



## Are bitcoins a buying opportunity?

Glenn Freeman | 06 Nov 2017

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The best-known cryptocurrency, Bitcoin, arrived on the market in 2013, with an original value of US\$15 that rose to US\$1000 in the space of a year. Since then, it has risen ten-fold, according to one price-tracking service, Bitcoinity.

[However, Bitcoin and other cryptocurrencies](#)--including Fedcoin, eKrona, Dinero electronico, and several more--have various critics within the financial space.

JP Morgan CEO, Jamie Dimon, recently called digital currency a "fraud" and suggested he would fire any employee trading bitcoin for being "stupid".

However, just a month later, his CFO Marianne Lake says the bank is "very open minded to the potential use cases in the future for digital currencies that are properly controlled and regulated," according to Bloomberg.

Dow Jones columnist Brett Arends is also a critic. In September, he wrote: "If you're holding cryptocurrencies today, remember that no matter how much money you think you've made, you haven't made a nickel until you've cashed it out."

"Do you think governments are going to be okay with a \$150 billion financial network that can be used by anyone outside of any oversight? ... [only] if the governments of the world all lose their collective minds."

### Trading milestone

However, CME Group's late-October launch of a Wall Street futures contract specifically for digital currencies could be a significant step towards mainstream finance sector acceptance.

The new contract will be cash-settled, based on the CME CF Bitcoin Reference Rate, which serves as a daily reference rate of the US dollar price.

Here in Australia, the Reserve Bank has this year made a couple of legislative changes that may be part of growing legitimacy for digital currencies.

In May, the Federal Budget outlined a measure that removes the GST on purchases of cryptocurrency, bringing the regulations in line with rules on trading in traditional currencies.

And since August, actions have been underway for cryptocurrencies to be recognised within the same anti-money laundering and counter-terrorism financing laws that apply to the Australian dollar and other currencies.

### Australian legal position

Though self-managed super fund (SMSF) trustees and other long-term, relatively conservative investors are possibly not ideally suited to bitcoin trading, Townsends Business and Corporate Lawyers has considered the current legal landscape for this cohort.

Bitcoins are legally classified as property, despite their online or "virtual" character, according to Elizabeth Wang, a solicitor with Townsends.

Regulators such as the Australian Taxation Office are yet to provide a formal ruling on whether SMSFs can invest in cryptocurrency.

However, even ahead of that, these are the key questions trustees should be asking: 1) Does an investment in bitcoins satisfy the "sole purpose test?" 2) Will the investment strategy of the SMSF be satisfied?

### Sole purpose test

Put simply, this is a legal requirement that the provision of retirement benefits for members is the sole purpose of an SMSF.

In the case of investing in bitcoins or some other cryptocurrency, difficulty in satisfying this condition may arise because an SMSF can't directly or indirectly provide financial assistance to its members prior to retirement. This includes the use of, or access to, the assets of the SMSF.

"An SMSF may be able to satisfy this requirement, if it could be shown the SMSF's bitcoins are held securely in a public IP address, and that the trustee ... and not the members are controlling any movement of the bitcoins," Wang says.

"Any movement or transfers between the SMSF's public IP addresses and a member's public IP addresses, even temporarily, could cause significant issues under the sole purpose test."

### Investment strategy

According to Wang, the current rules around SMSF investment risk are based within the "investment covenants" framework in Section 52B of the *Superannuation Industry (Supervision) Act*.

"The SMSF trustee will need to consider a number of aspects, including the risk in making, holding, and realising any investment, the likely return from an investment, diversification, liquidity, costs, and tax consequences as part of its investment strategy," cautions Wang.

"The inherently risky nature of cryptocurrency as an investment potentially contravenes the legal requirement for SMSF trustees to exercise due diligence in managing the investment process.

"Investing in bitcoins may not be a prudent SMSF investment, especially for those approaching retirement age, where stable income-generating assets and minimal risk of significant capital loss are important."

But there may still be a role for cryptocurrency in an SMSF investment portfolio. For instance, there is a strong case to be made that having a low proportion of your total assets, say 2 per cent, invested in bitcoin doesn't constitute a material risk, and even has the potential to add reasonable investment upside.

"Whatever the decision, bitcoins as an investment must be approved in the SMSF's investment strategy," Wang says. She suggests trustees may also need to amend the SMSF trust deed to allow investment in bitcoins.

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Glenn Freeman is a senior editor at Morningstar.

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