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Service: Blockchain, FinTech
Sector: Financial Services, IT & Telecommunications

Blockchain Bites: Aussie press muses Bitcoin as a gold replacement, US SEC out to make waves in lawsuit filed against Ripple, Regulators rattled about surge in scams, Singapore digital asset custodian given the all-clear

Michael Bacina, Barbara Vrettos, and Shannon Hatheier of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Aussie press muses Bitcoin as a gold replacement…

With Bitcoin's meteoric price rise over Christmas and the New Year, this week kicked off with two of Australia's more conservative media outlets musing on whether Bitcoin is a stable asset. The usually critical-of-digital-currency Financial Review (paywall) pondered the reasons for Bitcoin's price shooting up while the right-leaning masthead The Australia reproduced a Times article comparing Bitcoin to gold as a safe haven asset. The FinReview posited three reasons for Bitcoin's rise:

1. **Fear of Missing out (FOMO)** Companies like Microstrategy putting hundreds of millions into Bitcoin, Square buying USD$50M and Paypal offering Bitcoin purchasing within their app (for US users) and GrayScale Trust buying more Bitcoin than is being mined (leading to persistent buying pressure) there is an institutional backing to Bitcoin which has never been seen before.

2. **Demand for Inflation Hedges** Global M1 Money Supply has increased significantly this past year. Bitcoin's attractive fixed supply of 21 million Bitcoin programmed into the source code for the Bitcoin blockchain in a way that cannot be altered (absent more than 50% of the Bitcoin miners agreeing to do so and wrecking confidence in the system) provides an extremely handy inflation hedge in Bitcoin which, critically, involves no intermediary offering a complex product and close to zero counterparty risk.

3. **Increased legitimacy** Citing the US Comptroller of the Currency's recent letter approving bank handling of stablecoins, the FinReview is recognizing the increasing normalisation of digital currencies and Bitcoin is the leading currency in that space

While the future is plainly on blockchain, a warming of Australia's financial and business-oriented news-media to digital currency is to be welcomed and applauded.

US SEC out to make waves in lawsuit filed against Ripple

Just before the end of 2020, the SEC filed a lawsuit against Ripple Labs and its two top executives with claims that they unlawfully sold over 14.6 billion units of the digital asset "XRP". The lawsuit targets conduct dating back to 2013 where per the SEC's claim, Ripple sold over USD$1.38 billion in XRP to fund Ripple Labs' operations. The SEC allege that this sale was required to be registered as a sale of securities.

The discussion over whether XRP may be considered a security, due to its close ties to Ripple Labs, is not a new matter. The connection with Ripple Labs implies more centralisation than, for example, Bitcoin or Ethereum where the SEC has previously stated that the lack of a third party "*whose efforts are a key determining factor in the enterprise*" mean those tokens are not likely to be considered securities under US law.

Ripple Labs appears ready to defend the suit vigorously and leading US lawyers are in debate on the outcome, with traditional securities lawyers taking the view that Ripple will likely lose, and many Blockchain lawyers are emphasising the uncertainty around the historical tests under US law. The outcome of the case, whether by settlement or a full hearing, is going to cause more than mere ripples in the Blockchain pond.

Regulators rattled about surge in scams

The past week has seen both UK and New Zealand regulators issue statements warning about the risks of scams in digital currencies (and taking a shot at volatility of those assets). Both statements emphasise consumer protection, warn against unsolicited offers of investments in digital assets, and encourage consumers to get a better understanding of the nature of digital assets.

The FCA has an additional protection from scam companies, with a register for digital asset firms in the UK, so consumers can check if a business they are dealing with is at least registered with the FCA. As of today there's a short permanent list and a very long temporary list. Like the UK, NZ has a Financial Service Providers Register which provides access to a dispute resolution scheme, but many digital asset providers are not Financial Service Providers so won't appear on that register.

Regulators are continuing to develop jurisdictional registers for providers of digital assets in the bid to help protect consumers. However, the borderless nature of many digital currency exchanges that operate solely online continue to make it difficult for regulators to track the operators.

There is no equivalent to the FCA's register in Australia but since digital currency exchanges registered with AUSTRAC can provide a registration number which can be confirmed with AUSTRAC. *S*cams proliferate in all industries and sectors, not just digital currency and ultimately the best person to defeat a scammer is the end user, by taking proper care, research and attention to any purchasing or involvement in digital assets.

Singapore digital asset custodian given the all-clear

Singapore-based digital asset custody firm, Propine, recently announced its successful graduation from the Monetary Authority of Singapore's regulatory sandbox with a Capital Markets Services (**CMS**) License in hand. The CMS License is required in Singapore to engage in business activities prescribed under Singapore's Securities and Futures Act.

Propine say they are the:

> first fully regulated independent digital asset custody service provider [to be] granted the CMS licence and the only digital asset custodian globally with ISO 27001 certification

The announcement follows increased competition among custodians to secure private keys and gain the tick of approval to deliver their custody solutions. As the market for digital asset custody grows it is anticipated that traditional custodians will also seek to enter the market. Among those already competing for a slice of the pie include Singapore's DBS Bank and UK based firm Zodia, both of which are expected to launch digital asset custody services in 2021.

In Australia, the Australian Financial Services Licensing regime does not currently contemplate or accommodate an authorisation specifically for digital currency custodians and the regulatory guide addressing custody does not mention digital assets. Absent there being clear paths for Australian custodians of digital assets, overseas services will secure the jobs and profits from this rapidly growing market. We hope this will change in the near future to help support Australia's financial sector as it deals with revolutionary changes.