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**PROGRAM MATERIALS**  
**Program #29177**  
**November 14, 2019**

## **Crypto Comes in From Off the Grid: An Alphabet Soup of Regulators**

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# CRYPTO COMES IN FROM “OFF THE GRID:” AN ALPHABET SOUP OF REGULATORS

Speaker: Thomas O. Gorman, Dorsey & Whitney LLP  
November 14, 2019

## Detailed Agenda:

- I. Introduction (4 mins)
- II. Over View of Regulators (2 mins)
- III. SEC (28 mins)
  - a. Registration
  - b. The DAO Report
  - c. Funds, ETFs and Trading
  - d. Trading and Platforms
  - e. Enforcement Actions
  - f. Gatekeepers
- IV. CFTC (12 mins)
  - a. Approach
  - b. Commodity
  - c. Reach of Statutes
  - d. Trading
- V. FinCEN (10 mins)
  - a. Advisory
  - b. Cases
- VI. Tying the Currents Together (3 mins)
- VII. The Future (2 mins)
- VIII. Closing Remarks (2 mins)



# CRYPTO COMES IN FROM “OFF THE GRID:” AN ALPHABET SOUP OF REGULATORS

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**November 14, 2019**  
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# INTRODUCTION

- **Virtual currencies began as a little known tech curiosity tied to “getting off the grid”**
  - **Some believe they are the next greatest investment**
  - **Others believe they are fraud**
  - **The new currencies evolved with some now claiming “the revolution needs rules” while others assure encryption and privacy**
- **At the same time an alphabet soup of regulators struggle to deal with virtual currencies**
- **Now those same regulators have adopted a unified approach**

# INTRODUCTION

- **As the market and regulation continues to evolve questions about the future loom**
- **To project that future we will focus on the following**
  - **An overview of the regulators**
  - **The Securities and Exchange Commission (SEC)**
  - **The Commodity Futures Trading Commission (CFTC)**
  - **The Financial Crimes Network (FinCEN)**
- **Project the future direction of regulations**

# OVERVIEW OF REGULATORS

- **The SEC and CFTC have been the most active regulators**
  - Each has focused on their area of authority
  - Each has emphasized the investor protections under its statutes
- **FinCEN has also asserted jurisdiction in limited circumstances; See, e.g. Revised Geographic Targeting Order (Nov. 15 2018)(order re purchase of residential real estate with cash applies to purchase in crypto currency)**
- **The DOJ has brought criminal cases; See, e.g., *U.S. v. Haddow*, No. 1:17-mj-04939 (S.D.N.Y.); *U.S. v. Kantor*, No. 18-cr-177 (E.D.N.Y.)**

# SEC: REGISTRATION

- **Initially, the SEC brought an enforcement action alleging a failure to register the interests being sold**
  - **In the Matter of Erik T. Voorhees, Adm. Proc. File No. 3-15902 (June 3, 2014)(settled administrative proceeding involving unregistered shares valued in bitcoin)**
- **Subsequently, the SEC brought enforcement actions alleging fraud in addition to failure to register**
  - **See, e.g., SEC v. Plexcorps, Civil Action No. 1:17- cv-07007 (E.D.N.Y. filed Dec. 1, 2017)**
    - **Case centers on sale of cryptocurrency by individuals previously enjoined in Canada for selling unregistered interests**
    - **In four months Defendants signed up 1,500 investors and sold 81 million PlexCoin Tokens, raising about \$15 million**
    - **The SEC claims much of the investor money was misappropriated**
    - **The Court granted the Commission's motion for entry of a preliminary injunction in an order entered Nov. 7, 2018**

# SEC: THE DAO REPORT

- **The SEC issued a Report of Investigation called The DAO Report in July 2017, informing the market of its views on registration**
- **The critical test is two fold**
  - **Step 1: *SEC v. H.J. Howey Co.*, 328 U.S. 293 (1946) which considers**
    - **An investment of money**
    - **In a common enterprise**
    - **With the expectation of profits**
    - **From the efforts of others**
  - **Step 2: The economic reality of the transaction**



# SEC: THE DAO REPORT

- **The facts developed in the investigation**
  - The parties involved were: The DAO, Slock.it UG, Slock.it's co-founders, and certain intermediaries
  - The DAO used blockchain technology to operate as a virtual entity
  - The tokens sold represented interests in the enterprise
  - The tokens could be paid for with virtual currency, held as an investment, and sold
  - Investors were told the coins would increase in value as the ecosystem developed from others purchasing coins
  - The promoters would also advertise the investment
  - It was projected that the coins would be listed for trading on an exchange shortly after the close of the offering
- **Based on these facts, the SEC concluded the interests were securities**
- **In July 2019, the SEC permitted start-up Blockstack to proceed with a Reg A+ offering of digital tokens**
  - This was a first of its kind
  - The offering resembled a typical ICO

# SEC: FUNDS, ETFs AND TRADING

- **Virtual currencies present other issues, such as if they can be held by funds and ETFs and traded on an exchange**
- **The SEC has received applications**
  - **Cameron and Tyler Winklevoss, owners of Gemini Bitcoin exchange, sought approval for their trading platform**
  - **A number of applications for bitcoin ETFs and related products that would hold virtual currencies have been filed**
  - **None have been approved**
- **There has been a dialogue involving the SEC and market participants**

# SEC: FUNDS AND ETFs

- **For funds and ETFs, the issues were summarized in a letter from the Director of the Division of Investment Management to the Investment Company Institute and the Securities Industry and Financial Markets Association, dated Jan. 18, 2018**
- **The issues/questions included**
  - **Valuation: How would NAV be calculated each day?**
  - **Liquidity: Can redemptions be done daily?**
  - **Custody: How would custody requirements be met?**
  - **Arbitrage: Would volatility disrupt the ETF arbitrage process re exchange trading prices and NAV calculations (no material deviation)?**
  - **Manipulation: There are concerns about fraud in view of liquidity, volatility.**

# SEC: FUNDS AND ETFs

- **The resolution of the issues noted above – largely tied to liquidity and volatility – are the predicates for resolving questions regarding ownership by funds and ETFs**
- **The Director also noted that the resolution of these questions would inform decisions regarding**
  - **Registration under the Advisers Act**
  - **Listing standards with Corp Fin and Trading and Markets**
  - **The Office of the Chief Accountant**

# SEC: Trading and Platforms

- **The SEC's approach re trading platforms is similar – it keys to the volatility and liquidity of the markets and lack of investor protections**
- **The approach is summarized in a joint release from the Divisions of Enforcement and Trading and Markets, dated March 7, 2018**
- **Key points include**
  - **Many digital platforms, at times, refer to themselves as exchanges but lack the requisite protections**
  - **Some trading platforms claim to have trading protocols but they are not what are used by SEC registered exchanges**
  - **Others claim at times to have order books and updated bid/ask prices; but again, the procedures are not comparable to registered exchange**
- **Examination of these points suggest approval may be uncertain at best**

# SEC Enforcement Actions

- **The SEC's approach to cryptocurrencies was initially tested by *In the Matter of Munchee, Inc.*, Adm. Proc. File No. 3-18304 (Dec. 11, 2017)**
- **The case was based on alleged registration violations – there was no fraud charge; the basic facts are**
  - **The firm developed an iPhone app regarding restaurant reviews**
  - **To raise capital, the firm proposed to sell MUN tokens on the Ethereum block-chain**
  - **The firm planned to sell about half of the MUN tokens created**
  - **The tokens were marketed using a website, a white paper and other means**
  - **Key was the ecosystem – the value would go up as more investors bought coins**
  - **After the offering closed, the coins were to be registered for trading on an exchange**
  - **The SEC alleged registration violations**

# SEC Enforcement Actions

- ***Munchee* was the Commission's first registration violation only action**
  - The action resolved with the firm consenting to the entry of a cease and desist order based on the registration sections
  - The company halted its ICO offering when contacted by the staff and immediately returned the offering proceeds to the purchasers. *In the Matter of Munchee*, Adm. Proc. File No. 3-18403 (Dec. 11, 2017)
- **Since *Munchee* the Commission has continued to bring enforcement actions based on the DAO Report and *Howey*.**
  - *See, e.g., In the Matter of Carriereq, Inc. D/B/A Airfox, Inc.*, Adm. Proc. File No. 3-18898 (Nov. 16, 2018)(ICO where investors would benefit from the build out of the ecosystem; resolved with consent to cease and desist order based on Securities Act Sections 5(a) and (c) and payment of a \$250,000 penalty plus undertakings to return investor funds); *see also In the Matter of Paragon Coin, Inc.*, Adm. Proc. File No. 3-18897 (Nov. 16, 2018)
  - The Commission's press release regarding these cases noted that they are a model for firms that have issued tokens and want to comply with the federal securities laws

# SEC Enforcement Actions

- ***SEC v. Lucas*, Civil Action No. 1:19 -cv-08771 (S.D.N.Y. Filed Sept. 20, 2019)**
- **Defendant Jonathan Lucas is the founder and CEO of Fantasy Market, an online market place**
  - **The market was tied to social media**
  - **Later Respondent created the FM Whitepaper to generate investor interest**
  - **The offering was to be in two stages, a two week presale followed by a four week public token sale.**
  - **The FMT tokens were issued on the ERC-20 blockchain with a conversion ratio of 5 for \$1.00**
  - **The Whitepaper used for the sales urged investors to purchase early at discount prices.**
  - **The Whitepaper stated that there would be an aggressive repurchase program through which investors could profit**
  - **The price was expected to increase over 600%,**
  - **Investor funds would be pooled in digital asset wallets through which the investor could profit. The interests offered were in fact securities.**



# SEC Enforcement Actions

- **Investors were induced to purchase the securities with a series of misrepresentation regarding the development of the platform and use of proceeds**
- **In conducting the offering Mr. Lucas highlighted the credentials and talents of FM employees, some of whom did not exist while falsifying his biography**
- **In investors were also told that a pre-sale was held in which 150 institutional and accredited investors filled out the legal paperwork to participate, a false claim The claim was false.**
- **To resolve the case Defendant consented to the entry of a based on Securities Act Sections 5(a), 5(c) and 17(a) and Exchange Act Section 10(b). e also agreed to the entry of a five year officer director bar and a five year conduct based injunction prohibiting any offering of securities except for personal use. Mr. Lucas will pay a penalty of \$15,000. See Lit. Rel. No. 24607 (Sept. 23 2019).**

# SEC Enforcement Actions

- ***SEC v. Telegram Group Inc.*, Civil Action No. 19 Civ. 9439 (S.D.N.Y. Filed Oct 11, 2019) is the Commission's latest case in this area**
- **It represents in many ways the cross currents of regulation although it only deals with the securities issues**
  - **The case centers on the digital asset known as “Grams,” being offered by the owners and operators of mobile messaging application Telegram Messenger**
  - **The preliminary offerings raised billions of dollars for an about to launch solicitation and planned network expansion.**
  - **Grams tie to a world-wide encrypted communication system built on secrecy**
    - **No cooperation with regulators because the revolution does not need rules, just secrecy**

# SEC Enforcement Actions

- **Defendant Telegram Group Inc. is a privately-owned British Islands firm based in Dubai, UAE**
- **Its primary product is Messenger, a private, encrypted messaging application with about 300 million monthly users**
- **TON Issuers Inc., a named Defendant, is a BV Islands firm, owned by Telegraph Group, based in Tortola**
- **Telegram is owned by Dr. Nikolai Durov and his brother, Pavel, Both are Russian citizens**
- **Dr. Durov is the Chief Technology Officer of Telegram**

# SEC Enforcement Actions

- **The Durov brothers launched a version of Telegram Messenger in late 2013**
  - **Users of the service were told that it is “free and will always be free”**
  - **More importantly, users were assured that their privacy is taken seriously and that the company will “never give third parties access to your data”**
  - **Users can have secret chats since there is “disappearing content” and the use of encrypted data transmitted over multiple servers**
  - **The first generation, however, did not have the capability to replace high volume transaction mechanisms like credit cards and fiat currency.**

# SEC Enforcement Actions

- **By late 2017 the brothers were prepared to launch the next generation of Telegram**
- **It was touted as capable of operating on decentralized applications at a massive scale**
- **The new iteration, called “Telegram Open Network” or “TON,” was designed to host the next-generation of multi-blockchain systems**
- **Telegram described the system as “always [an] expanding and contracting decentralized supercomputer and value transfer system”**

# SEC Enforcement Actions

- **Over a three -month, period beginning in January 2018, Telegram entered into Gram Purchase Agreements with Initial Purchasers**
  - The agreements called for TON Issuer Inc., a subsidiary of Telegram, to issue a new cryptocurrency called “Grams”
  - A new blockchain platform would be launched known as “TON Network”
  - Investors purchased Grams for delivery following the completion of the TON Blockchain
- **The initial offerings involved about about 2.9 billion Grams sold for \$1.7 billion, about \$400 million from the U.S.**

# SEC Enforcement Actions

- **Telegram noted that the Gram Purchase Agreement is an investment contract, cautioning U.S. based investors that the offer and sale of the security – referencing the Agreement – was not registered under the Securities Act of 1933 and cannot be transferred**
- **Grams are a currency**
- **Investors were told that the Grams would appreciate from the build-out of the ecosystem or the TON Network**
- **The series of documents used in connection with the offerings noted that the capital raised from the initial solicitations would be pooled and used over time in connection with the development of the network**
- **Subsequent issuances of Grams would be priced at a premium**
- **The offering materials committed to deliver the Grams and launch the TON Blockchain by no later than October 31, 2019**

# SEC Enforcement Actions

- **Defendants are currently preparing for the next offering to fund the continued development of the network**
- **The Commission asserts that the markets are about to be flooded with unregistered securities which essentially will disappear once issued and sold**
- **The complaint alleges violations of Securities Act Sections 5(a) and 5(c)**
- **The Court granted the Commission's request for a temporary freeze order**
- ***See also In the Matter of XBT Corp. Sari, Adm. Proc. File No. 3- 19592 (Oct. 31, 2019)(International securities-based swaps dealer settles unregistered securities/broker charges)***



# SEC: GATEKEEPERS

- **SEC Commissioners and senior staff have been very aggressive in alerting investors to the dangers of investing in the virtual currency markets**
- **In a speech delivered on January 22, 2018, SEC Chairman Clayton warned market professionals – securities lawyers, accountants, and others involved with these products -- about fully complying with their professional obligations**
- **After noting that offerings and trading in the virtual markets frequently use terms that sound like the securities markets without offering the same protections, Chairman Clayton delivered what he called a “simple and a bit stern” message**

# SEC: GATEKEEPERS

- **The message**
  - **“I have instructed the SEC staff to be on high alert for approaches to ICOs that may be contrary to the spirit of our securities laws and the professional obligations of the U.S. securities bar . . . [market professionals and members of the securities bar] need to act responsibly and hold themselves to high standards . . . [the securities laws] assume that securities lawyers, accountants, underwriters, and dealers will act responsibly . . .”**
  - **It is not acceptable, the Chairman stated, to conclude that the ICO is “pretty close,” or to just be equivocal, and then let the offering go forward**
- **This gatekeeper theory traces to the earliest days of the SEC Enforcement Division**

# CFTC: COMMODITY – APPROACH

- **The CFTC has approached the virtual currency markets in a manner similar to that of the SEC**
- **The two Chairmen, plus the Directors of the Divisions of Enforcement for each agency, have issued joint statements cautioning investors about the dangers of the markets because of their lack of investor protections**
- **The Chairman of each agency reiterated these warnings in testimony before Congress earlier this year**

# CFTC: COMMODITY

- In 2015, the CFTC determined that virtual currencies are a commodity within the meaning of the CEA
- The position of the agency was upheld in *CFTC v. McDonnell*, Civil Action No. 18-cv-361 (E.D.N.Y. Opinion March 6, 2018)
  - The Court granted the CFTC’s request for a preliminary injunction in a fraud case; in part the opinion upheld the determination of the agency re jurisdiction
  - Defendants Patrick McDonnell and his firm, Coin Drop Markets, were essentially marketing expertise on trading virtual currencies for a fee
  - The CFTC alleged not only that Defendants lack any expertise, but that they misappropriated the investor funds

# CFTC: COMMODITY

- **In ruling in favor of the CFTC on the preliminary injunction, the Court held**
  - **The CEA defines commodity to include “wheat, cotton, rice, corn, oats . . . And all services, rights, and interests . . . In which contracts for future delivery are presently or in the future dealt in”**
  - **“In view of this definition the CFTC issued an order in 2015 finding that virtual currencies can be classified as commodities,” citing *In the Matter of: Coinflip Inc.*, CFTC Docket No. 15-29**
    - **The order states that “Bitcoin and other virtual currencies are encompassed in the definition [of a commodity] and properly defined as commodities”**
  - **The Court went on to hold that while the CFTC generally cannot regulate the spot market, under an expansion of its authority in the Dodd-Frank Act, the agency can bring an action under Section 9 of the CEA and Rule 180.1 prohibiting fraud involving any “contract of sale of any commodity in interstate commerce”**
  - **Subsequently, the Court entered a final judgment of permanent injunction and ordered the payment of restitution and a penalty three times the amount of the restitution ordered**

# CFTC: REACH OF STATUTES

- In ***CFTC v. Monex Credit Co.***, 311 F. Supp. 3d 1173, 11189 (C.D. Cal. 2018) the Court reached the opposite conclusion, finding that that the agency did not have jurisdiction under section 6(c) based on an exception
  - The Ninth Circuit reversed. First, the actual delivery exception is an affirmative defense according to a recent ruling by the Eleventh Circuit. While typically an affirmative defense is not considered on a motion to dismiss where, as here, the complaint establishes the defense it can be considered.
  - Second, the Court rejected the conclusion that new Section 6(c)(1) requires proof of manipulation and deception to establish a violation
    - The section was modeled by Congress on Exchange Act Section 10(b) which does not require proof of both elements to establish a violation.
    - To the contrary, Section 10(b) has been held to be a “catch-all clause to prevent fraudulent practices,” quoting *Chiarella v. United States*, 445 U.S. 222, 226 (1980)
    - It authorizes fraud-only claims. Since Section 6(c)(1) is the “mirror image” of the Exchange Act provision, it is clear that the District Court’s ruling is incorrect
  - The ruling was a significant victory for the agency
- The agency has continued to bring fraud actions regarding ICOs

# CFTC: TRADING

- **Trading involving virtual currencies has been permitted in the commodity markets**
- **The exchanges “self-certified” the approval**
- **Under that process, Designated Contract Markets are permitted to certify new products; the process does not require notice, public comment, or the approval of the CFTC**
- **On December 1, 2017, the CME and the CBOE Futures Exchanges self-certified new contracts for bitcoin future products**
- **The Cantor Exchange self-certified a new contract for Bitcoin binary options**

# CFTC: TRADING

- **The CFTC has actively monitored the process, imposing additional investor protections, which include**
  - **Having derivative clearing organizations set high initial and maintenance margins for cash-settled Bitcoin futures**
  - **Setting large trader reporting thresholds at five bitcoins or less**
  - **Entering into information sharing agreements with spot market platforms**
  - **Monitoring data from cash markets**
- **The CFTC has made it clear that these and similar arrangements will apply to any new products**



# FinCEN

- **The regulatory approach of FinCEN is similar to that of the SEC and CFTC – focus on applying existing principles**
- **In a May 9, 2019 advisory titled Advisory on Illicit Activity Involving Convertible Virtual Currency the agency sketched its approach**
  - **The advisory appears to be a broad warning regarding the nefarious use of crypto currencies. It is addressed to CEOs, COOs, Chief Risk and Compliance Officers and Cybersecurity Units.**
  - **Using subtitles such as “The Risks Posed by Virtual Currencies,” and “Darknet Marketplaces,” the Advisory trumpets the dangers of these currencies**
  - **Its potential reach and application is perhaps best reflect in the subtitle offered at the outset: “Criminals continue to exploit virtual currency to support illegal activity, money laundering and other behavior endangering U.S. national security, including through entities facilitating its anonymous use,”**

# FinCEN: Advisory

- **The Advisory is narrowly drawn, focusing largely on two points.**
  - **One is the used of convertible virtual currencies or CVCs**
  - **The other is a subset of peer-to-peer or P2P exchanges, particularly those tied to the dark web**
  - **CVCs create a risk of illicit financial transactions because of the global nature, distribution structure and limited transparency of the most widely used virtual currency systems**
  - **These “New types of anonymity-enhanced CVCs have emerged that further reduce the transparency of transactions and identities” as well as the source of the transaction**
  - **Some transactions appear to have been crafted for concealment**
  - **This makes it difficult for law enforcement to identify these transactions**
  - **It also also places increased emphasis on compliance by financial institution with anti-money laundering/counter terrorism (AML/CFT) systems, according to the Advisor**
  - **The prevalence of unregistered CVC entities that lack adequate AML/CFT controls enhances the risk from these transactions**

# FinCEN: Advisory

- **The advisory also focuses on a limited class of P2P transactions**
  - **Generally, these exchanges involve individuals or entities offering to exchange fiat currencies for virtual currencies or one virtual currency for another**
  - **The transactions are typically informal and may be on-line or in-person**
  - **Those involved in the transactions are frequently money service businesses or MSBs, some of which are foreign based**
  - **P2P exchange functioning as MSBs are required under to comply with the Bank Secrecy Act and the implementing regulations**
  - **Many involved in these transactions may, however, not be registered**

# FinCEN: Cases

- ***Crypto currency: U.S. v. BT-e, Civil Action No. 4:19-cv-04281 (N.D. Cal. Filed July 25, 2019)***
  - FinCEN filed a civil forfeiture action against a foreign based crypto exchange and its executive based on a failure to register as a money changer, to develop and implement an AML system and to file SARs
  - The penalties assessed include \$12 million against executive Alexander Vannick and \$88,586,314 against BTC-e, the exchange, for violations of the BSA
  - The penalties are predicated on the following
    - ***Registration violations:*** The exchange, considered a financial institution under the BSA, did not register with FinCEN as a Money Services Business or MSB within 180 days of starting operations
    - ***AML violations:*** The Bank Secrecy Act and the Money Services Business requirements require that the firm develop and implement an effective AML program and
    - ***File SARs:*** Under the BSA an MSB the exchange must file a SAR if it becomes aware of or suspects a suspicious transaction or transactions that aggregate to at least \$2,000 in value
    - The forfeiture case is pending

# FinCEN: Cases

- **DOJ has brought criminal charges against the firm and Mr. Vinnik**
  - **In May 2016 a two-count indictment charged BTC-e and Mr. Vinnik with operating an unlicensed Money Services Business**
  - **A superseding 21 count indictment centered on the same charges was returned early the next year. An extradition request for Mr. Vinnik has been initiated.**

# TYING THE CURRENTS TOGETHER

- **The relationships among the regulators is well illustrated by a recent Joint Release by FinCEN, the CFTC and the SEC**
- **In the Joint Release FinCEN, the CFTC and the SEC reiterated their individual approach to digital assets while essentially showing that “off-the-grid” is not the correct approach. Joint Release issued by the Financial Crimes Enforcement Network or FinCEN and the CFTC and SEC (collectively the “regulators”) (Oct. 11, 2019)**

# TYING THE CURRENTS TOGETHER

- **The Joint Release focuses on the currency type attributes of digital assets**
- **It was designed to “remind persons engaged in activities involving digital assets of their anti-money laundering and countering the financing of terrorism (AML/CFT) obligations under the Bank Secrecy Act”**
- **Those obligations apply to entities that the BSA defines as “financial institutions”**
  - **Those includes “futures commission merchants and introducing brokers, obligated to register with the CFTC, money services businesses as defined by FinCEN, and broker-dealers and mutual funds obligated to register with the SEC”**
- **The obligations of those in this space include the requirement to establish an effective AML and record keeping program which includes suspicious activity reporting or SAR requirements**

# TYING THE CURRENTS TOGETHER

- **The announcement was specifically targeted at “digital assets”**
- **As the Joint Release states: “For the purposes of this joint statement, ‘digital assets’ include security- or commodity-based instruments such as futures or swaps”**
- **While market participants use a variety of labels and terms to identify such instruments, the critical question is the substance involved, not the label**
- **Rather, as the Joint Release states, it is “[t]he nature of the Digital asset-related activities a person engages in [that is] a key factor in determining whether and how that person must register with the CFTC, FinCEN, or the SEC”**



# TYING THE CURRENTS TOGETHER

- **If the person engages in certain “commodity” related activities, for example, registration may be required with the CFTC**
  - In that instance its AML/CFT activities will be overseen by the CFTC, FinCEN and the National Futures Association
- **If the person or activities fall within the definition of a financial institution or a money-changer**
  - In that instances its AML/CFT activities will be overseen by FinCEN and perhaps others
- **If the person or activities fall within the definition of a security it may be required to comply with the Federal Securities laws**
  - In that instance its AM/CFT activities will be regulated by the SEC, FinCEN, and perhaps the Financial Industry Regulatory Authority or others, according to the release
- **The key is the nature of the activities**

# THE FUTURE

- **The SEC, CFTC, FinCEN, DOJ, and various banking regulators continue to monitor the cryptocurrency markets**
- **Those markets continue to evolve**
- **The SEC and CFTC have been particularly aggressive**
  - **The SEC's Enforcement Division has continued to bring registration and fraud actions**
  - **The CFTC has taken a similar approach, bringing fraud actions and monitoring trading**
  - **FinCEN has also adopted a similar approach within its area**

# THE FUTURE

- **The market continues to move forward and evolve**
  - Praetorian Group registered a \$75 million offering with the SEC
  - Cameron and Tyler Winklevoss, following a suggestion by a CFTC Commissioner, proposed creating a self-regulatory organization for virtual currencies
  - Yet consider Telegram and its promise of privacy
- **The Joint Release reflects the efforts of U.S. regulators to ensure a unified front**
  - Foreign views differ; for example, Hong Kong and the EU have adopted positions similar to the SEC; South Korea has banned their use
- **In the end, the forces that helped create the market for virtual currencies may have more impact on them than the regulators**
- **The final word on virtual currencies is likely to come from a blend of an evolving market and regulatory approach**