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## Say Hello to the SEC's Digital Currency Working Group.

By Marco Santori and Jeffrey Jacobi

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*Now that enforcement agencies have determined that digital currencies are more than a passing fad, they are establishing more permanent efforts focused on the novel legal issues digital currencies present. The SEC's formation of its multi-office Digital Currency Working Group may foreshadow an increase in the agency's exercise of regulatory authority over entities offering interests in Bitcoin and other digital currencies.*

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Businesses that transact in digital currencies or cryptocurrencies, such as Bitcoin and Litecoin, should be aware of the SEC's increased focus on these transactions.

Since Bitcoin's 2009 debut, regulators like the Financial Crimes Enforcement Network ("FinCEN") have scrutinized Bitcoin and other digital currencies to assess how they fit into the existing framework of laws applicable to money and securities. Regulators have also cracked down on a variety of perceived wrongs with some link to digital currencies, including money laundering, Ponzi schemes and securities fraud. For example, in July of 2013, the SEC charged an individual with defrauding investors in a Ponzi scheme involving Bitcoin, and in June of 2014 the SEC charged a Bitcoin-related website owner with publicly offering shares in his ventures without registering them.

Now that digital currencies have proved more than a passing fad, enforcement agencies are establishing more permanent efforts focused on the novel legal issues they present. The U.S. Department of Justice had by 2011 established its Global Illicit Finance Team (GIFT), a task force consisting of investigators from the U.S. Attorney's Office of the Southern District of New York, U.S. Secret Service, U.S. Immigration and Customs Enforcement - Homeland Security Investigations (ICE-HSI), the Internal Revenue Service, and the Department of Justice's Asset Forfeiture and Money Laundering Section. GIFT was recently credited with the shutdown of Liberty Reserve, which allegedly operated a \$6 billion digital currency system designed to provide cyber and other criminals with a way to launder their profits.

The SEC has followed suit. In a press release dated December 8, 2014, the SEC publicly featured its Digital Currency Working Group, which helped coordinate the investigation of Ethan Burnside, who was sanctioned for his alleged operation of two online venues that traded securities using digital currencies

without registering the venues as broker-dealers or stock exchanges. The Digital Currency Working Group has approximately 50 members from among the SEC's divisions and offices, and the stated aim of fostering information-sharing internally and externally. Though it was reportedly formed in 2013, it was not linked to a specific enforcement action until the SEC's press release of December 8, 2014.

The SEC's advance into this enforcement arena came at the same time as a ruling by Magistrate Judge Amos Mazzant of the Eastern District of Texas federal court that digital currency is "money" for the purposes of the Securities Act because it can be used to purchase goods and services, pay for individual living expenses, and exchanged for conventional currencies. In August of 2013, SEC Chairman Mary Jo White issued a letter that clarified the SEC's position: though virtual currency itself may not be considered a "security" subject to SEC enforcement, interests issued by entities owning virtual currencies or providing returns based on assets such as virtual currencies likely would be securities and therefore would be subject to regulation. In May of 2014, the SEC issued an alert warning investors of the risks of investments involving Bitcoin and other digital currencies.

These recent actions, including the establishment of the Digital Currency Working Group and the SEC's public commendation of the new group's efforts, reflect the SEC's increased interest in exercising regulatory authority over digital currencies. Businesses operating in this space, which might be accustomed to FinCEN oversight, should note the close scrutiny of another federal agency.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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