

## Open Learning Forum

### [Crypto-asset trading platforms: A regulatory trip around the world](#)

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#### **General**

As crypto-asset trading has grown in popularity, countries have taken different approaches to regulation; some countries have applied existing laws and regulations while others have created new regulatory frameworks specifically built for crypto-assets. While the landscape might be unclear, what has become obvious is that the stateless nature of blockchain and crypto-assets has presented regulatory bodies, legislators, and trading platforms with novel problems that have yet to be fully resolved.

#### **European Union**

While the EU has broad authority to set regulations and compel EU Member States to implement laws, the nature of its authority does not ensure regulations are harmonized across borders. EU Member States are granted a degree of autonomy when implementing laws in accordance with EU Directives; this has led to is divergent definitions (and, subsequently, regulation) of “financial instruments” and “electronic money.” Trading platforms must also contend with existing Member-specific securities laws and crypto-asset guidance.

A survey of Member States by the European Securities and Markets Authority (ESMA) and a report from the European Banking Authority (EBA) found that “pure payment-type” crypto-assets like bitcoin and ether and “pure utility-type” crypto-assets are generally not financial instruments, while crypto-assets with attached profit rights do qualify as securities. They also state that crypto-assets pegged to the value of fiat currency (i.e. stablecoins) most likely qualify as electronic money.

Given the current patchwork of regulations and laws across the EU, Latham & Watkins states that it “seems likely that the EU will undertake further efforts to harmonize the regulation of crypto-assets across the EU, [though] the timeline remains unclear.”

#### **United States**

In the U.S., crypto-assets that are deemed securities are regulated by the Securities and Exchange Commission (SEC) and those that are deemed commodities are regulated by the Commodities Futures Trading Commission (CFTC); the Financial Crimes Enforcement Network (FinCEN) has oversight over activities related to “convertible virtual currency.”

Crypto-assets deemed to be securities are subject to a variety of regulations from the SEC, as a result many trading platforms must register as securities exchanges or broker-dealers. It should be noted that non-security crypto-assets bundled as an exchange-traded fund would constitute a security.

Crypto-assets that are not deemed securities are generally regulated by the CFTC as commodities, bitcoin and ether being the most prominent examples. The CFTC does not have authority to regulate trading platforms, though it may combat manipulation and fraud. The CFTC has also indicated that it will be subjecting crypto-futures markets to enhanced scrutiny.

FinCEN stated in its 2019 guidance that “if a crypto-asset exchange buys or sells crypto-assets as a customer business or provides customers with a hosted wallet (or other stored value device), then it is a money transmitter,” and must comply with FinCEN rules.

### **Hong Kong**

Hong Kong’s Securities and Futures Commission (SFC) has created a regulatory sandbox to test its conceptual regulatory framework, which would grant licenses the virtual asset trading platform operators. These operators would have to comply with a variety of rules, including only offering services to “professional investors” and conducting due diligence on ICOs and crypto-assets before they are listed on the platform.

### **Singapore**

Singapore currently requires exchanges that facilitate trading of crypto-assets to apply for a license from the Monetary Authority of Singapore (MAS). Exchanges that facilitate trading of security tokens must apply to MAS and receive designation as an approved exchange or a recognized market operator (RMOs). At present, RMOs cannot offer their services to retail investors, though MAS has proposed expanding the RMO framework to three tiers. These three tiers would have different regulatory requirements, permissible activities, and customer bases.

### **The Philippines**

Bangko Sentral ng Pilipinas (BSP) regulates companies that enable the transfer of fiat to virtual currency (and vice versa) as a remittance and transfer company (RTC). RTCs must register with the BSP and are subject to specific crypto-asset guidance.

The Philippines Securities and Exchange Commission (PSEC) will soon release rules on crypto-asset offerings, as well as draft rules on exchanges and ICOs.

### **Thailand**

Operators dealing with digital assets must obtain a license from the Minister of Finance; this can be done by demonstrating the business has sufficient financial resources and KYC/AML policies, among a number of other requirements.

### **Japan**

Japanese crypto-asset exchanges must register with the Financial Services Authority (FSA). In 2018, exchanges created the self-regulatory Japanese Virtual Currency Exchange Association (JVCEA), which was subsequently certified by the FSA. The JVCEA may sanction exchanges that are not in compliance with regulations. Exchanges that allow trading of crypto-assets that carry profit rights may be subject to additional regulations.