

“Cryptocurrencies” vs “crypto-assets” : the regulatory battle for a token taxonomy

Blog post by Senior Associate Desné Masie, 2 July 2018

The Bank of England’s governor, Mark Carney, said [in a speech in March](#) that it is better to refer to cryptocurrencies as “crypto-assets” - that is, to see them as securities, “expressly because they are not true currencies”. The US SEC, on the other hand, took a more nuanced approach two weeks ago when it [clarified that](#) cryptocurrencies themselves are not securities, but that the [capital-raising activities using cryptocurrency technology](#) can be.

If two of the world’s most influential regulators cannot agree on the treatment of these cross-border instruments, the risk of regulatory arbitrage - and with it, financial crime, consumer mis-selling and financial instability - will potentially grow. Just such a concern has been echoed by the Bank for International Settlements (BIS), which has just called for a fundamental rethink of cryptocurrencies.

The current regulatory dilemma reflects in part the way cryptocurrencies were initially intended to be used chiefly as money, but have become used more as highly speculative instruments in their own right.

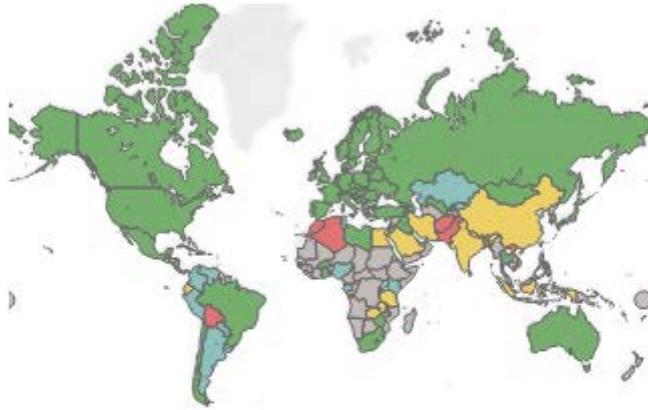
The South African reserve bank has just decided to designate them ‘tokens’. Carney, and other central bankers, have argued that the chances of cryptocurrencies in time replacing traditional currencies are “tenuous at best”.

That is certainly true, for now. Central bank-backed money is extremely hard to disrupt, especially where people have faith in their governments and democratic institutions. But blockchain is still in its infancy, with huge scope to grow. Ultimately, if central banks cannot issue money more efficiently than the market, then the market will drive innovation or the increased privatisation of money. The role of cryptocurrencies as speculative assets is also likely to grow. The market cap of speculative positions in cryptocurrencies is fast approaching \$1 trillion and will grow.

How much does the argument about definition actually matter? A lot, if it is linked to regulatory approach, which it will be. One attraction of the SEC’s case-by-case approach, rather than a blanket re-labelling of everything as “securities” is that it would allow regulators to establish a set of principles for regulation that could withstand rapid technological innovation. It also has a good chance of securing buy-in from crypto businesses themselves.

For investors, users and cryptocurrency developers, all this raises the obvious question of whether regulators will agree something consistently and collectively. Scope for better investor protections and institutional interest will both depend on this. Whether crypto-instruments are “currencies”, “securities”, or something else entirely, they have one thing in common: they are global in nature. Until a global regulatory response matches this, user and investors face the unattractive possibility of poor, patchy or inconsistent frameworks - and the risks that come with them.

Global crypto regulation



Legality

 Illegal

 Legal

 No information

 Unregulated - Permissive

 Unregulated - Restricted

