

The SEC Launches FinHub – New Resource for Public Engagement on FinTech Matters

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On October 18, 2018, the US Securities and Exchange Commission (the “SEC” or the “Commission”) announced its launch of a new “strategic hub for innovation and financial technology” the Commission is calling FinHub.¹

What is FinHub?

The Commission describes FinHub as “a resource for public engagement on the SEC’s FinTech-related issues and initiatives, such as distributed ledger technology (including digital assets), automated investment advice, digital marketplace financing, and artificial intelligence/machine learning.” FinHub replaces and builds upon the work of several prior internal working groups at the Commission focusing on similar issues.

The SEC states that FinHub will do the following:

- provide a portal for industry and the public to engage directly with SEC staff on innovative ideas and technological developments;
- publicize information regarding the SEC’s activities and initiatives involving FinTech;
- engage with the public through publications and events, including a FinTech Forum focusing on distributed ledger technology and digital assets planned for 2019;
- act as a platform and clearinghouse for SEC staff to acquire and disseminate information and FinTech-related knowledge within the Commission; and
- serve as a liaison to other domestic and international regulators regarding emerging technologies in financial, regulatory, and supervisory schemes.

Notably, FinHub will be led by Valerie Szczepanik, Senior Advisor for Digital Assets and Innovation and Associate Director in the SEC’s Division of Corporation Finance (the “Division”). The creation of FinHub under the leadership of Ms. Szczepanik demonstrates the SEC’s efforts to centralize and “coordinate efforts across all SEC Divisions and Offices regarding the application of US securities laws to emerging digital asset technologies and innovations, including Initial Coin Offerings and cryptocurrencies.”² Although the SEC’s announcement indicates that FinHub will also be staffed by representatives from the SEC’s divisions and offices generally who have expertise and involvement in FinTech-related issues, given Ms. Szczepanik’s role within the Division, which seeks to ensure that investors are provided with material information in order to

¹ Press Release, SEC, SEC Launches New Strategic Hub for Innovation and Financial Technology (Oct. 18, 2018), available at <https://www.sec.gov/news/press-release/2018-240>.

² Press Release, SEC Names Valerie A. Szczepanik Senior Advisor for Digital Assets and Innovation (June 4, 2018), available at <https://www.sec.gov/news/press-release/2018-102>.

make informed investment decisions,³ it would appear that the work of FinHub may more directly affect the Division's review of Initial Coin Offerings.

Practical Considerations

The decision to engage with the SEC is not one that should be taken lightly. There are various considerations that go into engaging with the SEC in any manner, whether formally or informally. For instance, it is unclear what form of guidance FinHub intends to dispense beyond informal staff opinion. Importantly, SEC Chairman Jay Clayton recently made a statement regarding SEC staff views in which he stated that, while staff of the SEC often informally addresses questions from interested parties concerning the Commission's rules or regulations and how such rules or regulations may apply to a particular entity's specific facts and circumstances, "all staff statements are nonbinding and create no enforceable legal rights or obligations of the Commission or other parties."⁴ A more formal process of SEC engagement involves the request of a no-action letter in which an individual or an entity may request that SEC staff not recommend that the Commission take enforcement action against the requestor based on the specific facts and circumstances set forth in the request and, in some cases, the SEC staff may permit parties other than the requestor to rely on the no-action relief. It is unclear whether the SEC would consider taking a no-action position in the context of an Initial Coin Offering or other digital asset related event. Despite Ms. Szczepanik's public statements that the SEC wants "people to come talk to us,"⁵ the SEC's announcement is silent on the nature of such engagement with FinHub.

Engagement with the SEC, however, may afford parties and their representatives:

- valuable insight into the thinking of the SEC staff as to whether the coin/token represents a security which must be either registered or issued in reliance upon a valid securities exemption;
- clarity as to how issuers and their representatives need to approach the application of, and compliance with, US federal securities laws in connection with their coin/token offerings;
- disclosure implications resulting from the unique features of the security coin/token intended to be offered; and
- the opportunity to prevent potential regulatory violations before they occur, thereby avoiding potential civil or criminal enforcement proceedings.

Any party seeking to craft an SEC engagement strategy should carefully consider its need for regulatory clarity in light of the product it seeks to develop and the value that less than formal and binding regulatory relief from all governmental authorities of concern may provide. While not all market participants may decide to engage with the regulators, this move by the SEC is a positive development in its efforts to increase the breadth and depth of its staff's understanding of the rapidly developing FinTech sector and will likely result in better and more informed regulation for the benefit of all stakeholders.

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3 Division of Corporation Finance, About the Division, available at <https://www.sec.gov/page/corpfm-section-landing>.

4 Public Statement, Chairman Jay Clayton, Statement Regarding SEC Staff Views (Sept. 13, 2018), available at <https://www.sec.gov/news/public-statement/statement-clayton-091318>.

5 SEC's New Crypto Czar Wants Coin Industry to Step out of Shadows, available at <https://www.bloomberg.com/news/articles/2018-07-30/juicitsu-is-easy-to-sec-crypto-czar-rapport-with-coinsters-hard>.