

# ROB LONG AND ROSS WILLIAMS TALK CRYPTOCURRENCY IN DALLAS BUSINESS JOURNAL

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**Bell Nunnally Partners Robert Long and Ross A. Williams authored the article, “What to expect when your company gets involved with cryptocurrency and blockchain,” featured in the *Dallas Business Journal*. Initial Coin Offerings (ICOs) as fundraising vehicles, whether or not to accept cryptocurrency for purchases, and state and federal regulatory trends are explored. Long and Williams offer considerations for companies looking to integrate cryptocurrency and blockchain, stressing that controls such as “well-crafted service agreements, stringent due diligence standards and constantly evolving cybersecurity protections” are crucial, as is keeping up with the ever-evolving regulatory framework.**

Full text of the article is below, and can be viewed on the *Dallas Business Journal*'s website by clicking [here](#).

## What to expect when your company gets involved with cryptocurrency and blockchain

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*The ongoing proliferation of blockchain technology towards the mainstream economy has brought with it a proliferation of cryptocurrencies — the virtual monies used to facilitate transactions on blockchains. These emerging cryptocurrencies are often injected into the market in initial coin offerings (known as ICOs), which have increasingly become the subject of government focus.*

*Through these ICOs and the events that follow them, tremendous amounts of wealth have been created and lost in short periods of time recently. This is a volatile space. Before venturing into it, businesses should*

be aware of regulatory regimes that govern it, the risks the space presents, and some of the remedies available.

The Texas State Securities Board (TSSB) has been actively investigating those who offer cryptocurrencies within Texas, or to Texas residents, to determine whether they are breaking Texas law prohibiting dealing in unregistered securities, an activity which can carry significant penalties.

The Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), Financial Crimes Enforcement Network (FinCEN), Office of Foreign Assets Control (OFAC), the Federal Bureau of Investigation, and other law enforcement agencies all have an interest at some level in regulating cryptocurrencies, those who offer them through ICOs, or the "real" money that arises from those activities.

The SEC regulates cryptocurrencies that are securities. The SEC is especially interested in investigating those who promote ICOs as investments for offering unregistered securities and even committing securities fraud.

The CFTC considers cryptocurrencies to be subject to federal commodities regulations. It can launch enforcement actions, has shown interest in setting policy, and issues joint statements with the SEC emphasizing a commitment to deterring and punishing fraud and abuse in the space.

FinCEN administers the Bank Secrecy Act regulations. It can require certain types of blockchain-related businesses to register as money services businesses, comply with Know Your Customer (KYC) and Anti-Money Laundering (AML) regulations, keep adequate records, and report suspicious activities.

OFAC enforces U.S. economic and trade sanctions. To the extent that an ICO appears to allow or even encourage dealings with sanctioned countries or individuals, the blockchain organization involved and those who advised on that activity could be subject to OFAC investigation and enforcement actions, as well as criminal prosecution.

The FBI and other law enforcement agencies may launch investigations into, and recommend criminal prosecution of, those involved with blockchain companies who engage in fraud or launch ICOs for the purpose of facilitating, furthering, concealing, or committing criminal activities.

The IRS is interested in learning of, and taxing, gains from cryptocurrency transactions on the various blockchains involving those within IRS jurisdiction.

With this regulatory backdrop, the risks vary depending on the role one takes in the industry.

For those buying into ICOs, they risk losing their money in a very short period of time. Some such ICO participants will likely seek recovery through the securities laws.

Those entrusting others to trade in cryptocurrencies on their behalf risk losing their principal investment or gains to potentially unscrupulous, unregistered advisors. They will likely seek recovery through claims for breach of contract, fraud, breach of fiduciary duty, and deceptive trade practices act violations.



*Businesses willing to accept cryptocurrency risk not getting full value for their goods and services should the value of the cryptocurrency drop precipitously before conversion to U.S. dollars. The short-term remedies for these businesses may well lie in well-written contracts that account for this volatility, and in creative transaction settlement mechanisms.*

*Digital wallets that hold cryptocurrency risk all manner of hacks that can result in the loss of their customers' coins or tokens. These companies may need to implement a combination of well-crafted service agreements, stringent due diligence standards, and constantly evolving cybersecurity protections to mitigate this risk to their business and customers.*

*Blockchain companies and their advisors risk investigations related to the regulations referenced above. They may need to obtain, and implement, sound regulatory compliance advice; and use well-written service, end-user, and business associate contracts. Ultimately, they may need to implement significant changes to the way they do business to comply with the regulatory regimes they operate under, as agencies make more and more apparent that they expect these companies to comply.*

*Having skilled counsel can help with many of these issues.*

## Related Practices

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