

## FINRA EXPANDS ITS DIGITAL ASSET INFORMATION SWEEP

The US Financial Industry Regulatory Authority ("**FINRA**") last week published a Regulatory Notice (the "**Digital Assets Notice**" or "**RN 18-20**") recommending that FINRA member firms provide information about existing and future business activities involving "digital assets."<sup>1</sup> RN 18-20 represents an expansion of FINRA's efforts to obtain information from member firms on their participation in the digital asset markets.

The Digital Assets Notice is sweeping in its coverage and raises important considerations for FINRA member firms and their affiliates.<sup>2</sup> For example:

1. RN 18-20 seeks information on both the securities-related and *non-securities* activities of FINRA members and their associated persons by stating that "**digital assets**" refers to "cryptocurrencies and other virtual coins and tokens (including virtual coins and tokens offered in an initial coin offering (ICO) or pre-ICO) and any other asset that consists of, or is represented by, records in a blockchain or distributed ledger (including any securities, commodities, software, contracts, accounts, rights, intangible property, personal property, real estate, or other assets that are 'tokenized,' 'virtualized,' or otherwise represented by records in a blockchain or distributed ledger)."
2. In addition to notifying FINRA of their own digital asset activity, member firms are encouraged to report on the digital asset activities of their affiliates.

Thus, the Digital Assets Notice is potentially expansive in scope, encouraging each FINRA member firm to provide information about both its and its affiliates' digital asset business activities.

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<sup>1</sup> FINRA Regulatory Notice 18-20, *Digital Assets*, (July 6, 2018).

<sup>2</sup> FINRA is a self-regulatory organization ("**SRO**") that has primary oversight authority over broker-dealers registered with the US Securities & Exchange Commission ("**SEC**"). All SEC-registered broker-dealers must be members of an SRO, and substantially all are FINRA members.

## Digital Assets Notice Program

RN 18-20 contains a non-exclusive list of digital assets activities that FINRA believes should be reported where a member firm, its associated persons, or an affiliate "currently engages, or intends to engage," in the activity.

1. Purchasing, selling, or executing transactions in digital assets.
2. Purchasing, selling, or executing transactions in a pooled fund investing in digital assets.
3. Creating, managing, or providing advisory services for a pooled fund related to digital assets.
4. Purchasing, selling, or executing transactions in derivatives (*e.g.*, futures, options) tied to digital assets.
5. Participating in an initial or secondary offering of digital assets (*e.g.*, ICO, pre-ICO).
6. Creating or managing a platform for the secondary trading of digital assets.
7. Providing custodial or similar services for digital assets.
8. Accepting cryptocurrencies (*e.g.*, Bitcoin) from customers.
9. Mining cryptocurrencies.
10. Recommending, soliciting, or accepting orders in cryptocurrencies and other virtual coins and tokens.
11. Displaying indications of interest or quotations in cryptocurrencies and other virtual coins and tokens.
12. Providing or facilitating clearance and settlement services for cryptocurrencies and other virtual coins and tokens.
13. Recording cryptocurrencies and other virtual coins and tokens using distributed ledger technology.
14. Any other use of blockchain technology.

The Digital Assets Notice Program will remain in effect until July 31, 2019.

## Existing Regulatory Obligations

RN 18-20 also reminds FINRA broker-dealers that existing regulatory obligations may be triggered by digital asset business activities, including: (i) the reporting and supervision of "outside business activities" by FINRA member representatives; and (ii) the need to obtain FINRA approval through the continuing membership application process where a digital asset business activity constitutes a "material change" in the firm's business operations. Thus, firms should closely review their current and planned digital asset activities and ensure that FINRA regulatory compliance requirements are considered and addressed, including where the digital assets are not "securities" under applicable law.

The Digital Assets Notice provides limited guidance on how member firms should respond to the request. Although described as a voluntary notice program, FINRA

member broker-dealers should design and implement procedures for gathering information to inventory their enterprise-wide digital asset activities, and to assess which activities are in-scope for reporting.

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