

Cryptoasset Exchanges Respond to New York Attorney General's Virtual Markets Integrity Initiative

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On April 17, 2018, the New York Attorney General's Office ("OAG") [launched](#) a Virtual Markets Integrity Initiative and sent letters to thirteen cryptoasset trading platforms requesting, through a [questionnaire](#), disclosures on their operations, internal controls, and safeguards to protect customer assets. The questionnaire focused on six major topic areas, including: 1) Ownership and Control, 2) Basic Operation and Fees, 3) Trading Policies and Procedures, 4) Outages and Other Suspensions of Trading, 5) Internal Controls, and 6) Privacy and Money Laundering. The OAG characterized the initiative as a mechanism to "increase transparency and accountability" on "platforms used by consumers to trade virtual or 'crypto' currencies like bitcoin and ether." Notably, the thirteen trading platforms were only given two weeks to respond to the questionnaire.

While cryptoasset exchanges already face regulatory scrutiny from the [SEC](#), the [CFTC](#), and certain state regulators (including other agencies within [New York](#)), among others, the OAG determined that their mandate to protect customers/ investors and ensure the fairness of New York's financial markets necessitated further action. Two of the targeted trading platforms – Coinbase and Kraken – publicized markedly different responses to the OAG's inquiries, the content of which sheds light on how some of the industry's key players are approaching regulation; and perhaps, how regulators should be approaching some of the industry's key players.

[Coinbase](#)

Mike Lempres, the Chief Legal & Risk Officer for Coinbase, [responded](#) to the Virtual Markets Integrity Initiative (on behalf of Coinbase) in a cooperative and obliging manner. Coinbase's response affirmed their commitment to the protection of consumers and investors and stated that, "we applaud the OAG for taking action to bring further transparency to the virtual currency markets." Further, Coinbase detailed their efforts to comply with various regulatory regimes, including that they: 1) have been registered as a money service business with FinCEN since 2013; 2) have 41 licenses in 39 states; 3) hold a Bitlicense from New York State's Department of Financial Services; and 4) have nearly 20% of their employees working in their compliance group. Coinbase also informed the OAG that they increased full-time staffing of their customer support team by "about a factor of ten" and they have had a "1000% increase in their surge, transaction capacity relative to Q3 of 2017... and expect to double this capacity in the coming months."

Kraken

On the other side of the spectrum, Jesse Powell, the CEO of Kraken, tweeted that "The AG's tone-deaf response shows just how bad the disconnect really is" and "Kraken left New York because New York is hostile to crypto, and this 'questionnaire' we received today proves that New York is not only hostile to crypto, it is hostile to business." Days later, Kraken released their "[Position on Regulation](#)," which, among other things, further described Kraken's opinions on the OAG's questionnaire. Kraken specifically condemned the OAG's imposition of a two-week deadline as unreasonable, referred to the inquiry as an "overly broad fishing expedition," explained that the information sought was proprietary and highly confidential, and called into question the true motives of the questionnaire, characterizing it as a publicity stunt.

Kraken's statement on the OAG's initiative concludes by stating:

"If the NYAG had bothered to ask, we could have told them what matters [to most crypto traders]:

1. *Token selection*
2. *Fast trade execution*
3. *User Interface*
4. *24/7/365 continuous markets*

5. *Uptime*
6. *Security (until it fails, then they realize it's #1)*
7. *Privacy, minimal document requirements for on-boarding*
8. *Customer Service*

[and w]hat doesn't matter to most crypto traders:

1. *Licenses and regulatory approval*
2. *Being protected from market manipulation*
3. *Being protected from making risky investments*
4. *Conforming to Wall St.'s image of what crypto markets should be*

That's all there is to say about New York."

Moving Forward

Last week, the then-incumbent Attorney General abruptly resigned. With the Attorney General's office in flux and a replacement yet to be named, the status of the OAG's Virtual Markets Integrity Initiative is uncertain. Nevertheless, the ability of cryptoasset exchanges to achieve regulatory compliance – at various levels of government – figures to continue to be a critical (and contested) question moving forward.

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