Regulation of Cryptocurrencies and Initial Coin Offerings in Switzerland: Declared Vision of a 'Crypto Nation'

By Joanna Diane Caytas

I. Overview

The notion of conservative Switzerland identifying as an aggressive, groundbreaking innovation leader in fintech seems inapposite only as long as we ignore what has happened to its storied traditional business model of banking secrecy under the global post-9/11 erosion of financial privacy that resulted in weaponization of extraterritorial reaches of investigations[1] and sanctions.[2] So it comes as little surprise that the notoriously tax-friendly canton of Zug developed a branding strategy to transform itself into a "Crypto Valley" since 2013,[3] a momentum that has not slowed down to date[4] and has resulted in one of the first supportive regulatory guidelines "light" of any major financial center in Europe, somewhat opportunistically breaking ranks with jittery neighbors seeking to curtail proliferation of ICOs which are primarily used to create businesses.[5] Strategically, ICOs are gradually disrupting traditional venture capital funding as hybrid models become *en vogue*, combining smart money and crowd support. Of the world's ten largest ICOs in 2017, four have used Switzerland as their base while over 100 requests for guidance were received by the Financial Market Supervisory Authority (FINMA), the nation's primary regulator, according to a PwC study.[6]

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In response to two legislative requests for evaluation introduced in the lower house of the Swiss Federal Assembly (parliament) in 2013,[7] [8] the Federal Council (the national government) presented a 30-page report on virtual currencies[9] on June 25, 2014 that provides an overview of current issues cryptocurrencies face in all areas of existing Swiss law and, although to a much lesser degree, under past jurisprudence.[10] It also provides an assessment of the principal identifiable legal risks presented by virtual currencies[11] and a first extremely tentative comparative review.[12] In response to the parliamentary inquiries that had triggered them, these 2014 findings of the Federal Council centered primarily on cryptocurrencies but did not yet reflect on the potential of blockchain technology more broadly.

But since 2014, the Swiss Financial Markets Supervisory Authority (FINMA) has initiated a gradual regulatory process intended to clarify when entrepreneurs need to comply with anti-money laundering and securities laws. To this day, its efforts have yielded a "Guidance" document issued September 29, 2017[13] followed by "Guidelines" published February 14, 2018.[14] Although both are not technically regulations, these documents are the principal policy pronouncements of the nation's primary regulator on the subject of cryptocurrencies and Initial Coin Offerings (ICOs)[15] and are intended to facilitate an orderly, legitimate, and growing market.

In mid-2014, and thus prior to the tsunami-like bitcoin boom of 2017-18, the Federal Council's Report did not acknowledge aspirations by Zug to create a "Crypto Valley,"[16] much less a "Crypto Nation."[17] But soon enough, the Swiss financial establishment embraced regular visits to periodic Crypto Finance Conferences at St. Moritz.[18] The conference on January 17-19, 2018 even featured the Swiss Commerce Secretary, Federal Councilor Johann Schneider-Ammann, as keynote speaker.[19] Shortly thereafter, he initiated a federal task force to bridge the chasm of conceptual issues between Zug's Crypto Valley ecosystem and the bricks and mortar of the existing Swiss legal framework, aiming to harmonize priorities for anticipated future regulations.[20]

Its report is expected by end of 2018. Government and markets show substantial interest because blockchain technology holds multiple promises: since it uses distributed ledgers that are verified by means of cryptography, no user can sell or exchange what they do not own.[21] Thus counterparty risk is eliminated, clearing expenses are minimized,[22] and intermediaries become superfluous.[23] Of course, this begs the question why an economy as heavily dependent on its financial services industry as Switzerland's would be so keen to advance technology that aims to eliminate intermediaries (which includes all banks, broker-dealers, asset managers, and institutional investors) and introduce stronger, cost-cutting competition to raising capital, something the finance industry is in dire need of—even if this initiative gives rise to concerns and challenges about legal status, regulation, taxation, cybersecurity, and volatility and speculative bubbles.[24] So, while this might seem like a bizarre attempt by Switzerland, Inc. to re-engineer itself by making one of its economic pillars redundant, the official explanation stated by FINMA's director is the enduring value of innova-

tion leadership,[25] and indeed Switzerland has long been ranked among the world's most innovative nations.[26]

While Switzerland and the U.S. dominate ICOs, both having raised almost the same amount in excess of $550 million,[27] Swiss government policy is to incentivize the ICO market without allowing a "Wild West mentality" to compromise standards and undermine the integrity of financial markets. At the moment, amounts at stake in ICOs, even globally, are far too small to present any systemic risk. But that could change with little notice and require expeditious adjustment of national experiments, considering that the number of ICOs exploded in 2017 and investments continue to grow exponentially.[28] So it is small wonder that FINMA seeks to keep market regulation technology-neutral[29] while the federal Department for International Finance declared its intention to make Switzerland an attractive location for ICOs, opening up the possibility of investing in start-ups to anyone with a smartphone.[30]

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2. Interfacing Cryptocurrencies with Current Statutory Law and Regulations

At the time of this writing, no ICO-specific regulation exists yet in Switzerland, nor is there pertinent case law or consistent legal doctrine.[31] That notwithstanding, Swiss regulators (primarily FINMA and the Swiss National Bank) have developed a profound understanding that is reflected and signaled in clear and open-minded guidance.[32] The FINMA Guidelines assess the circumstances of each ICO on its individual merits on a case-by-case basis rather than applying a uniform standard to all of them. Depending on an ICO's purpose and design, it may or may not be subject to regulatory requirements, and not necessarily to the same ones. Current Guidelines differentiate, for now, among three categories of tokens and ICOs.[33]

A. Payment Tokens

Payment tokens are transferable and can serve as present or future means of payment for goods or services or to store or transfer quasi-monetary value. This category comprises any and all cryptocurrencies that do not give rise to claims on their issuer, as central bank-issued notes and ledger accounts do. Under FINMA Guidelines, payment tokens must comply with money laundering regulations, but they will not be treated like financial securities.[34]

B. Utility Tokens

Utility tokens are tokens that provide digital access through a blockchain-based infrastructure to an application or service.[35] They will not qualify as, nor be subject to regulation as, securities so long as their sole purpose is to confer digital access rights.[36]

C. Asset Tokens

Asset tokens represent assets such as a debt or equity claim on the issuer. Such a claim could, for example, arise out of a promise of a share in future company earnings or future capital flows. If they pay dividends or interest or represent rights to earnings streams, with or without claim to repayment of principal, or confer voting rights, or if they are in their economic function analogous to equities, bonds, or derivatives, or other structures capable of securitization that enables physical assets to be traded on the blockchain, such tokens present significant functional analogies to securities. Thus, asset tokens will have to comply with all applicable securities laws and regulations.[37]

D. Hybrid Tokens

Hybrid tokens contain features of more than one of the above-mentioned categories. They are subject to all regulations that apply to at least one of their elements. For example, a utility token with payment token characteristics is subject to anti-money laundering legislation (see below).[38] It is safe to predict that hybrids will quickly move to the center of creative financial and legal engineering[39]—along with related regulatory challenges—because the advancement of blockchain technology with its ability to store

> a public registry of assets and transactions across a shared, trusted, peer-to-peer network, is lauded as one of the most significant technological innovations since the internet. Coupled with the sophistication of software code as a form of communicating information and automating complex instructions, blockchain technology provides a new means of recording information and facilitating the exchange of value in the global economy in a decentralised and immutable way.[40]

That sums up the business model of hybrid tokens and their resulting ICOs, aptly accommodated by the FINMA Guidelines as they aim at incubating their potential without prematurely (or at all) suffocating it with precautionary regulation overkill that is bound to stifle innovation, as the EU, the UK, China, Russia, South Korea, Vietnam,[41] and, partly, the U.S. are doing, driving entrepreneurs overseas,[42] primarily to Switzerland and other offshore financial centers.[43]

3. Regulatory Scheme

Therefore, the focus of FINMA's Guidelines rests heavily on anti-money laundering and securities regulation as these bodies of law are of greatest direct relevance to ICOs. Projects that would fall under the Banking Act[44] that governs deposit taking or the Collective Schemes Investment Act[45] that governs investment fund products are currently considered atypical.[46]

The Anti-Money Laundering Act (AMLA)[47] seeks to protect the financial system in its entirety against risks of money laundering and terrorism financing. Those risks are particularly high in a decentralized ledger-based blockchain system where assets may be transferred anonymously and without regulated intermediaries.[48]

Securities regulation, on the other hand, serves to secure market transparency, a reliable minimum standard of disclosure, and secure trading that is fair and conducive to efficient price formation. Investment decisions require minimum assurances of candor and disincentives to misleading information. The FINMA Guidelines incorporate the breadth and complexity of Swiss securities law and regulation[49] by way of reference, using a very user-friendly formula by applying the aforementioned three-pronged test visualized below.

A. FINMA's Transactional Purpose Matrix

FINMA's treatment of hybrids follows a simple transactional purpose matrix:[50]

	Pre-financing and pre-sale / The token does not yet exist but the claims are tradeable	The token exists
ICO of payment tokens	= Securities ≠ subject to AMLA	≠ Securities = means of payment under AMLA[3]
ICO of utility tokens[4]		≠ Securities, if exclusively a functioning utility token = Securities, if also or only investment function ≠ means of payment under AMLA
ICO of asset tokens[4]		= Securities ≠ means of payment under AMLA

Credit: FINMA, Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs) (Feb. 16, 2018), https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/.

B. Principal *Lacunae*

Among the issues not addressed in the FINMA Guidelines is price volatility: because the great majority of ICO projects are at an early stage of development, uncertainties remain high. They include foreign and global political risk centered on unpredictable regulatory actions. Another issue FINMA Guidelines cannot be expected to address, much less resolve, is the uncertainty under current civil law of whether contracts executed through blockchain technology (including "smart contracts") are legally binding in the first place.[51] That is a question controversially debated in common law jurisdictions as well, and it is frequently answered in the negative for "smart contracts," noting that, as our body of law stands, they are neither smart nor contracts.[52]

Another major white spot on the legal map that will likely require technological solutions is the protection of personal data in the blockchain.[53]

4. Summary Outlook

A. Blockchain Goes Mainstream

Little underscores blockchain's momentum more clearly than its spread from tax haven Zug into the highly-taxed establishment centers of Zurich and Geneva with an "innovation park" at Bahnhofstrasse 3[54] after another incubator had unveiled a "blockchain lab" in Geneva.[55] The canton of Zurich has long planned to dedicate the former Dübendorf military airport to becoming a major "blockchain hub."[56] But caution suggests remembering that these initiatives are more testimony to the future of blockchain technology than they are to current models and flavors of cryptocurrencies and ICOs.

B. Uncertainties on Cryptocurrencies Persist

While ICOs reported again a red-hot start into 2018,[57] experts warn about an imminent industry shift away from cryptocurrencies (payment tokens) to security token offerings (STOs), not least because of SEC enforcement actions with regard to ICOs open to U.S. investors.[58] At the same time, positions taken of late by the new head of the People's Bank of China on bitcoin seem to indicate a somewhat positive shift,[59] echoed by the Bank of England's governor and the Financial Stability Board.[60] Markets' exposure to the slightest indicator of major regulators' intent still causes extreme volatility and choppiness of prices of large-cap crypto coins, resulting in entrepreneurs constantly reviewing business models in response to rapidly changing trends.[61]

C. Living Down Switzerland's Tax Evasion Past

While Swiss banks spent much of the last decade trying to rid themselves of a legacy of lucrative accounts used mostly for capital flight and tax evasion, international probes as well as U.S., German, French, and OECD initiatives aimed at greater transparency are far from abating.[62] Here, FINMA's approach fits neatly with the country's pragmatic opportunistic integration of historic strengths with its new public policy of increased transparency and anti-avoidance strategy.[63] This includes strategic encouragement of blockchain technology development in general independently of—and thus untainted by—adverse publicity triggering potentially risky developments

in the fate of cryptocurrencies. Cryptocurrencies proper remain heavily exposed to concerns recently voiced again by the U.S. Treasury Secretary and other G-20 and OECD representatives about money laundering, tax avoidance, and worse.[64] This is, without doubt, the Swiss government's response to findings in the Bloomberg Report of October 2017[65] that "[s]ome worry that the money might be a little too secret." The purpose of regulation is to ensure that the Swiss cryptocurrency industry works with money only where there is a clear record of who is moving traditional currency to cryptocurrency, as the country cannot afford to go back to letting people bury their financial secrets in another black hole that earns unwanted notoriety as it did over the last two decades.[66] Government concerns—expected to be reflected in future regulations—seek to prevent the use of cybercurrencies for illicit activities in light of the fact that Switzerland dominates the market for cross-border management of private wealth.[67]

D. Self-Regulation and Self-Policing

Much like in the legal profession, preservation, maintenance, and public reliance upon self-regulation and self-policing are a central objective for financial industry associations and lobbies. The Financial Market Supervision Act (FINMASA)[68] recognizes in article 7 (3) a longstanding tradition[69] by permitting FINMA to recognize self-regulation as a minimum standard applicable not only to members of self-regulatory organizations (SROs)[70] but generally. Compliance with minimum standards may be enforced either by FINMA or by the SROs[71] which are themselves subject to FINMA supervision.[72] However, to date, no SRO has been recognized to have capabilities of self-policing the blockchain industry.

Many entrepreneurs hold the vision that technology will somehow allow ICOs to become self-policing, perhaps by methods similar to widely used consumer reviews. "It will become an ultra-transparent world if people have to pay more to hide … It is a huge opportunity to clean up the world."[73] The argument goes that any Swiss ICO that would not comply with strict anti-money laundering procedures would see traditional regulated banks turn away its accounts. But this line of reasoning has two major flaws: first, the argument that domestic banks would cease to accept accounts of corporate customers with lax compliance is losing ground as cost and delays of international electronic transfers shrink, not to mention that standards among Swiss banks in screening and monitoring their customers differ quite a bit in reality.

Money laundering has long involved sometimes sharply elevated transaction costs, none of which have deterred the practice. Moreover, growing capitalization of the cryptofinance universe and growing acceptance of tokens may render the need for ICO operators' reliance on traditional banks moot before long. Similarly, it will not be long before traditional national regulation as opposed to global mechanisms will have reached the end of its useful life span with regard to digital technologies, a fact that the G-20 and OECD have been slow to realize. On the other hand, it is this very globalized cooperation of ICO entrepreneurs that is inevitably bound to run afoul of some old-line alliances and geostrategic interests sooner or later.[74]

E. Imminent Regulation

As the Swiss federal task force impaneled to balance the national interest with the visions of cryptofinance entrepreneurs is slated to report to the government by the end of 2018,[75] it remains to be seen how upcoming regulation in its wake will square the circle by, on one hand, intelligently incentivizing innovation[76] and yet, on the other hand, curbing its fallout by upholding or adaptively reshaping existing law on securities regulation, anti-money laundering, sanctions, taxation, and data protection along with other keystones of twentieth-century jurisprudence.

Endnotes

1. Joanna Diane Caytas, Note, *Weaponizing Finance: U.S. and European Options, Tools and Policies*, 23 Colum. J. Eur. L. 441 (2017).
2. *See, e.g.*, Joanna Diane Caytas, *Sanctions, Real and Imaginary: Experiences with Russia in the Ukraine Crisis*, 9 Amsterdam L.F. 26 (2017).
3. Crypto Valley, *Our Story*, Cryptovalley.Swiss (2017), https://cryptovalley.swiss/about-the-association/.
4. *See* Hugo Miller, *Welcome to Crypto Valley*, Bloomberg Businessweek (Oct. 10, 2017), https://www.bloomberg.com/news/articles/2017-10-10/welcome-to-crypto-valley; Jeremy Epstein, *What Switzerland's 'Crypto Valley' Tells Us About the State of Blockchain*, VentureBeat (Sept. 10, 2017), https://venturebeat.com/2017/09/10/what-switzerlands-crypto-valley-tells-us-about-the-state-of-blockchain/.
5. *See* Ralph Atkins, *Switzerland Embraces Cryptocurrency Culture*, Fin. Times (Jan. 25, 2018), https://www.ft.com/content/c2098ef6-ff84-11e7-9650-9c0ad2d7c5b5.
6. Daniel Diemers, *Initial Coin Offerings: A Strategic Perspective: Global and Switzerland*, Crypto Valley (Dec. 21, 2017), https://cryptovalley.swiss/wp-content/uploads/20171221_PwC-S-CVA-ICO-Report_December_final.pdf, further discussed by David Torcasso, *Die grössten ICOs kommen aus der Schweiz* [*The largest ICOs come from Switzerland*], Handelszeitung (Jan. 19, 2018), https://www.handelszeitung.ch/unternehmen/blockchain-die-grossten-icos-kommen-aus-der-schweiz# (providing an overview of the 15 largest ICOs and the planned Telegram ICO intended to raise $1.2 billion based on the end-to-end encrypted messaging platform, as well as discussing national regulators' different views on ICOs as of January 2018, ranging from outright bans in China, South Korea, Vietnam, and Russia, to advising caution in the U.S., UK, EU, Canada, and Australia, to favorable disposition in Switzerland, Gibraltar, Isle of Man, Cayman Islands, Mauritius, Hong Kong, and Singapore—without exception low-tax or no-tax offshore financial centers. Japan, despite 40-60% share in bitcoin trading, took no position on ICOs).
7. National councilor Jean-Christophe Schwaab (parti socialiste, Vaud) requested by 'postulate' 13.3687 of Sept. 9, 2013 that the government should "evaluer les risques de la monnaie en ligne bitcoin" [evaluate the risks of online-currency bitcoin], https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20133687.

8. National councilor Thomas Weibel (green-liberal party, Zurich) requested on Dec. 5, 2013 by 'postulate' 13.4070 of Dec. 5, 2013 that the government should "Rechtssicherheit für Bitcoin schaffen" [create legal certainty for bitcoin], https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20134070.

9. Bundesrat (Federal Council), Bericht des Bundesrates zu virtuellen Währungen in Beantwortung der Postulate Schwaab (13.3687) und Weibel (13.4070) vom 25. Juni 2014 [Report of the Federal Council on Virtual Currencies in Response to the Postulates Schwaab (13.3687) and Weibel (13.4070) of June 25, 2014] ("Report"), https://www.news.admin.ch/NSBSubscriber/message/attachments/35361.pdf.

10. *Id*. at 10-18.

11. *Id*. at 18-22.

12. *Id*. at 23-25.

13. FINMA, FINMA Guidance 04/2017 – Regulatory Treatment of Initial Coin Offerings (Sept. 29, 2017), https://www.finma.ch/en/documentation/finma-guidance/#Order=4.

14. FINMA, Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs) (Feb. 16, 2018), https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/.

15. *Bringing Swiss Order to Initial Coin Offerings*, Fin. Times (Feb. 19, 2018), https://www.ft.com/content/36ef310c-1566-11e8-9e9c-25c814761640.

16. Erich Aschwanden, *Stadt Zug wird weltweit zum Bitcoin-Pionier* [*City of Zug Becomes a World-Wide Bitcoin Pioneer*], Neue Zürcher Zeitung (May 5, 2016), https://www.nzz.ch/schweiz/crypto-valley-zukunftsmodell-oder-marketing-gag-ld.22911.

17. Ralph Atkins, *'Crypto Nation' Switzerland Issues Guidelines to Support Market*, Fin. Times (Feb. 16, 2018), https://www.ft.com/content/737b9634-1303-11e8-8cb6-b9ccc4c4dbbb.

18. Crypto Finance Conference (2018), https://www.crypto-finance-conference.com/en/#.

19. Business ethicists object to governmental support of cryptocurrencies out of concern for their money laundering potential. *See, e.g.*, Peter Seele, *"Krypto-Nation" Schweiz: Ein doppelter Fauxpas?* [*Crypto Nation Switzerland: A Double Faux Pas*?] Inside Paradeplatz (Jan. 24, 2018), https://insideparadeplatz.ch/2018/01/24/krypto-nation-schweiz-ein-doppelter-fauxpas/ (arguing that the very nature of blockchain technology is transparency as opposed to cryptic anonymity, a privilege currently available only to the U.S. government; consequently, sovereign efforts should be geared toward maximization of transparency).

20. *See* Torcasso, *supra* note 6, and in more detail Erich Aschwanden, *Das Bankkonto soll nicht zum Stolperstein für Blockchain-Firmen werden* [*The Bank Account Should Not Turn Into a Stumbling Block for Blockchain Companies*], Neue Zürcher Zeitung (Mar. 10, 2018), https://www.nzz.ch/schweiz/task-force-schlaegt-bruecke-schlagen-zwischen-crypto-valley-und-bundesbern-ld.1364261. There are, of course, considerably more regulatory concerns to be addressed than mere interfacing with banking licenses and bank accounts. *See, e.g.*, Tony Anderson & Luke Scanlon, *Bitcoin, Blockchain & Initial Coin Offerings—A Global Review*, Pinsent Masons (Nov. 2017), https://www.pinsentmasons.com/en/media/publications/bitcoin-blockchain-and-ico/.

21. Joanna Diane Caytas, *Blockchain in the U.S. Regulatory Setting: Evidentiary Use in Vermont, Delaware, and Elsewhere*, Colum. Sci. & Tech. L. Rev. (May 30, 2017), http://stlr.org/2017/05/30/blockchain-in-the-u-s-regulatory-setting-evidentiary-use-in-vermont-delaware-and-elsewhere/.

22. *See* Joanna Diane Caytas, *Developing Blockchain Real-Time Clearing and Settlement in the EU, U.S. and Globally*, Colum. J. Eur. L: Preliminary Reference (June 22, 2016), http://cjel.law.columbia.edu/preliminary-reference/2016/developing-blockchain-real-time-clearing-and-settlement-in-the-eu-u-s-and-globally-2/.

23. Joanna Diane Caytas, *Regulatory Issues and Challenges Presented by Virtual Currencies*, Colum. Bus. L. Rev. (May 30, 2017), https://cblr.columbia.edu/regulatory-issues-and-challenges-presented-by-virtual-currencies/.

24. Diemers, *supra* note 6, at 6.

25. Mark Branson, Technological Change and Innovation in the Financial Sector, Speech to the Business Club Zurich, Zunfthaus Saffran, Zurich (Sept. 10, 2015), FINMA, https://www.finma.ch/de/dokumentation/finma-publikationen/referate-und-artikel/#Order=4.

26. The country tops the World Economic Forum's Global Competitiveness Report (*see* Klaus Schwab, *The Global Competitiveness Report 2016-2017*, World Economic Forum, http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf), the EU's European Innovation Union Scoreboard (*see* European Commission, *European Information Scoreboard 2016*, http://www.knowledgetransferireland.com/About_KTI/Reports-Publications/European-Innovation-Scoreboard-2016.pdf), the Global Innovation Index (*see* https://www.globalinnovationindex.org/), and patent applications in Europe (*see Swiss Lead on Patent Applications in Europe*, SWI Swissinfo, Mar. 3, 2016, https://www.swissinfo.ch/eng/champs_swiss-lead-on-patent-applications-in-europe/41999768).

27. Atkins, *supra* note 5 (discussing ICO market size in Q1-Q3 2017: 1. U.S. ($580m); 2. Switzerland ($550m); 3. Singapore ($184m); 4. Russia ($111m); 5. China ($82m); 6. UK ($67m); 7. Estonia ($63m); 8. Poland ($45m); 9. Costa Rica ($28m); 10. Netherlands ($27m); 11. Slovakia ($23m); 12. Hong Kong ($21m), altogether quite humble amounts on a global scale: total worldwide ICO proceeds rose from $0.8m in 2013 to $4.6 billion in 2017, by way of 430 ICOs in 2018). *See also* Torcasso, *supra* note 6.

28. Diemers, *supra* note 6, at 3.

29. FINMA, Asset Management: Technology-Neutral FINMA Regulations, FINMA (July 2, 2016), https://www.finma.ch/de/news/2016/07/20160701-mm-rs-09-01/.

30. Ralph Atkins, *Switzerland Sets Out Guidelines to Support Initial Coin Offerings*, Fin. Times (Feb. 16, 2018), https://www.ft.com/content/52820f90-1307-11e8-940e-08320fc2a277.

31. FINMA, FINMA Publishes ICO Guidelines, FINMA (Feb. 16, 2018), https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung/. *See also* FINMA Guidance, *supra* note 13, at 2.

32. *See* Atkins, *supra* note 30 (VC investing in ICOs comments on FINMA's guidance as "the most positive thing…seen from anyone" regulator); *see also Bringing Swiss Order to Initial Coin Offerings*, *supra* note 15.

33. FINMA Guidelines, *supra* note 14, at 3-5. The FINMA Guidelines are vaguely comparable to SEC Chairman Jay Clayton's *Statement on Cryptocurrencies and Initial Coin Offerings*, SEC, (Dec. 11, 2017), https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11.

34. FINMA Guidelines, *supra* note 14, at 3; Atkins, *supra* note 30.

35. FINMA Guidelines, *supra* note 14, at 3.

36. *See* Iyke Aru, *The Fundamental Principles of Utility Tokens in the Blockchain Ecosystem*, CCN (Mar. 4, 2018), https://www.ccn.com/fundamental-principles-utility-tokens-blockchain-ecosystem/. A similar attitude was taken by Wyoming exempting utility tokens from securities regulation in order to attract ICOs to the state: Josiah Wilmoth, *Wyoming House Unanimously Passes Bill Exempting Utility Tokens from Securities Laws*, CCN (Feb. 19, 2018), https://www.ccn.com/wyoming-house-unanimously-passes-bill-exempting-utility-tokens-securities-laws/.

37. FINMA Guidelines, *supra* note 14, at 3; Atkins, *supra* note 30.

38. Adam Reese, *Swiss Regulator FINMA: AML, Securities Laws to Apply to Some ICOs*, ETHNews (Feb. 16, 2018), https://www.ethnews.com/swiss-regulator-finma-aml-securities-laws-to-apply-to-some-icos; *see also* FINMA, *supra* note 31, at 1-2.

39. *E.g.*, by disrupting traditional VC funding by combining smart money with crowd support, *see* Diemers, *supra* note 6, at 5.

40. Lee Bacon & George Bazinas, "*Smart Contracts": The Next Big Battleground?* Jusletter IT (May 18, 2017), https://www.clydeco.com/insight/article/smart-contracts-the-next-big-battleground.

41. Diemers, *supra* note 6, at 11.

42. *Id.* at 12-14.

43. *See* Atkins, *supra* note 5; Diemers, *supra* note 6, at 11.

44. Bundesgesetz über die Banken und Sparkassen (Bankengesetz, BankG) [Federal Act on Banks and Savings Banks (Banking Act, BA)], SR 952.0, https://www.admin.ch/opc/de/classified-compilation/19340083/index.html. *See also Unofficial Translation of the Swiss Federal Act on Banks and Savings Banks*, KPMG (Feb. 3, 2016), https://home.kpmg.com/ch/en/home/insights/2016/02/federal-law-on-banks-and-savings-banks.html.

45. Bundesgesetz über die Kollektivanlagen (Kollektivanlagengesetz, KAG) [Federal Act on Collective Investment Schemes (Collective Investment Schemes Act, CISA)], SR 951.31, https://www.admin.ch/opc/en/classified-compilation/20052154/index.html.

46. *See* FINMA, *supra* note 31, at 2.

47. Bundesgesetz über die Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung (Geldwäschereigesetz, GwG) [Federal Act on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act, AMLA)], SR 955.9, https://www.admin.ch/opc/en/classified-compilation/19970427/index.html.

48. *See* FINMA, *supra* note 31, at 2.

49. *See* Thomas U. Reutter & Annette Weber, *Equity Capital Markets in Switzerland: Regulatory Overview*, Thomson Reuters Practical Law (2018), https://uk.practicallaw.thomsonreuters.com/8-501-2602; Lukas Wyss, Johannes Bürgi & Maurus Winzap, *Structured Finance and Securitization in Switzerland: Overview*, Thomson Reuters Practical Law (2017), https://uk.practicallaw.thomsonreuters.com/2-630-9902; Stephan Werlen & Kaspar Landolt, *Securities Law in Switzerland*, CMS (May 7, 2014), https://cms.law/en/CHE/Publication/Securities-Law-in-Switzerland. FINMA maintains a database of applicable laws and regulations with relevance to capital markets activity: *The Financial Market is Governed by Laws and Ordinances*, FINMA (2018), https://www.finma.ch/en/documentation/legal-basis/laws-and-ordinances/. Below is a list of the principal Swiss legislative and regulatory standards on financial markets and securities currently in force:

Financial market statutes of the Federal Assembly

Bundesgesetz über die Eidgenössische Finanzmarktaufsicht (Finanzmarktaufsichtsgesetz, FINMAG) [Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act, FINMASA)], SR 956.1, https://www.admin.ch/opc/en/classified-compilation/20052624/index.html.

Bundesgesetz über die Banken und Sparkassen (Bankengesetz, BankG) [Federal Act on Banks and Savings Banks (Banking Act, BA)], SR 952.0, *supra* note 44.

Bundesgesetz über die Börsen und den Effektenhandel (Börsengesetz, BEHG) [Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act, SESTA)], SR 954.1, https://www.admin.ch/opc/de/classified-compilation/19950081/index.html; Unofficial translation: https://www.access-info.org/wp-content/uploads/sesta-en.pdf.

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