

THE OTHER SIDE OF THE COIN: BITCOIN, BLOCKCHAIN, REGULATION & ENFORCEMENT

*A Latham & Watkins' Presentation for the FIA
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Your Presenters



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Latham & Watkins' Financial Institutions Group addresses the proprietary legal needs of financial institutions, from long-standing traditional players to new market entrants, through our globally integrated regulatory, transactional and litigation practices.

Today's Agenda

- Review of the treatment of cryptocurrency by various United States and EU regulatory bodies
- Overview of recent enforcement trends in cryptocurrency
- Outlook on potential blockchain technology applications and regulatory considerations in financial services
- Q&A

Current Regulatory Treatment of Cryptocurrency

**Commodity Futures
Trading Commission
(CFTC)**

**Board of Governors of
the Federal Reserve
System
(Federal Reserve)**

**Financial Crimes
Enforcement Network
(FinCEN)**

**Consumer Financial
Protection Bureau
(CFPB)**

**Securities and
Exchange
Commission
(SEC)**

EU Regulators

Note: In preparing the information provided herein, we have relied on various publicly available sources and regulatory materials. Latham & Watkins has not verified any of the information provided as a result of conversations with the relevant federal regulators. All summaries are subject to more detailed analysis.



Commodity Futures Trading Commission

First CFTC Bitcoin Enforcement Action: *In re Coinflip* (September 17, 2015)

- Derivabit Order found that Coinflip violated the CEA by operating a trading platform for cryptocurrency derivatives without registering as a SEF or DCM
- Bitcoin and other virtual currencies are “commodities” (as defined in the Commodity Exchange Act (“CEA”))
 - Virtual currency derivatives (including futures, options or swaps) are subject to CFTC jurisdiction



Commodity Futures Trading Commission

Bitcoin Derivatives, The Evolving US Market

- Trading Platforms, Exchanges and Products
 - TeraExchange: First to offer NDF with bitcoin underlying; registered as a swap execution facility (SEF)
 - LedgerX: Approved as a SEF (September 2015); still awaiting approval as a clearinghouse. If approved will be the first federally regulated bitcoin options exchange and clearing house to list and clear fully-collateralized, physically-settled bitcoin options
 - Hedgy: Offers forward smart contract to hedge the risk of price volatility for miners (not registered as a SEF); uses multi-sig technology to allow traders to enforce and settle forward contracts on the blockchain



Commodity Futures Trading Commission

Bitcoin Derivatives: The Asset Class

- Regulatory treatment of bitcoin derivatives
 - Spot contracts
 - Bitcoin swaps and forwards (and non-deliverable forwards)
 - Financial commodity v. nonfinancial commodity
- Regulatory treatment of bitcoin derivatives platforms and intermediaries
 - Swap execution facility
 - Designated contract markets
 - Brokers and futures commission merchants



The Federal Reserve

“[T]he Federal Reserve simply does not have authority to supervise or regulate bitcoin in any way. . . . [T]o the best of my knowledge, there is no intersection at all in any way between bitcoin and banks that the Federal Reserve has the ability to supervise and regulate.”

**- Janet Yellen, Chair, Board of Governors of
the Federal Reserve System**

Testimony before the Senate Committee on
Banking, Housing, and Urban Affairs,
February 27, 2014



The Consumer Financial Protection Bureau

- The Consumer Financial Protection Bureau (CFPB) issued a consumer alert in August 2014 about the risks of holding or using virtual currencies
 - The CFPB has not commented on whether virtual currency transactions are considered electronic funds transfers
 - However, in its recent proposed rules the CFPB noted that rules regarding prepaid accounts may apply to certain virtual currency products and wallets
 - Proposed new rules for prepaid accounts, to be effectuated through amendments to the regulations implementing the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)
 - The CFPB has not designated virtual currencies as an “unfair, deceptive or abusive act or practice” (UDAAP) or any virtual currency business as a non-bank “larger participant”



FinCEN Jurisdiction Over Virtual Currency Businesses

- FinCEN has issued interpretive guidance on the application of FinCEN regulations to money services businesses (MSBs), in particular to transactions in virtual currencies
- FinCEN stated that the transmission of virtual currencies by a third party intermediary constitutes “money transmission” (March 2013)
 - Exempts “users” of virtual currency such as consumers, investors and merchants
 - Requires intermediaries to register as MSBs
 - Exchanger – A person engaged as a business in the exchange of virtual currency for real currency, funds or other virtual currency
 - Administrator – A person engaged as a business in issuing (putting into circulation) a virtual currency, and who has authority to redeem such virtual currency
 - Subjects MSBs to certain KYC, transaction reporting and AML program requirements



FinCEN Jurisdiction (cont'd.)

- In addition to its guidance, FinCEN has issued four Administrative Rulings with respect to companies engaged in various types of virtual currency arrangements:
 1. **Virtual Currency Mining** – A company that mines virtual currency and uses the virtual currency for its own purpose (i.e., not for the benefit of another) *is not* an MSB (January 2014)
 2. **Software Development** – A company that produces and distributes software to facilitate transactions in virtual currency *is not* an MSB (January 2014)
 3. **Virtual Currency Trading Platform** – A company that intends to establish a convertible currency trading and booking platform *would be* an MSB (October 2014)
 4. **Virtual Currency Payment System** – A company that intends to set up a convertible currency payment system *would be* an MSB (October 2014)



State Money Transmitter Laws – Along a Spectrum...

States vary on the level of regulation of virtual currency transmission. For example:

New York

- BitLicense requirement imposed; amendments to Banking Law
- BitLicense final rules released by NYDFS (*June 2015*)
- First BitLicense issued (*September 22, 2015*)

North Carolina

- License required
- “MTA Modernization Bill” filed with the NC General Assembly (*March 19, 2015*)

California

- Under review by CA Department of Business Oversight
- Assembly Bill 1326 by Assembly Member Matt Dababneh (*February 9, 2015 - no longer active*)

Texas

- Present approach ***does not*** include regulation
- Texas Department of Banking, Supervisory Memorandum – 1037 (*April 23, 2014*)



Latham's 50-State Virtual Currency Survey

Survey Objective: Understand the treatment of virtual currencies, such as bitcoin, under state money transmitter regulations

Threshold: Does the state regulator of financial services consider virtual currencies to constitute "money" or "monetary value"?

If "Yes"

State will require licensure of any entity that controls or custodies (holds) a client's virtual currency

If "No"

State may not require a license unless the business also holds the customers' fiat (sovereign) currency (e.g., a currency exchange)

Other issues:

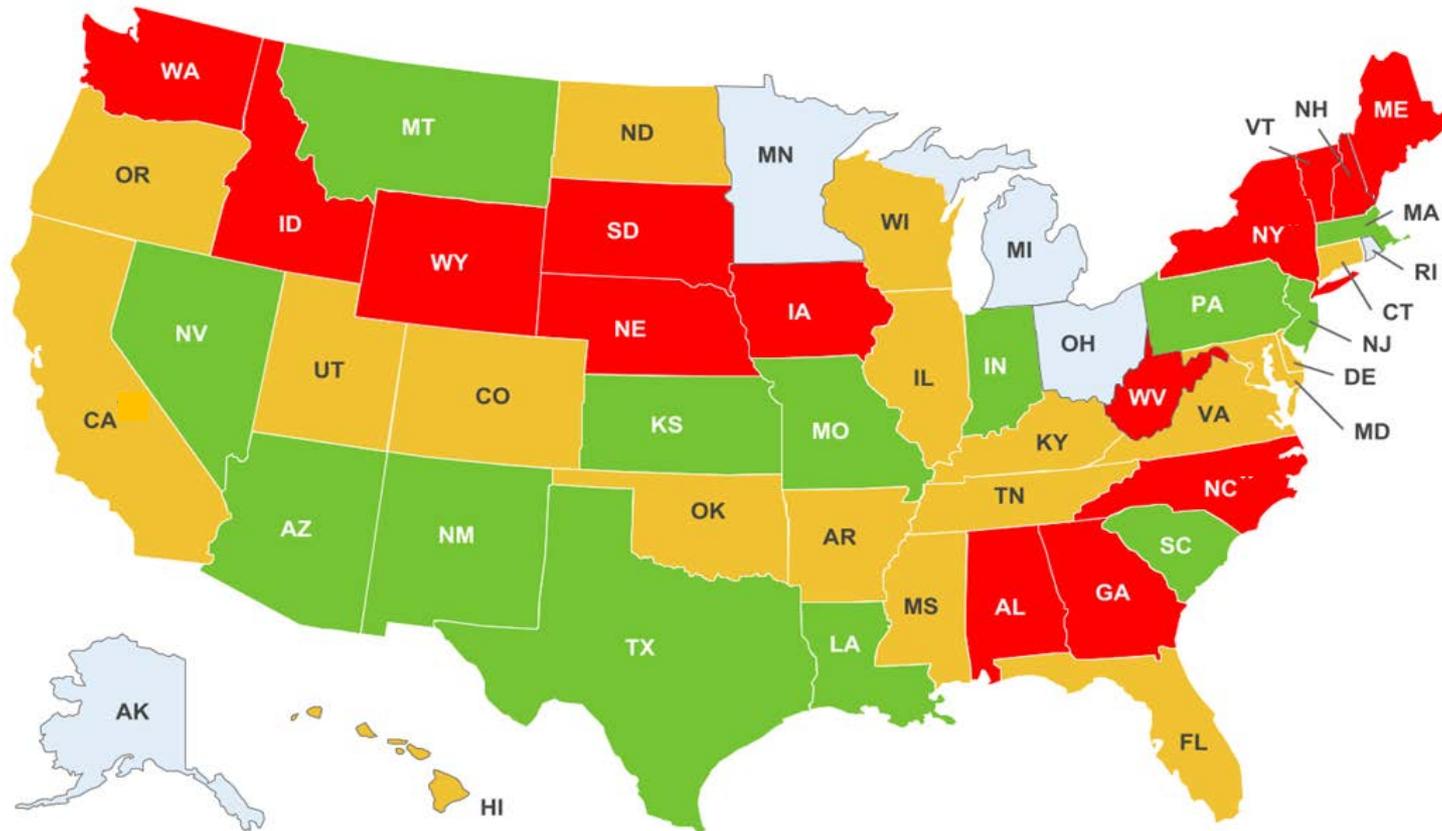
- Whether particular types of transactions require a license;
- What degree of control requires a license and how a virtual currency licensee would comply with requirements written for traditional money transmitter businesses (e.g., holding permissible investments and obtaining audited financial statements)

Note: The survey was initially conducted in April 2015. At that time, 51 state regulators (including the District of Columbia) were contacted directly and asked a series of 27 questions related to virtual currency regulation; four states did not respond to the survey at the time (Alaska, Minnesota, Michigan, Ohio). The survey and analysis is currently being updated to reflect recent developments in state regulation.



Latham's 50-State Virtual Currency Survey (cont.)

50-State Virtual Currency Survey Results



License **NOT** Required License Required No Policy No Response



Securities and Exchange Commission

“Whether a virtual currency is a security under the federal securities laws, and therefore subject to [SEC] regulation, is dependent on the particular facts and circumstances at issue.”

- Mary Jo White, SEC Chairman

Letter to Sen. Thomas R. Carper, Chairman, Committee on Homeland Security and Governmental Affairs, August 30, 2013

- While there have been arguments made that virtual currency might fall within the definition of a “security,” the more likely intersection with securities laws is through related instruments, such as notes denominated in bitcoin or investment contracts relating to bitcoin, and through transactions involving securities
 - For example, in the *Shavers* case the question was whether under the *Howey* Test the investments were an investment contract: an investment in a common enterprise that profits from the efforts of others
- Reddit Notes denominated in bitcoin
- Bitcoin Exchanges



Case Study: Bitcoin Savings & Trust

Promise

- Bitcoin arbitrage
- 7% interest per week (or 3,641% per year)

Reality

- Classic Ponzi scheme
- Raised/held ~7% of Bitcoin in public circulation (2011-12)
- Used investor funds to repay early investors and for personal expenses
- About half of investors lost all or part of their investment

Cases

- SEC case: \$40 million fine for violating Section 10(b) of the Exchange Act and Sections 5 and 17(a) of the Securities Act (2014)
- Criminal case: pleaded guilty and pending sentence

Lessons Learned

- “Bitcoin is a currency or form of money”
- Bitcoin-denominated investments deemed to meet the definition of an “investment contract” and found to be a “security” under the *Howey* Test



The Dark Side of the Coin

Both criminals *and* law enforcement understand cryptocurrency

The Bad Guys

- Nearly totally anonymous
- Lack of central authority
- Lack of traditional paper trail (e.g., Fedwire and SWIFT)
- Instantaneous transfers (harder for law enforcement to seize funds)
- Hide funds outside U.S. and financial systems yet retain access

Enforcement Actions

- **Securities and Wire Fraud**
 - SEC v. Trendon Shavers; U.S. v. Trendon Shavers
- **Money Laundering / BSA**
 - Silk Road: U.S. v. Ross William Ulbricht
 - Silk Road 2.0: U.S. v. Robert M. Faiella and Charlie Shrem
 - Silk Road 3.0: U.S. v. Force; U.S. v. Bridge
 - In re Ripple Labs Inc.
 - U.S. v. Murgio; United States v. Lebedev
- **Unregistered Offerings / Exchanges**
 - SEC v. Erik T. Voorhees
 - SEC v. BTC Trading, Corp. and Ethan Burnside
 - SEC v. Sand Hill Exchange, et al.
 - CFTC v. Coinflip
- **CFTC**
 - In re Coinflip
 - In re TeraExchange LLC
- **Deceptive Marketing**
 - FTC v. BF Labs, Inc., d/b/a Butterfly Labs



What to Expect



Regulation in Europe

- No binding EU institutional law regulating virtual currencies
 - Virtual Currencies are not regarded as money or currency
 - Currently an unregulated industry but likely to change soon – Motion for Resolution tabled in November 2015 and a Report from the Parliament’s Committee on Economic and Monetary Affairs (ECOM) was published on 23 February 2016
 - Related regulations have already been introduced, such as recent addition of virtual currencies to the Anti-Money Laundering Directive
 - EU Member States have issued a range of warnings, statements and clarifications on the legal status of virtual currencies but there is no consolidated/ conformed EU approach
- The European Banking Authority (EBA) does not regard virtual currencies as “money”
 - September 2013: “One of many innovations that warrants close supervision/ monitoring”
 - December 2013: Public warning that virtual currencies are not regulated, therefore consumers are not protected and may be subject to “unforeseen tax liabilities”
 - July 2014: EBA Opinion on Virtual Currencies - risks in virtual currencies outweigh the benefits, there is a need for a substantial body of regulation and, in the absence of such regulation, national supervisory authorities should discourage regulated financial services institutions from exchanging virtual currencies.

Regulation in Europe

- European Central Bank's "Virtual Currency Schemes: A further analysis" Report highlights the need for regulation and greater control at an EU level *(February 2015)*
- The European Securities and Markets Authority (ESMA) call for evidence on "Investment using virtual currency *(April –June 2015, December 2015)*"
- The European Court of Justice (ECJ) virtual currencies are not a "commodity" *(October 2015)*
- Motion for Resolution in front of the EU Parliament calls for stricter controls over virtual currency exchange transactions – ECON response expected spring 2016 *(November 2015)*
- European Parliament public hearing on regulation of virtual currencies : preference for lighter regulation not to stifle technological advance *(January 2016)*
- European Commission announced that, to prevent the abuse of virtual currencies for money laundering and terrorist purposes, they should be brought within the scope of the Anti-Money Laundering Directive *(February 2016)*

Regulation in Member States – UK, France, Germany

- No specific legislation in Member States either directly or indirectly regulating or prohibiting the use of virtual currency
- The Bank of England (BoE) did not regard virtual currencies as “a material risk to monetary or financial stability in the UK” (September 2014)
- The United Kingdom government publishes report on potential of technologies associated with virtual currencies (January 2016)
- French Banking Regulatory Authority (ACPR) does not regard digital currencies as falling under its scope but current rules clarified to require a licence for intermediaries on virtual currency exchanges (January 2014)
- The German Federal Financial Supervisory Authority (BaFin) regards Bitcoins as so called “units of account” triggering license requirements for commercial transactions (February and June 2014)

The Future of Blockchain Technology

- **Decentralized applications**
 - open source
 - majority consensus user base
 - data stored on a public blockchain
 - cryptographic token accesses application (issued in accordance with a standard algorithm acting as a proof of the value to the nodes that contribute to the application)

Examples: Bitcoin



The Future of Blockchain Technology

- **Distributed contracts:** A method of using Bitcoin to form agreements with people via the blockchain which allows you to solve common problems in a way that minimizes trust – *i.e.*, complete automation
- **Distributed markets for trading of futures, bonds, stock trading:**
 - value transfer is recorded in a distributed ledger
 - transactions are managed by distributed network of processors
 - no clearinghouse
 - disintermediation

The Future of Blockchain Technology

Blockchain and Derivatives

- Smart contracts in derivatives
 - Smart futures contracts
 - Smart OTC contracts
- Risk management applications
 - Multi-sig risk reduction
- Collateral management applications
 - Straight through processing
- Disintermediation
 - Redefining the intermediary role of FCMs, IBs, Advisors

The Future of Blockchain Technology

Regulatory Considerations

- Financial transfers: Crypto 1.0
- Multi-signature transactions:
 - Third-party escrow agent role
 - Fiduciary duties
- Anonymity (or lack thereof) of accounts
 - privacy laws
- Irreversibility of transfers create security issues
- Higher exposure to unconventional fraud (large-scale hacking)
- Property registers, transfers and IP
 - Recordation on decentralized ledger
 - UCC and security interest issues
 - Copyright law and doctrine of first sale



The Future of Blockchain Technology

Takeaways and hurdles

- **Market acceptance, coordination and standardization**
- **Evolution of regulation**

Questions?

Please use the “question” function on your webinar control panel to ask a question to the moderator or speakers.

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THANK YOU

FIA

APPENDIX

The FIA logo is located in the bottom right corner of the page. It consists of the letters 'FIA' in a bold, white, sans-serif font. The 'F' and 'I' are connected at the top, and the 'A' is slightly offset to the right. The logo is positioned in the lower right quadrant of the page, below the 'APPENDIX' header and to the right of the decorative lines.

FIA

Regulation in Asia

- No specific legislation in Hong Kong either directly or indirectly regulating or prohibiting the use of virtual currency
 - Hong Kong Monetary Authority (HKMA) is seeking to leverage its Organized and Serious Crimes Ordinance (OSCO) to sanction unlawful acts involving virtual currencies (e.g., fraud, money laundering)
- The Monetary Authority of Singapore (MAS) does not regard virtual currencies as “securities” or “legal tender”
 - MAS made an announcement in *March 2014* regarding its intention to regulate virtual currency intermediaries that buy, sell or facilitate the exchange of virtual currencies for real currencies

Regulation in Middle East

- Saudi Arabia
 - Banking, currency and payment and settlement systems regulated by Saudi Arabian Monetary Authority (SAMA) and provision of cryptocurrency-related services would fall within SAMA's remit.
 - SAMA is aware of bitcoin (at least since December 2014), but has yet to issue guidance or regulations.
- United Arab Emirates
 - Banking, currency and payment and settlement systems regulated by UAE Central Bank (UCB) and provision of cryptocurrency-related services would fall within UCB's remit.
 - UCB is reviewing payment regulations to accommodate “digital payments” – potential to address and formally regulate cryptocurrency-related services.
 - In Feb 2016, the Global Blockchain Council was launched in Dubai with support from key stakeholders from the UAE government, financial services, telecommunications and technology sectors.
 - *“The Council will help UAE authorities and corporations better understand this technology and consider its regulatory implications, and conduct pilot projects to test the readiness of markets to adopt digital currencies”*

Yvette D. Valdez

Yvette Valdez is a counsel in the New York office of Latham & Watkins and is a member of the firm's Financial Institutions Industry Group and the Derivatives practice.

Profile

Ms. Valdez has significant experience in the representation of dealers, intermediaries and end-users in connection with derivatives legal and regulatory matters under the Dodd-Frank Act as well as other CFTC, SEC and prudential regulation. Ms. Valdez has extensive experience representing investment banks, corporations, private equity firms and asset managers in structured investments and derivatives transactions, which include interest rate and credit derivatives, foreign exchange transactions, total return swaps, commodity transactions, futures and options. Ms. Valdez has developed an advisory practice applying these core regulatory principles to cryptocurrency derivatives and smart contracts. Ms. Valdez also has substantial experience in representing clients in structuring

finance-linked hedging structures in the energy, infrastructure and asset finance industry.

Ms. Valdez's regulatory practice consists of assisting foreign and domestic investment banks, futures commission merchants, introducing brokers, broker-dealers and commodity pools with their regulatory compliance requirements under the Dodd-Frank Act as well as advising buy-side clients in connection with their clearing and trade execution requirements. She has also advised clients in connection with the registration and compliance obligations of swap execution facilities.

Experience

Ms. Valdez's experience includes:

- Representation of Noble Markets on the CFTC regulatory

requirements as related to their Bitcoin exchange platform.

- Representation of SunTrust Bank, in connection with the establishment of a total return swap program*
- Representation of RBS in connection with the creation of an options trading platform for an insurer
- Representation of a start-up in establishing a gold trading platform



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Education

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Bio

Pia Naib

Pia Naib is an associate in the New York office of Latham & Watkins. Ms. Naib is a member of the Financial Institutions Group and focuses on advising domestic and foreign financial institutions on US bank regulatory issues.

Profile

Ms. Naib has experience advising banks, broker dealers and investment funds on US bank regulations. She advises on matters related to the US Bank Holding Company Act, and aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including the Volcker Rule.

Experience

- Representation of European-based . Naib represents clients before the:
 - Office of the Comptroller of the Currency
 - Federal Deposit Insurance Corporation
 - New York State Department of Financial Services
- Federal Reserve Board, the Federal Reserve Banks
- Department of the Treasury



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Stephen P. Wink

Stephen Wink is a partner in Latham's New York office and is a member of the firm's Capital Markets Practice and Financial Institutions Group. His practice focuses on advising a wide range of market players including investment banks, hedge funds, private equity firms, proprietary trading firms and other financial institutions.

Profile

- Regulation of broker-dealers and investment advisors
- Market regulation
- Compliance and enforcement matters
- Laws and rules under the Securities Exchange Act of 1934
- Rules of the Financial Industry Regulatory Authority (FINRA) and other self-regulatory organizations

Experience

Mr. Wink has in-depth knowledge and broad experience advising financial institutions on regulatory and related matters, gained in part from a decade as general counsel of a full-service investment bank.

Mr. Wink provides regular commentary on regulatory initiatives and rule-making proposals on behalf of clients and trade associations. He has frequently obtained no-action relief and

interpretive guidance on behalf of clients from various regulatory bodies, including the Securities and Exchange Commission and FINRA.

Mr. Wink served as a law clerk for Judge George E. MacKinnon of the US Court of Appeals for the DC Circuit from 1991 to 1992.

Recognition highlights

Recognized as one of the country's leading financial services broker dealer regulation lawyers.

"According to one impressed client, 'he just has very deep and extensive knowledge; he immediately understands the relevant issues and provides timely advice.'" *Chambers USA 2015*

Chambers USA 2012-2015: Financial Services Regulation

Recommended for Financial

Services Regulatory and Alternative / Hedge Funds, and noted by clients as "excellent." *The Legal 500 2014*

The "talented and skilled" Stephen Wink "is a trusted adviser: he's patient, calm and always available, and his advice is well received," report interviewees. *Chambers USA 2013*

Stephen Wink has worked in the broker-dealer industry for many years, both in private practice and as in-house counsel, and his arrival

is hailed as "a significant hire for the firm." According to sources, he "knows how clients think and he deals with problems not in a narrow sense but in the larger business context." *Chambers USA 2012*



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Benjamin A. Naftalis

Benjamin Naftalis is a partner in the New York office of Latham & Watkins where he is a member of the White Collar Defense and Investigations Practice Group.

Profile

Benjamin Naftalis practices at the forefront of white collar defense, representing clients in bet-the-company government investigations and litigation. Mr. Naftalis joined Latham following eight years as an Assistant US Attorney in the Southern District of New York.

During his tenure in the US Attorney's Office, Mr. Naftalis tried eight jury trials and briefed and argued more than ten appeals before the US Court of Appeals for the Second Circuit. As a member of the Office's Securities and Commodities Fraud Task Force, he investigated and prosecuted a wide range of offenses, including:

- Violations of federal securities and commodities laws, including insider trading
- Ponzi schemes, market manipulation and pump-and-dump schemes

- Broker-dealer and investment advisor fraud
- Mismarking of securities
- Abusive high-frequency trading practices

Mr. Naftalis's successful prosecutions include two former hedge fund managers of the US\$8 billion Amerindo Investment Advisors fund and the principals of the multi-billion dollar WG Trading hedge fund. He also brought the first federal criminal securities fraud charges involving a Bitcoin-related scheme.

Mr. Naftalis also served for four years in the Office's Terrorism and International Narcotics Unit. In this role he worked closely with numerous federal agencies and domestic and foreign intelligence services in leading investigations and prosecutions and coordinating parallel civil proceedings in the US, Africa, Europe, and South America, in cases involving terrorism and

national security, arms trafficking, international money-laundering and global narcotics trafficking.

In 2012, Mr. Naftalis received the Attorney General's Award for Distinguished Service – the Department's second-highest award – in connection with the successful investigation and prosecution of Ahmed Abdulkadir Warsame, a senior al Shabaab commander and emissary to al Qaeda in the Arabian Peninsula, on terrorism-related charges.

Prior to joining the US Attorney's Office, Mr. Naftalis clerked for the Honorable Jed S. Rakoff of the US District Court for the Southern District of New York and the Honorable Dennis Jacobs of the US Court of Appeals for the Second Circuit.



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Suzana Sava-Montanari

Suzana Sava-Montanari is a counsel in the London and Paris offices of Latham & Watkins. Ms. Sava-Montanari is a member of the firm's Financial Institutions Industry Group and Derivatives practice.

Profile

Ms. Sava-Montanari regularly advises financial institutions, buy side market participants and corporations in connection with derivatives and structured finance transactions and regulatory matters under the European Market Infrastructure Regulation (EMIR) as well as other EU prudential regulation.

Ms. Sava-Montanari has advised investment banks, sovereigns and corporates in relation to structuring and implementing their general or finance-linked hedging strategies (FX, interest rate and commodity)

or using equity derivatives in strategic transactions. She also advised investment banks and institutional or UHNW investors on a wide variety of structured credit, fund-linked or tax driven investments delivered through debt securities, balance sheet CLOs, OTC derivatives or ordinary equity.

Ms. Sava-Montanari's regulatory practice consists of assisting EU and non-EU financial institutions, asset managers and corporates with their regulatory compliance requirements under EMIR, including in connection with clearing, margining and reporting, as well as in their dialogue with the

European rule-making bodies in the context of the legislative process.

As part of her pro bono work, Ms. Sava-Montanari assisted, through the Financial Services Volunteer Corps in Washington DC, the Albanian Financial Services Authority in preparing its new Investment Funds Law. She is also one of the leaders of Latham & Watkins' Women Enriching Business network.



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Education

LPC, BPP Law School, 2003
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Languages

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Experience

- Representation of European-based Energy Company above the clearing thresholds with its regulatory compliance obligations under EMIR
- Representation of several large EU Corporates on the negotiation of their OTC derivatives documentation across Europe, Asia, Middle East and the Americas
- Representation of Council of Europe Development Bank in relation to their repurchase transactions

Bio

Alan W. Avery

Alan W. Avery is a partner in the New York office of Latham & Watkins. Mr. Avery concentrates his practice on federal and state regulation of banking organizations, advising domestic and foreign banking institutions concerning the impact of US federal and state banking laws on their global operations.

Profile

Mr. Avery has represented a number of US and non-US financial institutions with regard to federal and state regulatory approval requirements for bank formations, office establishment and licensing, internal reorganizations and mergers and acquisitions. He also advises transactional practice groups worldwide on US bank regulations. Additionally, Mr. Avery has represented sovereign wealth funds and private equity funds with respect to investments in US financial institutions.

Experience

Mr. Avery represents clients before the:

- Federal Reserve Board, the Federal Reserve Banks
- Department of the Treasury
- Office of the Comptroller of the Currency
- Federal Deposit Insurance Corporation
- New York State Department of Financial Services

Mr. Avery also regularly counsels financial institutions on a wide variety of matters related to US financial regulatory reform under the Dodd-Frank Wall Street Reform

and Consumer Protection Act, including:

- Changes to the regulation of bank and thrift holding companies and depository institutions
- Derivatives regulation
- Enhanced prudential standards
- "Living will" resolution planning requirements
- Regulatory capital requirements
- Systemic risk regulation
- Volcker rule regulation



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Education

JD, Pace University School of Law, 1998, *summa cum laude*

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Recognition highlights

Alan Avery is highly regarded for his "experience and expertise" in a wide range of regulatory matters impacting financial institutions. His "very good technical knowledge" ensures that he is a popular choice among big-name clients. *Chambers USA 2014: Financial Services Regulation*

Alan Avery is a respected financial services advisory lawyer who is considered to have "extremely high credibility and knowledge of the latest regulations." *Chambers USA2013: Financial Services Regulation*



Latham & Watkins Thought Leadership

Enforcement Trends in Cryptocurrency

Cryptocurrency is on the rise...and so are enforcement actions. *(December 9, 2015)*

Cryptocurrencies Are Commodities: CFTC's First Bitcoin Enforcement Action

In the absence of specific CFTC regulations regarding Bitcoin, the order helps clarify the CFTC's positions on cryptocurrency derivatives. *(September 20, 2015)*

Regulatory Notes on Bitcoin and Other Cryptocurrency Derivatives

Six things every investor, start-up, financial institution and payment processor should know about the future regulation of Bitcoin and other cryptocurrency derivatives. *(June 1, 2015)*

As Bitcoin Gains Momentum, Focus on Regulation Increases

Middle East entrepreneurs have begun launching Bitcoin payment products and SMEs are beginning to realize the potential of such technology. *(November 23, 2014)*

Virtual Currencies: New York State Department of Financial Services Discusses Proposed Regulations

As the proposed BitLicense takes shape, New York regulators are engaging in discussions with industry players. *(October 22, 2014)*

GMAC/CFTC Hosts Open Meeting Regarding Bitcoin and Digital Currency

The CFTC discusses first Bitcoin swap listed on a CFTC-regulated platform and Bitcoin regulation generally with panel of industry participants. *(October 21, 2014)*

Virtual Currencies: New York State Department of Financial Services Releases Proposed Regulations

As the first of their kind, the proposed regulations may add legitimacy to virtual currencies, but the new regulatory regime could stifle innovation and development. *(August 1, 2014)*

Latham & Watkins Practice Overview

Cryptocurrency and Blockchain Experience

Cryptocurrency and blockchain adoption is something our clients are thinking about—and so are we.

Our cross-border cryptocurrency team spans our **financial regulatory, technology transactions, white collar** and **cybersecurity practices** to ensure we are on top of the latest developments in this space and can advise our clients – including investment banks, emerging companies, and a variety of other institutions – accordingly.

Experience

We provide guidance and training on cryptocurrency and blockchain regulation, adoption and implementation to a variety of clients including investment banks, accounting firms, and technology startups among others. Our position as a thought leader in this space has led to conversations with several regulatory bodies around the globe, including in the United States and Europe, to advise on the potential implication of cryptocurrency and blockchain adoption on the financial services industry.

Thought Leadership

Our cross-border cryptocurrency team has published several pieces of thought leadership on the topic, including:

- *Enforcement Trends in Cryptocurrency*
- *Cryptocurrencies Are Commodities: CFTC's First Bitcoin Enforcement Action.*
- *Regulatory Notes on Bitcoin and Other Cryptocurrency Derivatives*
- *Virtual Currency: Evolving Regulation in New York, California and the Conference of State Bank Supervisors (CSBS)*
- *GMAC/CFTC Hosts Open Meeting Regarding Bitcoin and Digital Currency*
- *As Bitcoin Gains Momentum, Focus on Regulation Increases*
- *Virtual Currencies: New York State Department of Financial Services Discusses Proposed Regulations*

In April 2015, Latham & Watkins hosted a client seminar titled, ***The Other Side of the Coin: Bitcoin Regulation and Enforcement***. The cryptocurrency team presented alongside speakers from Blockchain, ARK Invest, Noble Markets and the FBI. We believe this was the first cryptocurrency-focused seminar hosted by a law firm.

50-State U.S. Virtual Currency Survey

In early 2015, Latham's cryptocurrency team launched the 50-state virtual currency survey in an effort to understand the state-by-state regulatory treatment of cryptocurrency in the United States on our clients' behalf. The team contacted state regulators from all 50 states to ask a standardized set of questions surrounding current and intended regulatory treatment.



Our Footprint

More than 2,200 lawyers located in the world's major business and financial centers

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