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ABA Releases Updated White Paper Regarding Cryptocurrencies and Digital Assets

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On January 19, 2021, the American Bar Association (ABA) Derivatives and Futures Law Committee's Innovative Digital Products and Processes Subcommittee (IDPPS) Jurisdiction Working Group released an [update](#) to its comprehensive white paper addressing jurisdictional issues associated with digital products, including cryptocurrencies and other digital assets, and digital processes, such as blockchain.¹ Michael L. Spafford, Chair of IDPPS, and Daren F. Stanaway, Vice Chair of the Jurisdiction Working Group,² were contributing authors to both the original white paper and the 2021 update.

The updated white paper analyzes in depth a number of current issues in the cryptocurrency and digital asset space that have developed since the publication of the first white paper, including:

- The rapid development of cryptocurrencies backed by fiat currencies (stablecoins), which FINMA recently recognized as a fourth general category of tokens;
- The growth of the decentralized finance movement and the increasing number of state central banks exploring the creation of virtual currencies, known as Central Bank Digital Currencies;
- The CFTC's 2020 guidance concerning "actual delivery" of digital assets and related litigation;
- The SEC's Digital Asset Framework, its first issuance of digital asset-related no-action letters, and further developments in its key enforcement actions targeting significant digital asset projects;
- SEC staff guidance on the custody of digital asset securities under the rules applicable to broker-dealers;
- Recent 2019 and 2020 case law developments in certain CFTC enforcement actions involving digital assets;
- New developments regarding the Travel Rule's application to virtual asset service providers;
- FinCEN's first assessment of civil money penalties against a peer-to-peer virtual currency exchanger; and
- International developments, including the EU's recent approval of the Sixth Anti-Money-Laundering Directive.

The need for this update speaks to the rapid evolution of the digital asset and cryptocurrency space. As regulators worldwide endeavor to keep pace with this ever-developing industry, it is imperative that market participants continue to keep themselves informed of the applicable legal and regulatory landscape, as detailed in this update.

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¹ The [original white paper](#) was published on March 13, 2019.

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