

Beyond Best Practices: Regulatory Compliance Now a Necessity in the Cryptocurrency Sector

Ballard Spahr
LLP

Article By

[Marjorie J. Peerce](#)

[Ballard Spahr LLP](#)

[Money Laundering Watch](#)

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As the value of bitcoin continues to soar (USD:BTC this past weekend exceeded \$19,000.00:1), we thought that now would be a good time to emphasize the need to ensure regulatory compliance with the many federal and state AML rules and regulations, in addition to those segmented across various countries. A caveat: This post is far from exhaustive, and before undertaking any investment in cryptocurrency, it would be wise to consult with an attorney familiar with the rules applicable to the cryptocurrency sector. Due to the nascency of the sector, the practical application of previously existing laws and regulations is rapidly evolving.

To begin, the notion that bitcoin and other digital tokens represent a currency only for criminals has been dispelled. Indeed, there is no question that investment in cryptocurrencies is inherently lawful and increasingly commonplace. In 2017 alone, investment in initial coin offerings, or token sales, has exceeded \$1.5 billion; in a similar vein, the value of certain cryptocurrencies now exceeds a number of Fortune 50 companies. Most recently, CBOE and CME, the world's largest futures exchange, [launched](#) bitcoin futures contracts.

With this in mind, and as we have written on this blog before (see [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#)), it is clear that regulators are moving aggressively to bring the cryptocurrency sector into the fold of existing rules and regulations. To be sure, applying these rules to the burgeoning sector has been like fitting a square peg in a round hole; a bedrock of the initial

cryptocurrency boom was the promise of anonymity for its users. Conversely, identity verification is a bedrock of AML compliance.

Nevertheless, regulators have forged ahead and, upon the U.S. Treasury's Financial Crimes Enforcement Network's (FinCEN) [declaration](#) that digital currency exchanges are "money services businesses," or MSBs, it is now clear that such businesses are subject to the Bank Secrecy Act ("BSA") and related state anti-money laundering statutes. Importantly, the handling of digital currencies can be subject to the BSA even though the currencies are not traditional, "fiat currency" — according to FinCEN, because a digital currency can represent a "value" that "substitutes for currency," an exchanger of digital currency is a MSB. At the state level, the New York State Department of Financial Services has been a leader in promulgating rules applicable to cryptocurrencies. For example, in June 2015, the agency created the first-of-its-kind business license for virtual currency activities, known as a BitLicense. The law requires, in part, crypto-businesses to comply with AML, "Know Your Customer" ("KYC"), and other money transmission regulations. Other states have more traditional laws regarding money transmission which may apply to crypto-businesses.

All told, traditional monitoring mechanisms have been playing an increasing role in the cryptocurrency sector. For example, nearly every digital currency exchange now requires new registrants to undergo a series of KYC verification steps, and once verified it is often the case that the purchase and sale of cryptocurrencies is capped at a relatively modest amount, at least for a certain period of time. Indeed, these developments have helped to provide assurance to individual investors that participation in the cryptocurrency boom can be entirely legitimate.

In sum, the excitement surrounding digital currencies has provided an immense opportunity for those interested to safely and lawfully participate. However, it is also the case that layers of regulatory oversight continue to take shape. With this in mind, there is little doubt that businesses considering operating in the sector must adopt a goal of understanding registration and reporting requirements, and furthermore, the extent to which internal policies and procedures are necessary to ensure compliance with the BSA and other related state anti-money laundering laws.

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