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SEC Launches Division To Engage With Public on Blockchain and Other FinTech Questions

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The U.S. Securities and Exchange Commission ("SEC") has launched a new division and web portal intended to help those in the financial technology space navigate the regulatory landscape. This prominently includes assisting companies developing blockchain applications, cryptocurrency trading solutions, and startups launching initial coin offerings.

The new Strategic Hub for Innovation and Financial Technology (FinHub) has an explicit mandate to "serve 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." The site provides links to the SEC's existing guidance and publications relating to the above and other topics. It also provides a means to request a meeting with SEC staff for further guidance on these subjects.

FinHub will be led by Valerie A. Szczepanik, Senior Advisor for Digital Assets and Innovation and Associate Director in the SEC's Division of Corporation Finance, and staffed by representatives from the SEC's divisions and offices who have expertise and involvement in FinTech-related issues.

The SEC's move is likely intended to bring clarity to a rapidly evolving space where the application of existing laws and regulations to nascent technologies is seen by many as a gray area. On some matters, such as the determination of whether an initial coin offering constitutes an offering of securities (which I have discussed in an earlier blog post) the area is not actually as gray as many promoters and investors might like to think. However given the number of recent enforcement actions involving unlawful ICOs by both the SEC and state securities authorities, the analysis of what constitutes a security continues to be poorly understood (or at least selectively ignored). On FinHub, one of the specific subjects on which one can request a meeting with the SEC is "Determination of Instrument as a 'Security.'" Other topics are broader and involve a range of services and technologies including robo-advisors, digital asset trading platforms, and artificial intelligence.



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In a statement accompanying the announcement of FinHub, Ms. Szczepanik said: "SEC staff across the agency have been engaged for some time in efforts to understand emerging technologies, communicate the agency's stance on new issues, and facilitate beneficial innovations in the securities industry. By launching FinHub, we hope to provide a clear path for entrepreneurs, developers, and their advisers to engage with SEC staff, seek input, and test ideas."

The SEC's announcement may be seen as an encouraging signal to entrepreneurs and companies working in the cryptocurrency, blockchain, or other developing FinTech space. Rather than focusing purely on its role in enforcing existing regulations, the SEC seems to be taking a proactive, collaborative approach to working with market participants. Such an approach could be the key to encouraging the development of these new technologies in line with applicable legal requirements, rather than stifling them with an aggressive enforcement focus. Of course, many of these technologies are subject to regulation by different, and often multiple, government agencies—and it remains to be seen whether those agencies will take a similar approach.

Anyone having questions about the regulations applicable to blockchain products, cryptocurrencies, or other FinTech businesses may contact Rich May attorney David Glod.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney David Glod.

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