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Blockchain Bites: ASIC sets a positive trajectory for an Australian Bitcoin ETF, CBA creates crypto capabilities for customers, FinTech job demand up 615% from August 2020, US President's working group on stablecoins, Seoul Local Council adopts public service Metaverse

Michael Bacina and Luke Misthos of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

ASIC sets a positive trajectory for an Australian Bitcoin ETF

Following the close of Consultation Paper 343: Crypto-assets as underlying assets for exchange traded products (**ETPs**) and other investment products in late July, ASIC's view on an Australian Bitcoin ETF has been revealed. ASIC has released guidance outlining their response and updated a number of existing regulatory guides. ASIC's response provides insight into ASIC's view about best practice for crypto-assets entering the regulated space noting the

> near unanimous support for ETPs and other investment products that provide exposure to crypto assets.

In a media release detailing the update, ASIC Commissioner Cathie Armour said:

> Crypto-assets have unique characteristics and risks that must be considered by product issuers and market operators in meeting their existing regulatory obligations.

ASIC's Report 705 outlines specific responses and submissions received, and significant changes have been made to INFO 225 and INFO 230. These include references to monitoring standards, custody of crypto-assets, pricing methodologies, disclosure and risk management where listed products are involved.

Report 705 is separated into 4 categories, being:

1. Meeting INFO 230 'Exchange traded products: Admission guidelines' expectations;
2. Responsible entity obligations;
3. Listed investment entities; and
4. AFS Licensing for a new kind of asset.

Despite Armour's statement, in accordance with ASIC's long standing regulatory policy the guidance attempts to remain technology neutral. This means limited reference to technology specific crypto asset requirements. ASIC prefers to issue guidance around best practice and leave the decision for admitting listed ETPs backed by crypto-assets to the market operators.

However, a key exception to this is the new category for AFS Licensing for registered managed investment schemes with the introduction of a crypto-asset specific category.

ASIC challenged submissions which noted the UK approach recognising crypto-assets given they carry the indicia of property but didn't give any specific reason why crypto-assets would not, absent other indicia, be simply treated as property. Oddly, ASIC stated that submissions had not convinced ASIC why crypto-assets should be treated as property as a starting point. The UK Jurisdiction Taskforce publication on this point is filled with reasoning on this front and it is disappointing to see ASIC fail to engage with what could have strengthened the legal standing of crypto assets generally.

ASIC notes commodities are not an existing asset kind in licensing frameworks and Said that designating crypto-assets as commodities would not solve the licensing issue.

ASIC has thus established 2 kinds of authorisations for applicants to apply for if they wish to operate a registered managed investment scheme holding digital assets, being either a:-

- a 'named scheme' authorisation (whether the scheme holds one or more crypto assets) which means the licence holder would only be able to operate a specifically identified scheme; or
- a 'kind scheme' authorisation for applicants who have operated 2 named schemes for at least two years. Once granted this will allow licensees to operate multiple crypto-asset registered schemes without needing to vary their license with the introduction of each new scheme.

At present these options are only available for holding BTC or ETH.

Also of note are:

- Key features which have been identified for market operators to consider when approving ETPs;
- ASIC is not limiting crypto asset custodians to Australia and is not changing the existing class order regarding custody of scheme assets; and
- ASIC is not mandating any specific disclosures in disclosure documents relating to crypto assets.

This is a potentially important shift for the regulation in crypto assets. The release follows in quick succession the Senate Report into Australia as a Technology and Financial Centre. It will be interesting to see whether the Senate Report is the impetus for other regulators to issue guidance in the near future.

CBA creates crypto capabilities for customers

The Commonwealth Bank of Australia (CBA) has today announced it will be creating a range of crypto capabilities for its 6.5 million-user banking app. Customers will be able to hold and use cryptocurrencies, like bitcoin, making CBA the first Australian bank to offer access to cryptocurrencies.

With only a few banks around the world offering this service, CBA has taken the first big step towards crypto banking in Australia. The perceived volatility of digital currencies and misunderstandings of risk has kept many traditional financial institutions away from the space.

However, with an increasing number of consumers interested in digital currency and regulation coming following the final report of the Senate Report into Australia as a Technology and Financial Centre (Senate Report) it seems an opportune moment for banks and other financial service providers to offer crypto-related services.

According to an article by the Australian Financial Review (AFR), CBA is expected to confirm a partnership with crypto trading platform Gemini to facilitate the trading of digital assets and Chainalysis will form part of the offer in order to deal with compliance and intelligence services for transaction tracking. Chainalysis works to prevent cybercrime, tracks trends and assists in the seizing of stolen funds, using the highly traceable nature of blockchain payment systems to help identify illicit use of digital currencies.

With Australian crypto personalities entering the AFR Young Rich List in force and a Bitcoin ETF on the horizon, digital assets are further entering the mainstream. The AFR notes that the CBA seem to be moving to operate more like a technology platform than a traditional bank.

For users this means they will soon have the ability to pay bills, check balances, manage property, invest in shares and buy digital currency from one app, which may entice younger customers to use the CBA. The Senate Report has opened the door for more institutions to prepare crypto-related services with the piece of mind that a regulatory framework is coming.

Should the Senate Report's recommendations be embraced, the potential for digital assets to flourish further increases considering the protection that banks like CBA will be able to offer users. This will be particularly important as the CBA is looking to allow its users to pay for goods and services using digital assets down the track, per the AFR.

In a year of significant checkpoints for the digital asset industry, such as MasterCard and Visa vying for crypto-linked credit cards, and the White House considering a crypto Executive Order, the news that the CBA is looking to integrate crypto into their user-friendly systems is some of the most exciting news yet in Australia.

FinTech job demand up 615% from August 2020 says LinkedIn

The explosion of Financial Technology (FinTech) over recent years is being reflected by employers on LinkedIn. The employment-oriented platform announced in an article that job listings containing the terms "crypto" or "blockchain" grew 615% from August 2020 according to the LinkedIn Economic Graph Team.

The surge of FinTech and blockchain related positions is hardly surprising given the growth and interest in the space with the White House considering a crypto Executive Order; the Securities and Exchanges Commission (SEC) approving a synthetic Bitcoin ETF; and the Final Report of the Senate Select Committee Senate Report into Australia as a Technology and Financial Centre being released.

It's not only crypto/digital asset companies that are seeking out candidates with FinTech experience, traditional institutions have also contributed to the rise in job advertisements. Posting up to 30 new roles in a single week, the data shows that finance giant JPMorgan Chase is one of the top employers for roles in the FinTech space.

Blockchain software developers, engineers, auditors and marketers have all been recruited by large financial institutions. This indicates that FinTech is closer than many think to truly becoming embedded into the traditional financial sphere.

The team at LinkedIn noted that financial services firms were projected to hire over three times as many staff with experience in FinTech in 2021 than in 2015. Brady Dougan, former CEO at Credit Suisse noted the influence of the FinTech industry in the LinkedIn article:

The financial services industry is all about continued reinvention, and the power of technology has been dramatic
The continued expansion of FinTech encourages growth and development in traditional financial institutions, so much so that the demand for candidates with experience in the industry will become more and more sought after.

US President's working group on stablecoins

The Presidents Working Group on Financial Markets, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have released their joint Report on Stablecoins (report). Per the press release, the reports purpose was to:

identify regulatory gaps related to stablecoins with the potential to be used as a means of payment, and to present recommendations for addressing those gaps.
The report notes the rapid expansion of stablecoins in the past year, with the largest stablecoin issuers having a market capitalisation exceeding USD $127 billion, up 500 per cent from last year.

The report emphasised broad strategic risks which stablecoins and stablecoin arrangements could present, which read in the nature of a banking or payment systems, which may indicate how seriously the US government is treating the growth of stablecoins. The shopping list of risk included:

- Run risk;
- Payment risk;
- Systemic risk;

- Fraud and misappropriation;
- Concentrated market power; and
- Risks to bank-based credit.

The report discusses novel operational risks which could arise in relation to decentralised stablecoins such as network congestion, liquidity risks and the challenge of coordinating decentralised networks. In particular, the working group raised concerns about the risk of a 'run' on stablecoins reserve assets, which could result in volatility and disruptions to other stablecoins and funding markets.

Importantly, however, the report suggests that these risks, and others, arise from gaps in the current US regulatory framework, and not some from an inherent problem in stablecoins, a position at odds with the SEC Chairman's views. As such, the report makes several recommendations to remedy what are considered 'critical gaps' in regulation, which effectively suggest bank-like regulatory frameworks:

- Limiting stablecoin issuance and related redemption and maintenance of reserve assets to 'insured depository institutions' which are subject to supervision and regulation, namely banks and bank holding companies;
- Requiring custodial digital wallet providers in stablecoin arrangements to be regulated by an appropriate federal bank regulator based on the stablecoin issuer;
- Prohibiting custodial wallet providers from lending stablecoins while enforcing liquidity, capital and risk management requirements; and
- Prohibiting custodial digital wallet providers from affiliating with commercial entities or to restrict the use of consumers' transaction data.

This report, and the recently announced US crypto Executive Order, shows an intention by the Biden Administration to consider regulation of stablecoins and digital assets in general.

Should the proposed recommendations be implemented by Congress, stablecoins could either become one of the most popular traded assets in the US, or may be pushed offshore if the regulation deployed is not tailored to harness the benefits of stablecoins.

Seoul Local Council adopts public service Metaverse

The Seoul Metropolitan Government (SMG) has announced it is the first local government in South Korea to establish a metaverse platform. The contactless communication channel is designed to provide a new-concept of public service by deploying the platform for residents. South Korea previously approved blockchain based digital drivers licences for citizens in 2020.

The □ 3.9 billion (AUD 4.48 million) project is part of a 10-year plan by Mayor Oh Se-hoon to digitise the city. The tentatively named 'Metaverse Seoul' is touted to be operational by the end of 2022 through a three-stage roll out and seeks to create metaverse capabilities for economic, cultural, tourism, educational and civil service industries within the city.

By the end of next year specific capabilities will include a Virtual Mayors Office, Seoul FinTech Lab, Invest Seoul and Seoul Campus Town before the launch of the 'Metaverse 120 Centre', a virtual public service centre, in 2023. Avatar public officials on the metaverse will provide consultation and civil service available through the civil service centre at Seoul City Hall.

SMG also aims to introduce a 'Virtual Tourist Zone' to showcase major tourist attractions as well as recreate lost tourist attractions. From 2023, leading festivals like the Seoul Lantern Festival and other major events will be broadcasted internationally on the Metaverse.

A policy for providing public service to overcome restrictions in the real world will be accompanying the metaverse and SMG plans to eventually expand the platform to all areas of its municipal administration. It remains to be seen if a metaverse will increase the working efficiency of officials or reduce costs of residents interacting with Council. While South Korea is among the only governments seeking to create a virtual city, the popularity of metaverse projects only seems to be increasing.

We remain optimistic but cautious about whether metaverse deployments will improve resident's interactions with government, as the UX issues which need to be addressed are inherently more complicated than those which seem to be regularly undercooked in current government website interfaces.