



Regulatory Update March 12, 2019

In this update, we examine a new California bill looking to require licensing for virtual currency businesses, the criminal charges brought by the DOJ for founder's involvement in cryptocurrency fraud, and the SEC's settlement with Gladius.

California Looks to Pass New Virtual Currency Businesses Licensing Framework

On February 22, lawmakers in California introduced [Assembly Bill 1489](#) (A.B. 1489), which mirrors the Uniform Law Commission's Uniform Regulation of Virtual Currency Businesses Act (URVCBA). The bill, sponsored by Ian Calderon (D) from the 57th District, would also adopt the Commission's Uniform Supplemental Commercial Law for the URVCBA.

The bill would define "virtual currency business activity" as "exchanging, transferring, or storing virtual currency or engaging in virtual currency administration, whether directly or through an agreement

with a virtual currency control services vendor." It goes on to describe "virtual currency control services vendor" as "a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency."

The bill follows the state's previous failed attempts at implementing a virtual currency licensing scheme similar to New York's BitLicense:

- [A.B. 1326](#) was introduced in 2015, but failed in the state senate in 2016. It proposed a slightly different definition of "digital currency business" to mean "the business of offering or providing the service of storing, transmitting, exchanging, or issuing digital currency." Under A.B. 1326, "storing" meant "to have custody or control of digital currency on behalf of others."
- [A.B. 1123](#) followed in 2017, experiencing the same fate later in 2018. It defined "virtual currency business" to include "maintaining full custody or control of virtual currency in this state on behalf of others."

Other states have similarly tried to enact the URVCBA with no success. Forms of the

URVCBA were introduced in Connecticut ([H.B. 5496](#)) , Hawaii ([S.B. 250](#) and [H.B. 70](#)), Nebraska ([L.B. 987](#)), Nevada ([S.B. 195](#)), and Oklahoma ([H.B. 1954](#)).

The URVCBA as well as A.B. 1489 have received mixed criticism. Critics took to social media to demonstrate their concern. Representatives from Wyoming's Blockchain Task Force detailed their issues with the URVCBA in a [letter](#) addressed to the Uniform Law Commission's president. The letter asserts that the Model Acts "neuter the power of blockchain technology." It criticizes the Acts for perpetuating the indirect ownership regime under the Uniform Commercial Code (UCC), providing clarification only for digital assets held by intermediaries. Further, it describes how the Acts fail to recognize consumer digital tokens or utility tokens, which are explicitly defined in Wyoming's [S.F. 125](#) signed into law last month.

Federal Prosecutors in Massachusetts Indict My Big Coin Pay Founder on Criminal Charges

The U.S. Department of Justice (DOJ) published a [press release](#) on Wednesday describing the criminal charges brought against My Big Coin Pay founder Randall

Crater of East Hampton, New York. The charges, four counts of wire fraud and three counts of unlawful monetary transactions, stem from Crater's alleged involvement in the Nevada-based cryptocurrency business's false and fraudulent statements made to investors, misappropriating nearly \$6 million in investments.

The indictment recounts the misrepresentations Crater and his team made to My Big Coin (MBC) investors from about 2014 to 2017, including that their "functioning virtual currency" was backed by gold and other assets, it was tradeable on exchanges, and they had a partnership with MasterCard. In reality, Crater was using investors funds to purchase jewelry, art, and other expensive collectibles, spending over \$300,000 at the Southampton Jewelry Exchange.

The charges follow the CFTC's civil suit against My Big Coin Pay that it brought in January 2018, resulting in the [landmark judicial opinion](#) in which a federal district judge in Massachusetts embraced the CFTC's view that MBC constituted a "commodity" under the Commodities Exchange Act. The court also rejected the defendants' argument that, even if MBC was a commodity, the CFTC lacked

authority to prosecute “the kind of garden variety sales puffery” here absent market manipulation.

Crater was arrested in Florida where he appeared before a Florida district judge, though the indictment was filed in Massachusetts, where he will face trial. The trial date has yet to be set.

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Unregistered ICO Self-Reports to SEC, Escapes Penalty

On February 20, the SEC [released details](#) of its latest settlement with a token issuer, ultimately deciding not to impose a monetary penalty on Gladius Network who self-reported its unregistered ICO to the SEC last August and cooperated with the agency’s investigation. Gladius raised over \$12 million from October to December 2017 with plans of offering network participants spare bandwidth and storage to boost users’ speed and protect against cyber attacks. The services would be funded solely with GLA Tokens.

The SEC found the tokens to be securities because investors had reasonable expectations of profits from Gladius’ efforts in creating a “marketplace” and secondary trading market for GLA Tokens. Pursuant to the [order](#), Gladius will return funds to investors, register the GLA Tokens as securities, and file reports with the SEC.

With Gladius, the SEC furthers its retrospective compliance initiative, reiterating that this settlement “shows the benefit of self-reporting and taking proactive steps to remediate unregistered offerings.” In November, after the Airfox and Paragon proceedings, regulators similarly [acknowledged](#) that there is “a path to compliance” even where “issuers have conducted an illegal unregistered offering of digital asset securities.”

An attorney on Twitter [pointed](#) out a notable difference between the Airfox/Paragon and the Gladius orders: In the Gladius order, the SEC outlined how the company can terminate its registration requirement if the GLA Token no longer qualifies as a security. This would be done by filing a [Form 15](#) and notifying the Commission 30 days prior to the filing. He posited that this provides “a more authoritative statement” demonstrating the

SEC's view that tokens can evolve from securities to non-securities.

Other News

- Cointelegraph: [Coinbase, R3 and Other Major Firms Respond to CFTC's Request for Input on Ethereum](#)
- CoinDesk: [Ripple Scores Minor Victory in US Securities Class Action](#)

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