

Regulatory Notice

18-20

Digital Assets

FINRA Encourages Firms to Notify FINRA if They Engage in Activities Related to Digital Assets

Summary

FINRA is monitoring developments in the digital asset marketplace and is undertaking efforts to ascertain the extent of FINRA member involvement related to digital assets. To supplement FINRA's efforts to date, FINRA is issuing this *Notice* to encourage each firm to promptly notify FINRA if it, or its associated persons or affiliates, currently engages, or intends to engage, in any activities related to digital assets, such as cryptocurrencies and other virtual coins and tokens. In addition, until July 31, 2019, FINRA encourages each firm to keep its Regulatory Coordinator abreast of changes in the event the firm, or its associated persons or affiliates, determines to engage in activities relating to digital assets not previously disclosed. If a firm recently has provided notice to its Regulatory Coordinator in response to a direct request, has provided this information by way of the 2018 Risk Control Assessment (RCA) Survey, or has submitted a continuing membership application (CMA) regarding its involvement in activities related to digital assets, FINRA does not request additional notification pursuant to this *Notice* unless a change has occurred.

Questions concerning this *Notice* may be directed to:

- ▶ Kosha Dalal, Associate Vice President & Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6903 or by email at kosha.dalal@finra.org;
- ▶ Racquel Russell, Associate General Counsel, OGC, at (202) 728-8363 or by email at racquel.russell@finra.org; or
- ▶ Cara Rosen, Counsel, OGC, at (202) 728-8852 or by email at cara.rosen@finra.org.

July 6, 2018

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Regulatory Reporting
- ▶ Senior Management
- ▶ Trading
- ▶ Training

Key Topics

- ▶ Blockchain
- ▶ Cryptocurrencies
- ▶ Definition of "Security"
- ▶ Digital Assets
- ▶ Distributed Ledger Technology
- ▶ Initial Coin Offerings
- ▶ Virtual Coin
- ▶ Virtual Token

Referenced Rules & Notices

- ▶ FINRA Rule 3210
- ▶ FINRA Rule 3270
- ▶ FINRA Rule 3280
- ▶ NASD Rule 1017
- ▶ Notice to Members 00-73
- ▶ Regulation ATS
- ▶ Section 2(a)(1) of the Securities Act of 1933
- ▶ Section 3(a)(10) of the Securities Exchange Act of 1934

Background & Discussion

The market for digital assets,¹ such as cryptocurrencies and other virtual coins and tokens, has grown significantly and has increasingly been of interest to retail investors. At the same time, investor protection concerns exist, including incidences of fraud and other securities law violations involving digital assets and the platforms on which they trade.² As such, FINRA has a keen interest in remaining abreast of the extent of member involvement in this space. Firms that engage or begin to engage in such activities are reminded to consider all applicable federal and state laws, rules and regulations, including FINRA and SEC rules and regulations.³

A firm, its associated persons or affiliates may be involved with digital assets in a myriad of ways. To better understand the scope of such activities, FINRA Regulatory Coordinators conducted a survey regarding firms' involvement in activities related to digital assets. In addition, the 2018 RCA Survey contained questions regarding digital assets. FINRA is supplementing these efforts by publishing this *Notice* to request that each firm promptly provide notification to its Regulatory Coordinator if it, or its associated persons (including activities under Rules 3270 and 3280)⁴ or affiliates, currently engages, or intends to engage, in activities related to digital assets, including digital assets that are non-securities.⁵ The types of activities of interest to FINRA if undertaken (or planned) by a member, its associated persons or affiliates, include, but are not limited to:

- ▶ purchases, sales or executions of transactions in digital assets;
- ▶ purchases, sales or executions of transactions in a pooled fund investing in digital assets;
- ▶ creation of, management of, or provision of advisory services for, a pooled fund related to digital assets;
- ▶ purchases, sales or executions of transactions in derivatives (*e.g.*, futures, options) tied to digital assets;
- ▶ participation in an initial or secondary offering of digital assets (*e.g.*, ICO, pre-ICO);
- ▶ creation or management of a platform for the secondary trading of digital assets;
- ▶ custody or similar arrangement of digital assets;
- ▶ acceptance of cryptocurrencies (*e.g.*, bitcoin) from customers;
- ▶ mining of cryptocurrencies;
- ▶ recommend, solicit or accept orders in cryptocurrencies and other virtual coins and tokens;
- ▶ display indications of interest or quotations in cryptocurrencies and other virtual coins and tokens;
- ▶ provide or facilitate clearance and settlement services for cryptocurrencies and other virtual coins and tokens; or
- ▶ recording cryptocurrencies and other virtual coins and tokens using distributed ledger technology or any other use of blockchain technology.⁶

FINRA encourages firms to promptly notify their Regulatory Coordinator in writing (including email) of its or its associated persons' or affiliates' involvement in activities related to digital assets. A material change in a firm's business operations also requires the submission and approval of a CMA.⁷ If a firm already has submitted a CMA regarding its involvement in activities related to digital assets, or provided notification to its Regulatory Coordinator in response to a direct request, or by way of the 2018 RCA Survey, FINRA does not request additional notice unless a change has occurred. Until July 31, 2019, each firm is encouraged to keep its Regulatory Coordinator updated if it, or its associated persons or affiliates, begins or intends to begin, engaging in a new type of activity relating to digital assets not previously disclosed.

Endnotes

1. For purposes of this *Notice*, the term "digital asset" refers to cryptocurrencies and other virtual coins and tokens (including virtual coins and tokens offered in an initial coin offering (ICO) or pre-ICO), and any other asset that consists of, or is represented by, records in a blockchain or distributed ledger (including any securities, commodities, software, contracts, accounts, rights, intangible property, personal property, real estate or other assets that are "tokenized," "virtualized" or otherwise represented by records in a blockchain or distributed ledger).
2. See e.g., SEC press release, [SEC Emergency Action Halts ICO Scam](#) (December 4, 2017); SEC press release, [SEC Halts Fraudulent Scheme Involving Unregistered ICO](#) (April 2, 2018); SEC public statement, Divisions of Enforcement and Trading and Markets, [Statement on Potentially Unlawful Online Platforms for Trading Digital Assets](#) (March 7, 2018); SEC Investor Alert, [Public Companies Making ICO-Related Claims](#) (August 28, 2017); and FINRA Investor Alert, [Don't Fall for Cryptocurrency-Related Stock Scams](#) (last updated December 21, 2017).
3. Digital assets that meet the definition of an "investment contract" under Section 2(a)(1) of the Securities Act of 1933 or under Section 3(a)(10) of the Securities Exchange Act of 1934 are "securities" governed by the federal securities laws and FINRA rules, irrespective of whether or not they are labeled as "securities." See generally Securities Exchange Act Release No. 81207 (July 25, 2017), [Report of Investigation Pursuant to Section 21\(a\) of the Securities Exchange Act of 1934: The DAO](#).
4. FINRA is interested in learning from firms how they currently handle notifications regarding participation in activities related to digital assets, such as cryptocurrencies and other virtual coins and tokens. See FINRA Rule 3270 (Outside Business Activities of Registered Persons) and Rule 3280 (Private Securities Transactions of an Associated Person). FINRA is not requesting notification or information regarding passive investments and activities of associated persons that are subject to the requirements of Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions).

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5. This notification is separate from any existing regulatory obligations under FINRA rules that may apply to a firm regarding its involvement in activities relating to digital assets (e.g., trade reporting transactions in digital assets that meet the definition of a “security” or filing a new member application or continuing member application). This notification also is separate from any other regulatory obligations that may apply to a firm regarding its involvement in activities relating to digital assets, such as submitting Form ATS filings as required, including notifications of “material changes” under Regulation ATS, such as changes to the types of securities traded on a platform. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70845, 70922 (December 22, 1998) (Regulation ATS adopting release) (including changes to “the operating platform, the types of securities traded, or the types of subscribers” as examples of “material changes” that must be filed under Rule 301(b)(2) of Regulation ATS); see also [Regulatory Notice 09-46](#) (August 2009) (reminding alternative trading systems of the need to submit to FINRA duplicate copies of any filing required by Rule 301(b)(2) of Regulation ATS).
6. Cryptocurrencies and other virtual coins and tokens use distributed ledger technology, most commonly known as “blockchain,” as the primary protocol for exchanging, storing and verifying information.
7. For factors to consider in determining materiality, see [Notice to Members 00-73](#) (SEC Approves Amendments to NASD Membership Rules). See also NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations).