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Crypto-asset trading platforms: A regulatory trip around the world

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Crypto-asset trading is a fast-growing part of the financial sector.[1] Some countries have wholeheartedly embraced crypto-assets; others have been more reticent to permit widespread adoption. Generally, countries have either interpreted existing laws and regulations to apply to crypto-assets or adopted new laws or regulations to specifically address crypto-assets – or embarked upon some combination of the two. Due to their use of blockchain and other distributed ledger technology, crypto-assets are, in most cases, inherently cross-border and cross-jurisdictional, and nothing but legal regimes keep them within certain borders. Thus, most issuers of crypto-assets and trading platforms must address multiple legal and regulatory frameworks when attempting to enter the market. This chapter will explore the regulation of crypto-asset trading platforms in the European Union, the United States, Hong Kong, Singapore, the Philippines, Thailand, and Japan.

European Union

The EU has an overarching financial regulatory framework principally made up of EU regulations (which are directly applicable in EU Member States) and EU Directives (which must be adopted into national law by each Member State). While this framework ensures a degree of harmonisation across EU Member States, it does not guarantee uniform regulation.

The regulation of crypto-assets provides a good illustration of this issue. A threshold question when considering whether EU financial regulation applies to crypto-assets is whether the crypto-asset in question constitutes a "financial instrument" or "electronic money". A crypto-asset trading platform that facilitates trading in crypto-assets that are financial instruments or electronic money will typically be subject to licensing and other regulatory requirements. The definitions of financial instrument and electronic money are set out in Directive 2014/65/EU ("MiFID II") and Directive 2009/110/EC ("2EMD"), respectively. EU Member States have interpreted and implemented these Directives differently; thus, it is possible that the same crypto-asset could be a financial instrument in one jurisdiction and not in another.[2] In addition, national laws, such as long-standing domestic securities laws, financial promotion and public offer laws, and newly introduced laws or regulations specifically addressing crypto-assets, may impose regulation on instruments that fall outside the scope of MiFID II or 2EMD.[3] Often, those jurisdictions that have not introduced crypto-asset-specific laws or regulations have issued guidance on the applicability of existing financial regulatory regimes to crypto-assets.[4] In addition to the variance in national laws, this Member State-specific guidance increases the risk of regulatory divergence throughout the EU. Given this fragmentation, it is necessary to classify a given crypto-asset in accordance with the national laws of each EU Member State in which it is to be marketed, distributed, traded, or otherwise used.

The European Securities and Markets Authority ("ESMA"), which is the European Supervisory Authority ("ESA") with jurisdiction over financial markets and investor protection in the EU, and the European Banking Authority ("EBA"), the ESA with jurisdiction over banking activity in the EU, both recently noted the fragmented state of affairs in their respective advice to the European Commission and European Parliament on regulating crypto-assets ("ESMA Advice"[5] and "EBA Report",[6] respectively).

ESMA conducted a survey of 29 European regulators regarding the regulatory classification of six examples of existing crypto-assets ("Survey") and concluded that the Member State regulators, "in the course of transposing [MiFID II] into their national laws, have in turn defined the term financial instrument differently. While some employ a restrictive list of examples to define transferable securities, others use broader interpretations. This creates challenges to both the regulation and to the supervision of crypto-assets".[7] The ESMA Advice highlighted areas of the EU regulatory framework (e.g., the requirements relating to settlement under the European Central Securities Depositories Regulation, which are critical to trading financial instruments in the EU) that may be difficult to apply to crypto-assets that are classified as transferable securities (a type of MiFID II financial instrument). The ESMA Advice also cautioned that the introduction of Member State-specific regulatory regimes to address crypto-assets will create an unequal playing field for crypto-assets across the EU. Considering the inherently cross-border nature of most crypto-assets, the ESMA Advice encouraged an "EU-wide approach" to the regulation of crypto-assets not otherwise captured by MiFID II and 2EMD.

While definitive classification remains subject to EU Member States' laws, some high-level principles for classification of crypto-assets can be extracted from the Survey:

- ESMA did not include "pure payment-type" crypto-assets (such as Bitcoin, Ether, and Litecoin) in the Survey on the basis that they "are unlikely to qualify as financial instruments".
- For a majority of the regulators surveyed, the existence of attached profit rights (whether or not alongside ownership or governance rights) was sufficient for a crypto-asset to constitute a transferable security, provided the crypto-asset was freely tradable and not a payment instrument.
- None of the regulators surveyed characterised "pure utility-type" crypto-assets as financial instruments on the basis that the "rights that they convey seem to be too far away from the financial and monetary structure of … a financial instrument".[8]

Similarly, while the EBA Report recognised that crypto-assets must be classified on a case-by-case basis, it stated that crypto-assets are not considered "funds"[9] or equivalent to fiat currency in any EU Member State for the purposes of EU financial regulation,[10] and indicated that crypto-assets are most likely to satisfy the definition of electronic money in circumstances where the value of the crypto-asset is pegged to the value of fiat currency (*e.g.* stablecoins) and the crypto-asset is redeemable for fiat currency.

Indeed, what the ESMA Advice and the EBA Report suggest is that for purposes of regulation, the characterisation of crypto-assets proceeds predominantly on the basis of an "intrinsic" assessment of a given crypto-asset, focused on the rights or entitlements granted to holders, rather than on the basis of "extrinsic" factors, such as the intended or actual use of the crypto-asset or other contextual factors relating to the crypto-asset (such as whether a platform to which the crypto-asset relates is currently operational or whether the network underlying the crypto-asset is decentralised).

Beyond the recent extension of EU anti-money laundering and counter-terrorism finance ("AML") legislation to capture certain crypto-asset service providers who did not otherwise fall under the AML regime,[11] there has not been much movement to harmonise the treatment of crypto-assets across the EU. The European Commission and the European Parliament have not yet responded to the recommendations in the ESMA Advice or the EBA Report. Thus, while it seems likely that the EU will undertake further efforts to harmonise the regulation of crypto-assets across the EU, the timeline remains unclear.

United States

In the US, crypto-asset markets and related activities are regulated under several federal and state regulatory regimes. At the federal level, the Securities and Exchange Commission ("SEC") is concerned with whether a crypto-asset is a "security", the Commodity Futures Trading Commission ("CFTC") asks whether a crypto-asset is a "commodity", and the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") regulates certain activities involving "convertible virtual currency". A crypto-asset can be one or more of these things simultaneously, and may also be subject to any number of state-level money transmitter, securities, and tax regimes.

Acting as a security. If a crypto-asset fits within the definition of a security, it is regulated by the SEC and subject to existing laws and regulations.[12] In this case, the issuer of the crypto-asset needs to either register the offering and sales of the crypto-asset under Section 5 of the Securities Act of 1933 or find an applicable exemption.[13]

In addition, the Securities Exchange Act of 1934 regulates intermediaries that engage in securities transactions. Many crypto-asset exchanges are thus required to register as a securities exchange or, depending on their business model, a broker-dealer.

Any funds that invest in crypto-assets that are securities are subject to the same laws applicable to pooled vehicles that invest in securities generally, such as the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

Notably, while the SEC regulates crypto-assets that are deemed securities, the SEC staff has indicated that the two most well-known crypto-assets – Bitcoin and Ether – are not considered securities. If, however, these non-security crypto-assets were bundled into investment vehicles (such as exchange-traded funds), they would become securities and be subject to SEC regulation.

Acting as a commodity. Generally, the CFTC has considered crypto-assets not otherwise designated as securities to be commodities (including Bitcoin and Ether). The CFTC regulates commodities, futures, options on futures, and swaps (i.e., derivatives) on commodities (including crypto-assets), subjecting market participants and their trades to regulatory oversight and registration requirements. The CFTC also regulates certain retail commodity transactions that are leveraged, financed, or margined as if they were futures. While the CFTC has no direct regulatory oversight of markets or platforms that conduct spot transactions of crypto-assets, the CFTC does retain the authority to police against manipulation and fraud in the spot commodities markets. Thus, the CFTC regulates the crypto-asset spot markets by enforcement, and has done so aggressively in the past few years.[14]

The CFTC also regulates exchanges that trade futures or options on crypto-assets as designated contract markets. The CFTC has issued a primer with respect to the heightened scrutiny of futures contracts on crypto-assets, and CFTC commissioners have publicly stated that the agency will be paying strict attention to this market.[15] In its report on its examination

priorities for 2019, the CFTC's Division of Market Oversight listed cryptocurrency surveillance practices at the top.[16]

Acting as a currency. If the crypto-asset is intended to act as a medium of exchange, it may be treated similarly to fiat currency for the purposes of the Bank Secrecy Act of 1970 and its implementing regulations (collectively, the "BSA"), which serves as the principal AML regulatory regime in the US.[17]

The BSA applies to "financial institutions", which includes banks and other entities, such as money services businesses ("MSBs").[18] MSBs include multiple categories of entities, the most relevant to crypto-asset exchanges being a "money transmitter".[19] A money transmitter is "[a] person that provides money transmission services",[20] which is, in turn, defined as "the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means".[21] Generally, any person falling within the definition of money transmitter must register with FinCEN and comply with the attendant requirements under the BSA. However, if an entity is functionally regulated by the SEC or the CFTC, it does not need to register as an MSB even if it otherwise meets the criteria.

The BSA does not expressly reference or contemplate crypto-assets or crypto-asset-related activities. FinCEN, however, has published guidance and issued administrative rulings that provide insight on the application of the BSA to certain crypto-asset-related activities. FinCEN's core guidance on the topic was published in 2013 ("2013 Guidance"),[22] which introduced the term "convertible virtual currency"[23] and defined the following three types of participants in generic convertible virtual currency arrangements:

- A "user" is "a person that obtains virtual currency to purchase goods or services".
- An "exchanger" is "a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency".
- An "administrator" is "a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency".[24]

FinCEN concluded that a user of convertible virtual currency is not an MSB, but that an administrator or exchanger of convertible virtual currency[25] that "(1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason **is** a money transmitter under FinCEN's regulations".[26]

In May 2019, FinCEN consolidated its guidance and administrative rulings on crypto-asset-related activities ("2019 Guidance") and provided additional clarity regarding the application of the BSA to a variety of crypto-asset-related business models. Notably, the 2019 Guidance states that a crypto-asset trading platform that matches offers to buy and sell convertible virtual currency for fiat currency, for which the platform maintains a separate fiat currency wallet and virtual currency wallet for customers to use in connection with trades on the platform, is an exchanger and therefore must register with FinCEN as an MSB and comply with the BSA.[27] Generally, based on FinCEN's guidance, if a crypto-asset exchange buys or sells crypto-assets as a customer business or provides customers with a hosted wallet (or other stored value device), then it is a money transmitter under the BSA and must register with FinCEN and comply with the applicable rules. On the other hand, if the platform simply provides information and the opportunity for customers to match and execute their own trades, it is likely not a money transmitter.

Finally, US states and territories regulate the provision of money transmission services to residents of their respective jurisdictions.[28] Although the requirements and related definitions vary slightly from state to state, money transmission services typically include (i) traditional money remittance, (ii) issuing or selling open-loop stored value or prepaid access, or (iii) issuing or selling payment instruments. Generally, if an entity is engaged in any one of those activities, it must be (a) licensed as a money transmitter under the relevant state law, (b) appointed and serve as the authorised agent of a money transmitter licensed in the relevant state, or (c) an entity or activity that is exempt under the relevant money transmitter statute.

The states have not taken a uniform approach with respect to regulating the transmission of crypto-assets. Some states have expressly amended their existing money transmission statutes to contemplate crypto-assets, some have issued guidance and/or interpretations that incorporate crypto-assets into their current money transmission statutes, and others have issued guidance finding that crypto-asset-related activities are not money transmission under their statutes. The State of New York is unique in that the financial services regulator issued a stand-alone regulation specific to crypto-asset-related activities.[29] As a general rule though, if a trading platform is accepting money or crypto-assets from one person or place and storing it and/or sending it to another person or place, in most instances, that activity is money transmission.[30]

Hong Kong

In Hong Kong, the Securities and Futures Commission ("SFC") recently announced that it is exploring whether virtual asset trading platforms ("VA Platforms")[31] should be regulated under its existing powers and has set out a conceptual regulatory framework for doing so ("Conceptual Framework").[32] The SFC has created a regulatory sandbox ("VA Platform Sandbox") for interested virtual asset trading platform operators ("VA Platform Operators"). The SFC will discuss its regulatory standards under the Conceptual Framework with participants and consider whether and how to regulate VA Platforms in light of the feedback it receives. If the SFC concludes that VA Platforms are suitable for regulation, it may begin granting licences to qualified VA Platform Operators. The SFC cannot currently regulate VA Platforms because existing laws and regulations extend only to certain types of financial products, such as securities, futures and funds.

Under the Conceptual Framework, a VA Platform Operator that offers trading in one or more crypto-assets that are securities (e.g., security tokens) will fall within the regulatory jurisdiction of the SFC and may apply to the SFC to be licensed. In granting a licence, the SFC will likely impose certain conditions, including that the VA Platform Operator will:

- Provide services only to "professional investors".[33]
- Admit only those crypto-assets issued under initial coin offerings ("ICO") that meet certain conditions.
- Execute a trade only if the client's account has sufficient assets to cover the trade.
- Maintain any additional financial resources as may be prescribed by the SFC.
- Maintain an insurance policy that would provide full coverage for crypto-assets held in cold storage and substantial coverage for crypto-assets held online.[34]
- Perform all reasonable due diligence on crypto-assets before listing them on the VA Trading Platform and disclose the listing criteria to clients.
- Publish comprehensive trading rules on its website.

If a crypto-asset exchange facilitates the trading of crypto-assets that are not securities or another type of regulated product, the exchange is not regulated.

Singapore

In Singapore, the regulatory regime applicable to any crypto-asset exchange depends on what type of crypto-asset is being traded. A crypto-asset exchange that offers any "digital payment token service" is regulated under the Payment Services Act ("PSA"), which will come into effect this year. Under the PSA, a crypto-asset exchange that deals (i.e., buys and sells) digital payment tokens or facilitates the exchange of digital payment tokens on a regular, centralised basis will require a licence from the Monetary Authority of Singapore ("MAS").

A crypto-asset exchange that facilitates trading in security tokens must apply to the MAS to become an approved exchange or a recognised market operator ("RMO"), unless otherwise exempted. In May 2018, the MAS proposed expanding the existing RMO regime from a single tier to three tiers to accurately reflect the risks posed by different market operators ("MOs").[35] Under the current regime, RMOs are only permitted to deal with "accredited investors" and cannot deal with retail investors.[36] Under the proposed multitiered RMO regime, the permissible activities and customer base would vary depending on the tier:

- Tier 1 would be the most heavily regulated. A Tier 1 RMO would have limited access to Singapore-based retail investors and would thus be subject to more stringent regulatory requirements than other RMOs. A Tier 1 RMO would be required to comply with all the requirements imposed on Tier 2 RMOs, along with additional requirements designed to protect retail investors (e.g., prospectus requirements, continuing obligations, and change of control transactions).
- Tier 2 would capture those MOs that qualify under the existing RMO regime. MOs that are authorised under the existing RMO regime would be re-classified as Tier 2 RMOs.
- Tier 3 would be for smaller MOs that target the non-retail market segment (e.g., banks). Tier 3 RMO applicants would need to fulfil a reduced set of capital requirements under Singapore's Securities and Futures Act and a simplified set of technology risk management and outsourcing compliance requirements. The application process for Tier 3 RMO applicants would also be simplified; they would be able to self-certify their compliance with a checklist of requirements prepared by the MAS. However, they would continue to be subject to the fit and proper requirements that are imposed on existing RMOs.[37]

The Philippines

In the Philippines, the Bangko Sentral ng Pilipinas ("BSP") regulates virtual currency exchange services (entities that convert crypto-assets to fiat currency and/or *vice versa*) as a type of remittance and transfer company ("RTC"). In addition to registering with the BSP, RTCs must comply with the virtual currency exchange-specific guidance published by the BSP.[38]

Meanwhile, the Philippines Securities and Exchange Commission ("PSEC") is due to issue final rules on digital asset offerings in the near future. The PSEC is also set to release draft rules to regulate other crypto-asset-related activities, such as crypto-asset exchanges and crowdfunding.

Additionally, the Philippines has created the Cagayan Economic Zone Authority ("CEZA"). However, a crypto-asset exchange registered with the CEZA may not service users in the Philippines, and any tokens to be traded must be listed on licensed off-shore exchanges. Thus, the utility of the CEZA is unclear.

Thailand

Digital asset business operators are required to obtain a licence from the Minister of Finance upon the recommendation of the Thailand Securities and Exchange Commission ("Thai SEC").[39] To obtain a crypto-asset exchange licence, the company must, among other things:

- Be established under Thai law.
- Possess sufficient financial resources, as determined by the Thai SEC.
- Maintain policies, systems, and measures (such as IT systems and internal control measures) that comply with the Thai SEC's standards.
- Ensure that adequate KYC and AML programmes are in place.

Japan

In Japan, crypto-asset exchanges[40] are required to be registered with the Financial Services Agency ("FSA") under the Payment Services Act ("Japan PSA").[41] In March 2018, Japan's existing registered crypto-asset exchanges created a self-regulatory body, the Japanese Virtual Currency Exchange Association ("JVCEA"), to provide additional regulation and guidance applicable to licensed crypto-asset exchanges. The FSA certified the JVCEA, which can now impose disciplinary sanctions on registered crypto-asset exchanges that do not comply with its regulation and guidance.

Furthermore, if the crypto-asset exchange trades crypto-assets that are securities that entitle investors to a distribution of profits or assets, both the crypto-asset exchange and the crypto-assets may be subject to regulations promulgated under the Financial Instruments and Exchange Act of Japan.

Conclusion

In most of the countries surveyed here, while some types of crypto-asset exchanges are currently regulated, most jurisdictions are still determining how to regulate without stifling innovation. In the EU, despite the existence of a centralised regulatory system, Member States have not been uniform in their interpretation of directives, leaving a crypto-asset exchange that hopes to operate EU-wide with the unenviable task of attempting to understand and comply with more than 20 regulatory regimes. In the US, the biggest takeaway is that all crypto-assets and crypto-asset exchanges will be captured under *some* regulatory regime, but it could be difficult to determine which one best applies (at both the federal and state level). In Hong Kong, regulators have created a sandbox to better tailor regulation to crypto-asset exchanges. The outcome of that experiment remains to be seen. In Singapore, the MAS is working on a new and more tailored regulatory regime to address the disparate needs of various crypto-asset exchanges. In the Philippines, other than regulating virtual currency exchanges, the government has not really addressed crypto-asset trading. In Thailand and Japan, crypto-asset exchanges are required to be registered (or licensed) with their respective regulator and meet ongoing compliance requirements, and are subject to enforcement.

While the vision of a global economy where crypto-assets offer instantaneous execution and borderless trades may still be a bit far off, the emergence of crypto-assets and trading of these

instruments is forcing countries to re-examine their existing legal and regulatory frameworks and their application to crypto-assets and the platforms that trade them. The next few years will be critical in the development of regulatory regimes addressing crypto-assets and crypto-asset trading platforms. Striking the right balance between consumer protection and market integrity and resilience without stifling innovation is the challenge all regulators face.

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* * *

Endnotes

1. For ease of reading, we use the term "crypto-asset" as a catch-all for the variety of financial instruments that a cryptocurrency, token, or coin can represent, including currency, securities, and commodities. Some jurisdictions' regulatory regimes differentiate between the type of instrument that is being traded, while others simply address the trading of crypto-assets, generally. If a governmental agency has defined a different term to capture the same concept, we have used that term in the discussion of that agency's regulation of crypto-asset-related activities.
2. The same is true for electronic money, although the definition has been implemented with a greater degree of uniformity across EU Member States than the definition of financial instrument.
3. Examples of the former notably exist in Germany and Italy, while examples of the latter exist in France, Gibraltar, and Malta.
4. *See, e.g.* Financial Conduct Authority, *CP 19/3: Guidance on Cryptoassets* (Jan. 2019).
5. ESMA, *Advice – Initial Coin Offerings and Crypto-Assets* (Jan. 9, 2019).
6. EBA, *Report with advice for the European Commission on crypto-assets* (Jan. 9, 2019).
7. ESMA Advice, p. 5.
8. ESMA Advice, p. 20.
9. Unless they otherwise fall within the definition of electronic money.
10. A position with which both the Bank of England and the European Central Bank (as well as other Member State central banks and monetary authorities) have publicly concurred on many occasions.
11. Which has itself been affected through an EU directive (Directive (EU) 2018/843 ("5MLD")) which is subject to implementation under the national law of EU Member States (some of which are likely to "gold-plate" the requirements).
12. Whether the crypto-asset is a security is decided pursuant to regulation but also to the threshold test imposed by the Supreme Court in *Securities and Exchange Commission v. W. J. Howey Co.*, 328 U.S. 293 (1946) (often referred to as the *Howey* test). Under the Securities Act of 1933, an instrument is an investment contract (or a security) if it is a "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party".
13. For example, SEC Regulation D and Regulation A both offer issuers potential exemptions.

14. *See, e.g. CFTC v. Patrick McDonnell and CabbageTech Corp. d/b/a Coin Drop Markets*, 18-CV-361, E.D.N.Y. (Mar. 6, 2018).
15. CFTC, *A CFTC Primer on Virtual Currencies*, Oct. 17, 2017.
16. CFTC, Release No. 7869-19, *CFTC Divisions Announce Examination Priorities*, Feb. 12, 2019.
17. FinCEN is responsible for administering the BSA.
18. 31 C.F.R. § 1010.100(ff).
19. *Id*. § 1010.100(ff)(5).
20. *Id*. § 1010.100(ff)(5)(i)(A).
21. *Id.*
22. FIN-2013-G001, *Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencie*s (Mar. 18, 2013).
23. In the 2013 Guidance and subsequent rulings, FinCEN distinguishes "convertible virtual currency" from "virtual currency", neither of which are specifically referenced in the BSA. FinCEN defines "virtual currency" as "a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency". "Convertible virtual currency" is more narrow and includes "virtual currency [that] either has an equivalent value in real currency, or acts as a substitute for real currency". The 2013 Guidance and subsequent rulings address convertible virtual currency.
24. *Id*.
25. *Id*.
26. *Id*. (emphasis in original).
27. *See* FIN-2014-R011, *Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform* (Oct. 27, 2014).
28. Only the State of Montana does not regulate money transmission.
29. The New York State Department of Financial Services adopted an entirely new regulatory regime specific to crypto-assets acting as currency: the Virtual Currency Business Activity licence ("Bitlicense") regime.
30. Some states have stated that their laws do not apply if there is no fiat currency involved in the transaction; *see, e.g.* Pennsylvania Department of Banking and Securities, *Money Transmitter Act Guidance for Virtual Currency Businesses* (Jan. 23, 2019) and Texas Department of Banking, Supervisory Memo 1037, *Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act* (April 1, 2019). Others have revised their statutes or issued interpretations to capture the activity; *see, e.g.* Washington State, which defines "money transmission" in part as "receiving money or its equivalent value (*equivalent value includes virtual currency*) to transmit, deliver, or instruct to be delivered to another location … by any means". Wash. Rev. Code § 19.230.010(18) (emphasis added).
31. The SFC's terms for crypto-asset trading platforms.
32. Securities and Futures Commission, *Statement on regulatory framework for virtual asset portfolio managers, fund distributors and trading platform operators*, Nov. 1, 2018.

33. Professional investors as defined under Part 1 Schedule 1 of the Securities and Futures Ordinance (Cap. 571) ("SFO").
34. Cold storage refers to the offline storage of a crypto-asset, such as on a USB drive or in some physical form. *See* Latham & Watkins' *Book of Jargon: Cryptocurrency & Blockchain Technology* for additional definitions.
35. While public comments are no longer being accepted, MAS has not yet published its response, and no bill has been introduced in Parliament to implement this proposal.
36. Accredited investors (both individuals and corporations) are defined in section 4A of the Securities and Futures Act and section 2 of the Securities and Futures (Classes of Investors) Regulations 2018.
37. The "fit and proper requirements" are the criteria that MAS expects all persons carrying out regulated activities to meet. These include, but are not limited to: the (i) honesty, integrity, and reputation; (ii) competence and capability; and (iii) financial soundness of the applicant. *See* MAS Guidelines on Fit and Proper Criteria.
38. BSP, Circular No. 942, Amendment to Section 4511N of the Manual of Regulations for Non-Bank Financial Institutions, Jan. 5, 2017; BSP, Circular No. 944, Guidelines for Virtual Currency (VC) Exchanges, Jan. 19, 2017.
39. Digital asset business operators include digital asset exchanges, brokers, dealers, and a catch-all for "other businesses relating to digital assets as prescribed by the Minister under the recommendation of the [Thai SEC]". Emergency Decree on Digital Asset Businesses B.E. 2561 (2018).
40. A crypto-asset exchange is a service provider that engages in the sale, exchange, or brokerage of crypto-assets.
41. The Japan PSA only captures certain types of crypto-assets (those that satisfy all of the conditions in one of the two categories below) and only exchanges trading those types of crypto-assets need to be licensed. Category #1: the token: (i) can be used as a means of payment for goods and/or services (to the extent that the merchants with whom the tokens can be used are not limited to certain persons designated by the issuer); (ii) is exchangeable for any fiat currency; and (iii) is electronically transferable. Category #2: the token both: (i) is exchangeable for Category #1 crypto-assets; and (ii) is electronically transferable.

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