



5 Ways Cryptocurrency Traders in EMEA Can Plan Ahead for U.S. Government Scrutiny

In response to the growth of cryptocurrency trading, the U.S. Department of Justice (DOJ) and Commodity Futures Trading Commission (CFTC) are aggressively directing their enforcement resources to combat against digital currency traders in the UK and greater EMEA. Firms representing entities and individuals involved in cryptocurrency should be comprehensive in their approach to preventing any U.S. government actions.

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U.S. government agencies have recently been responding to the growth of cryptocurrency trading with vigorous oversight. The U.S. Department of Justice (DOJ) and Commodity Futures Trading Commission (CFTC) are aggressively directing their enforcement resources to combat against digital currency traders in the UK and greater EMEA. Therefore, counsel located in the region needs to be aware of the risks involved with this new-found aggression and how to prepare for any U.S.-driven regulatory inquiries or subpoenas.

In this environment, firms representing European entities and individuals involved in cryptocurrency should:

Be mindful of the U.S. government's long reach.

Just last week, the media reported that the DOJ and CFTC had opened a spoofing investigation into British bitcoin traders, demonstrating the U.S. government is more than willing to bring enforcement actions against companies and individuals involved in bitcoin-based outside of the U.S. The agencies' jurisdiction extends beyond the U.S. borders, although jurisdictional defenses may exist depending on the number and nature of contacts with the U.S.

Prepare for scrutiny of the secondary market.

To date, enforcement efforts by the U.S. Securities and Exchange Commission (SEC) have largely focused on the initial coin and token offerings. But U.S. regulators, including the SEC, CFTC and DOJ, have also been scrutinizing the trading of such virtual currencies in the secondary markets. Firms should be prepared to respond to inquiries from the U.S. government regarding the nature and extent of their virtual currency trading activities, as well as the compliance controls they have in place.

Anticipate potential cross-border asset seizures.

Even before they bring any formal action, U.S. authorities can attempt to seize assets. Prior preparation and a swift response can help a company or individual to successfully fend off an asset seizure or forfeiture action. Moreover, some particularities of U.S. law may result in default seizure of an individual's assets while they fight extradition to the U.S. Therefore, firms should assemble a team that understands which specific asset seizure mechanism the U.S. government has used or is likely to use, before developing or commencing a defense strategy.

Assemble records carefully.

Companies confronting a potential U.S. government investigation must prioritize the record they develop, as it can have a direct bearing on the likelihood of a successful outcome. To correctly determine whether and when particular documents may be subject to disclosure, and how they can help move a matter toward a successful resolution, companies must understand all relevant discovery rules, privileges and data privacy laws. Whether negotiating a settlement or litigating through trial, proper record management is crucial.

Hire experienced counsel.

In response to a U.S. government inquiry or subpoena, companies should retain counsel with former U.S. prosecutorial and enforcement experience. Such lawyers will be best positioned to understand whether the company's or individual's posture should be cooperative or adversarial. Given the current uncertainty surrounding the legal status of digital currencies and ICOs, there may be opportunities to successfully litigate against U.S. regulatory agencies.

KOBRE & KIM

About Kobre & Kim's EMEA Government Enforcement Defense Team

Kobre & Kim is an Am Law 200 law firm that focuses exclusively on disputes and investigations does not have a transactional practice or ongoing institutional relationships in the digital currency industry, and thereby maintains its ability to serve as a zealous and independent advocate in disputes involving the U.S. government or virtually any private litigant.

We have been lead counsel in most of the important cases in the futures and derivatives space, particularly U.S. Department of Justice cases, and U.S. Commodity Futures Trading Commission and U.S. Securities and Exchange Commission cases involving alleged manipulation and disruptive trading. We also have a successful track record of convincing the government to unfreeze assets or reduce forfeiture requests that often have hundreds of millions of dollars at stake.

Our EMEA government enforcement defense team is led by a former U.S. Department of Justice prosecutor resident in the UK.