

Balancing the Blockchain: The Imperative Need for Cryptocurrency Regulation in the United States

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Picture money in your mind for a second. You probably pictured physical money with faces of former presidents or maybe the face of Alexander Hamilton. Over time, the common understanding of money has changed, and now we may all picture different things when thinking about money. One of those changes came in the form of cryptocurrency. Since the birth of Bitcoin, cryptocurrency has become a major topic of discussion in day-to-day life, especially so in the past years.¹ You may have been there at the beginning of the cryptocurrency debate when a few were first announced, eventually changing the modern definition of currency.² Or maybe you were an unfortunate victim of Elon Musk's appearance on SNL, which coincided with major losses in Dogecoin worth.³ Regardless of how you learned of, or became involved with cryptocurrency, chances are you have heard or been involved in conversations focusing on the topic of cryptocurrency.

This blog will discuss what cryptocurrency is and the growing concern for regulation of cryptocurrency in the future.⁴ I will also discuss the current system for regulation of securities and ways in which this system's focuses may transfer to cryptocurrency.

I. Cryptocurrency and How It Sets Itself Apart from Traditional Currency Forms

Cryptocurrency is "any form of that exists digitally or virtually and uses cryptography to secure transactions."⁵ Cryptocurrency's name is based on its use of encryption to verify transactions.⁶ This means that advanced coding is used to store and transmit cryptocurrency data between wallets and public ledgers.⁷ Unlike the traditional currency that we are used to using in the United States, cryptocurrency is a digital payment system that does not rely on banks to verify transactions.⁸ Instead of physical money, which was the predominant form of currency until more recent history, cryptocurrency allows anyone anywhere to send or receive money.⁹

Getting cash may not be easy, but most Americans know you can gain access to cash from a bank, cashback at the register, or some other everyday process. Additionally, many Americans receive cash for special occasions like birthdays, holidays, and other celebrations.

¹ See Julie Pinkerton, *The History of Bitcoin, the First Cryptocurrency*, USNEWS (Nov. 14, 2023), <https://money.usnews.com/investing/articles/the-history-of-bitcoin#:~:text=How%20Bitcoin%20Started,identity%20has%20never%20been%20verified>; *History of Cryptocurrency: The Idea, Journey, and Evolution*, WORLDCOIN (Sept. 4, 2023), <https://worldcoin.org/articles/history-of-cryptocurrency>.

² See Pinkerton, *supra* note 1.

³ David Goldman, *Dogecoin Tumbles After Elon Musk Jokes About it on 'SNL'* (May 10, 2021), CNNBUSINESS, <https://www.cnn.com/2021/05/09/investing/dogecoin-elon-musk-snl/index.html>.

⁴ Sarah Wynn, *Treasury Officials Call for Action From US Policymakers to Regulate Crypto Before the Next Crisis Hits*, THE BLOCK (Jan. 18, 2024), <https://www.theblock.co/post/273440/treasury-officials-call-for-action-from-us-policymakers-to-regulate-crypto-before-the-next-crisis-hits>.

⁵ See *What is Cryptocurrency and How Does It Work?*, KASPERSKY, <https://usa.kaspersky.com/resource-center/definitions/what-is-cryptocurrency> (last visited Feb. 1, 2024).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Gaining access to crypto, on the other hand, is not as simple, and it is not common knowledge among Americans. There are a few ways you can gain access to and trade cryptocurrency.¹⁰ One way to gain access to cryptocurrency is by using a traditional trading platform such as Fidelity.¹¹ Using this method, investors may buy crypto in a fashion similar to that of buying stock.¹² Another way to gain access to crypto is through a crypto exchange, which focuses solely on crypto.¹³ This method is different from a traditional trading platform because of differences in fees and differences in levels of security.¹⁴ Two final methods of gaining access to crypto are through mobile payment services and through alternative platforms.¹⁵ These two methods tend to have the highest fees associated with purchasing crypto.¹⁶ While gaining access to crypto may seem like a fun and exciting endeavor, it also comes with some important risks to take note of.

II. Challenges and Hazards Associated with Cryptocurrency

There are three noteworthy risks associated with cryptocurrency: (1) the cryptocurrency market exhibits highly unpredictable and fluctuating trends, (2) once a transaction has occurred, you cannot reverse or cancel said transaction, and (3) the regulatory status of cryptocurrency is currently unclear in the United States.¹⁷ The saying “high risk, high reward” is especially true for investing in the crypto market, and while this may excite some investors, it is also what makes crypto so volatile.¹⁸ This inherent nature of crypto is a risk that experienced investors may be willing to take, but for investors who are not well-versed in crypto, this has the potential to pose a serious threat. Another risk that is inherent to crypto is the inability to reverse or alter a transaction once it has already occurred, which stems from the nature of the blockchain.¹⁹ “Once a transaction is recorded on the blockchain it cannot be altered or deleted” the transaction was verified and added to the blockchain in a specific order.²⁰ This risk only increases when you consider human error, online scammers/hackers, and other unfortunate mistakes. An additional significant and arguably paramount concern linked to cryptocurrency is the absence of legal safeguards for cryptocurrency transactions.²¹

¹⁰ See *Ways to Buy Cryptocurrency*, FID. (Oct. 4, 2023), <https://www.fidelity.com/learning-center/trading-investing/crypto/ways-to-buy-crypto#:~:text=Cryptocurrencies%20can%20be%20bought%20on,to%20market%20manipulation%20than%20securities.>

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Jake Frankenfield, *Cryptocurrency Explained With Pros and Cons for Investment*, INVESTOPEDIA: CRYPTOCURRENCY, <https://www.investopedia.com/terms/c/cryptocurrency.asp> (last updated Nov. 3, 2023).

¹⁸ See *What is Volatility*, COINBASE, <https://www.coinbase.com/learn/crypto-basics/what-is-volatility> (last visited Feb. 1, 2024).

¹⁹ *Can I Cancel a Cryptocurrency Transaction?*, WIREX, <https://wirexapp.com/help/article/can-i-cancel-a-cryptocurrency-transaction-1208> (last visited Feb. 1, 2024).

²⁰ *Id.*

²¹ *Cryptocurrency Risks*, STATE OF CONN. DEP’T. OF BANKING, <https://portal.ct.gov/DOB/Consumer/Consumer-Education/Cryptocurrency-Risks> (last visited Feb. 1, 2024).

While there are ongoing discussions about the regulation of cryptocurrency, there is currently no settled regulation.²² In 2022, Joe Biden released an executive order which called for monitoring of the crypto sector and enforcement of consumer protection laws.²³ This was helpful in theory, but with all the uncertainty surrounding cryptocurrency, there are many risks for which there are little to no protections. While we may not have comprehensive regulations on cryptocurrency, we do have a system of regulations for assets called “securities.”

III. Why Regulations Govern Securities

A “security” is a “fungible, negotiable financial instrument that holds some type of monetary value.”²⁴ A security can take many different forms, such as stocks, bonds, and exchange-traded funds.²⁵ These forms of assets are regulated for a number of reasons including, but not limited to, providing clear and accurate information to potential investors, providing recourse for investors who suffer losses that are not just a result of the market, and providing governmental regulatory organizations the power to discipline bad actors.²⁶ If potential investors are properly educated on the asset they are planning on investing their money in, they can better protect themselves or better prepare themselves for any loss they may experience. With regulations in place, any issuers of those assets that purposefully make misrepresentations can be held accountable. Accountability means those issuers will not only be punished, but investors will have access to recovery rights.²⁷ These justifications for regulation can easily be applied to cryptocurrency, but cryptocurrency does not currently fall under the umbrella of a regulated security.

IV. Why the United States Requires Prompt Cryptocurrency Regulation

In more recent news, Graham Steele, the Treasury Department’s Assistant Secretary for Financial Institutions, emphasized the need for cryptocurrency standards to be established before a potential crisis occurs.²⁸ This urgency emanates from financial crises in the past which led to new regulation.²⁹ In the past, the Dodd Frank Act was established in response to the 2008 financial crisis to reduce risk in the banking system.³⁰ This regulation was the solution to a major

²² See Michael Bromberg, *SEC Crypto Regulations: What Financial Advisors Need to Know*, INVESTOPEDIA: LAWS & REGULATIONS, <https://www.investopedia.com/crypto-regulations-for-financial-advisors-8402046> (last updated Jan. 17, 2024).

²³ Bralon Hill, *US Treasury Official Calls for Immediate Crypto Regulation*, CRYPTO NEWS (Jan. 18, 2024, 9:40 PM), <https://crypto.news/us-treasury-official-calls-for-immediate-crypto-regulation/>; See Exec. Order No. 14067, 87 Fed. Reg. 14143 (Mar. 14, 2022).

²⁴ Will Kenton, *What are Financial Securities? Examples, Types, Regulation, and Importance*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/security.asp> (last updated Dec. 20, 2023).

²⁵ Nick Lioudis, *Common Examples of Marketable Securities*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/033015/what-are-some-common-examples-marketable-securities.asp#:~:text=Stocks%2C%20bonds%2C%20preferred%20shares%2C,marketable%20securities%20is%20their%20liquidity> (last updated Apr. 23, 2023).

²⁶ See *The Laws That Govern the Securities Industry*, SEC, <https://www.sec.gov/about/about-securities-laws> (last updated Oct. 1, 2013).

²⁷ *Id.*

²⁸ Bralon Hill, *US Treasury Official Calls for Immediate Crypto Regulation*, CRYPTO NEWS (Jan. 18, 2024, 9:40 PM), <https://crypto.news/us-treasury-official-calls-for-immediate-crypto-regulation/>.

²⁹ *Id.*

³⁰ Noah Berman, *What is the Dodd-Frank Act*, COUNCIL ON FOREIGN RELATIONS: BACKGROUNDER, <https://www.cfr.org/backgrounder/what-dodd-frank-act> (last updated May 8, 2023, 1:21 PM).

problem that already occurred, and in his statement, Steele was urging the government to act on cryptocurrency before another crisis occurs.³¹ Notwithstanding the relatively new nature of cryptocurrency, it is imperative that the United States acts and prevents anything similar to the 2008 financial crisis. A benefit of the law is its ability to alter and adapt to changes in values and technology. Without the government being proactive with cryptocurrency regulations, there is always the serious risk of another crisis due to lack of preventative measures. This is why it is important to act fast, with a focus on the future.

³¹ Wynn, *supra* note 4.