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THE STATE OF CRYPTO – A 360° PERSPECTIVE

Moderator – Andy Ray

Panelists – Mary Dunbar, Albert Lung, Sarah-Jane Morin, and Andrew Gray

May 3, 2018

Agenda

- Welcome: Andrew Gray
- Introduction: Andy Ray
- Taxation: Sarah-Jane Morin
- Capital Markets: Albert Lung
- SEC/FINRA Regulation: Mary Dunbar
- Panel Q&A

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Introduction



- The market value of cryptoassets rose more than 40x in 2017, and dropped by 60% in the first quarter of 2018
- The IRS is owed an estimated \$25b with respect to gains on transactions involving cryptoassets in 2017.
- The SEC has issued hundreds of subpoenas to companies and individuals involved in the cryptoasset ecosystem.
- Even as legal/regulatory landscape seems to be getting cloudy, the mix of market participants is shifting from almost exclusively individuals to include more and more institutions.

What does it all mean?

- Our panelists are here to discuss the current state of affairs from a wide range of perspectives.
 - [Sarah-Jane Morin](#), who has written and spoken widely on the topic of taxation of cryptoassets, including a widely read article in [VentureBeat](#), is here to talk about the taxation of cryptoassets. And before you ask whether taxation is an example of the tail wagging the dog, we all need to remember the famous story of the IRS and Al Capone.
 - [Albert Lung](#), who is based in our Palo Alto office and works with many emerging companies who have executed and/or are considering cryptocurrency offerings, is here to talk to us about the capital markets, and how they are shifting in light of the overall market drop, the volatility, and the increasing regulatory interest.
 - [Mary Dunbar](#), who is a former Vice President at NASDAQ and represents regulated financial market participants, is here to talk to us about the entry of these new participants, how the current regulatory framework affects them, and how it seems to be shifting.

Taxation



- Overview
- How is an exchange of one cryptoasset for another treated?
- Why has there been a lot of press on the so-called IRS Coinbase subpoenas?
- Realistically, what is the exposure for someone who failed to report gain on a transaction involving cryptoassets?
- If a taxpayer failed to report gains on a transaction involving cryptoassets, what's the best way to fix that?
- What if I or an entity that I manage/own issues tokens or virtual currency to buyers – **for** example, in an ICO? Is that a reportable transaction for tax purposes?
- What if I'm a miner who mines cryptoassets in exchange for payment in cryptoassets?
- What are the states doing about taxation on cryptoassets?
- What about foreign countries?

Capital Markets



- SEC's position on ICO and token offering
 - Utility token versus securities
 - Recent decisions and guidance
- What are the options for a company that is looking to issue a coin or token?
 - Private placement / general solicitation; Regulation A+ ICO; Registered Offering / S-1; Regulation CF
- How has the market shifted over the past year?
 - U.S versus foreign offering
 - Foundation structure
 - Token generator incorporation
- What is the difference between a listed and an unlisted offering?
 - Secondary trading issues / blue sky/federal exemption
- Token offering as an alternative to VC financing and “exit strategy”
- What are the qualities of the companies that are most likely to be successful in a cryptocurrency offering?

Institutional Investors

- We understand that there are about 250 crypto “funds” out there, and about 150 were started in the past year. We also understand that of those funds, maybe 50 could ultimately serve institutional investors, meaning pension funds, sovereign wealth funds, and the like.
- Investing in these funds is an option, but we understand that many more traditional investment managers (as opposed to institutional investors) are considering forming their own funds. What kinds of institutional players are interested in/entering the market?
- How are the SEC and FINRA addressing trading and custody issues for certain cryptoassets?
 - Broker-Dealers
 - Investment Advisors
 - Investment Companies
- Is there state regulation of market participants?
- Can you explain the so-called “custody” issue?

Panel Discussion



- International regulation
- International enforcement (e.g., the Japan exchange case)
- Other US regulators
 - The CFTC
 - Banking regulators
 - State “money transmitter” regulation; New York BitLicense
- Other potential enforcement agencies
 - State AGs
- Any thoughts about cryptoassets that are truly “cryptocurrencies”? For example, there are news stories about countries like Russia and Venezuela issuing currencies that are based on blockchain technology.

Biography



Andrew M. Ray

Washington, D.C.

+1.202.739.6585

andrew.ray@morganlewis.com

 [@AMRayEsq](https://twitter.com/AMRayEsq)

Andrew Ray is the leader of the firm's Fintech and interdisciplinary corporate practice in Washington, DC, where he represents public and private companies, financial sponsors, and management teams in a broad range of industries, including technology, financial services, life sciences, real estate, and the not-for-profit sector. Various industry publications recognize Andy as a leader in both M&A and in communications law, among other fields. He recently led the team representing Oculus VR in its \$2 billion sale to Facebook, which was named the M&A Advisor M&A Deal of the Year.

Biography



Sarah-Jane Morin

San Francisco

+1.415.442.1231

sarah-jane.morin@morganlewis.com

Sarah-Jane Morin focuses her practice on representation of public and private companies, private equity funds, venture capital funds, real estate funds, portfolio companies, and real estate investment trusts in the tax aspects of complex business transactions and fund formations, including domestic and cross-border investment strategies, sponsor investment strategies, limited partner investment strategies, mergers, acquisitions, integrations, buyouts, recapitalizations, debt and equity restructurings, and ongoing operations and tax compliance issues. Additionally, she advises on international tax issues, including the tax aspects of offshore vehicles (CFC/PFIC regimes), anti-deferral rules (Subpart F), withholding, cost sharing, and transfer pricing.

Biography



Mary Dunbar

San Francisco

+1.415.442.1568

mary.dunbar@morganlewis.com

Mary M. Dunbar counsels clients on broker-dealer and securities market regulation, including compliance, supervision, and reporting issues. She represents clients in SEC and FINRA investigations and disciplinary proceedings, and conducts internal investigations. Mary also advises clients on broker-dealer formation, mergers and acquisitions, and FINRA and exchange membership issues. Mary brings to Morgan Lewis experience as a vice president and deputy general counsel with The Nasdaq Stock Market, Inc., as well as other FINRA and governmental experience.

Biography



Albert Lung

Silicon Valley

+1.650.843.7263

albert.lung@morganlewis.com

Albert Lung advises companies throughout the United States and abroad on capital market transactions, corporate governance, and securities laws. His clients include publicly listed companies and investment banking firms in emerging technology, biotechnology, software, and life sciences fields. Albert advises clients in public and private offerings, compliance with US Securities and Exchange Commission (SEC) regulations and disclosure requirements, NASDAQ/NYSE listing requirements, corporate governance, investors communications, and a variety of other general corporate matters.



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