

CRYPTOCURRENCY & DIGITAL ASSETS

OVERVIEW

As the use of digital currency and the adoption of blockchain technology has proliferated, creating a highly efficient alternative for global commerce, it has been simultaneously complicated by a lack of regulatory certainty. The debate over the long-term potential of digital currencies and blockchain technology has been influenced in part by the regulatory scrutiny of regulators in the United States and Europe including, the Commodity Futures Trading Commission (CFTC), the Federal Bureau of Investigations (FBI), the U.S. Department of Justice, the U.S. Department of the Treasury through the Financial Crimes Enforcement Network (FinCEN), the Internal Revenue Service (IRS), the U.S. Securities and Exchange Commission (SEC), and the state of New York through the Department of Business Oversight.

BCLP has assembled a cross-functional team that counsels clients on the regulatory issues presented by the development of digital currencies and the application of blockchain technology. The Digital Currency Team includes members of the following practices:

- FinTech and Payments
- Broker-Dealer Litigation, Arbitration, and Regulatory Practice
- Fund Formation Team
- Intellectual Property
- Prepaid and Emerging Payments Team
- Public Policy and Government Affairs
- Securities Litigation and Enforcement
- White Collar Defense and Investigations

In addition, we work closely with our extensive network of international offices on cross-border matters.

This team focuses on the regulatory aspects of digital currencies and blockchain technology in light of existing regulations and in light of past prosecutions by the Department of Justice against leading digital currency platforms, FinCEN regulatory actions against money services businesses

and money transmitters, SEC enforcement actions against collective investment vehicles and mining operations that focus on digital currencies, and congressional focus on emerging digital currency businesses. The Digital Currency Team also counsels clients on the potential regulations that will be applied to digital currencies by the CFTC, FinCEN, the SEC and state regulators.

AREAS OF FOCUS

Digital currency businesses may be subject to a range of state and federal laws, including:

- CFTC Registration
- Criminal prosecution by the Department of Justice
- Federal Bank Secrecy Act (BSA) and anti-money laundering (AML) laws
- Formation and registration of digital currency funds with the SEC
- State and federal regulations governing money service businesses and money transmitters

Any client planning to develop, launch or expand a digital currency business faces significant regulatory challenges. BCLP can effectively advise digital currency businesses in the following areas:

- Federal Bank Secrecy Act and AML compliance policies, procedures, and controls
- Product launches, including design, fees, terms and conditions, and product terminations, including dispute resolution, termination and wind-down procedures
- State and federal licensing requirements and exemptions

The Digital Currency Team maintains updated 50 state surveys in all areas of state law affecting digital currency businesses. In addition to counseling on the regulatory issues, BCLP also defends clients against government investigation and complex commercial matters related to digital currencies.

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.

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



Robert J. Endicott

Partner and Leader, Securities and
Corporate Governance, St. Louis

rob.endicott@bclplaw.com

[+1 314 259 2447](tel:+13142592447)



Kenneth M. Achenbach

Partner, Atlanta

ken.achenbach@bclplaw.com

[+1 404 572 6808](tel:+14045726808)

RELATED CAPABILITIES

- Fintech
- Payment Systems
- Data Privacy & Security

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

Events

Feb 11, 2025

BCLP Partner Speaks on DEI in the Legal Profession at ABA Virtual CLE Conference

Insights

Dec 06, 2024

2024 CFTC Enforcement: Agency Celebrates Record Monetary Relief

On December 4, 2024, the Commodity Futures Trading Commission (“CFTC”) released its enforcement results for Fiscal Year 2024 (“FY 2024”), showcasing record awards of monetary relief totaling more than \$17.2 billion. The historic awards reflect the agency’s continued pursuit of misconduct charged in enforcement actions filed in FY 2023 in the digital asset space along with enforcement actions against traditional financial services firms and commodity trading houses. The CFTC’s FY 2024 robust enforcement efforts featured a focus on intermediaries, emphasizing the importance of proper registration and compliance by entities facilitating derivative transactions. Enforcement against repeat offenders intensified, reflecting a strategy of escalating penalties to deter recidivism and safeguard market integrity. Additionally, the agency expanded its attention to environmental fraud, bringing its first enforcement case...

Insights

Nov 29, 2024

SEC Enforcement Tea Leaves: Expected Priorities in the Second Trump Administration

In this article, attorneys from BCLP's Financial Services Disputes and Investigations (FSDI) team predict the next Administration's SEC Enforcement priorities. The FSDI team includes former SEC, FINRA, and CFTC enforcement attorneys and former federal prosecutors. The team advises clients on SEC and FINRA enforcement, and other securities litigation, matters. How will President-elect Trump's reelection impact the SEC's enforcement priorities? We looked for clues from the first Trump Administration's Enforcement program, and also from the agency's current Republican Commissioners. In the new Administration, we expect the SEC (1) to emphasize protecting retail investors, (2) to refocus crypto enforcement actions on fraudsters, and (3) to take a more conservative approach to corporate disclosure and cybersecurity cases.

Insights

Oct 21, 2024

Modernizing UK Trade Settlement Standard: The Road Ahead

Insights

Sep 24, 2024

The Road Ahead For Tokenized Investment Funds In The UK

Insights

Jul 17, 2024

Courts at the Forefront of Innovation

Insights

May 01, 2024

Courts at the forefront of innovation

Insights

Mar 27, 2024

Unpacking The Law Commission's Digital Assets Consultation

Insights

Jan 31, 2024

What new digital sandbox regs hold in store for UK markets