

## **CRYPTO AND DIGITAL ASSETS**

### **OVERVIEW**

### **LITIGATION**

The major players in the cryptocurrency and digital assets space continue to engage the BCLP team, representing clients from investors (VCs, corporates and PE) and technology businesses (from startups and high-growth to mature companies) to enterprise users (including corporates and financial services institutions procuring or investing in technology), advising on all aspects of their disputes and transactional activity.

We have represented exchanges in cases involving alleged failure to deliver tokens, losses of funds due to crypto investments, and cases brought against exchanges by customers with losses. We have defended a major cryptocurrency exchange in a JAMS arbitration in San Francisco in which the claimant brought a multi-million dollar claim for stolen Bitcoin. Following a four-day hearing involving extensive expert witness testimony, our team obtained a defense verdict for the exchange and an order requiring the claimant to pay our client's attorneys' fees. Most recently, we are defending a decentralized cryptocurrency exchange in a case in a suit brought by a liquidity provider.

Our cryptocurrency disputes team has first-chair experience trying these cases, with strategic input from our securities litigation and data privacy specialists.

### **TRANSACTIONS & REGULATORY**

We also have a cross-functional team counseling clients on regulatory and other issues presented by the development of digital assets, cryptocurrency and the application of blockchain technology. We advise clients in the context of existing regulations and past enforcement activity, as well as advocating for clients in interactions with regulators to assess new products. Our crypto team regularly counsel clients on compliant designs for cryptocurrency and digital assets in light of the scrutiny that such products will endure from CFTC, SEC, FinCEN and state regulators. Our lawyers have extensive experience in private practice and as government regulators, making them well-suited to advise on the current regulatory environment, and provide best in class solutions to a plethora of challenges that our clients face in this space, on both a micro and macro level.

- Recognized by Chambers UK for Information Technology (and Global for outsourcing matters)
- Recognized by Legal 500 for Technology, Media and Telecoms sector (TMT)

## CLIENT STORIES

Getting clients from A to B

Apto payments

BCLP advised [Apto Payments](#), a San Francisco based fintech company, on its launch of the UK's first cryptocurrency debit card. BCLP's solution helped Apto navigate the complex regulatory requirements challenging the launch.

## MEET THE TEAM



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## EXPERIENCE

### LITIGATION

- Defending a decentralized exchange (“DEX”) against claims brought by a liquidity provider regarding whether the liquidity provider is entitled to tokens following the launch of the DEX.

- Successfully defended a crypto exchange in an arbitration from a USD multi-million claim. Defendant awarded attorneys' fees and costs.
- Defending crypto exchange in claims arising from alleged losses from customers following margin calls after a flash crash.
- Defending claims and injunction applications against a trading platform, Lead Capital Markets Limited, brought by a customer who asserted Bitcoin trades had been wrongly closed out and that the trading platform had acted fraudulently in managing trades. The claims were successfully struck out.
- Acting for a large cryptocurrency exchange in defending a EUR 500 million claim associated with alleged damages associated with removal of a corporate from a published index basket.
- Defended a global Fintech and payments company against allegations of patent infringement in the U.S. District Court for the Eastern District of Texas, Case No. 2:20-cv-00082, in which U.S. Patent No. 6,000,608 entitled "Multifunction Card System" is being asserted.

## **TRANSACTIONS & REGULATORY**

- Advised Apto Payments, a FinTech start-up by one of Twitter's co-founders, on the launch of the UK's first cryptocurrency debit card by Coinbase, a cryptocurrency exchange valued at more than US\$8bn at the time of the transaction.
- BCLP worked extensively with Overstock.com and its subsidiary, tZERO Group. They have developed extensive technical knowledge in the "digital security" space and operates an alternative trading system (ATS) through its wholly owned broker-dealer subsidiary, tZERO ATS.
- Advised on the structuring and establishment of a range of cryptocurrency-related business models, for example working with a start-up to set up a cryptocurrency exchange and a blockchain/ICO technology company to establish a fund to provide investors with exposure to cryptocurrencies.
- Extensive work with a cryptocurrency, blockchain and distributed ledger trading company, launched by a leading internet retailer. BCLP advised on in-bound licensing agreements with several third party software and technology providers related to building out its cryptocurrency and distributed ledger platform.
- Advising a renewable-powered bitcoin mining business and renewable energy developer from their corporation formation to employment and financing matters.

- Advised CFD providers offering CFDs over cryptoassets on various regulatory issues including performing a survey of local law jurisdiction to ensure it was permitted under their licence and advising on the fair treatment of customers and related conduct of business
- Acting for an exchange in defending a EUR 500 million claim associated with alleged damages associated with removal of a corporate from a published index basket.
- Advising tZero on its enterprise-level blockchain solutions including token issuance, management and trading.

## RELATED INSIGHTS

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### **At long last: what crypto's first spot ETFs mean for the digital asset industry**

After years of denials, the SEC has finally approved its first Bitcoin spot ETFs. Reaching this point has involved legal battles, repeated reviews of applications, and much more. That said, the SEC's approval of a Bitcoin spot ETF represents a huge leap forward for the digital asset industry: it further solidifies the primacy of Bitcoin and other cryptocurrencies as an asset class. However, these approvals were not straightforward—and at times, seemed improbable. Nevertheless, approval now deals an even greater blow to the SEC's regulation by enforcement approach. Given that Bitcoin spot ETFs have now been approved, digital assets will only be further legitimized as an asset class.

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## **SEC v. Ripple Labs: A Critical Industry Win**

On July 13, 2023, Southern District of New York Judge Analisa Torres issued an Order in SEC v. Ripple Labs, Inc. The SEC alleged that Ripple Labs had issued unregistered securities to investors, but Ripple contended that its token, XRP, was not a security as it was not an investment contract under the Howey test. Judge Torres' Order provided three key holdings regarding the question of whether a transaction of XRP is an investment contract: first, when issued to institutional investors, XRP's sale was a security; second, when sold via exchanges "programmatically" to individual investors, XRP's sale was not a security; and third, when issued to executives or via grants, XRP's issuance was not a security. Judge Torres' Order deals a significant blow to many of the SEC's recent arguments that almost all cryptocurrencies are immutably securities—cryptocurrencies themselves are never securities.

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## **Partners author article in 'Law360' on US and UK crypto regulation**

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## **A Time of Transition for the CFTC**

Over the past year, the Commodity Futures Trading Commission continued moving its focus away from practices like spoofing, instead bringing high-profile actions in the crypto space and reaching significant settlements with some of the nation's largest financial institutions relating to their use of unauthorized communication methods. Given the CFTC's newfound focus on unauthorized methods of communication—a focus shared by the Securities and Exchange Commission—market participants should immediately work to revamp their policies, procedures, and practices before regulators turn their gaze upon you.