

December 19, 2017

Four Key Takeaways from the SEC's Bitcoin and Cryptocurrency Statement

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Over the past few months, there has been a great deal of excitement among investors about Bitcoin and other cryptocurrencies. This excitement intensified in recent weeks as Bitcoin values rose 1800% and the Chicago Mercantile Exchange began to allow trading of Bitcoin futures.^[i] The sudden emergence of cryptocurrencies has been met with concern by the SEC. Earlier this year, the SEC issued an Investor Bulletin on Initial Coin Offerings (ICOs) highlighting some of the risks of investing in ICOs.^[ii] Last week, with interest in cryptocurrencies reaching new heights, SEC Chairman Jay Clayton issued an official statement on cryptocurrencies and ICOs.^[iii] The statement addressed both “Main Street” investors and market professionals (e.g., investment advisers, broker-dealers, and securities lawyers). Here are the four key takeaways for investment advisers:

1. Any activity that involves an offering of securities, whether novel or not, must be accompanied by disclosures, processes, and other investor protections required by securities laws.^[iv]
2. In evaluating whether ICOs should be registered, investment advisers should review the SEC's investigative report on ICOs and consult with legal counsel as needed.^[v]
3. Excessive touting of investments in thinly-traded and volatile markets is a red flag that may indicate scalping, pump and dump schemes, and other forms of market manipulation.^[vi]
4. A decision to allow payments in cryptocurrency, purchasing cryptocurrency on margin, or other uses of cryptocurrency to facilitate securities transactions should be accompanied by a review of anti-money laundering and know-your customer requirements.^[vii]

If you have any questions about Chairman Clayton's statement as it relates to investment advisers or the regulation of investment adviser more generally, we invite you to contact us directly. **John I. Sanders and Lauren Henderson** are associates based in the firm's Winston-Salem office. ^[i] Alexander Osipovich & Gunjan Banerji, *Exchange Giant CME Launches Bitcoin Futures*, WALL ST. J., Dec. 17, 2017, available at <https://www.wsj.com/articles/exchange-giant-set-to-launch-bitcoin-futures-after-rival-stumbles-1513432800>. ^[ii] SEC, *Investor Bulletin: Initial Coin Offerings* (July 25, 2017), available at https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_coinofferings. ^[iii] Jay Clayton, Chairman, SEC, *Statement on Cryptocurrencies and Initial Coin Offerings by SEC* (Dec. 11, 2017), available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>. ^[iv] *Id.* ^[v] *Id.* ^[vi] *Id.* ^[vii] *Id.*