ABA Releases Updated White Paper Regarding Cryptocurrencies and Digital Assets

By Michael L. Spafford & Katherine Berris

On January 19, 2021, the American Bar Association (ABA) Derivatives and Futures Law Committee’s Innovative Digital Products and Processes Subcommittee (IDPPS) Jurisdiction Working Group released an update to its comprehensive white paper addressing jurisdictional issues associated with digital products, including cryptocurrencies and other digital assets, and digital processes, such as blockchain. Michael L. Spafford, Chair of IDPPS, and Daren F. Stanaway, Vice Chair of the Jurisdiction Working Group, were contributing authors to both the original white paper and the 2021 update.

The updated white paper analyzes in depth a number of current issues in the cryptocurrency and digital asset space that have developed since the publication of the first white paper, including:

- The rapid development of cryptocurrencies backed by fiat currencies (stablecoins), which FINMA recently recognized as a fourth general category of tokens;
- The growth of the decentralized finance movement and the increasing number of state central banks exploring the creation of virtual currencies, known as Central Bank Digital Currencies;
- The CFTC’s 2020 guidance concerning “actual delivery” of digital assets and related litigation;
- The SEC’s Digital Asset Framework, its first issuance of digital asset-related no-action letters, and further developments in its key enforcement actions targeting significant digital asset projects;
- SEC staff guidance on the custody of digital asset securities under the rules applicable to broker-dealers;
- Recent 2019 and 2020 case law developments in certain CFTC enforcement actions involving digital assets;
- New developments regarding the Travel Rule’s application to virtual asset service providers;
- FinCEN’s first assessment of civil money penalties against a peer-to-peer virtual currency exchanger; and
- International developments, including the EU’s recent approval of the Sixth Anti-Money Laundering Directive.
The need for this update speaks to the rapid evolution of the digital asset and cryptocurrency space. As regulators worldwide endeavor to keep pace with this ever-developing industry, it is imperative that market participants continue to keep themselves informed of the applicable legal and regulatory landscape, as detailed in this update.

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:

Michael L. Spafford
michaelspafford@paulhastings.com

Katherine J. Berris
1.202.551.1919
katherineberris@paulhastings.com

1 The original white paper was published on March 13, 2019.
2 Ms. Stanaway, formerly Of Counsel at Paul Hastings, currently is Associate General Counsel – Investigations & Enforcement at Interactive Brokers.