



# CRYPTO ASSETS

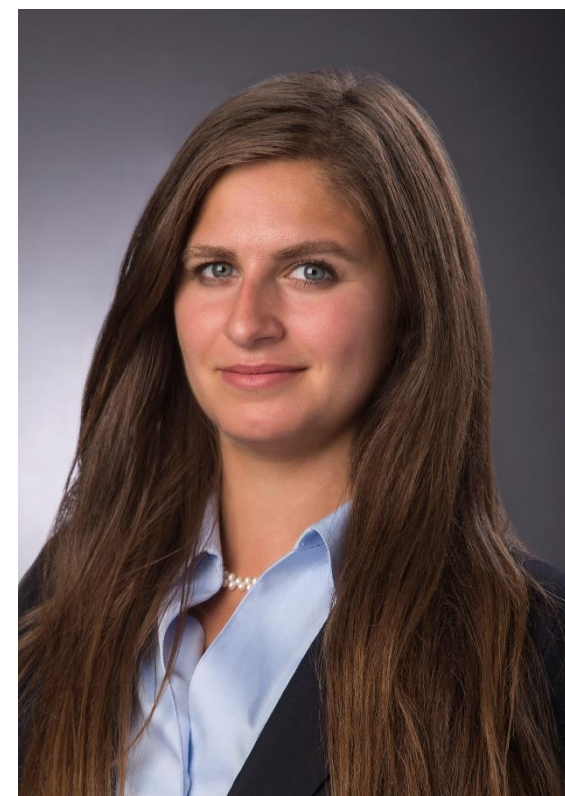
OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK IN THE EU AND UK

Lara Kaplan



# LARA KAPLAN BACKGROUND

- Financial Services Regulatory Lawyer qualified in England & Wales
- FinTech and Payments Group, Paul Hastings in Washington DC\*
- Finance & Innovation Global Group, World Bank Consultant
- Previously a Lawyer at the Financial Conduct Authority in London
- Experience in the UK Parliament and European Parliament



\*not admitted to the bar in Washington DC

# TERMINOLOGY?

CRYPTO ASSET

DIGITAL CURRENCY

DIGITAL ASSET

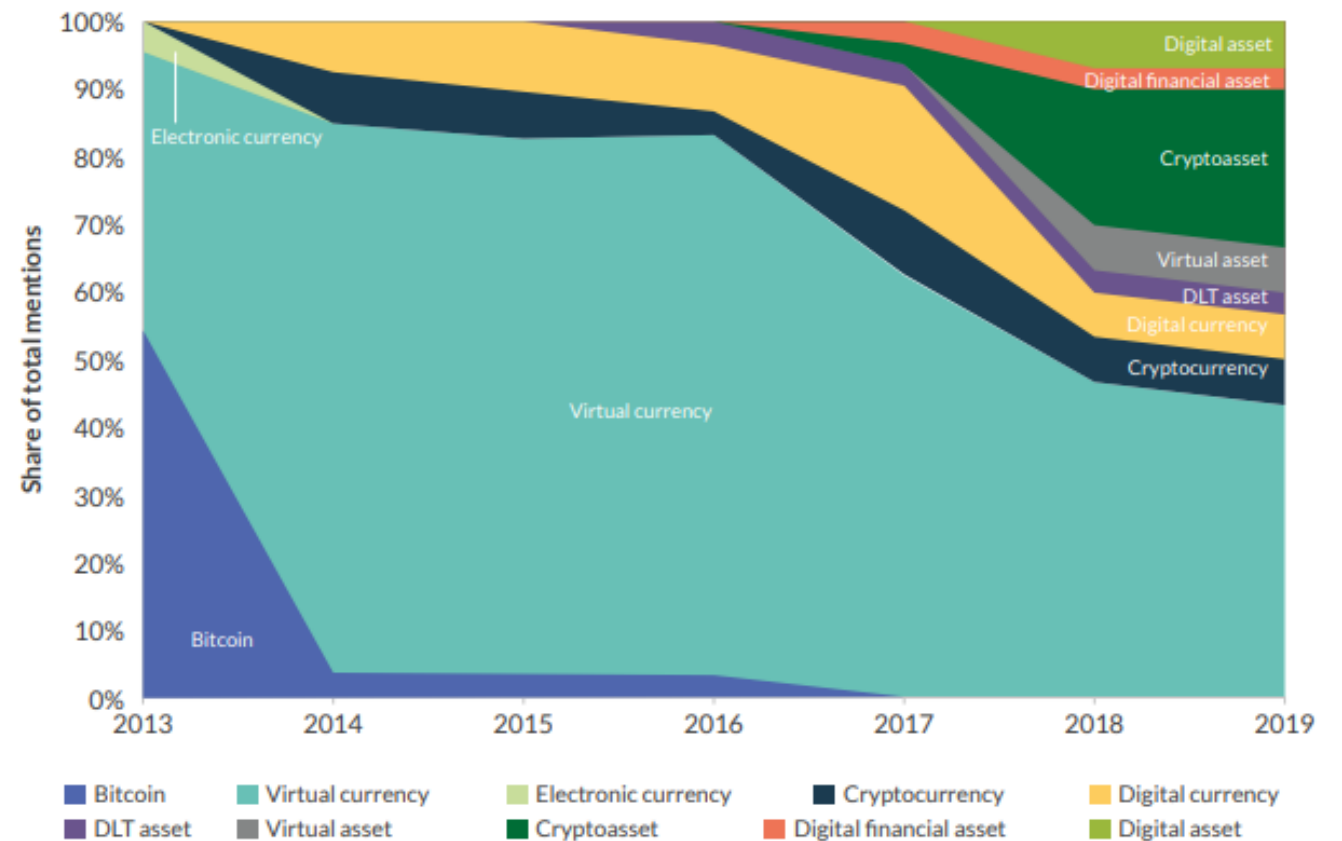
VIRTUAL CURRENCY

CRYPTOCURRENCY

TOKEN

BITCOIN

VIRTUAL ASSET



# EU – WHAT IS A CRYPTO ASSET?

Crypto asset means an asset that:

- a) depends primarily on **cryptography and distributed ledger technology (DLT)** or similar technology as part of its perceived or inherent value;
- b) is **neither issued nor guaranteed by a central bank or public authority**, and
- c) can be **used as a means of exchange** and/or for **investment purposes** and/or to **access a good or service**



Payment/exchange/currency tokens	Investment tokens	Utility tokens
<p>Often referred to as VCs or crypto-currencies.</p> <p>Typically do not provide rights (as is the case for investment or utility tokens) but are used as a means of exchange (e.g. to enable the buying or selling of a good provided by someone other than the issuer of the token) or for investment purposes or for the storage of value.</p> <p>Examples include Bitcoin and Litecoin.</p> <p>'Stablecoins' are a relatively new form of payment/exchange token that is typically asset-backed (by physical collateral or crypto-assets) or is in the form of an algorithmic stablecoin (with algorithms being used as a way to stabilise volatility in the value of the token).</p>	<p>Typically provide rights (e.g. in the form of ownership rights and/or entitlements similar to dividends).</p> <p>For example, in the context of capital raising, asset tokens may be issued in the context of an ICO which allows businesses to raise capital for their projects by issuing digital tokens in exchange for fiat money or other crypto-assets.</p> <p>Examples include Bankera.</p>	<p>Typically enable access to a specific product or service often provided using a DLT platform but are not accepted as a means of payment for other products or services.</p> <p>For example, in the context of cloud services, a token may be issued to facilitate access.</p>

# EU APPROACH TO CRYPTO ASSETS

“a significant share of existing crypto-assets are likely to fall outside the rules, as things stand...[but] Importantly, we believe that a more elaborate bespoke regime for those crypto-assets that do not qualify as financial instruments is premature. The phenomenon is still novel and business models continue to evolve.”



Vice President of the European Commission,  
Valdis Dombrovskis



Chair of European  
Securities and  
Markets Authority  
(ESMA), Steven  
Maijoor

“for crypto-assets that are covered by EU rules, we will review our legislation to make sure that it is fit for purpose and can effectively be applied to this type of assets. For crypto-assets that are not covered, we have launched a feasibility study on a possible common regulatory approach at EU level.”

# UK REGULATORY LANDSCAPE FOR FINTECH FIRMS

 UK Parliament

  
HM Treasury



 BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Payment Systems Regulator

UK Cryptoasset TaskForce is comprised of:

- HM Treasury
- Bank of England
- Financial Conduct Authority

\*Agencies indicated through the dotted line are included in the UK Cryptoasset TaskForce



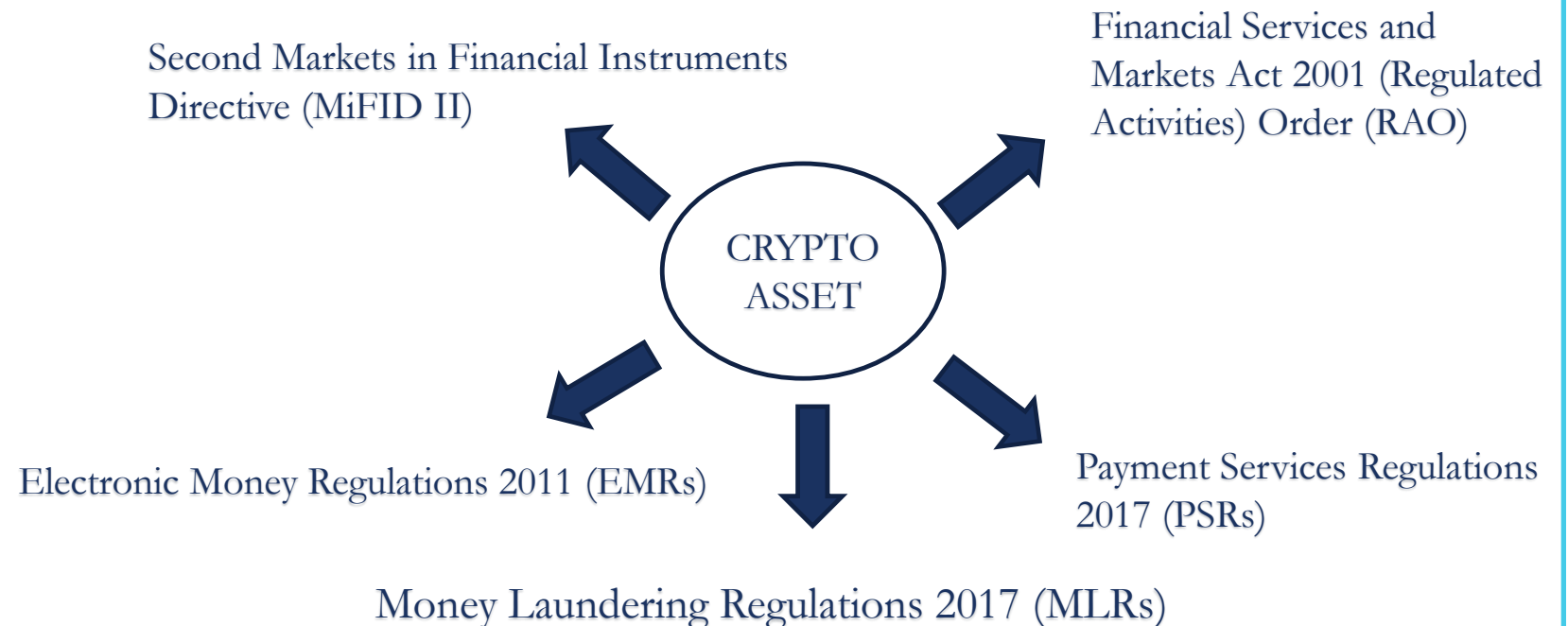
# REGULATION OF CRYPTO ASSETS IN THE UK – THE PERIMETER

The FCA ‘**regulatory perimeter**’ is the boundary that separates regulated and unregulated financial services activities.

## Regulated activities =

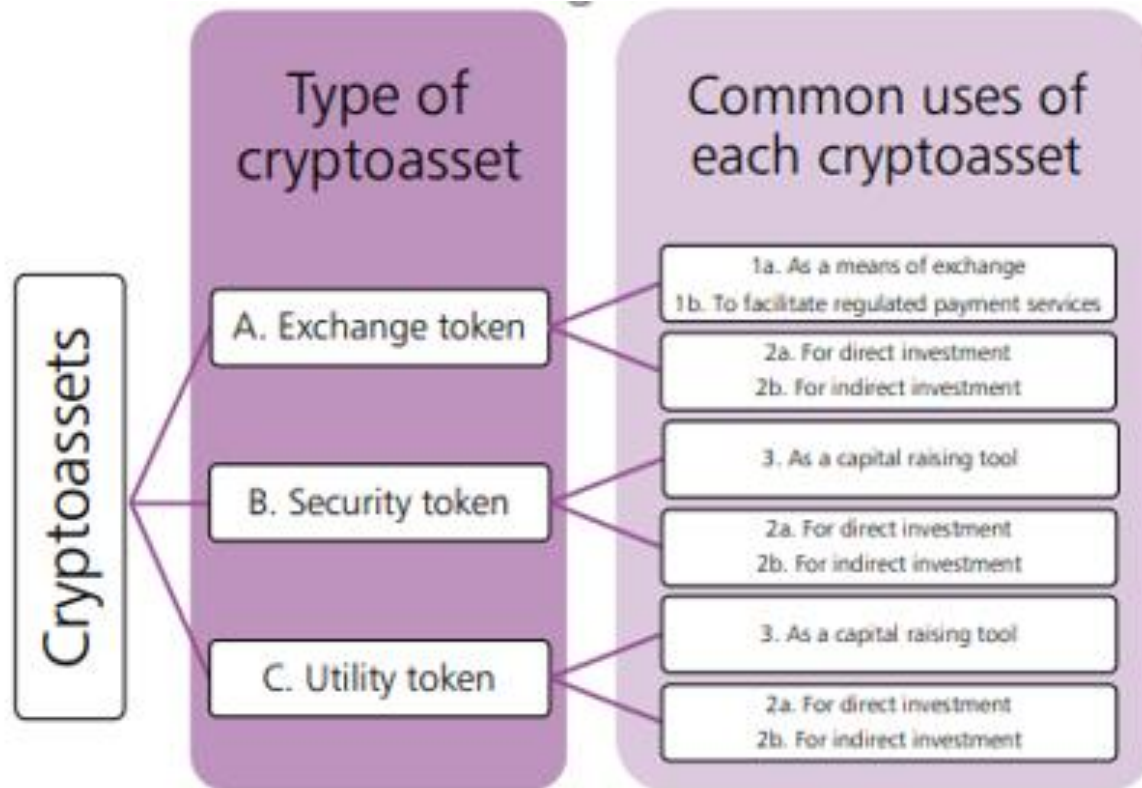
- Specified investment +
- Specified activity +
- by way of business in the UK

*The Financial Services and Markets Act 2000 (FSMA)*

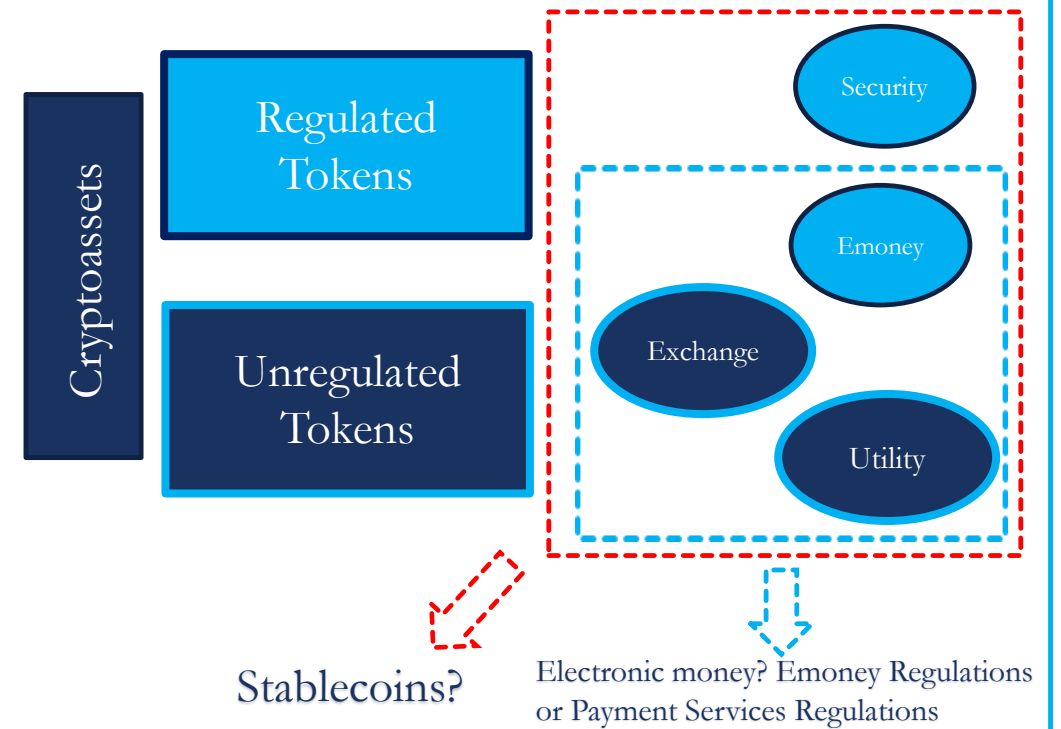


# UK - WHAT IS A CRYPTO ASSET?

## Cryptoasset TaskForce – October 2018



## FCA Guidance – July 2019





# REGULATED CRYPTO ASSET: SECURITY TOKENS

## What is a **security token**?

- “tokens with specific characteristics that mean they provide rights and obligations akin to specified investments, like a share or a debt.”
  - Specified investments in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) → securities.
  - Not e-money
  - Regulated by the FCA



SECURITY

## Is it a **transferable security**?

- ‘those classes of securities which are negotiable on the capital market, with the exception of instruments of payment’
- Additional applicable rules may apply, e.g. prospectus regime

## Is it a **non readily realizable security**?

- Crowdfunding rules

## Is it an investment product such as **derivative contracts that reference cryptoassets**?

- Proposed ban to retail consumers



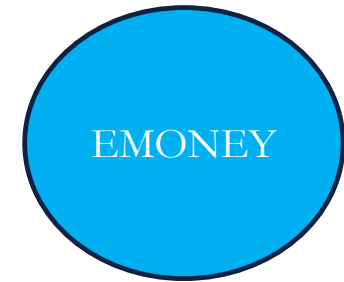
# REGULATED CRYPTO ASSET: E-MONEY TOKENS

**Electronic money** defined as “electronically (including magnetically) **stored monetary value** as represented by a claim on the electronic money issuer which—

- (a) is issued **on receipt of funds** for the purpose of making payment transactions;
- (b) is accepted by a person **other than the electronic money issuer**; and
- (c) is **not excluded** by regulation 3

*Electronic Money Regulations 2011*

- Not money, not tokens, not a security
- Payment Services Regulations
- Electronic Money Regulations



# UNREGULATED CRYPTOASSETS: EXCHANGE AND UTILITY TOKENS

## EXCHANGE

“[N]ot issued or backed by any central authority and are intended and designed to **be used as a means of exchange**. They tend to be a **decentralized** tool for buying and selling goods and services without traditional intermediaries. These tokens are usually outside the perimeter” – FCA Guidance

- Not specified investment
- *e.g.* Cryptocurrencies
- PSR implications

## UTILITY

“[T]okens grant holders **access to a current or prospective product or service** but do not grant holders rights that are the same as those granted by specified investments. Although utility tokens are **not specified investments**, they might meet the definition of e-money in some circumstances (as could other tokens). In this case, activities involving them may be regulated” - FCA Guidance

- Initial coin offerings

**Applicable laws** outside of the FCA perimeter are those rules that may apply to **unregulated activities**.

# STABLECOINS

A stablecoin is a type of crypto asset for which mechanisms are established to minimize price fluctuations and 'stabilize' its value.



# RISKS WITH CRYPTO ASSETS

## Consumer related risks

- FCA research studies
- Ban on crypto derivatives



### Temperature on risk

Volume and usage of crypto assets low

## Market manipulation

- Dear CEO letters
- Market monitoring

## Financial Crime

- Financial Action TaskForce Recommendation 15
- EU's Fifth Money Laundering Directive (5MLD), Money Laundering Regulations 2019



# BENEFITS OF CRYPTO ASSETS

- Reduced cost of transactions
- Privacy of transactions
- Immutable record of transactions on the ledger
- ICO funding / access to credit
- Speed of settlement of transactions
- Global scale and reach





# TAKEAWAYS & QUESTIONS



Contact email: [lkaplan1@worldbank.org](mailto:lkaplan1@worldbank.org)

