

Goodmans^{LLP} Update

Canadian Securities Administrator To Consider Regulatory Framework for Crypto Assets

The Canadian Securities Administrator (CSA) recently released its 2019-2022 business plan (the “Plan”), which reveals the CSA is considering the development of a regulatory regime for crypto assets and crypto trading platforms over the next three years.

The Plan was released on the heels of Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms*, issued by the CSA together with the Investment Industry Regulatory Organization of Canada on March 14, 2019, which proposed a framework of tailored regulatory requirements to address novel features and risks related to the trading of crypto assets. For more information on that paper, see our April 1, 2019 Update, *Canadian Securities Regulators Propose to Regulate Crypto-Asset Platforms*.

The Plan

The Plan aims to consider the regulatory challenges of emerging technologies, including distributed ledger technology, of which blockchain is the most widely known and utilized. The Plan indicates the CSA will look to ways in which existing regulatory frameworks can be tailored to address risks associated with the trading of blockchain-based crypto assets that fall under the CSA's jurisdiction.

The Plan's objectives relating to the regulation of crypto assets are set out in three distinct initiatives:

1. The CSA will consider developing a regulatory regime for crypto-asset trading platforms that are subject to securities or derivatives regulation. Currently, there are no platforms facilitating the secondary trading of crypto assets that are regulated as a marketplace in Canada. However, the CSA outlines that certain platforms, depending on how they operate and what crypto assets they offer, may be subject to existing securities legislation.
2. The CSA will research and propose custodial requirements for registrants and investment funds that facilitate custody solutions for trading and holding regulated crypto-securities.
3. The CSA will analyze whether there are specific characteristics that warrant a more tailored approach to capital raising and disclosure requirements when crypto assets such as tokens or coins are used to raise funds for various types of enterprises.

Implications

The release of the Plan comes at a time when several high profile events have highlighted the need for clearer regulation of crypto assets.

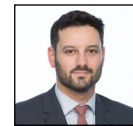
The 2018 incident involving the Vancouver-based crypto trading platform QuadrigaCX exemplified the potential for crypto assets to be stolen or lost in today's unregulated climate. In December 2018, QuadrigaCX lost access to approximately CAD\$190 million when the CEO's sudden death left the assets held by the platform inaccessible because only the CEO had access to the encrypted keys. A clear regulatory framework imposing standards and custodial requirements could help subvert similar incidents.

More recently, the Securities and Exchange Commission (SEC) launched a lawsuit against Kitchener-based Kik Interactive Inc (“Kik”), which has further underscored the importance of achieving regulatory clarity

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surrounding crypto assets. In the Kik case – the SEC’s first legal action applying securities law to digital tokens and coins – the regulator claims the company’s 2017 sale of approximately US\$100 million of its “Kin” tokens under a simple agreement for future tokens, and an ensuing initial coin offering, amounted to an illegal securities offering. In the build-up to the lawsuit and since its launch, both sides have made opposing public statements about whether crypto assets should be exempted from securities regulations. For further background on the Kik lawsuit, see our June 5, 2019 Update, [SEC Sues Canadian Company for Conducting Illegal Token Offering](#).

In the wake of the QuadrigaCX and Kik incidents, it is clear the need for improved guidance on the regulation of crypto assets is pressing. The CSA hopes the Plan initiatives will balance regulatory imperatives and the goal of facilitating innovation and flexibility in the nascent crypto-asset industry, while providing enhanced clarity on this issue.

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