ABA Releases White Paper Regarding Cryptocurrencies and Digital Assets

By Michael L. Spafford & Daren F. Stanaway

On March 13, 2019, the American Bar Association ("ABA") Derivatives and Futures Law Committee’s Innovative Digital Products and Processes Subcommittee ("IDPPS") Jurisdiction Working Group released a comprehensive white paper addressing jurisdictional issues associated with digital products, such as cryptocurrencies, and digital processes, including blockchain. Michael L. Spafford, Co-Vice-Chair of the IDPPS subcommittee, and Daren F. Stanaway, Paul Hastings Senior Associate, were contributing authors.

The white paper tackles a number of topic areas relevant to the ever-changing cryptocurrency and digital asset landscape, including:

- Background information regarding digital assets and blockchain technologies, including associated trading platforms, security issues, and characteristics and features of digital assets and virtual currencies;
- Regulation by the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA"), including the CFTC’s approach to classifying and regulating virtual currencies and related derivatives;
- The Securities and Exchange Commission’s ("SEC") regulation under the Securities Act, the Securities Exchange Act, the Investment Company Act, and the Investment Advisers Act, including when the SEC classifies a digital asset as a "security;"
- The interplay, and sometimes tension, between SEC and CFTC regulations;
- FinCEN regulation of digital assets, including in relation to anti-money laundering ("AML") and know-your-customer ("KYC") requirements;
- International regulation of digital assets and blockchain technology throughout Europe, Asia, Australia, and globally; and
- State law considerations, including state law licensing requirements and state-specific regulations.

In the still nascent cryptocurrency and digital asset space, the white paper affords a comprehensive resource for investors, SEC and CFTC registrants, participants in SEC- and CFTC-regulated markets,
legal practitioners, other industry and market participants, and policymakers worldwide. Given government regulators’ and policymakers’ increased focus on the digital asset and digital currency sphere, it is imperative that participants in these industries familiarize themselves with the laws and regulations that may govern their conduct or require registration with regulators, both to foster continued innovation and cooperative relationships with regulatory bodies and to avoid running afoul of existing (or future) requirements.

If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Washington, D.C. lawyers:

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