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The Digital Regulator

# Switzerland tackles stable coins

## Abstract

*During the first part of the year, 2019 was expected to be the STO (Security Token Offering) year. However, It has turned out to be a stable coin year. The announcement of Libra has been the key event. It has brought crypto terminology to the main street and constituted a wake-up call for governments and regulators globally. It has shown that the crypto industry can become systemically relevant to the monetary and financial system. Libra has paved the way for a plethora of smaller-size projects, particularly in Switzerland – home to the most developed crypto finance ecosystem – and caused FINMA to announce its position on Libra by means of a guidance for such smaller-size projects. FINMA's guidance states that a project that would need a payment system license incremented by prudential regulatory requirements as well as international regulatory coordination. With this move, Switzerland further cements its position as the most developed, yet rigorous and pragmatic, crypto finance hub It recognizes the need to address global and coordinated fashion the systemic risk aspect associated with large-scale stable coin initiatives – while the G7 handed off work on regulatory issues raised by global stable coins to the Financial Stability Board (FSB).*

## Stable coins: The Swiss approach in the international context

In an international environment where skepticism, statements of intention and high-level warnings dominate, Switzerland emerges as the first jurisdiction to increase regulatory certainty in a material way for stable coin projects, including Libra. This is an outcome of the combination between a leading crypto finance ecosystem, such as the Swiss one, and a pragmatic, innovation-friendly, regulator, such as FINMA - holding a clear view of what is systemically relevant and when.

- ✓ FINMA has taken a hands-on approach and supplemented its ICO guidelines<sup>link1</sup> with guidance on how it will assess stable coins<sup>link1</sup> projects within its supervisory remit under Swiss supervisory law<sup>1</sup>. Sticking to a principle-based and technically-neutral approach to financial regulation, FINMA underlines that there is no need for new regulation to address

stable coins and that for each risk raised there is already a regulation that needs to be applied. The detailed requirements shall differ on a case by case basis, depending on the underlying exposure of the 'stable coin' (e.g. currencies, commodities, real estate or securities) and the legal rights of its holders. Anti-Money Laundering (AML), securities trading, banking, fund management and financial infrastructure regulation can all be of relevance. Regarding the global stable coin project Libra, FINMA confirmed that Libra Association requested an assessment. FINMA indicated that this project, as it is presently envisaged, would require a payment system license – with likely additional prudential regulatory requirements in the fields of capital allocation (for credit, market and operational risks), risk concentration and liquidity management. FINMA also made clear that global stable coin projects like Libra require international regulatory coordination.

- ✓ At a macroeconomic level, the Swiss national bank <sup>link1</sup> (SNB) has focused on whether stable coins might influence the effectiveness of monetary policy and recognised that if stable coins pegged to foreign currencies were to establish themselves in Switzerland, the effectiveness of the country's monetary policy could be impaired. This conclusion echoes and refers to the prospect that a digital currency could replace the dollar as the global hedge currency <sup>link1</sup> – which is the primary international political economy concern underlying stable coins.
- ✓ At the international level, the G7 handed off to the FSB the task to examine the regulatory issues <sup>link1</sup> raised by stable coins that have the potential to reach global scale. In focus are global stable coin projects that could affect the international payment system and the effectiveness of monetary policies (for more details on the effect of Libra on monetary policy and the international payment system, read Enter Project Libra <sup>link1</sup>), and raise challenges for financial stability, consumer and investor protection, data privacy and protection, financial integrity including AML/CFT (where CFT means Combating the Financing of Terrorism) and know-your-customer compliance, mitigation of tax evasion, fair competition and anti-trust policy, market integrity, sound and efficient governance, cyber security and operational risks, and an appropriate legal basis. The international Financial Action Task Force <sup>link1</sup> (FATF) is monitoring Libra closely to ensure that significant risks are addressed. In the EU, the European Central Bank <sup>link1</sup> (ECB) sets the resolution of

technological, legal, governance, monetary policy and stability issues as conditions to further progress on stable coin initiatives. The Bank of Japan <sup>link1</sup> requests the highest level of regulation and coordination to be applied to stable coins.

## Noted on the fly

*VanEck Securities and SolidX Management withdrew the BTC ETF proposal from the SEC, given lack of action, and offer it to institutional investors on an OTC platform. US SEC rejects BTC ETF proposal filed by Bitwise*

- ✓ After the SEC delayed multiple times the approval of their BTC ETF proposals, VanEck Securities and SolidX Management <sup>link1</sup> decided to withdraw the application and use an SEC exemption (Rule 144A) to offer the product to institutional investors on the OTC Link ATS platform instead. The SEC <sup>link1</sup> has been reiterating throughout the year its concerns <sup>link1</sup> around price manipulation, rigor of price discovery and custody operations, that could unduly hurt retail investors.
- ✓ The SEC rejected a BTC ETF <sup>link1</sup> proposal filed by Bitwise, arguing that it failed to meet the legal requirements to prevent market manipulation or other illicit activities.

*For IFRIC, cryptocurrencies are intangible assets (accounting status)*

- ✓ The International Financial Reporting Interpretations Committee (IFRIC) decided that a cryptocurrency is an intangible asset <sup>link1</sup>. The decision will become an international standard in bookkeeping and businesses will have to treat cryptocurrencies as intangible assets.

*Germany sets forth a blockchain strategy*

- ✓ Germany's government <sup>link1</sup> has passed a new strategy which sets the priorities in the blockchain space around digital identity, securities and corporate finance.

*EU narrows the scope of 'right to be forgotten'*

- ✓ The European Court of Justice ruled that the right to be forgotten “is not an absolute right<sup>link1</sup>” and privacy rules do not apply outside the EU. This decision is likely to influence the discussion around GDPR (General Data Protection Regulation) compliance of blockchain records.

*EU kicks off the European Blockchain Service Infrastructure (EBSI)*

- ✓ The European Commission informed that a total of €4 million has been invested in the EBSI<sup>link1</sup> project for 2019-2020, with over 300 contributors and four selected use cases: notarization, diplomas, international identity and reliable data sharing.

## Conclusion

FINMA complemented its ICO guidelines with guidance on the assessment of stable coins projects. Consistent with past stances, it indicates that there is no need for new regulation to address stable coins. The risks are known and for each risk there is already a regulation. It proposed a classification of stable coins to assist the assessment of projects. FINMA indicated that under Swiss supervisory law, Libra needs a payment system license, likely to be incremented by prudential regulatory requirements in the areas of capital, risk and liquidity, as well as proper international regulatory coordination. At the macroeconomic level, the SNB highlights that stable coins pegged to foreign currencies could impair the effectiveness of domestic monetary policy, while the G7 handed off to the FSB the task to examine the regulatory issues raised by stable coins that have the potential to reach global scale. Noted on the fly:

1. The accounting decision by the International Financial Reporting Interpretations Committee (IFRIC) to classify cryptocurrencies as intangible assets and
2. The withdrawal from the Securities and Exchange Commission (SEC) of the VanEck Securities and SolidX Management Bitcoin exchange-traded funds (BTC ETF) proposals as

well as the SEC rejection of the BTC ETF proposal filed by Bitwise.

<sup>1</sup> FINMA reminds that tax law, competition law or data protection law can all be of relevance too, but are outside FINMA's remit.

link1 <https://www.bankofengland.co.uk/-/media/boe/files/speech/2019/the-growing-challenges-for-monetary-policy-speech-by-mark-carney.pdf?la=en&hash=01A18270247C456901D4043F59D4B79F09B6BFBC>

link2 <https://www.coindesk.com/japans-central-bank-chief-calls-for-international-effort-on-libra-regulation>

link3 <https://www.cnbc.com/2019/09/19/jay-clayton-delivering-alpha.html>

link4 <https://www.financemagnates.com/cryptocurrency/news/sec-rejects-bitwises-bitcoin-etf-proposal/>

link5 [http://www.koreatimes.co.kr/www/biz/2019/09/175\\_276003.html](http://www.koreatimes.co.kr/www/biz/2019/09/175_276003.html)

link6 <https://www.blockchain-strategie.de/BC/Navigation/DE/Home/home.html>

link7 <https://www.nytimes.com/2019/09/24/technology/europe-google-right-to-be-forgotten.html>)” and privacy rules do not apply outside the EU. This decision is likely to influence the discussion around GDPR (General Data Protection Regulation

link8 <https://en.cryptonologist.ch/2019/08/29/european-blockchain-service-infrastructure/>

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