

CRYPTO REGULATION IN THE TIME OF TRUMP  
[Pre-Publication Draft]

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ABSTRACT

Donald Trump's election as president during November 2024 results in perhaps the most dramatic philosophical change in approach to governmental regulation in over ninety years. The Great Depression of the 1930s created a need for regulatory reform and resulted in the advent of such new regulatory frameworks as the U.S. Securities and Exchange Commission (SEC). It has been the purpose of the SEC to create and nurture efficient securities markets enabling vibrant capital formation while preventing fraud upon the investing public. At issue is the contrast between the regulatory regime in place since 1933-34 and the Trump Administration's desire to foster securities and capital markets having less regulation and enforcement. My focus here is the regulation of crypto currencies, protection of the investing public, and their impact on the soundness of capital markets and our financial system.

SEC Commissioner Caroline A. Crenshaw writes, "Over the last several months, we have heard repeatedly that the Commission, and its new Crypto Task Force, are embarking on a quest to give the crypto industry regulatory clarity. We've heard 'change is coming fast' for crypto at the SEC and that the crypto markets will soon be free from the "limbo" they've been 'languishing [...] in for years.'" She continues, "How is it that these crypto assets are supposedly not securities when it comes to registration requirements, but conveniently *are* securities when a registrant sees an opportunity to sell a new product?... If you're confused, join the club. The various, and sometimes conflicting issues surrounding whether crypto constitutes "a security" and the

appropriate regulation of this technology remains under considerable controversy. These issues are the subject of this paper.

Keywords: administrative law, agency capture, artificial intelligence, Paul S. Atkins, Bitcoin, blockchain, Caroline A. Crenshaw, crypto, cryptocurrency, CFTC, Commodities Futures Trading Commission, corporate governance, Crypto Task Force, cybersecurity, DeFi, digital, distributed ledger, Donald Trump, fintech, fraud, Gary Gensler, NFTs, Hester Peirce, proof-of-work mining, regulation, SEC, Securities and Exchange Commission, stablecoin, staking,

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## CRYPTO REGULATION IN THE TIME OF TRUMP

### OVERVIEW

Donald Trump's election as president during November 2024 results in perhaps the most dramatic philosophical change in approach to governmental regulation in over ninety years. The Great Depression of the 1930s created a need for regulatory reform and resulted in the advent of such new regulatory frameworks as the U.S. Securities and Exchange Commission (SEC).<sup>1</sup> It has been the purpose of the SEC to create and nurture efficient securities markets enabling vibrant capital formation while preventing fraud upon the investing public. At issue is the contrast between the regulatory regime in place since 1933-34 and the Trump Administration's desire to foster securities and capital markets having less regulation and enforcement. As Congress passes cryptocurrency legislation during the summer of 2025 it becomes clear that cryptocurrencies in some form have a future in the United States.

The advent of digital assets presents many complex and novel legal issues for policy makers and scholars, such as: market dynamics;<sup>2</sup> investment psychology;<sup>3</sup> the property questions;<sup>4</sup> energy usage impact of digital mining on environmental and climate

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<sup>1</sup> See JOHN KENNETH GALBRAITH, *THE GREAT CRASH 1929* (Harper Business, 2009); Neal F. Newman & Lawrence J. Trautman, *Securities Law: Overview and Contemporary Issues*, 16 OH. ST. BUS. L. J. 149 (2021), <http://ssrn.com/abstract=3790804>.

<sup>2</sup> See generally, Andrew Morin & Tyler Moore, *The Impact of Cryptocurrency Spot Price Volatility on Derivative Markets*, [published?] (2025), <http://ssrn.com/abstract=4729600>;

<sup>3</sup> Chuleeporn Changchit, Robert Cutshall, Long Pham & Eugene Bland, *Psychological and Technological Factors Shaping Cryptocurrency Investment: The Moderating Role of Personality Traits*, [published?] (2025), <http://ssrn.com/abstract=5252820>; Suwan (Cheng) Long, Ying Xie, Zhengyuan Zhou, Brian M. Lucey & Andrew Urquhart, *From Whales to Waves: The Role of Social Media Sentiment in Shaping Cryptocurrency Markets*, [published?] (2025), <http://ssrn.com/abstract=4996475>; Hesam Shahriari, Adam Stivers & Ming Tsang, *Bias in Cryptocurrency Investing: The Framing of Financial and Moral Considerations*, [published?] (2025), <http://ssrn.com/abstract=5226437>.

<sup>4</sup> Juliet M. Moringiello & Christopher K. Odinet, *The Property Law of Tokens*, 74 FLA. L. REV. 607 (2022), <http://ssrn.com/abstract=3928901>; Andrea Tosato & Christopher K. Odinet, *Digital*

issues;<sup>5</sup> and growing concern is being expressed about Constitutional emoluments clause conflicts.<sup>6</sup> My focus here is the regulation of crypto currencies, protection of the investing public, and their impact on the soundness of capital markets and our financial system. *The New York Times* reports that following Donald Trump’s assuming “office a second time this year, his crypto fortunes have skyrocketed through a series of business ventures that pose unprecedented conflicts of interest. Not only is Mr. Trump a major operator in the crypto industry, he is also its top policymaker— and a symbol of its rising stature in Washington.”<sup>7</sup> President Trump’s conflict of interest will be mentioned only in passing and will remain a topic for other inquiries.

This Article turns out to be much different from the one I set out to write. Over the course of several decades, securities law has been an important area of my focus: as an entrepreneur; corporate director; investment banker; student and professor of this ever-changing body of law. We are now more than fifteen years post-bitcoin launch. During this relatively short period of time, Bitcoins have increased in value from mere cents per coin to \$ \_\_\_\_\_ as of July \_\_, 2025. In the minds of many, fifteen years of Bitcoin

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*Assets and the Property Question*, \_\_ FLA. L. REV. (forthcoming),  
<http://ssrn.com/abstract=5151907>.

<sup>5</sup> Alexander Neumueller, Gina C. Pieters, Kamiar Mohaddes, Valentin Rousseau & Bryan Zheng Zhang, *Cambridge Digital Mining Industry Report: Global Operations, Sentiment, and Energy Use*, (may 2025), <http://ssrn.com/abstract=5236060>.

<sup>6</sup> See Andy Grewal, *The Foreign Emoluments Clause and the Chief Executive*, 102 MINN. L. REV. 639 (2017); Jed H. Sugarman & Gautham Rao, *Emoluments, Zones of Interest, and Political Questions: A Cautionary Tale*, 45 HASTINGS CONST. L.Q. \_\_ (2018); Deborah Sills, *The Foreign Emoluments Clause: Protecting Our National Security Interests*, 26 BROOKLYN J.L. & PUB. POL’Y \_\_ (2018); Lawrence J. Trautman, *Grab ‘Em By the Emoluments: The Crumbling Ethical Foundation of Donald Trump’s Presidency*, 17 CONN. PUB. INT. L.J. 169 (2018), <http://ssrn.com/abstract=2999769>. But see Josh Blackman & Seth Barrett Tillman, *The Unresolved Threshold Issues in the Emoluments Clauses Litigation: The President Has Three Bodies and There is no Cause of Action for Ultra Vires Conduct*, 20 GEO. J.L. & PUB. POL’Y 163 (2022); Seth Barrett Tillman, *Business Transactions and President Trump’s ‘Emoluments’ Problem*, 40 HARV. J.L. & PUB. POL’Y 759 (2017).

<sup>7</sup> Ben Protess & Andrea Fuller, *Trump Cashes In on Cryptocurrency*, N.Y. TIMES, Jun. 15, 2025 at 20.

experience and rapid growth seems sufficient time to pause and inquire whether the crypto industry has now achieved agency capture? Do these new regulatory developments constitute dangerous sources of systematic risk now unleashed by various crypto-related products on the American economic system?

Several years ago, Professor Kevin Werbach stated that “Without realizing it, blockchain developers have wandered into territories that legal scholars have fought over for centuries. The challenge, therefore, is what happens when ledgers meet law?”<sup>8</sup>

Consider that:

Legal structures such as contracts, property, corporations, and judicial enforcement replace interpersonal trust with more structured rights, expectations, and remedies. Yet there are places the legal system cannot go, and sometimes the very formalization that law imposes is an impediment to trust... Developing the rules, norms, incentives, and technical architectures for a well-functioning community is a very hard problem. There are points where law needs to adapt to recognize the potential of the blockchain, but the reverse is also true: the blockchain needs law. Its impact will depend on its developers’ ability to connect Satoshi Nakamoto’s cryptoeconomic trust model with the formal structures and institutions of legal enforcement.<sup>9</sup>

SEC Commissioner Caroline A. Crenshaw writes, “Over the last several months, we have heard repeatedly that the Commission, and its new Crypto Task Force, are embarking on a quest to give the crypto industry regulatory clarity. We’ve heard ‘change is coming fast’ for crypto at the SEC and that the crypto markets will soon be free from the “limbo” they’ve been ‘languishing [...] in for years.’”<sup>10</sup> She continues, “How is it that these crypto assets are supposedly not securities when it comes to registration

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<sup>8</sup> Kevin Werbach, *Trust, But Verify: Why The Blockchain Needs The Law*, 33 BERKELEY TECH. L.J. 489, \_\_ (2018).

<sup>9</sup> *Id.*

<sup>10</sup> Caroline A. Crenshaw, SEC Commissioner, Muddying the Waters: More Confusion on Crypto Asset Security Status (May 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-crypto-asset-security-status-053125>.

requirements, but conveniently *are* securities when a registrant sees an opportunity to sell a new product?... If you're confused, join the club. "<sup>11</sup> The various, and sometimes conflicting issues surrounding whether crypto constitutes "a security" and the appropriate regulation of this technology remains under considerable controversy. These issues are the subject of this paper. The topic of cryptocurrency regulation is highly complex and fraught with risk of contagion to financial markets. As a result, comprehensive treatment of this subject could easily have resulted in this article being twice as long.

This paper proceeds in ten parts. First, is a discussion about the political environment enabling dramatic deregulation accompanying arrival of the Trump administration during January 2025. Second, is a description of the rapid evolution of cryptocurrencies. Third, is coverage of the crypto fraud regulation and enforcement under Chair Gary Gensler, 2021-2024. Next, the 2024 presidential campaign and implication for cryptocurrency regulation is discussed. Fifth, is a look at the Trump family investment activity and focus on the cryptocurrency ecosystem. Sixth, is a look at the SEC's crypto policies under Chair Paul S. Atkins. Seventh, Commissioner Caroline A. Crenshaw's courageous dissent is documented. Eighth, is a discussion about Stablecoins. Ninth, I explore the cybersecurity threat to crypto assets. And last, I conclude.

## I. TRUMP'S DEREGULATION ARRIVES

As the Trump administration's MAGA movement assumes control of Washington's executive branch, the public is reminded of Ronald Regan's 1981 inaugural address statement that "government is not the solution to our problem;

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<sup>11</sup> *Id.*

government is the problem.”<sup>12</sup> The Trump movement to deregulate brings into view the philosophical conflict between: those calling for the elimination of financial and most other regulation connected with over ninety years of lessons learned following the Securities Act of 1933<sup>13</sup> and the Securities and Exchange Act of 1934,<sup>14</sup> and lessons learned from subsequent case law.

As a foreshadowing of things to come, upon assuming office, among the first actions taken by President Trump is to freeze enforcement of the Foreign Corrupt Practices Act (FCPA).<sup>15</sup> *The Wall Street Journal* reports that “Trump said at the time that enforcement of a federal antibribery law, the Foreign Corrupt Practices Act,<sup>16</sup> puts American firms at a disadvantage to foreign rivals that can engage in conduct forbidden in the U.S.”<sup>17</sup> Observing that “Enforcing the Foreign Corrupt Practices Act has been a cornerstone of the Justice Department’s white-collar program for decades... Deputy Attorney General Todd Blanche announced... The department has closed nearly half of its foreign-bribery investigations to align with new guidelines.”<sup>18</sup> Elsewhere, others report, “Critics said the new guidelines were a dangerous reversal. ‘This retreat from enforcing laws against corporate crime is a perversion of justice that further concentrates the administration’s power to corruptly reward insiders and punish perceived enemies,’ said Rick Claypool, a research director at the nonprofit watchdog group Public Citizen.”<sup>19</sup>

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<sup>12</sup> Ronald Regan, Inaugural Address 1981, Ronald Regan Presidential Library & Museum, <https://www.reaganlibrary.gov/archives/speech/inaugural-address-1981>.

<sup>13</sup> 15 U.S.C. §§ 77a-77aa.

<sup>14</sup> 15 U.S.C. § 78a et seq.

<sup>15</sup> 15 U.S.C. §§ 78dd-1, et seq.

<sup>16</sup> 15 U.S.C. §§ 78dd-1, et seq.

<sup>17</sup> Dave Michaels & Max Fillion, *DOJ Unfreezes Foreign-Bribery Case Shifting to a Narrower Focus*, WALL ST. J., June 11, 2025 at A3.

<sup>18</sup> *Id.*

<sup>19</sup> Glenn Thrush, *Justice Dept. Tightens Focus In Prosecuting Bribery Abroad*, N.Y. TIMES, June 12, 2025 at A15.

The FCPA since 1977 has prohibited the bribery of foreign government officials.<sup>20</sup> Early in his career Judge Stanley Sporkin had served as Director of the Division of Enforcement at the Securities and Exchange Commission and later as general counsel of the Central Intelligence Agency (CIA). Previously, Judge Sporkin recalled during 2012:

As I continued to explore how we at the SEC ought to deal with this, it occurred to me that—while maybe not material from a financial amount (Quantitative Materiality), this conduct and these bribery funds are material under a concept of Qualitative Materiality. We formulated a theory to proceed against those corporations on the basis they were not disclosing the illegal conduct. We had brought about sixty cases before Senator William Proxmire called and asked ‘Do you need a law?’ I said, sure; but all it needs to say is that ‘every corporation must have accurate books and records. Our [SEC’s] chief accountant, Sandy Burton, added the provision that corporations must have accurate internal controls.

These two provisions: (1) accurate books and records, and (2) internal controls--- became the ‘books and records’ provisions of the law. Senator Proxmire was in agreement; but said, we also need an anti-bribery provision—and that became the essence of the law, ‘books and records’ and anti-bribery.

After passage of the law, we got push-back from issuers complaining about how they can’t be spending all this time on compliance and that it was making American companies non-competitive. This evolved into a volunteer program—where if an issuer made a good faith effort, which entailed a voluntary investigation of their overseas conduct, we accepted their report and never sued them. But, in summary, the FCPA was not the result of a ‘do good’ proposal. It was more the case that if the SEC has a requirement regarding disclosure, then you should have accurate disclosure. If a corporation was making money through bribery and other illicit payments, this had to be disclosed to shareholders.<sup>21</sup>

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<sup>20</sup> See generally, Lawrence J. Trautman & Joanna Kimbell, *Bribery and Corruption: The COSO Framework, FCPA, and U.K. Bribery Act*, 30(3) FLA. J. INT’L L. 191 (2018), <http://ssrn.com/abstract=3239193>; Lawrence J. Trautman & Kara Altenbaumer-Price, *Lawyers, Guns and Money – The Bribery Problem and U.K. Bribery Act*, 47 INT’L LAW. 481 (2013), <http://www.ssrn.com/abstract=2276738>; Lawrence J. Trautman & Kara Altenbaumer-Price, *The Foreign Corrupt Practices Act: Minefield for Directors*, 6 VA. L. & BUS. REV. 145 (2011), <http://www.ssrn.com/abstract=1930190>.

<sup>21</sup> Lawrence J. Trautman & Kara Altenbaumer-Price, *Foreign Corrupt Practices Act: An Update on Enforcement and SEC and DOJ Guidance*, 41 SEC. REG. L.J. 241, 243 (2013) (citing Hon. Stanley Sporkin, Panel Discussion: Foreign Corrupt Practices Act at SMU Corporate Counsel Symposium (Oct. 5, 2012); Telephone Interviews with Hon. Stanley Sporkin (July 10–11, 2013); e-mails from Hon. Stanley Sporkin to Lawrence J. Trautman (July 2, 10–11, 2013) (on file with author)).

During recent years, the rapid rate of technological change has provided legislative and regulatory challenges for lawmakers.<sup>22</sup> Rapid technological advances such as: advent of the Internet;<sup>23</sup> Internet-of-Things (IoT);<sup>24</sup> artificial intelligence (AI);<sup>25</sup> blockchain enabled technologies;<sup>26</sup> and quantum computing applications<sup>27</sup> pose complicated regulatory policy issues. Following the results of the November 2024 U.S. presidential elections, both political parties find themselves reacting to the dissatisfaction of the American electorate’s perception of bloated government dysfunction.<sup>28</sup> About five months into Trump’s second occupation of the oval office, the editorial board of *The Wall Street Journal* publishes an editorial titled, “Trump’s Corrosive Culture of Corruption,” stating:

At the gala dinner President Trump held last month for those who bought the most Trump cryptocurrency, the champion spender was the entrepreneur Justin Sun, who had put down more than \$40 million on \$Trump coins. Mr. Sun had a good reason to hope that this investment would pay off. He previously invested \$75 million in a different Trump crypto venture—and shortly after the Trump administration took office in

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<sup>22</sup> Lawrence J. Trautman, *Bitcoin, Virtual Currencies and the Struggle of Law and Regulation to Keep Pace*, 102 MARQ. L. REV. 447 (2018), <https://ssrn.com/abstract=3182867>.

<sup>23</sup> Lawrence J. Trautman & George P. Michaely, *The SEC & The Internet: Regulating the Web of Deceit*, 68 CONSUMER FIN. L.Q. REP. 262 (2014), <http://www.ssrn.com/abstract=1951148>.

<sup>24</sup> Lawrence J. Trautman & Mohammed T. Hussein, *The Internet of Things (IoT) in a Post-Pandemic World*, 9 J. L. & CYBER WARFARE (2024), <http://ssrn.com/abstract=4149477>; <https://www.amazon.com/dp/B0D67X286C>; Lawrence J. Trautman, Mohammed T. Hussein, Louis Ngamassi & Mason Molesky, *Governance of The Internet of Things (IoT)*, 60(3) JURIMETRICS 315 (Spring 2020), <http://ssrn.com/abstract=3443973>.

<sup>25</sup> Lawrence J. Trautman, W. Gregory Voss & Scott Shackelford, *How We Learned to Stop Worrying and Love AI: Analyzing the Rapid Evolution of Generative Pre-Trained Transformer (GPT) and its Impacts on Law, Business, and Society*, 34(1) ALBANY L.J. SCI. & TECH. (2025), <http://ssrn.com/abstract=4516154>; Lawrence J. Trautman & Larry D. Foster II, *Sam Altman, OpenAI, and The Importance of Corporate Governance*, 16(1) CASE W. J. L. TECH. & INTERNET 133 (2025), <https://ssrn.com/abstract=4679613>.

<sup>26</sup> Lawrence J. Trautman, *Is Disruptive Blockchain Technology the Future of Financial Services?*, 69 CONSUMER FIN. L.Q. REP. 232 (2016), <http://ssrn.com/abstract=2786186>.

<sup>27</sup> Michael J. Conklin, Brian Elzweig & Lawrence J. Trautman, *Legal Recourse for Victims of Blockchain and Cyber Breach Attacks*, 23 U.C. DAVIS BUS. L.J. 135 (2022-2023), <http://ssrn.com/abstract=4251666>.

<sup>28</sup> Lawrence J. Trautman, Joseph Biden, Kamala Harris, Donald J. Trump, The U.S. Constitution, Fitness For Office, Deep Fakes, and Importance of Succession Planning: A Corporate Governance Perspective, <https://ssrn.com/abstract=4907110>. [publication?].

January, the Securities and Exchange Commission paused its lawsuit against him on charges of cryptocurrency fraud...

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The cryptocurrency industry is perhaps the starkest example of the culture of corruption in his second term. He and his relatives directly benefit from the sale of their cryptocurrency by receiving a cut of the investment. Even if the price of the coins later falls and investors lose money, the Trumps can continue to benefit by receiving a commission on future sales. Forbes magazine estimates that he made about \$1 billion in cryptocurrency in the past nine months, about one-sixth of his net worth...

...

Mr. Trump... shut down a Justice Department team that investigated illegal uses of cryptocurrency. He pardoned crypto executives who pleaded guilty to crimes, and his administration dropped federal investigations of crypto companies. He nullified an Internal Revenue Service rule that went after crypto users who didn't pay their taxes...

...

Nevertheless, he is presiding over a culture of corruption. He and his family have created several ways for people to enrich them—and government policy then changes in ways that benefit those who have helped the Trumps profit. Often Mr. Trump does not even try to hide the situation. As the historian Matthew Dallek recently put it, 'Trump is the most brazenly corrupt national politician in modern times, and his openness about it is sui generis.' He is proud of his avarice, wearing it as a sign of his success and savvy...

...

The investors in the Trump's crypto company include the United Arab Emirates, which is investing \$2 billion, and a small technology company with ties to China that is buying as much as \$300 million worth of Mr. Trump's meme coins.<sup>29</sup>

### Impact of "Abundance"

Publication of the book "Abundance" by Ezra Klein and Derek Thompson in 2025 is credited with the widespread questioning of the degree to which "regulatory obstacles and an obsession with procedure have caused liberal governance to fail to deliver on its promises."<sup>30</sup> The diagnosis by Klein and Thompson while containing "echos in conservative critiques of government and Elon Musk's DOGE, the author's

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<sup>29</sup> Trump's Corrosive Culture of Corruption, Opinion, Editorial Board, WALL ST. J., June 8, 2025 at 11.

<sup>30</sup> Molly Ball, *Democrats Tap Into "Abundance" Theme*, WALL ST. J., June 2, 2025 at A4.

prescription is very different. Instead of taking a wrecking ball to the bureaucracy, the authors propose cutting red tape and unleashing the state as a stimulant to growth and innovation.”<sup>31</sup>

### Department of Government Efficiency

During the first few months of the second Trump administration, Elon Musk’s Department of Government Efficiency (DOGE) made claims of saving \$billions “as a result of reversing regulations.”<sup>32</sup> Analysis by *The New York Times* “found that the math that could back up these [claims] is marred with accounting errors, incorrect assumptions, outdated data and other mistakes. The misleading claims come as the Trump administration has begun a push for mass deregulation of the American economy, with plans to rapidly undo hundreds of rules...”<sup>33</sup> The analysis to follow is focused on the Securities and Exchange Commission, Commodities Futures Trading Commission, interface with traditional financial institutions, and the emerging DeFi entities.

### Commodities Futures Trading Commission (CFTC) and Crypto

Attorney Lewis Rinaudo Cohen, a partner at Cahill, Gordon & Reindel LLP comments about how “the bifurcated U.S, regulatory structure—where the oversight of activity involving securities and commodities derivatives fall under different federal agencies—complicates the regulation of the digital asset sector.”<sup>34</sup> This pervasive environment of uncertainty as “observed in enforcement actions, [results in] American

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<sup>31</sup> *Id.*

<sup>32</sup> Coral Davenport & Stacy Cowley, *Costs for Americans Rise Despite Claims by DOGE*, N.Y. TIMES, June 1, 2025 at A1.

<sup>33</sup> *Id.* at A1-18.

<sup>34</sup> Exploring Bipartisan Legislative Frameworks for Digital Assets: Hearing Before S. Comm. On Banking, Housing & Urban Aff. 119<sup>th</sup> Cong. 24-25 (2025) (Statement of Lewis Rinaudo Cohen, Ptr. Cahill, Gordon & Reindel LLP), [https://www.banking.senate.gov/imo/media/doc/cohen\\_testimony\\_2-26-25.pdf](https://www.banking.senate.gov/imo/media/doc/cohen_testimony_2-26-25.pdf).

entrepreneurs fac[ing] a constant threat of litigation arising from ambiguous applications of our securities laws.”<sup>35</sup> Consider that, “cases have been brought against major platforms for facilitating secondary market trading in tokens that some plaintiffs allege are unregistered securities—even when there is no ‘issuer’ with which the asset holders have any legal relationship.”<sup>36</sup> These matters have been the subject of considerable testimony by industry leaders before Congress.<sup>37</sup>

At the Harvard Kennedy School’s Mossavar-Rahmani Center for Business and Government, Timothy G. Massad is Director of the Digital Assets Policy Project. Previously, “he was chairman of the Commodity Futures Trading Commission from 2014 to 2017... served at the U.S. Treasury Department from 2009 to 2014, primarily as the

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<sup>35</sup> Exploring Bipartisan Legislative Frameworks for Digital Assets: Hearing Before S. Comm. On Banking, Housing & Urban Aff. 119<sup>th</sup> Cong. 24-25 (2025) (Statement of Lewis Rinaudo Cohen, Ptr. Cahill, Gordon & Reindel LLP).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 8. *See, e.g.*, The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure, Hearing Before the Subcomm. on Digit. Assets, Fin. Tech., and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2023), <https://tinyurl.com/2yp22fwm>; The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem, Hearing Before the H. Comm. on Fin. Servs., 118th Cong. (2023), <https://tinyurl.com/4ar5vxsj>; Dazed and Confused: Breaking Down the SEC’s Politicized Approach to Digital Assets, Hearing Before the Subcomm. On Digit. Assets, Fin. Tech., and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2024), <https://tinyurl.com/2jzsf3by>; Crypto Crash: Why Financial System Safeguards are Needed for Digital Assets Before the S. Comm. on Banking, Hous., and Urb. Affs., 118th Cong. (2023), <https://tinyurl.com/uphtw2nk>; Crypto Crash: Why the FTX Bubble Burst and the Harm to Consumers Before the S. Comm. On Banking, Hous., and Urban Affs., 117th Cong. (2022), <https://tinyurl.com/56hc2chw>; Investigating the Collapse of FTX, Part I Before the H. Comm. on Fin. Servs., 117th Cong. (2022), <https://tinyurl.com/56hc2chw>; Protecting Investors and Savers: Understanding Scams and Risks in Crypto and Securities Markets Before the S. Comm. on Banking, Hous., and Urb. Affs., 117th Cong. (2022), <https://tinyurl.com/3ku4b4y5>; Putting the ‘Stable’ in ‘Stablecoins:’ How Legislation Will Help Stablecoins Achieve Their Promise Before the H. Subcomm. on Digit. Assets, Fin. Tech. and Inclusion of the H. Comm. on Fin. Serv., 118th Cong. (2023), <https://tinyurl.com/cbhpc62>; The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets Before the H. Comm. on Fin. Servs. & H. Comm. on Agric. Joint Subcomm., 118th Cong. (2023), <https://tinyurl.com/3z482ech>; The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure Before the H. Comm. on Financial Services & H. Comm. on Agric. Joint Subcomm., 118th Cong. (2023), <https://tinyurl.com/muedwru9>; Understanding Stablecoins’ Role in Payments and the Need for Legislation Before the H. Subcomm. On Digit. Assets, Fin. Tech. and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2023), <https://tinyurl.com/59zwum75>; Coincidence or Coordinated? The Administration’s Attack on the Digital Asset Ecosystem Before the H. Subcomm. on Digit. Assets, Fin. Tech. and Inclusion of the H. Comm. on Fin. Serv., 118th Cong. (2023), <https://tinyurl.com/mr2ea497>.

Assistant Secretary for Financial Stability, where [he] oversaw the Troubled Asset Relief Program.”<sup>38</sup> Mr. Massad testified:

Since 2014, when under my leadership the CFTC declared bitcoin to be a commodity, I have spoken and written about the need to improve regulation of digital assets. This has included appearances before several committees of Congress.

I believe digital assets and tokenization technology could be very valuable in numerous ways. They could potentially be used for a variety of financial transactions and processes, in ways that might generate greater efficiency, growth, choice, opportunity and financial inclusion. But although it has been sixteen years since bitcoin was launched, we have not yet seen that much use that has generated real world value.

The stated purpose of the President’s Executive Order on ‘Strengthening American Leadership in Digital Financial Technology’ is to ‘support the responsible growth and use of digital assets, blockchain technology, and related technologies.’ The question is how to fulfill those words. Will we create legal frameworks that encourage responsible development of digital technology in ways that create social utility, or frameworks that mostly encourage more speculative activity and more of the types of abuses we have seen far too much of to date?

To date, the crypto industry has been characterized by a primary focus on speculative activity as well as tokens and applications that have little social utility. There have been rampant abuses, fraud, manipulation, failures to protect consumers and the use of this technology for financial crime and evasion of sanctions. It is also true that the absence of a clear regulatory framework has caused some institutions to refrain from making investments that might lead to applications of greater utility. I believe that both the excessive speculative activity and the failure to develop more useful applications are in large part due to the absence of a strong regulatory framework— one that provides adequate consumer and investor protection and minimizes those risks. Yes, we need clarity of rules. But we need the right rules.<sup>39</sup>

### Securities and Exchange Commission (SEC)

As we will see in the pages to follow, the philosophical contrast between over ninety years of securities regulation dedicated toward protecting investors from fraud and

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<sup>38</sup> Exploring Bipartisan Legislative Frameworks for Digital Assets: Hearing Before S. Comm. On Banking, Housing & Urban Aff. 119<sup>th</sup> Cong. 24-25 (Feb. 26, 2025) (Statement by Timothy G. Massad, Dir. Digital Assets Pol’y Proj., Mossavar-Rahmani Ctr. For Bus. & Govt., Harv. Kennedy Sch), [https://www.banking.senate.gov/imo/media/doc/massad\\_testimony\\_2-26-25.pdf](https://www.banking.senate.gov/imo/media/doc/massad_testimony_2-26-25.pdf).

<sup>39</sup> *Id.*

the belief that existing body of securities caselaw and regulation was hampering innovation could not be in greater contrast.<sup>40</sup>

### Federal Reserve and Relaxed Bank Regulation

As a result of the 2007-08 financial crisis, “the country’s biggest banks lobbied against a... rule that was intended to shore up... [bank] stability and ensure they could withstand steep losses in times of turmoil.”<sup>41</sup> By mid-2025, “financial regulators led by the Federal Reserve agreed to relax the rule, embarking on what is expected to be an extensive push to loosen the regulatory reins on Wall Street.”<sup>42</sup> According to *The New York Times*, “the supplementary leverage ratio, mandates that lenders maintain a buffer of easy-to-access money against their total leverage. That measure includes assets such as loans and Treasuries as well as exposures that do not appear on a bank’s balance sheet but generate income, like derivatives.”<sup>43</sup> The news coverage warns that “in loosening the rule in a permanent way which the Fed voted 5 to 2 in favor of doing... it risks making the financial system more fragile at a time when President Trump’s policies are stoking extreme volatility.”<sup>44</sup>

### The Constitutional Argument

Professor Kyle Langvardt observes during 2023 that “the [crypto] industry is leaning more heavily into constitutional and Administrative Procedure Act (“APA”)-based litigation— and threats of such litigation—as a last-ditch means to secure the

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<sup>40</sup> See §§ III & VI, *Infra*.

<sup>41</sup> Colby Smith & Joe Rennison, *Fed Yields To Pressure To Loosen Bank Rules*, N.Y. TIMES, June 27, 2025 at B1.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

regulatory shelter that the blockchain continually promises and fails to provide.”<sup>45</sup> In

sum:

The theories advanced... are out of step with First Amendment case law and basically doomed to fail in court. But because they are couched in terms of ‘code as speech,’ ‘financial censorship,’ and the need to sacrifice public priorities to make way for long-term techno-utopias (here, the crypto-enabled ‘Web3’), the crypto industry’s First Amendment story nevertheless resonates deeply with crypto culture’s defining ideological obsessions.<sup>46</sup>

Professor Langvardt states, “Overall, crypto’s First Amendment opportunism interferes with public efforts to protect investors, collect taxes, and fight financial crime—and ultimately, it debases the First Amendment itself.”<sup>47</sup>

## II. RAPID EVOLUTION OF CRYPTO CURRENCIES

Crypto or virtual currencies are based on the blockchain technology. Elsewhere, “Aaron Wright and Primavera De Filippi write, ‘[t]he blockchain is a distributed, shared, encrypted-database that serves as an irreversible and incorruptible public repository of information. It enables, for the first time, unrelated people to reach consensus on the occurrence of a particular transaction or event without the need for a controlling authority.’”<sup>48</sup> In sum, “blockchain is simply a data structure that leverages hash functions and encryption to provide the security of information.”<sup>49</sup> As early as 2016 the question

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<sup>45</sup> Kyle Langvardt, *Crypto’s First Amendment Hustle*, 26(1) YALE J. L. & TECH. 130, 132 (2023).

<sup>46</sup> Kyle Langvardt, *Crypto’s First Amendment Hustle*, 26(1) YALE J. L. & TECH. 130, 132 (2023).

<sup>47</sup> Kyle Langvardt, *Crypto’s First Amendment Hustle*, 26(1) YALE J. L. & TECH. 130, (2023).

<sup>48</sup> See Lawrence J. Trautman & Mason J. Molesky, *A Primer for Blockchain*, 88 UMKC L. REV. 239 (2019), arXiv:1904.03254, <https://ssrn.com/abstract=3324660>, citing, Aaron Wright & Primavera De Filippi, *Decentralized Blockchain Technology and The Rise of Lex Cryptographia 2* (Mar. 20, 2015, revised July 25, 2017) (unpublished manuscript), <https://ssrn.com/abstract=2580664>.

<sup>49</sup> See Trautman & Molesky, *Id.* See also John W. Bagby, David Reitter & Philip Chwistek, *An Emerging Political Economy of the BlockChain: Enhancing Regulatory Opportunities*, 88 UMKC L. REV. 419 (2018), <https://ssrn.com/abstract=3299598>.

of whether “disruptive blockchain technology is the future of financial services” was being raised.<sup>50</sup>

Formerly Counsel for New Technology Policy at the U.S. Federal Communications Commission, and currently Wharton professor Kevin Werbach says “The central question is not how to regulate blockchains but how blockchains regulate... To achieve their monumental potential and avoid catastrophic failures, blockchain-based systems will need to integrate with the operations and institutions of the law.”<sup>51</sup>

The development of multiplayer online games may be credited for the origin of modern virtual currencies. Dating back to at least 1996, these virtual “worlds” each had “a distinct economy, with assets, production, and commerce reflecting real life Earth economies.”<sup>52</sup> By now, more seasoned readers of this article are likely several years past understanding the fundamentals of this technology. Due to the limited word count allotted for this article, some of the better foundational literature is provided below for those possessing such an appetite.<sup>53</sup> Law professor Chris Brummer contends that the era of blockchain technology requires a modernized approach to disclosure theory.<sup>54</sup>

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<sup>50</sup> See Trautman, *supra* note 26.

<sup>51</sup> See Werbach, *supra* note 8.

<sup>52</sup> Lawrence J. Trautman & Alvin C. Harrell, *Bitcoin Versus Regulated Payment Systems: What Gives?*, 38 CARDOZO L. REV., 1041, 1042 (2017), <http://ssrn.com/abstract=2730983>

<sup>53</sup> See generally, Franklin Allen, Xian Gu & Julapa Jagtiani, *A Survey of Fintech Research and Policy Discussion*, 1 REV. CORP. FIN. 259 (2021), <http://ssrn.com/abstract=3622468>; Shaanan Cohny, David A. Hoffman & David A. Wishnick, *Coin-Operated Capitalism*, 119 COLUM. L. REV. 591 (2019), <http://ssrn.com/abstract=3215345>; Christian Catalini & Joshua Gans, *Some Simple economics of the Blockchain*, [published?], (2019), <http://ssrn.com/abstract=2874598>; Maximilian Friedlmaier, Andranik Tumasjan & Isabell M. Welpe, *Disrupting Industries With Blockchain: The Industry, Venture Capital Funding, and Regional Distribution of Blockchain Ventures*, [published?], (2017), <http://ssrn.com/abstract=2854756>; Jon Garon, *Legal Implications of a Ubiquitous Metaverse and a Web3 Future*, [published?], (2022), <http://ssrn.com/abstract=4002551>; John Griffin & Amin Shams, *Is Bitcoin Really Un-Tethered?*, [published?], (2019), <http://ssrn.com/abstract=3195066>; Philipp Hacker & Chris Thomale, *Crypto Securities Regulation: ICOs, Token Sales and Cryptocurrencies Under EU Financial Law*, 15 EURO. CO. & FIN. L. REV. 645 (2018), <http://ssrn.com/abstract=3075820>; Campbell R. Harvey, Ashwin Ramachandran & Joey Santoro, *DeFi and the Future of Finance*, [published?], (2022), <http://ssrn.com/abstract=3711777>; Max Raskin, *The Law and Legality of Smart Contracts*, GEO. L.

### How Blockchain Works

While the underlying technology of blockchain is complex, their basic function of “providing a distributed yet provably accurate record” is simple.<sup>55</sup> Professor Werbach explains:

Everyone can maintain a copy of a dynamically-updated ledger, but all those copies remain the same, even without a central administrator or master version. This approach offers two basic benefits. First, one can have confidence in transactions without trusting the integrity of any individuals, intermediaries, or governments. Second, the single distributed ledger replaces many private ledgers that must be reconciled for consistency, thus reducing transaction costs. The software enabling this uses digital cryptography and game-theoretic incentives to make it difficult to cheat the system.<sup>56</sup>

### Bitcoin Leads the Way

On July \_\_, 2025, Coinbase listed a total of \_\_\_\_\_ different cryptocurrencies having a total market capitalization of \$ \_\_\_\_\_, with Bitcoin valued at \$ \_\_\_\_\_ each for a total of market capitalization of \$ \_\_\_\_\_.<sup>57</sup>

[insert BTC price performance]

### Coinbase Global, Inc. and Related Entities

Coinbase states that it provides “a trusted platform that makes it easy for people and institutions to engage with crypto assets, including trading, staking, safekeeping, spending, and

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TECH. REV. 304 (2017), <http://ssrn.com/abstract=2959166>; Michel Rauchs, Andrew Glidden, Brian Gordon, Gina C. Pieters, Martino Recanatini, François Rostand, Kathryn Vagneur & Bryan Zheng Zhang, *Distributed Ledger Technology Systems: A Conceptual Framework*, [published?], (2019), <http://ssrn.com/abstract=3230013>; Fahad Saleh, *Blockchain Without Waste: Proof of Stake*, 34 REV. FIN. STUD. 1156 (2021), <http://ssrn.com/abstract=3183935>; Fabian Schär, *Decentralized Finance: On Blockchain- and Smart Contract- Based Financial Markets*, \_\_ FRB OF ST. LOUIS REV. \_\_ (202 \_\_), <http://ssrn.com/abstract=3843844>; Dirk A. Zetzsche, Ross P. Buckley, Douglas W. Arner & Linus Föhr, *The ICO Gold Rush: It's a Scam, It's a Bubble, It's a Super Challenge for Regulators*, 63 HARV. INT'L L.J. \_\_ (2019), <http://ssrn.com/abstract=3072298>.

<sup>54</sup> Chris Brummer, *A Developer Theory of Disclosure*, (2025), <http://ssrn.com/abstract=5137972>.

<sup>55</sup> See Werbach, *supra* note 8.

<sup>56</sup> *Id.*

<sup>57</sup> CoinMarketCap.com (June \_\_, 2025),

fast, free global transfers. We also provide critical infrastructure for onchain activity and support builders who share our vision that onchain is the new online.”<sup>58</sup> Coinbase Global, Inc. discloses “Our platform serves as a trusted and compliant on-ramp to the onchain economy and enables our users to engage in a wide variety of activities with their crypto assets in both our own proprietary and third-party product experiences enabled by access to decentralized applications.”<sup>59</sup> In addition, “Our business consists of products that we monetize through transaction fees, such as our consumer trading product suite, as well as subscription products and services, such as our stablecoin products.”<sup>60</sup> As the GENIUS ACT passes the Senate and moves to the House of Representatives for consideration, reports state “Coinbase is joining the rush to offer a credit card promising crypto rewards, with cardholders able to earn up to 4% back in bitcoin for everyday purchases... Crypto companies including the Winklevoss twins’ crypto exchange Gemini and Crypto.com unveiled similar offerings.”<sup>61</sup>

Article space limitations prohibit additional focus on Coinbase entities here; but, additional information is available.<sup>62</sup>

### III. SEC FIGHTS FRAUD UNDER CHAIR GARY GENSLER [2021 to 2024]

*“We oversee over \$110 trillion capital markets—about half stocks, and about half bonds and other markets. Crypto is a small piece of our overall markets; but, it is an outsized piece of the scams and frauds and problems in our markets; because, without prejudging any one token, much of this*

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<sup>58</sup> About Coinbase, Coinbase.com, <https://www.coinbase.com/about> (last viewed June 24, 2025).

<sup>59</sup> Coinbase Global, Inc., Ann. Rpt. On Form 10-K for period ending Dec. 31, 2024, at 7, <https://www.sec.gov/Archives/edgar/data/1679788/000167978825000022/coin-20241231.htm>.

<sup>60</sup> *Id.*

<sup>61</sup> Vicky Ge Huang, *Credit Cards Entice Users With Bitcoin Rewards*, WALL ST. J., June 27, 2025 at B9.

<sup>62</sup> See §\_\_ *Infra*. See also Lawrence J. Trautman, Looking at the Risk Disclosures from Coinbase Global, Inc, \_\_\_\_\_.

*fraud is noncompliant with the protections of our securities laws.”*

*Gary Gensler  
SEC Chair  
Speaking on CNBC Squawk Box  
With Andrew Ross Sorkin  
May 7, 2024<sup>63</sup>*

Nominated by President Joseph R. Biden and confirmed by the U.S. Senate, Gary Gensler served the SEC as Chair from April 17, 2021 until January 20, 2025. The SEC website reports, “In that role, Chair Gensler led the agency through a robust rulemaking agenda to enhance efficiency, resiliency, and integrity in the U.S. capital markets. He also oversaw an enforcement program that held wrongdoers accountable and returned billions to harmed investors...”<sup>64</sup> Under Chair Gensler’s leadership, “The SEC also set the stage for important debates regarding the growing use of artificial intelligence in the world of finance.”<sup>65</sup> The SEC website states:

During Chair Gensler’s tenure, the Commission vigorously followed the facts and the law without fear or favor to ensure that market participants comply with the securities laws whether it be regarding traditional financial products or more recent ones like crypto. The agency filed more than 2,700 enforcement actions and obtained approximately \$21 billion in penalties and disgorgement orders. Between fiscal years 2021 and 2024, the agency returned more than \$2.7 billion to harmed investors as the result of enforcement actions...

...

Immediately before joining the SEC, Chair Gensler was professor of the Practice of Global Economics and Management at the MIT Sloan School of Management, co-director of MIT’s Fintech@CSAIL, and senior advisor to the MIT Media Lab Digital Currency Initiative. From 2017 to 2019, he served as Chair of the Maryland Financial Consumer Protection Commission.

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<sup>63</sup> See, Lawrence J. Trautman, Brian Elzweig & Neal F. Newman, The SEC, Fraud, and Crypto Currencies, 90 MO. L. REV. (forthcoming), <https://ssrn.com/abstract=4965035>, citing Videorecording, Gary Gensler, SEC Chair, Speaking on CNBC Squawk Box with Andrew Ross Sorkin (May 7, 2024) at 0:29, <https://www.cnbc.com/video/2024/05/07/sec-chair-gensler-on-crypto-regulation-right-now-investors-arent-getting-the-required-disclosures.html>.

<sup>64</sup> Gary Gensler, Former Chair, SEC, <https://www.sec.gov/about/sec-commissioners/gary-gensler>.

<sup>65</sup> Gary Gensler, Former Chair, SEC, <https://www.sec.gov/about/sec-commissioners/gary-gensler>.

Earlier in his career, Chair Gensler worked at Goldman Sachs, where he became a partner in the Mergers and Acquisitions department, headed the firm's Media Group, led fixed income & currency trading in Asia, and was co-head of finance, responsible for the firm's worldwide Controllers and Treasury efforts.<sup>66</sup>

### Crypto Facilitates Criminal Payments, Tax Avoidance, and Terrorism

Cryptocurrencies have become widely recognized as payments conduits facilitating multinational organized crime transactions and those of terrorist groups.<sup>67</sup> In addition, widely reported schemes to facilitate tax avoidance<sup>68</sup> through the use of cryptocurrencies are reported.<sup>69</sup> Reports state, "more than \$50 billion [is] estimated to have been laundered through cryptocurrencies in the past few years."<sup>70</sup>

### FTX Implodes

Perhaps the most significant loss to investors during the tenure of Chair Gensler was the failure and subsequent bankruptcy of FTX, covered in adequate detail

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<sup>66</sup> *Id.*

<sup>67</sup> See Interpol, *Cryptocurrency Crime: Preventing the Misuse of Virtual Assets by Organized Crime for Money Laundering* (Dec. 9, 2023), <https://www.interpol.int/en/News-and-Events/News/2021/Cryptocurrency-crime-preventing-the-misuse-of-virtual-assets-by-organized-crime-for-money-laundering>; See also Richard H. Fair, *AML In the Void: Cross-Chain Bridges as a National Security Threat*, [published?] (2025), \_\_\_\_\_; Romina Gabbiadini, Lorenzo Gobbi & Eugenio Rubera, *Money Laundering and Blockchain Technology: Can You Follow the Trail of Cryptocurrency Transactions?*, Bk. Of Italy Occasional Paper No. 893 (2025), <http://ssrn.com/abstract=5247949>; Lawrence J. Trautman, *Virtual Currencies: Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?*, 20 RICH. J. L. & TECH. 13 (2014), <http://www.ssrn.com/abstract=2393537>.

<sup>68</sup> Lawrence J. Trautman, *Following the Money: Lessons from the "Panama Papers," Part 1: Tip of the Iceberg*, 121 PENN ST. L. REV. 807 (2017), <http://ssrn.com/abstract=2783503>. See also David D. Schein & Lawrence J. Trautman, *The Dark Web and Employer Liability*, 18(1) COLO. TECH. L.J. 49 (2020), <http://ssrn.com/abstract=3251479>.

<sup>69</sup> Congcong Li & Mark (Shuai) Ma, *Is Cryptocurrency the New Tax Haven for Tax Evaders? Exposé of Financial Secrecy in Tax Havens and Bitcoin Trading by Tax Evaders*, <http://ssrn.com/abstract=4731408>. See also § IX, *Infra*.

<sup>70</sup> Heather Yue Zhou, *Regulating Crypto Money Laundering: An Assessment of Current Regulatory Responses and Potentials for Technology-Based Solutions*, 8(2) STANFORD J. BLOCKCHAIN L. & POL'Y 142 (2025).

elsewhere.<sup>71</sup> As observed by professor Menesh Patel, “While investors now increasingly turn to crypto asset trading for portfolio appreciation and diversification, the popularization of secondary crypto asset trading risks significant investor harm through increased incidents of fraud.”<sup>72</sup>

Professors Ernst, Spatt, Routledge, and Zetlin-Jones write that “the bankruptcy... in November of 2022 impacted over one million individual accounts.”<sup>73</sup> Professor Mark Edwin Burge writes, “The original use case of Bitcoin and its progeny as a system of payment is at a legal fork and is, at this moment, eminently savable because of the presence of two uniform acts that are ripe for enactment by the states.”<sup>74</sup>

These are:

First, the 2022 amendments to the Uniform Commercial Code, which add the new Article 12, fill in gaps in commercial law for cryptocurrency that give it transactional certainty on a par with traditional checks and payment cards. Second, the Uniform Regulation of Virtual Currency Businesses Act creates crucial consumer protection for users of third-party digital wallets, transforming a technical convenience into a safer interface for mainstream users. If proponents of cryptocurrency wish to see it thrive as a mainstream payment system, then they would do well to press for enactment of the 2022 UCC Amendments and the URVCBA. Otherwise, the future of decentralized cryptocurrency is likely to be dominated by a potentially endless series of speculative bubbles rather than as acceptance as a payment system.<sup>75</sup>

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<sup>71</sup> Lawrence J. Trautman, *Tik Tok! TikTok: Escalating Tension Between U.S. Privacy Rights and National Security Vulnerabilities*, 108 MARQ. L. REV. (forthcoming), <http://ssrn.com/abstract=4163203>; Lawrence J. Trautman & Larry D. Foster II, *The FTX Crypto Debacle: Largest Fraud Since Madoff?*, 54 U. MEMPHIS L. REV. 289 (Winter 2023), <http://ssrn.com/abstract=4290093>. See also Thomas Conlon, Shaen Corbet & Yang Hu, *Understanding the Contagion Effects of the FTX Exchange Collapse*, (2023) [published?], <http://ssrn.com/abstract=4640797>.

<sup>72</sup> Menesh S. Patel, *Fraud on the Crypto Market*, 36 HARV. J. L. & TECH. 171 (2022).

<sup>73</sup> Thomas Ernst, Chester S. Spatt, Bryan Routledge & Ariel Zetlin-Jones, *Dark Crypto*, (2025) [published?], <http://ssrn.com/abstract=5186551>.

<sup>74</sup> Mark Edwin Burge, *After FTX: Can the Original Bitcoin Use Case Be Saved?* 72 KANSAS L. REV. 1 (2023), <http://ssrn.com/abstract=4571529>.

<sup>75</sup> Mark Edwin Burge, *After FTX: Can the Original Bitcoin Use Case Be Saved?* 72 KANSAS L. REV. 1 (2023), <http://ssrn.com/abstract=4571529>.

Speech by Gurbil S. Grewal, Director, Enforcement

In conducting research for this Article, I was struck by a 2023 speech given by Gurbil S. Grewal, Director, SEC’s Division of Enforcement. The juxtaposition of regulatory philosophy that has now become evident was well addressed in his talk before the William & Mary Business Law Review’s Third Annual Symposium entitled “Regulating Finance in a Changing Administrative State,” and his subsequent reflections on the topic. As is the case with all SEC officials, remarks made on occasions such as this does not necessarily reflect the views of the Commission, the Commissioners, or other members of the staff.<sup>76</sup> Accordingly, Director Grewal’s epilogue to remarks at this symposium, in relevant part, are now presented:

By the time I became Enforcement Director in July 2021, the SEC had already brought dozens of enforcement actions to address widespread noncompliance in the crypto markets. But, noncompliance, and the attendant investor risk, remained pervasive. Meanwhile, four months later, the combined market capitalization of crypto assets reached approximately \$3 trillion. This marked a 15-fold increase from just two years earlier. Soon after, however, the crypto market cratered, abetted by a series of high-profile failures and bankruptcies of major firms that caused extensive investor losses. It lost two-thirds of its market capitalization in just nine months, shedding value even quicker than it had gained it.

In short, my tenure as Director has coincided with extreme volatility and investor risk in the crypto markets. This has been vividly demonstrated by the dramatic increase in the number of complaints about crypto that investors submitted to the SEC’s Office of Investor Education and Advocacy (“OIEA”), from 820 in fiscal year 2019, the first year that OIEA’s annual list of Top Ten Categories of Complaints included crypto, to 5,357 in fiscal year 2023.

In response to this upheaval and rampant noncompliance, we have redoubled our enforcement efforts, some of which I was privileged to highlight in my speech at William & Mary. Perhaps unsurprisingly, there have been even more developments in the crypto markets since those remarks. Just days later, the Pew Research Center released a survey finding that nearly a third of Americans who had ever invested in, traded,

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<sup>76</sup> Gurbil S. Grewal, Director, Division of Enforcement, What’s Past is Prologue: Enforcing the Federal Securities Laws in the Age of Crypto, SEC (July 2, 2024), <https://www.sec.gov/newsroom/speeches-statements/grewal-remarks-age-crypto-070224>.

or used crypto, no longer held any. The number of lower-income Americans who had gotten out of crypto was even higher, at 43%, providing another vivid rejoinder to the narrative that crypto will uplift the unbanked, help them build wealth, and increase upward mobility.

The same survey found that a whopping three-quarters of Americans who have heard about crypto do not believe that crypto is reliable and safe. Given the continued noncompliance in this space, they have good reasons to be concerned. For example, in June 2023, the SEC charged the operators of the largest crypto asset trading platform in the world with allegedly combining the functions of an exchange, broker, dealer, and clearing agency without complying with the registration provisions of the federal securities laws applicable to any of those functions, depriving investors of crucial investor protections. The SEC's complaint also alleged that the operators commingled certain customer assets and attempted to evade U.S. securities laws by announcing sham controls that they disregarded so that they could keep high-value U.S. customers on their platforms.

The next day, the SEC also charged the operator of the largest crypto asset trading platform in the United States with intertwining the traditional services of an exchange, broker, and clearing agency without complying with the registration provisions applicable to any of them. Taken together, these matters, which were brought just about two months after my remarks, highlight what I believe to be the continued risk to investors in the crypto markets.

As if that were not enough, the Enforcement Division continues to address fraud and noncompliance in new and old forms in the crypto space. Among others, the SEC filed its first actions charging the illegal unregistered offerings of crypto asset securities in the form of purported non-fungible tokens (NFTs), applying the same well-trod test discussed above to determine that the NFTs were offered and sold as "investment contracts," and therefore were securities. The SEC also brought its first case charging a purportedly decentralized autonomous organization with failing to register its pooled crypto asset vehicles as investment companies, as required under the federal securities laws. And in another recent action, the SEC brought charges against individuals allegedly responsible for a \$1.7 billion crypto asset-related pyramid scheme.

Also notable, since my remarks, several courts have issued rulings in ongoing litigation expressly reaffirming *Howey's* application to crypto assets and rejecting not only the defendants' blanket arguments that the crypto assets at issue were not securities, but also, in the cases where the court addressed it, their attempt to invoke the "major questions doctrine."

In addition, in April 2024, the SEC completed its first trial involving crypto asset securities. After a nine-day trial, a jury in the United States District Court for the Southern District of New York found the defendants liable for orchestrating what the SEC alleged was a years-long fraud involving crypto asset securities that led to massive investor

losses when the scheme unraveled. Following the verdict, the defendants agreed to pay more than \$4.5 billion in disgorgement, prejudgment interest, and civil penalties.

In sum, the crypto markets remain fast-moving, volatile, and, I believe, rife with investor risk. [internal citations omitted]<sup>77</sup>

### Transition Early 2025

In her statement dated February 4, 2025, SEC Commissioner Hester M. Pierce comments, “The crypto road trip on which the newly announced Crypto Task Force has embarked... should be more enjoyable and less risky than the crypto road trip the Commission has taken the industry on for the last decade [under Chair Gensler].”<sup>78</sup>

Critical of the prior SEC leadership, Commissioner Pierce states:

On that last trip, the Commission refused to use regulatory tools at its disposal and incessantly slammed on the enforcement brakes as it lurched along a meandering route with a destination not discernible to anyone. But just as modern technology does not eliminate the risks of taking to the open road, this new journey toward regulatory clarity still presents dangers, and both the Commission and the public need to stay alert and aware of the risks and opportunities that may lie ahead. I am delighted to be accompanied on the journey by a wonderful team of talented SEC staff, and we look forward to engaging with many enthusiastic members of the public who will help us navigate on this journey. With all that assistance, I am hopeful that we will arrive at a place that is better than we could have imagined as we were careening down the road on the previous crypto road trip.<sup>79</sup>

Elsewhere, professors Trautman, Elzweig and Newman examine in detail the SEC’s enforcement actions taken during the Gensler administration against many crypto industry participants, including: Ripple Labs; certain Binance entities; FTX; Genesis

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<sup>77</sup> Gurbil S. Grewal, Director, Division of Enforcement, What’s Past is Prologue: Enforcing the Federal Securities Laws in the Age of Crypto, SEC (July 2, 2024), Epilogue, <https://www.sec.gov/newsroom/speeches-statements/grewal-remarks-age-crypto-070224>.

<sup>78</sup> Hester M. Peirce, SEC Commissioner, The Journey Begins, Statement (Feb 4. 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.

<sup>79</sup> *Id.*

Global Capital LLC; Terraform Labs; and Hex, Pulse Chain, and PulseX, just to name a few.<sup>80</sup>

#### IV. 2024 PRESIDENTIAL CAMPAIGN AND CRYPTO IMPACT

Although Donald Trump had been negative about Bitcoin and cryptocurrencies during 2019, by 2024 “many of Mr. Trump’s former administration officials went on to work for or lobby on behalf of the cryptocurrency industry.”<sup>81</sup>

##### Truth Social

According to the Associated Press, “President Donald Trump launched his social media platform, Truth Social, in early 2022, after he was banned from major sites such as Facebook and the platform formerly known as Twitter following the Jan. 6 attack on the U.S. Capitol.”<sup>82</sup> Trump Media & Technology Group Corp. (TMTG) “was incorporated on December 11, 2020 as Digital World Acquisition Corp., a blank check company formed for the purpose of entering into an initial business combination with one or more businesses or entities.”<sup>83</sup> TMTG now trades under the ticker symbol “DJT.”<sup>84</sup>

Among the risk factors listed in the TMTG registration statement are the following:

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<sup>80</sup> Lawrence J. Trautman, Brian Elzweig & Neal F. Newman, *The SEC, Fraud, and Crypto Currencies*, 90 MO. L. REV. 425 (2025), <https://ssrn.com/abstract=4965035>. See also Alexandros G. Kazimirov, *Regulation By Enforcement: A Retrospective of the SEC’s Vision for Digital Assets and An Alternative European Model*, 8(2) STANFORD J. BLOCKCHAIN L & POL’Y 237 (2025).

<sup>81</sup> Alan Rappeport, *Trump Reinvents Platform In a Bid To Court Voters*, N.Y. TIMES, Aug. 9, 2024 at A1-15.

<sup>82</sup> Associated Press, *What we know about Truth Social, Donald Trump’s social media platform* (Mar. 27, 2024), <https://apnews.com/article/truth-social-donald-trump-djt-ipo-digital-world-7437d5dcc491a1459a078195ae547987>.

<sup>83</sup> Trump Media & Technology Group Corp. Registration Statement on Form S-1, 10 (Aug. 24, 2024), [https://www.sec.gov/Archives/edgar/data/1849635/000114036124038409/ny20032766x1\\_s1.htm](https://www.sec.gov/Archives/edgar/data/1849635/000114036124038409/ny20032766x1_s1.htm).

<sup>84</sup> Trump Media Stock Drops, WSJ Staff, WALL ST. J., Sept. 21-22, 2024 at A4.

- If Truth Social fails to develop and maintain followers or a sufficient audience, if adverse trends develop in the social media platforms generally, or if President Donald J. Trump were to cease to be able to devote substantial time to Truth Social, TMTG’s business would be adversely affected...
- Computer malware, viruses, hacking, phishing attacks, and spamming could adversely affect TMTG’s business and results of operations...
- TMTG’s success depends in part on the popularity of President Donald J. Trump. Adverse reactions to publicity relating to President Donald J. Trump, or the loss of his services, could adversely affect TMTG’s revenues and results of operations.<sup>85</sup>

### Donald Trump Avid Crypto Supporter

*The New York Times* states, “as a candidate... Mr. Trump began taking in millions of dollars of cryptocurrency donations and allowing supporters to buy Trump-branded sneakers with Bitcoin. The Republican Party platform even included a pledge to ‘defend the right to mine Bitcoin.’”<sup>86</sup> During a July 2024 Bitcoin conference held in Nashville, “Mr. Trump said he wanted the United States to be the ‘crypto capital of the planet’ and the Bitcoin ‘super-power of the world’... ‘If crypto is going to define the future, I want it to me mined, minted and made in the U.S.A.’”<sup>87</sup> In addition, “he decided it was a good idea to cater to the more than 100 million Americans who use cryptocurrencies.”<sup>88</sup> About two months before election-day 2024, Mr. Trump is reported to buy hamburgers and Diet

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<sup>85</sup> Trump Media & Technology Group Corp. Registration Statement on Form S-1, 14 (Aug. 24, 2024), [https://www.sec.gov/Archives/edgar/data/1849635/000114036124038409/ny20032766x1\\_s1.htm](https://www.sec.gov/Archives/edgar/data/1849635/000114036124038409/ny20032766x1_s1.htm). See also Neal F. Newman & Lawrence J. Trautman, *Special Purpose Acquisition Companies (SPACs) and the SEC*, 24 U. PA. J. BUS. L. 639 (2022), <http://ssrn.com/abstract=3905372> (discussing mechanics of SPACs).

<sup>86</sup> Alan Rappeport, *Trump Reinvents Platform In a Bid To Court Voters*, N.Y. TIMES, Aug. 9, 2024 at A1-15.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

Coke at New York City's Pubkey, "the drinking hole for the bitcoin revolution," paying with Bitcoin.<sup>89</sup>

### Trump's Crypto Industry Candidate Support

According to *The Wall Street Journal*, "The crypto industry's courting of Trump was on full display at a June [2024] fundraising dinner in San Francisco. In attendance were representatives from some of crypto's largest U.S. businesses such as the exchange Coinbase and the payments platform Ripple."<sup>90</sup> Donald Trump's presidential campaign has embraced the crypto crowd, while "The crypto industry's network of nonpartisan super political-action committees has amassed a nearly \$170 million war chest to spend in the 2024 election cycle. Trump's campaign has raised millions of dollars in contributions made in cryptocurrencies, too."<sup>91</sup> By September of election year it was already reported that "Trump appointed Howard Lutnick, chairman and CEO of Cantor Fitzgerald, co-chair of his transition team, giving the crypto industry's biggest cheerleader on Wall Street a potentially powerful role... The rules will be written by people who love your industry, not hate your industry,' Trump said in his speech."<sup>92</sup> In addition, "At the conference, Trump also reiterated a pledge to commute the sentence of Ross Ulbricht, who created and ran the crypto-fueled Silk Road online drug marketplace before being sentenced to life imprisonment on federal drug and computer crime charges."<sup>93</sup>

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<sup>89</sup> Alex Leary & Vicky Ge Huang, *Trump Buys the Burgers And Pays With Bitcoin*, WALL ST. J., Sept. 19, 2024 at B6.

<sup>90</sup> Ben Foldy, Vicky Ge Huang & Caitlin Ostroff, *Trump Hitches Campaign to Crypto Crowd*, WALL ST. J., Sept. 21-22, 2024 at A4.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* See also Usman W. Chohan, *Crypto-Oligarchy: The Cryptocurrency Lobby in American Politics*, [published?] (2025), <http://ssrn.com/abstract=5080344>.

### Crypto Donors to Trump Inaugural

The second largest contributor to Trump’s inauguration “was the crypto currency company Ripple, which gave about \$4.9 million.”<sup>94</sup> As we will see later,<sup>95</sup> in May 2025 [Ripple] reached a settlement with the Securities and Exchange Commission to resolve a long-running lawsuit, sending its coin [price] soaring.”<sup>96</sup>

## V. TRUMP COMES TO TOWN

Days before taking office, President-elect Donald J. Trump and his family... started selling a cryptocurrency token featuring an image of Mr. Trump drawn from the July assassination attempt, a potentially lucrative new business that ethics experts assailed as a blatant effort to cash in on the office he is about to occupy again.”<sup>97</sup> By June 2025, *The Guardian* newspaper observes, “Donald Trump’s push to sharply ease oversight of the cryptocurrency industry, while he and his sons have fast expanded crypto ventures that have reaped billions of dollars from investors including foreign ones, is raising alarm about ethical and legal issues.”<sup>98</sup> In addition, “Trump’s ardent pursuit of crypto fortunes was highlighted in a report... from the watchdog group State Democracy Defenders Fund that estimated his crypto ventures as of mid-March to be worth about \$2.9bn. That is a striking sum since Trump’s crypto ventures are less than a year old.”<sup>99</sup>

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<sup>94</sup> Josh Dawsey & Patrick Thomas, *Big Donors to Trump Inaugural Reap Benefits in Washington*, WALL ST. J., June 4, 2025 at A1.

<sup>95</sup> § VI., *Infra*.

<sup>96</sup> Dawsey & Thomas, *supra* note 89.

<sup>97</sup> Eric Lipton, *President-Elect Is Selling New Crypto Meme Coin, Raising Ethical Concerns*, N.Y. TIMES, Jan. 19, 2025 at 25.

<sup>98</sup> Peter Stone, ‘Roadmap for corruption’: Trump dive into cryptocurrency raises ethical alarm, *Guardian*, (May 25, 2025), <https://www.theguardian.com/us-news/2025/may/25/trump-crypto-corruption-ethics>.

<sup>99</sup> *Id.*

### Trump Meme Coins

*The New York Times* reports, “Disclosed just days before his second inauguration, the venture is the latest in a series of moves by Mr. Trump that blur the line between his government role and the continued effort by his family to profit from his power and global fame.”<sup>100</sup> Consider that “this newest venture brings Mr. Trump and his family directly into the world of selling cryptocurrency, which is regulated by the Securities and Exchange Commission. Mr. Trump recently disclosed he intended to name a cryptocurrency advocate as S.E.C. chairman.”<sup>101</sup> Before assuming office, “Mr. Trump has... made clear that he will be working to promote the cryptocurrency industry. He has announced his intention to appoint regulators who will lift restrictions on the sale of new tokens and ties between cryptocurrency companies and other more traditional financial enterprises.”<sup>102</sup> *The New York Times* in June 2025 states the value of the meme coin \$TRUMP “on paper could be worth billions of dollars.”<sup>103</sup> And “Mr. Trump’s wife, Melania, contributed to the family income, receiving \$217,000 [during 2024] in licensing fees related to a digital token.”<sup>104</sup>

### Crypto Friendly

By mid-2025 ample examples illustrate “President Trump’s pledge to make America a ‘bitcoin superpower.’ Vice President JD Vance told attendees at a bitcoin conference in Las Vegas that the administration would press ahead with crypto-friendly

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<sup>100</sup> Eric Lipton, *President-Elect Is Selling New Crypto Meme Coin, Raising Ethical Concerns*, N.Y. TIMES, Jan. 19, 2025 at 25.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Ben Protess & Andrea Fuller, *Trump Cashes In on Cryptocurrency*, N.Y. TIMES, Jun. 15, 2025 at 20. *But see* David Krause, *Risks of Investing in Meme Coins: A Case Study of the \$Trump Coin*, <http://ssrn.com/abstract=1285149>.

<sup>104</sup> *Id.*

policies.”<sup>105</sup> In a related development, “The Senate is also preparing to pass legislation that would create a regulatory framework for stablecoins, which are used by traders to store cash or purchase other tokens.”<sup>106</sup>

### Family Financial Involvement in Crypto and Other Media

*The New York Times* reports that following Donald Trump’s assuming “office a second time this year, his crypto fortunes have skyrocketed through a series of business ventures that pose unprecedented conflicts of interest. Not only is Mr. Trump a major operator in the crypto industry, he is also its top policymaker—and a symbol of its rising stature in Washington.”<sup>107</sup> By mid-June 2025, “Mr. Trump’s mandatory financial disclosure report for 2024... previewed the crypto riches he is now poised to reap as president.”<sup>108</sup> In addition to Trump Media’s other assets, a TV streaming platform called Truth+ is announced during July 2025.<sup>109</sup> In just “a matter of months, the Trump family has reached into nearly every corner of the crypto industry.”<sup>110</sup>

### American Bitcoin

According to *The Wall Street Journal*, “The [Trump] family struck a deal in March [2025] to launch a bitcoin-mining company called American Bitcoin.”<sup>111</sup> In addition, “On a Wall Street conference call...Eric Trump made a pitch for the newest venture in his family’s rapidly expanding cryptocurrency empire... in the pitch [he] made clear that the policies of his father’s administration would give the new company,

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<sup>105</sup> Corrie Driebusch, *Crypto Firm Circle’s Shares Soar in Debut*, WALL ST. J., June 6, 2025 at B1.

<sup>106</sup> *Id.*

<sup>107</sup> Protess & Fuller, *supra* note 98.

<sup>108</sup> *Id.*

<sup>109</sup> Trump Media Kicks Off Streaming App Truth+, *The Digest*, N.Y. TIMES, July 8, 2025 at B2.

<sup>110</sup> Sam Goldfarb, Anthony Barros & Vicky Ge Huang, *Trump Discloses Financial Holdings*, WALL ST. J., June 16, 2025 at A4.

<sup>111</sup> *Id.*

American Bitcoin, a ‘competitive advantage.’”<sup>112</sup> *The New York Times* story reports, “Virtually every aspect of the trump family’s business portfolio is fraught with conflicts of interest that have blurred the boundary between government and industry.”<sup>113</sup> In addition, “The debut of American Bitcoin, which is set to merge with a publicly traded company later this year, has heightened those concerns, introducing new ethical questions and pulling the Trumps even deeper into crypto, a business the White House had aggressively championed.”<sup>114</sup>

### World Liberty Financial

Reports indicate “The Trump Family’s World Liberty Financial is launching a stablecoin, its latest bid to capitalize on a crypto-market revival kindled by the president’s election. World Liberty’s USD1 will be backed by short-term U.S. Treasuries, U.S. dollar deposits, and other cash equivalents, the company said.”<sup>115</sup> In addition, “The token will be issues on the Ethereum network and a blockchain created by Binance, the crypto exchange that has sought to forge closer ties to the president’s family.”<sup>116</sup> The disclosures for 2024 show Mr. Trump’s “Stake in World Liberty Financial, the cryptocurrency firm that he unveiled during the presidential campaign, earned about \$57 million, making it one of the Trump Family’s most lucrative investments in 2024. And a licensing deal involving a related industry, NFT collectibles, produced another \$1.2

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<sup>112</sup> David Yaffe-Bellany, *The Trumps Promote Bitcoin Mining Venture*, N.Y. TIMES, Jun. 18, 2025 at B1.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* But see David Krause, *Can the Trump Family Strike Digital Gold? Evaluating the Risks and Rewards of Their bitcoin Mining Venture*, [Published?], <http://ssrn.com/abstract=5204328>.

<sup>115</sup> Vicky Ge Huang, *Trump Family Venture Deepens Crypto Push*, WALL ST. J., Mar. 26, 2025 at A1.

<sup>116</sup> *Id.*

million.”<sup>117</sup> According to *The New York Times*, although the mandatory financial disclosure information “ends as of Dec. 31, 2024, World Liberty announced this year that it had sold more than a half-billion dollars’ worth of its coin, a significant portion of which the Trump family was entitled to.”<sup>118</sup>

### Retirement Plans Crypto Warning Rescinded

Law professor Lauren K. Valastro writes, “Regulating cryptocurrency’s place in America’s most popular retirement savings vehicle generates thorny legal, ethical, and social justice dilemmas.”<sup>119</sup> According to *The New York Times*, “The Labor Department, which oversees retirement plans, said on May 28 [2025] that it would adopt a neutral stance toward crypto, neither endorsing nor disapproving of plan managers who decide to include digital assets on 401(k) investment menus.”<sup>120</sup> The *Times* coverage states, “The shift is not surprising given the Trump administration’s enthusiastic embrace of the crypto industry, even if President Trump and his family’s crypto dealings have raised ethical questions with little precedent in presidential history.”<sup>121</sup> Regarding retirement accounts, journalists warn, “It’s obvious that the world is changing in dangerous ways, but we don’t yet know all the consequences. What is clear is that the rise of

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<sup>117</sup> Protesse & Fuller, *supra* note 98. See also David Guenther, *Cryptocurrencies, NFTs, and the Expanding Definition of “Investment Contract”: Has the S.E.C. Already Torpedoed the Howey Test?*, XXX(2) FORDHAM J. CORP. & FIN. L. (forthcoming), <http://ssrn.com/abstract=520681>; Edward Lee, *Recommendations to SEC Crypto Task Force for treatment of NFTs for Digital Art Under Securities Law and the First Amendment*, [published?] (2025), <http://ssrn.com/abstract=5213645>; Lawrence J. Trautman, *Virtual Art and Non-fungible Tokens*, 50 HOFSTRA L. REV. 361 (2022), <http://ssrn.com/abstract=3814087>; Brian Elzweig & Lawrence J. Trautman, *When Does A Nonfungible Token (NFT) Become A Security?*, 39 GA. ST. U. L. REV. 295 (2023), <http://ssrn.com/abstract=4055585>.

<sup>118</sup> Protesse & Fuller, *supra* note 98.

<sup>119</sup> Lauren K. Valastro, *Did the Superbowl Ad Curse Heighten Defined Contribution Plan Fiduciary Duties?: Deciphering the Legal and Ethical Landscape of Cryptocurrency Options in 401(k)s*, 57 U. MICH. J.L. REFORM 1 (2023), <http://ssrn.com/abstract=4773605>.

<sup>120</sup> Tara Siegel Bernard, *Trump Rescinds Crypto Warning*, N.Y. TIMES, Jun. 14, 2025 at B1.

<sup>121</sup> *Id.*

cryptocurrency is beginning to affect working people who are saving for retirement, a child's education or a home purchase.”<sup>122</sup>

## VI. SEC UNDER CHAIR PAUL S. ATKINS [2025-]

It *is* a new day at the SEC. While I have directed Commission staff across our policy Divisions to begin drafting rule proposals related to crypto, the staff continue to “clear the brush” through staff-level statements... as I mentioned at a recent Crypto Task Force roundtable, I would like the Commission to allow SEC registrants to custody and trade both securities and non-securities under one roof. Enabling this reality could reduce costs for investors while allowing non-security trading to enter a regulated environment at the federal level expeditiously.

Paul S. Atkins  
Chairman  
U.S. Securities and Exchange Commission  
May 19, 2025<sup>123</sup>

### Prior Experience

The SEC website discloses that “Paul S. Atkins was sworn into office as the 34<sup>th</sup> Chairman of the Securities and Exchange Commission on April 21, 2025, after being nominated by President Donald J. Trump on January 20, 2025, and confirmed by the U.S. Senate on April 9, 2025.”<sup>124</sup> A lawyer, Chairman Atkins “first worked at the SEC in the 1990s as an advisor to former Chairman Richard Breedon. He rejoined the SEC as a Republican Commissioner in 2002 and stayed until 2008, when he left and formed [a]

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<sup>122</sup> Jeff Sommer, *Crypto May Be Spreading in Your Retirement Account*, N.Y. TIMES, Jun. 15, 2025 at BU 3.

<sup>123</sup> Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission: Prepared Remarks Before SEC Speaks (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

<sup>124</sup> Chairman Paul S. Atkins, U.S. Sec. & Exch. Comm., <https://www.sec.gov/about/sec-commissioners/paul-s-atkins>.

consulting firm.”<sup>125</sup> As a result “Areas that became priority targets for enforcement during the Biden administration, including cryptocurrency trading and environmental disclosures, are on the chopping block.”<sup>126</sup>

### Creation of Crypto Division

On January 21, 2025, “SEC Acting Chairman Mark T. Uyeda launched a crypto task force dedicated to developing a comprehensive and clear regulatory framework for crypto assets. Commissioner Hester Peirce will lead the task force.”<sup>127</sup> The Task Force intended to “collaborate with Commission staff and the public to set the SEC on a sensible regulatory path that respects the bounds of the law. To date, the SEC has relied primarily on enforcement actions to regulate crypto retroactively and reactively, often adopting novel and untested legal interpretations along the way.”<sup>128</sup>

The Commission observes, “Clarity regarding who must register, and practical solutions for those seeking to register, have been elusive. The result has been confusion about what is legal, which creates an environment hostile to innovation and conducive to fraud. The SEC can do better.”<sup>129</sup> It will be the focus of the Task Force to “help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously.”<sup>130</sup>

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<sup>125</sup> Dave Michaels, *Trump’s SEC Pick Was Once Wall Street’s Expert for Hire*, WALL ST. J., Feb. 26, 2025 at A5.

<sup>126</sup> *Id.*

<sup>127</sup> Press Release 2025-30, Sec Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force, SEC (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

Commissioner Hester M. Peirce

Before her appointment as SEC Commissioner by President Donald J. Trump in January 2018, she “conducted research on the regulation of securities markets at the Mercatus Center at George Mason University... was a Senior Counsel on the U.S. Senate Committee on Banking, Housing, and Urban Affairs... where she advised members of the Committee on securities issues.”<sup>131</sup>

Commissioner Peirce states:

This undertaking will take time, patience, and much hard work. It will succeed only if the Task Force has input from a wide range of investors, industry participants, academics, and other interested parties. We look forward to working hand-in-hand with the public to foster a regulatory environment that protects investors, facilitates capital formation, fosters market integrity, and supports innovation.<sup>132</sup>

Within the Crypto Commission’s first few months, statements were issued addressing the following subjects: protocol staking activities; broker-dealer custody of digital asset securities; crypto asset activities and distributed ledger technology; offerings and registrations of securities in the crypto asset markets; stablecoins; certain proof-of-work mining activities; meme coins; and associated accounting rules and regulations. Here is a description regarding some of these issues.

Certain Protocol Staking Activities

The SEC’s Division of Corporation Finance states, the “staking of crypto assets that are intrinsically linked to the programmatic functioning of a public, permissionless network, and are used to participate in and/or earned for participating in such network’s consensus mechanism or otherwise used to maintain and/or earned for maintaining the

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<sup>131</sup> Commissioner Hester M. Peirce, SEC, <https://www.sec.gov/about/sec-commissioners/hester-m-peirce>.

<sup>132</sup> *Id.*

technological operation and security of such network.”<sup>133</sup> In addition, “We refer in this statement to these crypto assets as “Covered Crypto Assets” and their staking on PoS Networks as “Protocol Staking.”<sup>134</sup> For additional information about this topic, readers are referred to the detailed statement.<sup>135</sup>

### Broker-Dealer Custody of Digital Asset Securities

On May 15, 2025 the SEC’s Division of Trading and Markets issued a withdrawal of the joint staff statement on broker-dealer custody of digital asset securities that had previously been issued on July 8, 2019.<sup>136</sup>

On April 25, 2025, the SEC hosted a roundtable on crypto custody at its Washington, D.C. headquarters. Moderated by attorney Zach Zweihorn, panelists included: Jason Allegrante (Fireblocks); Rachel Anderika (Anchorage Digital Bank); Terrence Dempsey (Fidelity Digital Asset Services, LLC); Mark Greenberg (Kraken); Veronica McGregor (Exodus Movement, Inc.); Brandon Russell (Etana Custody, Inc); Tammy Weinrib (Copper Technologies Ltd.); Justin Browder (Simpson Thatcher & Bartlett LLP); Mike Didiuk (Schulte Roth & Zabel, LLP); Larry Florio (1Kx); Elliott Frank (Distributed Global LLC); Susan Gault-Brown (Allen Overy Shearman Sterling LLP); Adam Levitin (Georgetown University Law Center); Ryan Louvar (WisdomTree,

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<sup>133</sup> Statement on Certain Protocol Staking Activities, Div. of Corp. Fin., SEC (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>. (last viewed June 25, 2025).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Statement Withdrawal of the Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities, Div. of Trading & Mkts., SEC & Off. Gen. Counsel, Fin. Indus. Reg. Auth. (May 15, 2025), <https://www.sec.gov/newsroom/speeches-statements/withdrawal-joint-staff-statement-broker-dealer-custody-digital-asset-securities>. (last viewed June 25, 2025).

Inc.); Neel Maitra (Dechert LLP); and Charles Mooney (University of Pennsylvania Carey Law School).<sup>137</sup>

### Crypto Asset Activities and Distributed Ledger Technology

Of potential help, the SEC’s staff of the Division of Trading and Markets offers a pronouncement and “responses to frequently asked questions relating to crypto asset activities and distributed ledger technology.”<sup>138</sup> Further to those meetings previously mentioned, as part of the Commission’s Crypto Task Force efforts, additional roundtables were held during the Spring of 2025. On April 11, a roundtable on crypto trading was held at the Washington headquarters featuring: Moderator Nicholas Losurdo (Goodwin Procter LLP); and the following panelists: Tyler Gellasch (Healthy Markets Association); Jon Herrick (NYSE); Richard Johnson (Texture Capital); Dave Lauer (Urvin Finance & We the Investors); Katherine Minarik (Uniswap Labs); Christine Parlour (UC Berkeley); Chelsea Pizzola (Cumberland DRW); Austin Reid (FalconX); and Gregory Tusar (Coinbase).<sup>139</sup>

Then, on May 12, the Crypto Task Force hosted a roundtable on “Tokenization—Moving Assets Onchain: Where TradFi and DeFi Meet.”<sup>140</sup> Moderated by Jeff Dinwoodie (Cravath); panelists included: Cynthia Lo Bessette (Fidelity); Eun Ah Choi

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<sup>137</sup> Press Release No. 2025-65, SEC Announces Agenda, Panelists for Roundtable on Crypto Custody (Apr. 16, 2025), Press Release No. 2025-65, SEC Announces Agenda, Panelists for Roundtable on Crypto Custody (Apr. 16, 2025),

<sup>138</sup> Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology, SEC (May 15, 2025), <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology>. (last viewed June 25, 2025).

<sup>139</sup> Press Release 2025-61, SEC Announces Agenda, Panelists for Roundtable on Crypto Trading (Apr. 7, 2025), <https://www.sec.gov/newsroom/press-releases/2025-61>.

<sup>140</sup> Press Release 2025-72, SEC Announces Agenda, Panelists for Roundtable on Tokenization Plus Date Change for Roundtable on DeFi (May 5, 2025), <https://www.sec.gov/newsroom/press-releases/2025-72>.

(Nasdaq); Will Geyer (Invesco); Sandy Kaul (Franklin Templeton); Robert Mitchnick (Blackrock); Christine Moy (Apollo Management); Johnny Reinsch (Tokenized Asset Coalition); Christian Sabella (DTCC); and Alex Zozos (SuperState).<sup>141</sup>

### Securities in the Crypto Asset Markets

The Division of Corporation Finance “as part of an effort to provide greater clarity on the application of securities laws to crypto assets... provided its views about the application of certain disclosure requirements under the federal securities laws to offerings and registrations of securities in the crypto asset markets.”<sup>142</sup> Accordingly, “These offerings and registrations may involve equity or debt securities of issuers whose operations relate to networks, applications, and/or crypto assets. These offerings and registrations also may relate to crypto assets offered as part of or subject to an investment contract (such a crypto asset, a ‘subject crypto asset’).”<sup>143</sup> Following the formation of the Crypto Task Force to “develop a comprehensive and clear regulatory framework for crypto assets, including addressing applicable registration and disclosure requirements. The Division is issuing this statement to provide its views during the pendency of these deliberations.”<sup>144</sup> The Division states:

The disclosures required in connection with offerings and registrations under the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”) protect investors, facilitate capital formation, and promote fair, orderly, and efficient markets. In recent years, some issuers in the crypto asset markets have registered or qualified offerings of securities under the Securities Act or registered a class of securities under the Exchange Act. This statement reflects our

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<sup>141</sup> *Id.*

<sup>142</sup> Offerings and Registrations of Securities in the Crypto Asset Markets, Div. of Corp. Fin., SEC (April 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025>.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

observations regarding disclosures provided in response to existing disclosure requirements. It also addresses our views about certain specific disclosure questions that market participants have presented to the staff. While disclosures should be based on an issuer's specific facts and circumstances, we believe that issuers may benefit from the identification of common issues we have identified during our reviews.

This statement addresses our views about certain disclosure requirements set forth in Regulation S-K as they apply to Securities Act registration forms (such as Form S-1) and Exchange Act registration forms (such as Form 10). This statement also addresses our views about certain disclosure requirements of Form 20-F when used by foreign private issuers to register classes of securities under the Exchange Act, and Form 1-A for offerings exempt from registration under Regulation A. This statement does not address all material disclosure items, and the disclosure topics addressed below may not be relevant for all issuers. Each issuer should consider its own facts and circumstances when preparing its disclosures. Each issuer also should consider whether it is permitted to provide "scaled disclosure" with respect to any applicable disclosure requirements. Moreover, issuers should note that disclosure is not required where a particular disclosure requirement is not applicable, or they otherwise do not have responsive information.

In this statement, we sometimes address the same or similar disclosure items in more than one place. This should not be read to suggest providing duplicative disclosure in multiple places throughout filings. Rather, issuers should use their judgment in determining the location for any relevant disclosures.

#### Description of Business

SEC rules require issuers to provide a narrative description of the material aspects of their business. Issuers are required to disclose information material to an understanding of the general development of their business, and, in the case of the business done and intended to be done by the issuer, only information material to an understanding of the business taken as a whole (or with respect to each segment, if applicable).

Disclosure should be tailored to the issuer's business and presented in clear, concise, and understandable language, without overly relying on technical terminology or jargon. For example, we have observed disclosure that:

- Specifically relates to the material aspects of the issuer's current or proposed business, rather than to crypto networks, crypto assets, or other technologies that are not specific or material to the issuer's current or proposed business.
- Addresses the current stage of development of the business and clearly delineates any forward-looking or future plans of development.
- Is consistent with the issuer's public statements and promotional materials (including, without limitation, white papers, and developer documentation) relating to material aspects of the business.

We also have observed the following disclosure with respect to current or proposed business plans:

- The issuer’s specific business activity, such as operating or developing a network or application, and the current stage of development of the business.
- Whether the issuer intends to continue to operate the business following the launch of a network or application, and, if so, a description of the issuer’s contemplated business activities. If not, a description of how the business will be operated following launch and whether another entity will be involved in such operations.
- To the extent the business has not been fully implemented, milestones (including technology development milestones) needed to fully implement the business.
- How the issuer generates or expects to generate revenue or increase profitability and/or value.
- Whether the security or crypto asset has any function(s) in the operation of the business, including whether it has any intended use or role in an associated network or application.

Where an issuer is developing or acquiring or intending to develop or acquire a network or application, we have observed issuers tailoring their disclosure to provide a narrative description of the purpose of the network or the application, and its operation, including the following:

- Whether the initial development team is developing a network and/or application and/or a crypto asset for the network or application.
- The current state and timeline for the development of the network and/or application to show how and when the initial development team intends to achieve network maturity or deploy the application.
- Milestones needed to fully develop the network, application, and/or crypto asset, including an estimated timeline, the estimated costs to reach key milestones, and the source of funds for the development of the network, application, and/or crypto asset.
- The objectives of the network and how the technology of the network or application functions and accomplishes its objectives, including its architecture, software, cryptographic key management, and functionality.
- Whether the technology is derived from proprietary or open-sourced software, and a description of any licenses or intellectual property rights relating to the technology.
- The process for validating transactions, the consensus mechanism, the block size, the transaction speed, the transaction (or “gas”) fees, and reward mechanism, if any.
- A description of any products and services that will be offered through the network and/or application.
- The various roles that exist or are intended to exist in connection with the network and/or application, such as users, onchain and offchain service providers, developers, transaction validators, and governance participants.
- The process of how network and application upgrades and updates are disclosed, proposed, developed, reviewed, and ultimately deployed.
- The measures, if any, taken to ensure network and/or application security.
- A description of the network or application’s governance system, as applicable.

#### Risk Factors

SEC rules require a discussion of the material factors that make an investment in the registrant or the offering speculative or risky. In the context of offerings and registrations of securities in the crypto asset markets, the content and scope of an issuer's disclosure will depend on the nature of the security and the issuer's business, and may include factors that address the development and implementation of the issuer's business and the particular characteristics of the security, such as its features, price volatility, limited rights of holders, valuation and liquidity risks, technological risks, cybersecurity risks, business, operational, and network risks, and legal and regulatory risks. Disclosure should address risks relating to an associated network or application if material.

The following are examples of risks that have been disclosed:

- Risks relating to the issuer's planned business operations, such as risks relating to technology and cybersecurity, and implementation of the issuer's business, as well as reliance on another network or application.
- Risks relating to the security, such as the risks relating to any unique characteristics of the security including its form, price volatility, the rights of holders or their lack of rights, valuation and liquidity, supply, and custody.
- Risks related to other applicable laws and regulations, such as whether the issuer's activities may require it to register with the Financial Crimes Enforcement Network or certain state financial services agencies under money transmission laws, or to register with another regulatory authority, such as federal or state banking regulators or the Commodity Futures Trading Commission.

#### Description of Securities

SEC rules require an issuer to provide a materially complete description of its securities. The specific disclosure depends on the particular type of security, with these rules setting forth requirements for specifically identified types of securities, such as traditional capital stock and debt securities. These rules also include a general category for securities that are not specifically identified, referring to them as "other securities" or "other kinds of securities." In the context of offerings and registrations of securities in the crypto asset markets, we have observed disclosure where issuers have considered how this requirement applies in the context of their particular security, such as where an offering or registration involves a subject crypto asset. In these cases, issuers have provided a description of the terms, rights, and characteristics of the security in their specific context. It is important for investors to understand what the security represents.

Examples of disclosure we have observed in the context of describing a security in the crypto asset markets include, among others, the following:

#### Rights, Obligations, and Preferences

- How the rights of holders and characteristics of the security are memorialized, how such rights and characteristics convey when the security is transferred, and whether, when and by whom such rights and characteristics can be modified.

- The rights that holders have and do not have, such as with respect to dividends, payments, profit sharing, distributions, and voting rights, as well as the rights holders have to enforce their rights, preferences, and obligations.
- If the holders have voting rights, how the issuer intends to comply with applicable proxy rules.
- The rights that holders have and do not have with respect to transactions that impact the issuer or the network, such as liquidation, bankruptcy, sale, merger, network forks or other similar events.
- The characteristics of the security, such as term, maturity, restrictions on transferability, how the security or subject crypto asset can be accessed, held and transferred, redeemed, retired, or burned, whether the security can be loaned or pledged and by whom, and whether the security will be certificated or uncertificated, and eligible for deposit at a securities depository.

#### Technical Specifications

- The network or application associated with the security or subject crypto asset, and whether the underlying code can be modified, how, when, and by whom, and what effect(s) that may have on the rights of a holder of the security or subject crypto asset.
- The technical requirements for holding, accessing and transferring the security or subject crypto asset, such as the requirements and characteristics as to wallets and keys, whether the wallet addresses of the sender and receiver must be included in an approved list of participants, and any network transaction fees required for the transfer of the security or subject crypto asset and who is responsible for those fees.
- Where the definitive record of ownership exists and who maintains it.
- Whether the security or subject crypto asset is divisible, and, if so, whether there are any limits on its division.
- Whether the security or subject crypto asset and the smart contract(s) and/or code on which it is/are based, if applicable, have been subjected to a third-party security audit (*i.e.*, an independent assessment to identify vulnerabilities and ensure compliance with industry standards), and if, so who conducted the audit and the results of the audit.

#### Supply

- The rules governing the total supply of the security or subject crypto asset, including the total supply, whether it is fixed at a maximum possible supply, the method for minting or generating the security or subject crypto asset, whether the supply will be created at initial generation or continuously or from time to time, whether there is a process for redeeming, retiring, freezing or burning the security or subject crypto asset, whether any of the supply is reserved for the network's treasury, particular uses or participants, and whether any portion of the supply is subject to vesting and/or lock-ups.
- Whether any entity or person (or group of persons) is responsible for implementing rules governing the total supply and/or has the authority or ability to change the rules.
- Whether the issuer intends to enter into any arrangements with market makers or similar firms to distribute and/or provide liquidity for the security or a subject crypto asset and the terms of such arrangement.

If the issuer's business involves crypto assets that themselves are not securities, whether offered as part of or subject to an investment contract or otherwise, similar disclosures, if material, may be relevant to the section of the registration or offering statement discussing the issuer's business.

#### Directors, Executive Officers, and Significant Employees

SEC rules require disclosure of information relating to the identity and experience of those entrusted with the management of the issuer, including executive officers, directors, and certain significant employees who are (or are expected) to make a significant contribution to the issuer's business. SEC rules also require such disclosure for persons who do not hold formal titles or positions as executive officers or directors but who perform policy-making functions typically performed by executive officers or perform similar functions as directors. Further, if a third party is performing the policy-making functions typically performed by executive officers and directors, we have observed disclosure addressing the third party that satisfies the applicable disclosure requirements. For example, certain trusts – such as the spot crypto exchange-traded products – have a sponsor with directors and executive officers who perform functions similar to directors or executive officers of the trust. In these cases, disclosure has been provided with respect to the directors or executive officers of the sponsor. Although disclosure regarding executive compensation of the issuer would not be applicable in this situation, disclosure may be required of any fees paid to the third party for performing such functions.

#### Financial Statements

SEC rules require issuers to provide financial statements that comply with applicable requirements. Issuers with requests for assistance regarding the form and content of financial statements and other financial information required to be included in Commission filings should contact the Division's Office of Chief Accountant. Issuers may also consult with the SEC's Office of the Chief Accountant on accounting and financial reporting questions, especially those involving unusual, complex, or innovative transactions.

#### Exhibits

SEC rules require an issuer to file as an exhibit any instrument defining the rights of security holders. In connection with offerings and registrations of securities in the crypto asset markets, to the extent that the rights, preferences, and obligations of holders of the securities are memorialized in smart contract(s) or otherwise programmed into the code of a network or application, we have observed filings include as an exhibit the code of the smart contract(s) and/or the network or application, with the issuer updating any such exhibit in response to subsequent changes in such code. [internal citations omitted]<sup>145</sup>

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<sup>145</sup> *Id.*

### Certain Proof-of-Work Mining Activities

On March 20, 2025 the SEC’s Division of Corporation Finance issued its Statement on Certain Proof-of-Work Mining Activities. In this statement, the Division looks at “mining” issues surrounding, “crypto assets that are intrinsically linked to the programmatic functioning of a public, permissionless network, and are used to participate in and/or earned for participating in such network’s consensus mechanism or otherwise used to maintain and/or earned for maintaining the technological operation and security of such network.”<sup>146</sup> The Division states:

We refer in this statement to these crypto assets as ‘Covered Crypto Assets’ and their mining on proof-of-work networks as ‘Protocol Mining.’  
Protocol Mining

Networks rely upon cryptography and economic mechanism design to eliminate the need for designated trusted intermediaries to verify network transactions and provide settlement assurances to users. The operation of each network is governed by an underlying software protocol, consisting of computer code, that programmatically enforces certain network rules, technical requirements, and rewards distributions. Each protocol incorporates a “consensus mechanism,” or method for enabling the distributed network of unrelated computers (known as “nodes”) that maintain the peer-to-peer network to agree on the “state,” or authoritative record of network address ownership balances, transactions, smart contract code, and other data, of the network. Public, permissionless networks allow anyone to participate in the network’s operation, including the validation of new transactions to the network in accordance with the network’s consensus mechanism.

Proof-of-work (“PoW”) is a consensus mechanism that incentivizes network transaction validation by rewarding network participants, called “miners,” who operate nodes adding computational resources to the network. PoW involves validating transactions on a network and adding them in blocks to the distributed ledger. The “work” in PoW is the computational resources that miners contribute to validate transactions and add new blocks to the network. Miners do not have to own the network’s Covered Crypto Asset to validate transactions.

Miners use computers to solve complex mathematical equations in the form of cryptographic puzzles. Miners compete with their peers to

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<sup>146</sup> Statement on Certain Proof-of-Work Mining Activities, Div. of Corp. Fin., SEC (March 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025>.

solve these puzzles, and the first miner to solve a puzzle is tasked with accepting batches of transactions from other nodes and validating (or proposing) new blocks of transactions to the network. In exchange for providing validation services, miners earn “Rewards” in the form of newly “minted” or created Covered Crypto Assets that are delivered under the terms of the protocol.<sup>[6]</sup> In this way, PoW creates an incentive for miners to invest the resources necessary to add valid blocks to the network.

A miner providing validation services receives the Reward only after the other nodes in the network verify, through the protocol, that the solution is correct and valid. To this end, once a miner finds the correct solution, it broadcasts this information to other miners who can verify whether the miner properly solved the puzzle to receive the Reward. Once verified, all miners then add the new block to their own copies of the network. PoW is designed to secure the network by requiring miners to spend considerable time and computational resources to authenticate transactions. When the validation process functions in this way, it not only makes it less likely that someone would seek to undermine a network but also makes it less likely that miners could include altered transactions, such as those enabling the “double spending” of Covered Crypto Assets.

In addition to self (or solo) mining, miners can join “mining pools,” which allow miners to combine their computational resources to increase their chances of successfully validating transactions and mining new blocks on the network. Mining pools have developed into various types, each with differing methods of operation and Reward distribution. A pool operator typically is responsible for coordinating the miners’ computational resources, maintaining the pool’s mining hardware and software, overseeing the pool’s security measures to protect against theft and cyberattacks, and ensuring that the miners are paid their Rewards. In return, the pool operator charges a fee that is deducted from the miners’ share of the Rewards earned by the mining pool. Reward payouts vary among pools, although Rewards often are distributed across the mining pool in proportion to the amount of computational resources that each miner contributes to the pool. Miners have no obligation to stay in a pool and can choose to leave a pool at any time.

#### Division’s View on Protocol Mining Activities

It is the Division’s view that “Mining Activities” (defined in this statement) in connection with Protocol Mining, under the circumstances described in this statement, do not involve the offer and sale of securities within the meaning of Section 2(a)(1) of the Securities Act of 1933 (the “Securities Act”) and Section 3(a)(10) of the Securities Exchange Act of 1934 (the “Exchange Act”). Accordingly, it is the Division’s view that participants in Mining Activities do not need to register transactions with the Commission under the Securities Act or fall within one of the Securities Act’s exemptions from registration in connection with these Mining Activities.

#### Protocol Mining Activities Covered by this Statement

The Division's view pertains to the following Protocol Mining activities and transactions ("Mining Activities" and each a "Mining Activity"): (1) mining Covered Crypto Assets on a PoW network; and (2) the roles of mining pools and pool operators involved in the Protocol Mining process, including their roles in connection with the earning and distribution of Rewards. Only Mining Activities undertaken in connection with the following types of Protocol Mining are addressed in this statement.

- Self (or Solo) Mining, which involves a miner mining Covered Crypto Assets using its own computational resources. The miner may work alone or together with others to operate a node and mine Covered Crypto Assets.
- Mining Pool, which involves miners combining their computational resources with other miners to increase their chances of successfully validating transactions and mining new blocks on the network. Reward payments may flow from the network directly to the miners or indirectly to them through the pool operator.

#### Discussion

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act each defines the term "security" by providing a list of various financial instruments, including "stock," "note," and "bond." Because a Covered Crypto Asset does not constitute any of the financial instruments that are specifically enumerated in the definition of "security," we conduct our analysis of certain transactions involving Covered Crypto Assets in the context of Protocol Mining under the "investment contract" test set forth in *SEC v. W.J. Howey Co.* The "*Howey test*" is used to analyze arrangements or instruments not listed in those statutory sections based on their "economic realities."

In evaluating the economic realities of a transaction, the test is whether there is an investment of money in an enterprise premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. Federal courts since *Howey* have explained that *Howey's* "efforts of others" requirement is satisfied when "the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise."

#### Self (or Solo) Mining

A miner's Self (or Solo) Mining is not undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. Rather, a miner contributes its own computational resources, which secure the network and enable the miner to earn Rewards issued by the network in accordance with its software protocol. To earn Rewards, the miner's activities must comply with the rules of the protocol. By adding its computational resources to the network, the miner merely is engaging in an administrative or ministerial activity to secure the network, validate transactions and add new blocks, and receive Rewards. A miner's expectation to receive Rewards is not

derived from any third party's managerial or entrepreneurial efforts upon which the network's success depends. Instead, the expected financial incentive from the protocol is derived from the administrative or ministerial act of Protocol Mining performed by the miner. As such, Rewards are payments to the miner in exchange for services it provides to the network rather than profits derived from the entrepreneurial or managerial efforts of others.

#### Mining Pool

Likewise, when a miner combines its computational resources with other miners to increase their chances of successfully mining new blocks on the network, the miner has no expectation of profit derived from the entrepreneurial or managerial efforts of others. By adding its own computational resources to a mining pool, the miner merely is engaging in an administrative or ministerial activity to secure the network, validate transactions and add new blocks, and receive Rewards. In addition, any expectation of profits that the miners have is not derived from the efforts of a third party, such as a pool operator. Even when participating in a mining pool, individual miners still perform the actual mining activity by contributing their computational power to solve the cryptographic puzzles for validation of new blocks. Moreover, whether a miner self (or solo) mines or mines as a member of a mining pool does not alter the nature of Protocol Mining for purposes of the *Howey* analysis. In either case, Protocol Mining, as described in this statement, remains an administrative or ministerial activity. Further, a pool operator's activities in operating the mining pool using the combined computational resources of participating miners primarily are administrative or ministerial in nature. While some of the pool operator's activities may benefit the group of miners, any such efforts are not sufficient to satisfy *Howey's* "efforts of others" requirement because miners primarily are relying on the computational resources that they provide in conjunction with other members to the mining pool to earn profits. To this end, a miner does not join a mining pool based on the ability to earn profits passively from the activities of the pool operator. [internal citations omitted]<sup>147</sup>

#### Meme Coins

On February 27, 2025 the SEC's Division of Corporation Finance issued its pronouncement about meme coins. A "meme coin" can be defined as "a type of crypto asset inspired by internet memes, characters, current events, or trends for which the promoter seeks to attract an enthusiastic online community to purchase the meme coin

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<sup>147</sup> *Id.*

and engage in its trading”<sup>148</sup> The Division of Corporation Finance continues, “Although individual meme coins may have unique features, meme coins typically share certain characteristics. Meme coins typically are purchased for entertainment, social interaction, and cultural purposes, and their value is driven primarily by market demand and speculation. In this regard, meme coins are akin to collectibles.”<sup>149</sup> In addition, “Meme coins also typically have limited or no use or functionally. Given the speculative nature of meme coins, they tend to experience significant market price volatility, and often are accompanied by statements regarding their risks and lack of utility, other than for entertainment or other non-functional purposes.”<sup>150</sup> Consider:

It is the Division’s view that transactions in the types of meme coins described in this statement, do not involve the offer and sale of securities under the federal securities laws. As such, persons who participate in the offer and sale of meme coins do not need to register their transactions with the Commission under the Securities Act of 1933 (“Securities Act”) or fall within one of the Securities Act’s exemptions from registration. Accordingly, neither meme coin purchasers nor holders are protected by the federal securities laws.

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Securities Exchange Act of 1934 each defines the term “security” by providing a list of various financial instruments, including “stock,” “note,” and “bond.” A meme coin does not constitute any of the common financial instruments specifically enumerated in the definition of “security” because, among other things, it does not generate a yield or convey rights to future income, profits, or assets of a business. In other words, a meme coin is not itself a security. The aforementioned statutory sections also provide that “investment contracts” are securities. Given that a meme coin is not itself a security, we conduct our analysis of whether a meme coin may be offered and sold as part of an investment contract under the “investment contract” test set forth in *SEC v. W.J. Howey Co.* The *Howey* test analyzes whether certain arrangements or instruments are investment contracts based on their “economic realities.”

In evaluating the economic realities of a transaction, the *Howey* test considers whether there is an investment in an enterprise

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<sup>148</sup> Staff Statement on Meme Coins, Div. of Corp. Fin., SEC (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. Federal courts since *Howey* have explained that *Howey's* “efforts of others” requirement is satisfied when “the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”

The offer and sale of meme coins does not involve an investment in an enterprise nor is it undertaken with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. First, meme coin purchasers are not making an investment in an enterprise. That is, their funds are not pooled together to be deployed by promoters or other third parties for developing the coin or a related enterprise. Second, any expectation of profits that meme coin purchasers have is not derived from the efforts of others. That is, the value of meme coins is derived from speculative trading and the collective sentiment of the market, like a collectible. Moreover, the promoters of meme coins are not undertaking (or indicating an intention to undertake) managerial and entrepreneurial efforts from which purchasers could reasonably expect profit.

Notwithstanding the foregoing, this statement does not extend to the offer and sale of meme coins that are inconsistent with the descriptions set forth above, or products that are labeled “meme coins” in an effort to evade the application of the federal securities laws by disguising a product that otherwise would constitute a security. As noted above, the Division will evaluate the economic realities of the particular transaction.

Further, although the offer and sale of meme coins may not be subject to the federal securities laws, fraudulent conduct related to the offer and sale of meme coins may be subject to enforcement action or prosecution by other federal or state agencies under other federal and state laws. [internal footnotes omitted]<sup>151</sup>

### Chairman’s Focus

On his 20<sup>th</sup> working day as SEC Chairman, Paul S. Atkins testifies to the U.S. House Appropriations Subcommittee on Financial Services and General Government, “I have returned to the SEC where I was a Commissioner from 2002 to 2008. In that time, I advocated for greater transparency at the agency and emphasized robust cost-benefit analysis when considering new

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<sup>151</sup> *Id.* See also Guneet Kaur Nagpal & Luc Renneboog, *Valuing Digital Art: On Non-fungible Tokens, Blockchain Hypes, and the Creation of Scarcity* [published?] (2024), <http://ssrn.com/abstract=4622618>.

regulations.”<sup>152</sup> Chairman Atkins “also previously served on the staff of two SEC chairmen—Richard Breeden, appointed by President George H.W. Bush, and Arthur Levitt, appointed by President Bill Clinton.”<sup>153</sup> Regarding the SEC’s mission, Chairman Atkins states:

The SEC’s three-part mission was enunciated by Congress in the Exchange Act: protecting investors; facilitating capital formation; and maintaining fair, orderly, and efficient markets.

Investor protection is vital to our mission—holding accountable those who lie, cheat, and steal. The SEC will remain vigilant in our important role to ensure that investors have confidence to participate in the markets.

Capital formation is also at the root of what we do—fostering a direct, economical route for investors’ capital to find its way to entrepreneurs and industry to create products and services. This engine of growth employs people, helping them to work and save to achieve their dreams.

The third core part of our mission is maintaining fair, orderly, and efficient markets. Congress calls on the Commission to ensure that our regulations balance costs and benefits, that they do not become too burdensome by adding needless friction to the marketplace, undermining the capital formation that yields so much benefit.

During my tenure as chairman, the SEC will not stray from this core three-part mission.<sup>154</sup>

#### Call For Clarity: Is Crypto a Security or Not?

As noted previously, SEC Commissioner Caroline A. Crenshaw, at mid-year 2025, raises the issue, “In the name of... clarity, we’ve seen staff statement after staff statement, pronouncing that all sorts of crypto assets are *not* securities.” But, “now we see no objection to the effectiveness of new exchange-traded funds that assert certain crypto assets—ETH and SOL—actually *are* securities. Does this Commission, in fact, believe that ETH and SOL are securities?”<sup>155</sup>

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<sup>152</sup> Paul S. Atkins, SEC Chairman, Testimony Before the United States House Appropriations Subcommittee on Financial Services and General Government (May 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-testimony-fsgg-052025>.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Caroline A. Crenshaw, SEC Commissioner, Muddying the Waters: More Confusion on Crypto Asset Security Status (May 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-crypto-asset-security-status-053125>.

How is it that these crypto assets are supposedly not securities when it comes to registration requirements, but conveniently *are* securities when a registrant sees an opportunity to sell a new product?

If you're confused, join the club. These developments lay bare that we are not actually chasing crypto regulatory clarity -- these assets cannot be both securities and not securities at the exact same time.<sup>[7]</sup> Rather than clarity, it seems we are simply getting out of the way of anything and everything in the crypto space. In so doing, we are thwarting any meaningful attempt to apply a coherent regime to crypto assets and rewarding a maximally aggressive approach to entering our markets. This results in opportunistic – and deeply inconsistent – legal interpretations. Even our staff can't reconcile these inconsistencies, though their concerns don't seem to matter much these days.<sup>[8]</sup>

So far, the Commission and The Crypto Task Force's journey to clarity has only taken us further and further adrift in increasingly muddy waters of our own making.<sup>156</sup>

#### What a Difference Six Months Makes

The sea change in regulation of crypto industry participants by the SEC is noted in the following examples of settlements with: Binance; Coinbase; Immutable; Ripple; and Robinhood; and Tether; just to name a few.

just to name a few. Brief outlines of these examples are now presented.

#### Binance Settlement

In a litigation release dated May 29, 2025, the SEC “filed a joint stipulation with Defendants Binance Holdings Limited, BAM Trading Services Inc., BAM Management US Holdings Inc., and Changpeng Zhao to dismiss, with prejudice, the Commission’s ongoing civil enforcement action against them.”<sup>157</sup> In exercising discretion, the Commission further states, “and as a policy matter, the Commission determined that the

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<sup>156</sup> *Id.*

<sup>157</sup> Litigation Release No. 26316, Binance Holdings Limited; BAM Trading Services Inc.; BAM Management US Holdings Inc.; Changpeng Zhao: SEC v. Binance Holdings Ltd, et. Al., Case No. 1:23-cv-01599 (D.D.C. filed June 5, 2023) SEC Announces Dismissal of Civil Enforcement Action Against Binance Entities and Founder Changpeng Zhao (May 29, 2025), <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26316>.

dismissal of this action is appropriate. Furthermore, as stated in the joint stipulation, “the Commission’s decision to seek dismissal of this Litigation does not necessarily reflect the Commission’s position on any other litigation or proceeding.”<sup>158</sup>

### Coinbase Settlement

On February 27, 2025, the SEC “announced that the Commission has filed a joint stipulation with Coinbase Inc. and Coinbase Global Inc. to dismiss the ongoing civil enforcement action against the two entities.”<sup>159</sup> In addition:

The Commission’s decision to exercise its discretion and dismiss this pending enforcement action rests on its judgment that the dismissal will facilitate the Commission’s ongoing efforts to reform and renew its regulatory approach to the crypto industry, not on any assessment of the merits of the claims alleged in the action. Furthermore, as stated in the joint stipulation, ‘the Commission’s decision to seek dismissal of this litigation does not reflect the Commission’s position on any other case.’<sup>160</sup>

### Immutable Settlement

Reports emerge on March 25, 2025 that “The crypto gaming firm behind Ethereum layer-2 Immutable X said it received a letter of termination from the SEC that didn’t explain why it ended its probe.”<sup>161</sup>

### Ripple Settlement

During May 2025 the SEC announced filing of “a settlement agreement entered into with defendants Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen

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<sup>158</sup> *Id.*

<sup>159</sup> Press Release No. 2025-47, SEC Announces Dismissal of Civil Enforcement Action Against Coinbase (Feb. 2025), <https://www.sec.gov/newsroom/press-releases/2025-47> (last viewed June 25, 2025).

<sup>160</sup> *Id.*

<sup>161</sup> Jesse Coghlan, *SEC closes investigation into Immutable nearly 5 months after Wells Notice*, COINTELEGRAPH (Mar. 25, 2025), <https://cointelegraph.com/news/sec-closes-immutable-investigation-five-months-after-wells-notice>.

that lays out a framework for resolving the Commission’s civil enforcement action against them.”<sup>162</sup> Terms of the settlement:

provides, among other things, that the Commission and Ripple would jointly request the district court to issue an indicative ruling as to whether it would dissolve the injunction against Ripple in the district court’s August 7, 2024 final judgment and order the escrow account holding the \$125,035,150 civil penalty imposed by the final judgment be released, with \$50 million paid to the Commission in full satisfaction of that penalty and the remainder paid to Ripple. The Settlement Agreement further provides that, following an indication from the district court that it would dissolve the injunction and release the escrowed penalty amounts as requested, the Commission and Ripple will seek a limited remand to the district court for that relief, after which they would move to dismiss their respective appeals from the final judgment, which are currently pending in the United States Court of Appeals for the Second Circuit. The Commission and the defendants filed the settlement agreement with the district court as part of their joint request for an indicative ruling.<sup>163</sup>

### Robinhood Settlements

Robinhood announced on February 24, 2025 that the ongoing investigation by the SEC has been “officially closed... into Robinhood Crypto (RHC). On February 21, 2025, the SEC’s Enforcement Division advised RHC in a letter that it had concluded its investigation and did not intend to move forward with an enforcement action. This follows the SEC’s May 2024 Wells Notice to RHC.”<sup>164</sup> California Attorney General Rob Bonta, in a separate matter, “announced a \$3.9 million settlement with cryptocurrency trading platform Robinhood Crypto, LLC (Robinhood), for failing to allow customers to

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<sup>162</sup> Ripple Labs, Inc., Bradley Garlinghouse, and Christian Larsen, SEC, Litigation Release No. 26306 (May 8, 2025), <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26306>. (last viewed June 25, 2025).

<sup>163</sup> *Id.*

<sup>164</sup> Press Release, *SEC Closes Investigation Into Robinhood Crypto with No Action* (Feb. 24, 2025), <https://newsroom.aboutrobinhood.com/sec-closes-investigation-into-robinhood-crypto-with-no-action/>. (last viewed June 25, 2025).

withdraw their cryptocurrency from their Robinhood accounts from 2018 to 2022, and for failing to fully disclose aspects of its trading and order handling arrangements.”<sup>165</sup>

### Tether

*The New York Times* reports “For years, Tether had faced accusations that it lied about its finances and allowed crime to flourish on its platform.”<sup>166</sup> Then, during February 2025, “Tether joined business executives and U.S. lawmakers for a private lunch at the Willard, a luxury hotel near the White House... The episode was a sign of the changing landscape for crypto firms as President Trump has embraced the industry.”<sup>167</sup> In addition, “Since Mr. Trump’s inauguration, Tether has pushed to reshape crypto regulations as it considers starting an operation in the United States. The company’s main product is a cryptocurrency known as stablecoin, which is designed to maintain a price of \$1.”<sup>168</sup> *The New York Times* article continues:

Tether is pushing Congress to influence a Senate bill, introduced this year by Mr. Hagerty that outlines rules for stablecoins. And it has launched a public-relations campaign that featured ads in an insider Washington publication trumpeting its cooperation with U.S. law enforcement.

For years Tether had been regarded with suspicion. Its stablecoin has proved to be a popular tool for criminals. In 2021, it paid \$18.5 million to settle a fraud investigation by the New York attorney general.

But within days of taking office, Mr. Trump, who started a crypto business with his sons last year, ended a Biden administration crackdown on digital assets. Crypto companies that once avoided the country, fearful of regulatory sanctions, now enjoy astonishing access to Congress and the White House.

No crypto executive has illustrated the shift more than Mr. Ardoino [Tether’s CEO], an Italian who had never visited the United States until this year. On his trip to Washington in March, he met with

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<sup>165</sup> Press Release, *Attorney General Bonta Secures \$3.9 Million Settlement with Cryptocurrency Company Robinhood*, (Sept. 4, 2024), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-secures-39-million-settlement-cryptocurrency-company> (last viewed June 25, 2025).

<sup>166</sup> David Yaffe-Bellany & Kenneth P. Vogel, *Crypto Zeal Pulls Tether Off Blacklist*, N.Y. TIMES, April 30, 2025 at B1.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

lawmakers, joined a forum hosted by the Commodity Futures Trading Commission and mingled with fellow executives at a party sponsored by Coinbase, a crypto exchange.<sup>169</sup>

*The New York Times* article continues to discuss Tether’s powerful American allies. For example, the article states, “The firm’s most prominent business partner is the investment bank Cantor Fitzgerald, which until this year was run by Howard Lutnick, now Mr. Trump’s Commerce Secretary... Last year, Tether recorded profits of more than \$13 billion, making it one of the world’s wealthiest crypto operations.”<sup>170</sup>

Before enactment by the end of June 2025, “The Genius Act would require stablecoin issuers to underpin the value of their tokens with reserves of cash, short-term Treasuries and similar safe assets. Larger issuers would be required to publish annual, audited financial statements.”<sup>171</sup> According to *The Wall Street Journal*, “That is bad news for Tether, which commands roughly two-thirds of the stablecoin market, with \$156 billion in circulation.”<sup>172</sup> While “Tether’s stablecoins are partly backed by bitcoin and precious metals and the company has resisted being fully transparent about its finances. That means the legislation could make it untenable for Tether to keep operating in the U.S., said Scott Armstrong, a former federal prosecutor who handled crypto cases.”<sup>173</sup> However, “The Senate legislation provides a three-year grace period for companies to be compliant with the new requirements. A companion bill under consideration in the House of Representatives gives issuers 18 months.”<sup>174</sup>

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Alexander Osipovich, Vicky Ge Huang & Angus Berwick, ‘Genius Act’ to Punish Stablecoin Giant Tether, WALL ST. J., June 26, 2025 at B1.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

### Emerging Use Cases

Novel use cases for cryptocurrencies are reported almost daily. For example, placing bets on start-ups and usage for real estate investing are noted. A brief explanation of each is now presented.

### Tokens On SpaceX

*The Wall Street Journal* reports “An investment platform plans to use blockchain technology to sell investors exposure to SpaceX, another effort in an arms race to give regular traders access to hot startups.”<sup>175</sup> However, “Token buyers won’t have access to companies’ financials and won’t own actual stakes.”<sup>176</sup> The report continues:

Republic’s says it is starting to sell digital ‘tokens’ that mirror the performance of private shares of Elon Musk’s rocket and satellite company starting this week. The investment platform, which offers individual investors access to investments typically limited to the wealthy, plans to eventually expand its tokenization to other high-profile private companies like artificial intelligence firms OpenAI and Anthropic.

Republic’s plan is part of an array of efforts by crypto exchanges, brokerages and others to reinvent securities, using similar blockchain technology that underpins bitcoin. Still largely untested with regulators, and even the underlying companies, the tokens are another attempt to trade on stocks that can’t be found on the New York Stock Exchange or Nasdaq.<sup>177</sup>

A visit to the Republic website discloses plans to offer “mirror tokens” on SpaceX, Anthropic, and others.<sup>178</sup> However, Commissioner Hester M. Peirce states

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<sup>175</sup> Corrie Driebusch, *Platform to let Anyone Bet On SpaceX*, WALL ST. J., June 26, 2025 at B1.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> rSpaceX, Republic, <https://republic.com/r-spacex> (last visited July 1, 2025).

“efforts to ... create digital versions of stocks and other securities, are still governed by securities laws.”<sup>179</sup>

### Robinhood to Offer “Tokenized” Equities

Other exchanges such as Kraken and Gemini are “announcing plans to offer “tokenized stocks to overseas customers.”<sup>180</sup> In addition, “Robinhood Markets, the brokerage upstart that drew in millions of traders during the Covid-era meme-stock frenzy, is making a significant push into crypto by launching a wave of new services designed to make its app a central hub for digital assets.”<sup>181</sup> The report states:

Such ‘tokenized equities’ would make it easier for foreign customers to access U.S. stocks such as Apple, Tesla and Nvidia as well as popular exchange-traded funds, including the SPDR S&P 500 ETF, around the clock.

Robinhood also plans to offer tokenized shares of privately owned companies to customers. The trading platform is making stock tokens of OpenAI and SpaceX available to eligible European users this summer, executives said at a crypto event...<sup>182</sup>

### Real Estate Investments

Of significance to real estate markets, “President Trump’s housing director, William Pulte, said he would direct Fannie Mae and Freddie Mac — the nation’s big mortgage finance firms — to consider home buyers’ crypto investments as part of their overall wealth in assessing whether they can afford a mortgage.”<sup>183</sup> Consider that “In a recent survey, roughly 14 percent of home buyers said they planned to sell crypto assets

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<sup>179</sup> Matthew Goldstein, *‘Token’ Type of Security Is Subject To Same Law*, N.Y. TIMES, July 11, 2025 at B3.

<sup>180</sup> Vicky Ge Huang & Hannah Erin Lang, *Robinhood Goes All In On Crypto With Mix Of Services*, WALL ST. J., July 1, 2025 at B1.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> Matthew Goldstein, *Crypto Moves Into Housing*, N.Y. TIMES, June 28, 2025 at B1.

to help get the cash to cover a down payment on a home, up from 5 percent in 2019, according to Redfin, the residential real estate brokerage company.”<sup>184</sup>

## VII. COMMISSIONER CAROLINE A. CRENSHAW’S COURAGEOUS DISSENT

Caroline A. Crenshaw received unanimous confirmation by the U.S. Senate and “was sworn into office as Commissioner of the U.S. Securities and Exchange Commission on August 17, 2020.”<sup>185</sup> During the Spring of 2025 Commissioner Crenshaw joined the debate with the following two statements that adequately and forcefully present the dissenting view about President Trump’s hands-off regulatory approach to the regulation of the crypto industry.

### Crypto 2.0: Regulatory Whiplash

In her February 27, 2025 statement, Commissioner Crenshaw observes, “Today the Commission dismissed its enforcement action against Coinbase, a crypto trading platform. This reverse-course midstream – coupled with recent high-profile stays of other litigations – is not only unprecedented, it ignores 80 years of well-established law.”<sup>186</sup> This action is taken while, “We say we are dismissing the action because of future recommendations that may be made by the ‘crypto task force dedicated to helping the Commission develop the regulatory framework for crypto assets.’”<sup>187</sup> Commissioner

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<sup>184</sup> *Id.*

<sup>185</sup> About, SEC Commissioners, Caroline A. Crenshaw, SEC, (Jan. 29, 2025), <https://www.sec.gov/about/sec-commissioners/caroline-crenshaw>.

<sup>186</sup> Caroline A. Crenshaw, SEC Commissioner, Crypto 2.0: Regulatory Whiplash, Statement (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-crypto-2-0-regulatory-whiplash-022725>.

<sup>187</sup> *Id.*

Crenshaw continues warns, “whatever the law may be tomorrow, market participants should not be able to avoid the law as it stands today.”<sup>188</sup> Commissioner Crenshaw states:

The Commission has brought numerous actions to enforce the securities laws with respect to crypto assets since their advent, during both Republican and Democratic administrations. And, court after court has upheld the Commission’s jurisdiction in this space. In fact, in the *Coinbase* matter the Commission dismissed today, the court had found that the Commission adequately pleaded violations of the securities laws. The court explained that: “[t]he SEC has a long history of proceeding through [enforcement] actions to regulate emerging technologies and financial instruments within the ambit of its authority as defined by cases like *Howey*[.] Using enforcement actions to address crypto-assets is simply the latest chapter in the long history of giving meaning to the securities laws through iterative application to new situations.” The court also held that “the challenged transactions fall comfortably within the framework that courts have used to identify securities for nearly eighty years.” The Commission’s action today blithely tosses aside that body of precedent.

I have heard many say that the industry craves legal clarity. Today’s action results in less clarity. I have and will continue to work with participants who seek to operate within the securities laws. Or, should the Commission enact new regulations or Congress change the law, we can progress down a different path. But until that time, we have a framework in place and that framework should be applied and enforced equally as to all participants.

Far from clarity, today’s action creates more uncertainty. What exactly is the law as it applies to crypto assets? How can we pursue fraudulent conduct in this space while casting doubt on our regulatory jurisdiction? Are we eroding our ability to police fraudulent Ponzi schemes? Are we poised to give special treatment to crypto assets over traditional assets, or even other emerging assets? What effects will this have on our traditional markets and financial instruments?

The newly created crypto task force may intend to make recommendations to answer some of these questions, but we do not have any legally enforceable answers yet. In fact, the most salient change to date has been this retreat from enforcement of the securities laws with respect to crypto. Or, “regulation by non-enforcement.”

It may well be that “environments in which the law is unclear are havens for bad actors,” but wholesale failure to enforce the law seems worse. There are well known risks in this industry – fraud and manipulation, money laundering, national security concerns, volatility, and retail investor losses – just to name a few.

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<sup>188</sup> *Id.*

Lastly, today's action undermines the credibility of our Division of Enforcement. It creates the specter that the agency will deploy its enforcement resources in conjunction with election cycles or in favor of those with means. This invites criticism that our agency is politicized and sows distrust in government. Our agency's job is to do what is right for investors, issuers, and capital markets. This is not it. (citations omitted)<sup>189</sup>

May 19, 2025 Remarks Before "SEC Speaks"

Given the historical importance and personal courage demonstrated by SEC Commissioner Crenshaw's remarks titled, "A Reckless Game of Regulatory Jenga - Remarks at "SEC Speaks," I have decided to include materially the entire transcript, as follows (internal references omitted):

Good afternoon. As you know, SEC Speaks is an opportunity for the agency, and specifically the SEC staff, to speak directly to practitioners in our space. To me, and perhaps to some of you, this year's SEC Speaks feels a bit different. My hope is that over the course of this event, amid talk of rolling back rules and diminishing protections, we will all be reminded of the crucial work that the agency does, which benefits not only investors, but also you. And, I hope we are all reminded of the caliber of people who do that work.

Before I begin, I'll give the standard disclaimer. The views that I express today are my own, and not necessarily those of the Commission, the staff or my fellow commissioners.

My remarks today offer a word of caution as the agency chips away at decades of our own work – *and*, at the same time, as we stare down alarming market volatility, emerging risks, and calls for deregulatory action in all corners of our markets.

As we careen down this path full speed, it almost feels like we're playing a game of regulatory Jenga. Our proverbial Jenga tower is made up of a set of discrete but interrelated rules and laws, deeply and carefully developed over the years, and implemented by a strong agency of experts, skilled in overseeing and regulating our increasingly complex markets.

Of course, in Jenga, the tower remains standing when you pull out a block or two here and there. But, how many blocks can you pull before the tower gives way? When it comes to the stability of our markets, how far are we willing to take our dangerous game? Who would ultimately be the loser when the foundation gives way? I worry, as we all should, that those losing the most won't be the influential, monied interests; rather, it will be the Main Street Americans – the investors and small business

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<sup>189</sup> *Id.*

owners who can least afford the greatest loss. Consider some of the actions of the agency over the past weeks and months.

### **Institutional Integrity**

First, we pushed out our staff. This is the first, and perhaps most devastating, Jenga piece to go.

The SEC is, and has been, comprised of dedicated public servants who are responsible for implementing and upholding a careful mosaic of laws, which have matured gradually and deliberately over decades. Their knowledge base reflects a regulatory regime that is highly technical, and their expertise has been sharpened by lessons learned from crises past. The industry's success, in many ways, depends upon the agency maintaining a deep well of institutional knowledge.

Our well has taken a substantial and sudden hit. In response to voluntary retirement, resignation, or simply the specter of random firings, we have lost nearly 15% of our staff. These are experts in their fields who have weathered market events of all shapes and sizes; seen the fallout from calamity; guided recovery efforts; and have instituted protections that decrease the risk that similar disasters might happen again. In other words, these are the people who you want in place when volatility (or disaster) strikes. This of course begs the question – is our capacity sufficient today to prevent a future crisis, or aid in the recovery from one?

We cannot take the integrity and continuity of this institution as we know it for granted – and we should not assume that the growth and stability we've witnessed the past few years will continue.

### **Un-Due Process**

Then, we diluted or effectively rescinded the laws without due consideration of the costs, benefits, or public feedback. This is the second foundational Jenga piece.

In the past four months, we've used guidance to walk away from rules and upend longstanding practice. Recently, there has been a wave of staff guidance on meme coins, on crypto mining, on investment adviser marketing, on the engagement with management for purposes of Schedules 13D and 13G; and on verification requirements for accredited investors. We have further changed the rules of the road for proxy proposals (issued midway through the proxy season); and effectively amended recently adopted rules on conflicts of interest in securitized transactions.

In particular, our statements on these crypto-related issues are the equivalent of a wink and nod intended to convey that we do not plan to rigorously apply our laws in certain, specific situations. For example, the statements pull at the threads of our most foundational case law while meekly suggesting – in footnotes – that we still might do the required facts and circumstances analysis in each case. We take this slipshod approach to stablecoins as well, which have shown their capability of posing systemic risk to our traditional financial system.

We've done all of the above without Commission vote; without the benefit of analysis from our economists; and, without fulsome opportunity for public comment. I am concerned that staff guidance is not the correct vehicle for declarations of this magnitude, and we need to carefully analyze suggestions that we ought to create some alternative, presumably lesser, regime to accommodate industry and promised innovation.

Separately, the Commission has also declined to defend, and claims to be "reconsidering," recently adopted rules. The dismantling of these rules taken individually is bad enough, but what's worse is the broader intentional pattern of undoing the dually adopted work of prior Commissions. The result is that every "final" rule feels like it isn't final at all. This is problematic for our reputation and credibility as a regulatory body and may undermine the presumption of regularity of government affairs. Of course, rules are amended and updated over the years and decades as necessary, but to reverse course on rules before they have even gone into full effect suggests that a prior Commission vote is meaningless against the slightest change in the political breeze.

### **Brazen Failure to Enforce the Laws We are Charged with Enforcing**

Third – the next Jenga piece – we are ignoring courts and failing to faithfully and evenhandedly enforce even laws that have been on the books for decades.

Our agency was criticized for purportedly engaging in "regulation by enforcement," but this was a total misnomer. None of our litigations tried to create laws or regulate in a new way. These actions applied decades-old precedent to address violations of the *existing* securities laws. This is what our mandate is and always has been. The real complaint was not that the Commission wasn't applying the facts to the law, it was that the crypto industry didn't like the law and wanted new rules. And we've now shut down our enforcement program, abandoning our duty to enforce existing law, in anticipation of creating new crypto-friendly rules. This is properly criticized as regulation by non-enforcement.

Given that, I am deeply troubled by the Commission's abandonment of swaths of our enforcement program. As I have said before, these cases were thoroughly investigated by the staff and considered by a prior Commission. Some even involve court orders that we now toss aside with no respect for the court's decision.

This about-face is problematic for a host reasons: it corrodes our reputation in front of courts, it undermines the credibility of the Commission and staff when we pursue enforcement cases involving all types of misconduct (not just crypto-related conduct), and it casts doubt on the state of longstanding and fundamental case law. In a supposed search for regulatory clarity, all these actions have done is create confusion and disarray.

### **Unheeded Risks**

Finally, we are ignoring significant risks.

Consider the crypto markets again. These products have already laid bare how their heightened risk profiles can result in harm for investors. Crypto presents certain novel risks – including those related to hacks and the prevalence of crypto as a method of payment for illicit activity. This last year alone saw a 66 percent increase in total fraud-related crypto losses – primarily affecting individuals over the age of 60. Plus, we’ve already experienced what a large-scale crypto crisis can look like. As recently as 2022, following the fallout of FTX, there was a shared sense of concern and call to action for regulators. Those risks have not gone away, but the calls for serious regulatory scrutiny are a lot quieter these days. For example, unique challenges with custody, conflicts of interest, disclosure, and market integrity remain unresolved – despite the pressure for widespread crypto adoption and experimentation. Adding to the complexity, are the scores of “traditional” products that reference crypto assets in some form, including crypto futures ETFs and crypto ETPs. Failing to appreciate and address these risks and complexities destines us to repeat hard lessons with high stakes as crypto becomes increasingly entangled with traditional finance.

Next, consider the unheeded risks posed by the eroding barrier between the public and the private markets. There is a growing appetite to experiment with limitations on exposure to private assets in registered funds. The distinction between public and private markets exists for a reason. We know that private markets are inherently riskier, entail less disclosure, and require a higher tolerance for volatility and illiquidity. And, we’ve seen instances of outsized harm when the opacity of the private market space covers up massive fraud. These private markets are not designed for the average Main Street investor. Packaging these risks into retail products – in the form of retail funds of private funds, for example – does not change their nature. It simply further masks those risks to investors who may not appreciate them – if they even know that they are being exposed to them at all. What’s more, it’s not clear that products designed for retail investors, such as registered funds, will function effectively in times of market stress if they are significantly handcuffed to private markets. It is therefore worth asking: is this proposed expansion in retail investors’ interests, particularly when fees on products with private market exposure are exponentially higher than, for example, most index funds?

### **A Bad Time to Play Games**

So, we’re pulling pieces from the Jenga tower in a perilous way. And we’re doing so in time of serious headwinds.

- Markets are becoming increasingly (predictably) volatile;
- products are more complex;
- investors are more exposed;
- regulators will have less insight.

It is reminiscent of other times when we’ve been criticized for our deregulatory posture while markets were growing increasingly complex.

Consider the 2008 financial crisis. In a post-mortem, the bipartisan Financial Crisis Inquiry Commission’s Final Report concluded that the crash was avoidable and the result of “human action and inaction.” According to the report, decades of deregulation and reliance on ill-advised self-regulation by financial institutions resulted in widespread failures in financial regulation and supervision. The report also found that regulators failed adequately to manage evolving risks and heed warning signs of instability.

After a crisis happens, the first thing people ask is “how could this have happened?” And, more specifically, “where were the regulators?” But, *before* a crisis happens, everyone demands that regulators get out of their way. I don’t want us to suffer the same fate.

### **Conclusion**

This is a dangerous game. We are pulling apart our own regulatory foundation – block by block, case by case, and rule by rule. It feels all too familiar to those of who have lived through 2008. *And* this approach comes in a moment when the agency has just experienced an unprecedented blow to our staff. If we continue down this path, eventually, the carefully constructed tower of regulatory blocks will tumble – leaving the door open to the same types of misconduct that we have spent decades eradicating. When that happens, small businesses and retail investors are the ones who will lose out as they attempt to tread water in tumultuous markets with fewer and fewer protections.

Of course, there is also the damage a potential future crisis will inflict upon the reputation of regulators who let it happen. In that future moment, when we’re asking ourselves what could’ve prevented a new crisis, we may find ourselves coming back to the rules and case law that we contemplate abandoning at this very moment.

Tomorrow’s hindsight is today’s foresight. We cannot play games with the institutional integrity of the SEC – and the integrity of our markets – and expect that we won’t ultimately lose. Sooner or later, our complacency today will be the cautionary tale told to the regulators of tomorrow. Like tumbling Jenga pieces, we cannot let our guard down and pull the wrong blocks.<sup>190</sup>

### DeFi and the American Spirit

On June 9, 2025, the Commission held the last of six roundtable discussions regarding crypto asset regulation. The meeting held at SEC headquarters in Washington

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<sup>190</sup> Caroline A. Crenshaw, SEC Commissioner, A Reckless Game of Regulatory Jenga – Remarks at “SEC Speaks” (May 19, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-remarks-sec-speaks-051925>.

featured opening remarks by: Paul S. Atkins, Chairman; Caroline A. Crenshaw, Commissioner; Mark T. Uyeda, Commissioner; Hester M. Pierce, Commissioner; and Richard B. Gabbert, Chief of Staff, Crypto Task Force. A discussion moderated by former SEC Commissioner Troy Paredes followed, featuring remarks and discussion by: Jill Gunter, Espresso Systems; Michael Jordan, DBA; Omid Malekan, Columbia Business School; Michael Mosier, Arktouros; Rebecca Rettig, Jito Labs; Gabe Shapiro, MetaLex; Peter Van Valkenburgh, Coin Center; Erik Voorhees, Venice AI; and Kevin Werback, Wharton School.<sup>191</sup>

#### VIII. STABLECOIN: CONGRESSIONAL TESTIMONY AND LEGISLATION

A “stablecoin” may be defined as “a digital asset whose value is designed to track the price of an underlying asset or another unit of value.”<sup>192</sup> A number of early academic works focus on stablecoins:<sup>193</sup> and, some highlight the positive innovative aspects of these digital assets.<sup>194</sup> Writing in 2022, Professors Bruce, Odinet, and Tosato observe,

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<sup>191</sup> Crypto Task Force Roundtable—DeFi and the American Spirit, SEC, (Jun 9, 2025), <https://www.sec.gov/newsroom/meetings-events/defi-american-spirit>.

<sup>192</sup> Circle Internet Group, Inc. Amendment No. 3 to Registration Statement (Form S-1) (May 27, 2025) at 7, [https://www.sec.gov/Archives/edgar/data/1876042/000119312525126208/d737521ds1a.htm#rom737521\\_24](https://www.sec.gov/Archives/edgar/data/1876042/000119312525126208/d737521ds1a.htm#rom737521_24).

<sup>193</sup> Apolline Blandin, Gina C. Peters, Yue Wu, Anton Dek, Thomas Eisermann, Damaris Njoki & Sean Taylor, *3<sup>rd</sup> Global Cryptoasset Benchmark Study*, (Sept. 24, 2020), <http://ssrn.com/abstract=3700822>;

<sup>194</sup> Wilko Bolt, Vera Lubbersen & Peter Wierds, *Getting the Balance Right: Crypto, Stablecoin and CBDC*, 16(1) J. PAYMENTS STRAT. & SYS. 39 (2021), <http://ssrn.com/abstract=4014319>; Ross P. Buckley, Douglas W. Arner, Dirk A. Zetsche, Anton N. Didenko & Lucien J. van Romburg, *Sovereign Digital Currencies: Reshaping the Design of Money and Payments Systems*, 15 J. PAYMENTS STRAT. & SYS. 7 (2021), <http://ssrn.com/abstract=3834879>; John Caramichael & Gordon Liao, *Stablecoins: Growth Potential and Impact on Banking*, Int’l Fin. Discussion Paper No. 1334 (2022), <http://abstract=4023830>; Christian Catalini, Alonso de Gortari & Nihar Shah, *Some Simple Economics of Stablecoins*, MIT Sloan Res. Paper No. 6610-21 (2021), <http://ssrn.com/abstract=3985699>; Anton N. Didenko, Dirk A. Zetsche, Douglas W. Arner & Ross P. Buckley, *After Libra, Digital Yuan and COVID-19: Central Bank Digital Currencies and the New World of Money and Payments Systems*, [published?] (202\_), <http://ssrn.com/abstract=3622311>; D. Arner, R. Buckley, D. Zetsche and A. Didenko, ‘Monetary Hegemony: Technological Evolution and the International Monetary System,’ 42 B.U. INT’L

“stablecoins have the potential to change the way we make payments... [but warn and discuss] just how unreliable and unstable this latest crypto innovation really can be.”<sup>195</sup>

A particularly popular use case recognized that “For sizable populations in low- and middle-income countries (LMICs), remittances from abroad form significant portion of their income... The use of cryptocurrencies and blockchain technology is an alternative to [expensive] money transfers.”<sup>196</sup> However, a number of earlier commentators focus on regulatory uncertainty.<sup>197</sup> During 2023, Professors Jackson, Massad, and Awrey offer a schematic for regulating stablecoins without Congressional action.<sup>198</sup>

However, Professor Ryan Clements observes during 2021 that “Algorithmic stablecoins are inherently fragile. These uncollateralized digital assets, which attempt to peg the price of a reference asset using financial engineering, algorithms, and market incentives, are not stable at all but exist in a state of perpetual vulnerability, iterations to date have struggled to maintain a stable peg.”<sup>199</sup> Others also concentrate on the risk

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L.J. 213 (2024); Lai Hoang & Dirk G. Bauer, *How Stable Are Stablecoins?* \_\_ EURO. J. FIN. (202 \_\_), <http://ssrn.com/abstract=3519225>.

<sup>195</sup> Kara J. Bruce, Christopher K. Odinet & Andrea Tosato, *The private Law of Stablecoins*, 54 AZ. ST. L.J. 1073, \_\_\_\_ (2022), <http://ssrn.com/abstract=4191646>. See also Dirk Bullmann, Jonas Klemm & Andrea Pinna, *In Search For Stability in Crypto-Assets: Are Stablecoins the Solution?*, [published?] (2019), <http://ssrn.com/abstract=344484>;

<sup>196</sup> Rajendra Kulkarni, Laurie Schintler, Naoru Koizumi, Jim Olds & Roger S. Stough [published?], <http://ssrn.com/abstract=3511139>.

<sup>197</sup> Raphael Auer, Jon Frost, Leonardo Gambacorta, Cyril Monnet, Tara Rice & Hyun Song Shin, *Central Bank Digital Currencies: Motives, Economic Implications and the Research Frontier*, \_\_ ANN. REV. ECON. \_\_ (202 \_\_), <http://ssrn.com/abstract=3922836>; Christian Catalini & Alonso de Gortari, *On the Economic Design of Stablecoins*, [published?] (202 \_\_), <http://ssrn.com/abstract=3899499>; Marco Dell’Erba, *Stablecoins in Cryptoeconomics. From Initial Coin Offerings (ICOs) to Central Bank Digital Currencies*, \_\_ N.Y.U. J. LEGIS. & PUB. PLC’Y \_\_ (202 \_\_), <http://ssrn.com/abstract=3385840>.

<sup>198</sup> Howell E. Jackson, Timothy G. Massad & Dan Awrey, *How We Can Regulate Stablecoins Now—Without Congressional Action*, Brookings, Hutchins Ctr. Res. Paper No. 76 (2022), <http://ssrn.com/abstract=4208329>.

<sup>199</sup> Ryan Clements, *Built to Fail: The Inherent Fragility of Algorithmic Stablecoins*, 11 WAKE FOREST L. REV. ONLINE 131 (Oct. 2021), <http://ssrn.com/abstract=3952045>.

exposure.<sup>200</sup> Professors Richard K. Lyons & Ganesh Viswanath-Natraj “identify two 2019 design reforms: migration of Tether from the Omni to the Ethereum blockchain and decentralization of issuance.”<sup>201</sup>

### Concept Debated

Gary B. Gorton and Jeffrey Y. Zhang write “Based on lessons learned from economic theory and financial history, we argue that circulating private money is not an effective medium of exchange because it is not always accepted at par and its issuers are vulnerable to destabilizing bank runs.”<sup>202</sup> Written in 2023, Professors Yiming Ma and Anthony Lee Zhang explore “economically significant run risk” among stablecoins at that time.<sup>203</sup> Professor Steven L. Schwarcz warns, “If widely used, stablecoins also could impair central banks’ ability to control monetary policy and possibly undermine confidence in the value or operational continuity of currencies, which could threaten international monetary and financial stability. Stablecoin regulation must also address that potential threat.”<sup>204</sup>

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<sup>200</sup> *Id.*

<sup>201</sup> Richard K. Lyons & Ganesh Viswanath-Natraj, *What Keeps Stablecoins Stable?* \_\_ J. INT’L MONEY & FIN. \_\_ (202\_), <http://ssrn.com/abstract=3508006>.

<sup>202</sup> Gary B. Gorton & Jeffrey Y. Zhang, *Taming Wildcat Stablecoins*, 90 U. CHI. L. REV. \_\_ (2023), <http://ssrn.com/abstract=3888752>. See also Roman Kozhan & Ganesh Viswanath-Natraj, *Decentralized Stablecoins and Collateral Risk*, [published?], <http://ssrn.com/abstract=3866975>;

<sup>203</sup> Yiming Ma, Anthony Lee Zhang & Yao Zeng, *Stablecoin Runs and the Centralization of Arbitrage*, [published?](2023), <http://ssrn.com/abstract=4398546>. See also Bruce Mizrach, *Stablecoins: Survivorship, Transactions Costs and Exchange Microstructure*, 27 J. ALTERNATIVE INVESTMENTS 82 (2025), , <http://ssrn.com/abstract=3835219>.

<sup>204</sup> Steven L. Schwarcz, *Regulating Digital Currencies: Towards an Analytical Framework*, 102 B.U. L. Rev. \_\_ (2022), <http://ssrn.com/abstract=3775136>.

## Congressional Testimony

Substantial testimony has been provided to Congress on each side of the controversy involving whether to liberalize regulation of cryptocurrencies. Examples typical of the arguments for and against adoption of stablecoins are now presented.

### Proponents

Before hearings on “Securing America’s Leadership in the Digital Asset Revolution, held by the Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Digital Assets, Sarah Hammer, who serves as Executive Director at the Wharton School, Founder and CEO of Wharton Cypher Accelerator, and Adjunct Professor at the University of Pennsylvania Law School, observed “Blockchain technology and digital assets represent a fundamental evolution in financial services, introducing decentralization, transparency, and immutability as core attributes. These innovations have the potential to reduce settlement risk, improve financial infrastructure, enable seamless cross-border transactions in real time, and increase financial inclusion.”<sup>205</sup> In addition, “blockchain technology is reshaping how value is stored, transferred, and managed. As other nations move swiftly to integrate digital assets into their financial systems, the United States faces a choice: remain at the forefront of financial innovation or cede leadership to jurisdictions that provide clearer regulatory frameworks.”<sup>206</sup> Professor Hammer states:

As CEO of an accelerator, I often work directly with pioneering startups as they navigate this evolving landscape. These entrepreneurs embody the

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<sup>205</sup> Securing America’s Leadership in the Digital Asset Revolution: Hearing Before S. Comm. on Banking, Housing, and Urban Affairs, Subcomm. on Digital Assets, 119th Cong (2025) (statement of Sarah Hammer, Exec. Dir., Wharton School, Founder and CEO of Wharton Cypher Accelerator, and Adjunct Professor at the University of Pennsylvania Law School).

<sup>206</sup> *Id.*

spirit of American ingenuity, yet they face a formidable challenge: regulatory uncertainty. Over the past several years, the absence of a clear framework, the prevalence of regulation by enforcement, and the de facto prohibition on banking services for blockchain and digital asset businesses have left even well-intentioned companies without a viable path to compliance. This uncertainty has not only slowed innovation—it has pushed it offshore. The consequences extend well beyond individual businesses, threatening America’s leadership in the global financial system.

In my work, I also have the privilege of witnessing firsthand the extraordinary talent, vision, and drive of students dedicated to digital assets and blockchain innovation. These young innovators are not seeking deregulation. Rather, they are demanding clarity, consistency, and a regulatory framework that fosters responsible innovation while protecting consumers and upholding market integrity. If we fail to provide it, they may take their ideas, capital, and ambition elsewhere, thus ceding the future of finance to other countries. That is not a risk the United States can afford to take.

The stakes are high. With a clear, strategic regulatory framework, the United States will cement its dominance of digital assets for decades to come. Regulatory clarity will give American businesses the certainty they need to drive innovation, attract global firms to our markets, and establish rigorous safeguards against illicit activity. Most critically, it will ensure that the next wave of financial transformation happens here, anchored in American leadership and values.

The choice before us is unmistakable: we can lead this transformation or be relegated to the sidelines. History has proven that when the United States embraces innovation with clear, principles-based regulation, we do not merely keep pace with technological revolutions—we define them. Now is the moment to act.<sup>207</sup>

### Those Opposed

Representative of arguments against the GENIUS Act are those given by U.S. Senator Elizabeth Warren (D-Mass.), Ranking Member of the Senate Banking, Housing, and Urban Affairs Committee during a speech given on the Senate floor.<sup>208</sup> In relevant part, she states “This bill goes forward without a single chance for a single senator to

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<sup>207</sup> *Id.*

<sup>208</sup> Senator Elizabeth Warren, On Senate Floor, Warren Urges Colleagues to Use Their Leverage and Vote No on GENIUS Act Until Critical Issues Addressed (June 11, 2025), <https://www.banking.senate.gov/newsroom/minority/on-senate-floor-warren-urges-colleagues-to-use-their-leverage-and-vote-no-on-genius-act-until-critical-issues-addressed>. (last viewed June 26, 2025).

offer a single amendment. Even changes that have widespread, bipartisan support are left aside as Leader Thune decided just to strong-arm the bill on through the Senate... we've seen this movie before."<sup>209</sup> Senator Warren warns:

By simultaneously boosting the derivatives industry and lightly regulating it, the bill Congress had passed helped set the stage for the 2008 financial crash. After the meltdown, Congress came back and cleaned up the mess in Dodd-Frank, but that was long after hundreds of billions of dollars in taxpayer bailouts had been handed to Wall Street, while ten million families had lost their homes and millions more had lost their jobs...

...

Proponents argue the GENIUS Act will provide legal clarity, promote innovation, reduce risks, protect consumers, and advance U.S. competitiveness in a new financial market.

Passage of the GENIUS Act is expected to significantly grow the market from \$200 billion now to an estimated \$2 trillion in a short time.

The GENIUS Act is riddled with loopholes and contains weak safeguards for consumers, national security, and financial stability.

Yeah, it all sounds very similar. But there is one big difference between the GENIUS Act and the CFMA. President Clinton did not own a derivatives company. President Trump does own a stablecoin company.

Through his crypto businesses, President Trump has created an efficient means to trade presidential favors like tariff exemptions, pardons, and government appointments for hundreds of millions—perhaps billions—of dollars from foreign governments, from billionaires, and from large corporations. This is the single greatest corruption scandal in American history and, by passing the GENIUS Act, the Senate is about to not only bless this corruption, but to actively facilitate its expansion...

...

The bill permits Big Tech companies and other conglomerates to issue their own private currencies and take control over the money supply. It includes a special carveout that makes it even easier for private companies like X to issue a stablecoin. Musk has made it clear that in a few years he wants his new X Money payment platform to be (quote) “half of the global financial system.” Senator Hawley and Senator Blumenthal have an amendment to fix that. Leader Thune has blocked that amendment.

Community banks have warned us that by creating a parallel, lightly regulated banking system, the stablecoin market will drain deposits from our local communities. There will be less funding available for small businesses and households across our country. Senator Hickenlooper has an amendment to fix that. Leader Thune has blocked that amendment.

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<sup>209</sup> *Id.*

The bill would also mean easier access to money for terrorists and cartels. Even today, the crypto industry’s own analysts are calling stablecoins (quote) “the new kingpin of illicit crypto activity.” According to Chainalysis, a blockchain analytics firm, stablecoins account for more than 60% of all illicit crypto transactions. Unfortunately, the GENIUS Act massively expands the marketplace for stablecoins while failing to address the basic national security risks posed by them. It also includes glaring loopholes that would allow Tether, a notorious foreign stablecoin issuer now based in El Salvador, access to U.S. markets. Just this week, prosecutors charged a Russian national in New York for using Tether to help Russians evade U.S. sanctions. Senators Schumer, Reed, Shaheen, and Blunt-Rochester have amendments to fix these problems. Leader Thune has blocked those amendments...

...

Finally, the GENIUS Act lacks the basic safeguards necessary to ensure that stablecoins don’t blow up our entire financial system. The bill permits stablecoin issuers to invest in risky assets and allows them to engage in risky non-stablecoin activities, like private credit or derivatives trading. At the same time, the bill constrains regulators’ ability to apply capital and liquidity safeguards to limit the chances of stablecoin failures. Again, we have amendments to fix this, and again, Leader Thune has blocked those amendments...

...

I urge my colleagues to vote NO on this bill.<sup>210</sup>

### Senate Bill Advances

During June 2025 the U.S. Senate passes “legislation to regulate a widely used type of cryptocurrency, a key victory for the digital-asset industry after it poured money into last year’s election..”<sup>211</sup> This legislation, “the first of its kind to put federal guardrails on digital currencies, would set up oversight of stablecoins, a popular crypto asset typically pegged to a fiat currency like the U.S. dollar.”<sup>212</sup> *The Wall Street Journal* states “For every dollar of stablecoins, issuers would be required to hold at least one dollar of reserves in short-dated Treasuries, bank insured deposits, government money-

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<sup>210</sup> *Id.*

<sup>211</sup> S. 1582, 119<sup>th</sup> Cong. (2025-2026), GENIUS ACT, <https://www.congress.gov/bill/119th-congress/senate-bill/1582/text>. See also, Amrith Ramkumar, *Senate Set To Pass Bill Regulating Stablecoin*, WALL ST. J., June 18, 2025 at A1.

<sup>212</sup> Amrith Ramkumar, *Senate Set To Pass Bill Regulating Stablecoin*, WALL ST. J., June 18, 2025 at A1.

market funds, repurchase agreements backed by Treasury bills, and other liquid federal government-issued asset approved by regulators.”<sup>213</sup> In sum, “This means they can’t invest in risky, high-yielding assets.”<sup>214</sup> But consider, “Broader adoption of stablecoins will create new financial risks that will have to be closely monitored, but the legislation at least establishes safeguards to protect users. It also subjects issuers to anti-money laundering laws, which could help law enforcement crack down on cartels that move money with stablecoins.”<sup>215</sup> The legislation now moves to the House of Representatives for consideration and approval, then to the president to be signed into law.

### Circle Internet IPO

In his founder’s letter, Circle Internet Group’s Jeremy Allaire discusses his personal journey in attempting to understand the financial collapse of 2008.<sup>216</sup> Mr. Allaire writes, “As a student of political economy, I needed to understand what happened. This huge part of the global economic system—the financial services industry—had failed us massively.”<sup>217</sup> In addition:

As I dug into the history of banking, money, central banking, and the international monetary system, I became convinced that we needed a new architecture for the financial system, one that was rooted in the internet—built on open networks, open software, and global integration—and eventually one where full-reserve digital currency can be intermediated with internet-based credit markets to create what could ultimately become a safer financial system.

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<sup>213</sup> A Senate Stablecoin Breakthrough, Op-Ed, WALL STREET J., June 21-22, 2025 at A14.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> Circle Internet Group, Inc. Amendment No. 3 to Registration Statement (Form S-1) (May 27, 2025) at 1, [https://www.sec.gov/Archives/edgar/data/1876042/000119312525126208/d737521ds1a.htm#rom737521\\_24](https://www.sec.gov/Archives/edgar/data/1876042/000119312525126208/d737521ds1a.htm#rom737521_24). See also Lawrence J. Trautman, *Personal Ethics, Subprime Mortgages and the U.S. Financial Collapse of 2007-09: A Post-Chevron “Fail Safe” Proposal*, 53 REAL ESTATE L.J. 172 (Winter 2025), <https://ssrn.com/abstract=2502124>.

<sup>217</sup> Circle Internet Group, Inc. *Id.*

It was during this time of personal exploration that I stumbled across Bitcoin in 2012. While I was not sold on the idea that Bitcoin itself would become the answer, within it I found a revolutionary combination of technical innovation and philosophical alignment around the idea of an open, internet-based alternative financial system.

### **Circle's founding and vision**

In early 2013, after immersing in the early technical communities that had formed around Bitcoin and blockchains, it became extremely clear to me and Circle co-founder Sean Neville that a major new layer of the internet was being born, one that provided a new set of open protocols that would do to the exchange of value what earlier protocols had done to the exchange of data and communications.

While it was not possible at the time, as technologists, it was clear to the two of us that blockchains would evolve to enable the issuance of digital tokens representing other assets, would allow for the execution of code in the form of smart contracts, and ultimately allow one to build higher-level protocols for money. This was going to be bigger and more impactful than the Web was, because this could transform not just information but the entire global economic system.

We envisioned the development of an “HTTP for Money,” a protocol for dollars and other fiat digital currency tokens that would provide an open and programmable infrastructure to rebuild the global financial system in the image of the internet.

For both of us, two key implications were extremely clear.

First, the natural outcome would be that blockchains would reach scale, speed, and efficiency, and that such a protocol for dollars on the internet would lead to a world where the storage and transmission of value (fiat money value) would be commoditized, which would accelerate the velocity of money and also return trillions in value to the real economy.

Second, the fact that digital currency protocols would be programmable using smart contracts meant that there would ultimately be a massive transformation in the utility of money, and that new “money blocks” would emerge that could transform finance, trade, commerce, and the very foundation of capital markets.<sup>218</sup>

In their registration statement filed with the SEC dated May 27, 2025 for their

Initial Public Offering, Circle Internet Group, Inc. includes the following reflections:

### **What we've accomplished**

Today, Circle is a globally recognized and respected brand and company, with a reputation for integrity and transparency, as both an advocate and leader in building the internet financial system.

Since its launch in 2018, USDC, as the core of the Circle stablecoin network, has been used for more than \$25 trillion in onchain

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<sup>218</sup> *Id.*

transactions as of March 31, 2025, of which nearly \$6 trillion were in the first quarter of 2025 alone. With more than \$61 billion of USDC in circulation as of May 23, 2025, millions of end-users use USDC for payments, settlements, and as a digital dollar store of value. Thousands of companies and developers have integrated with USDC, creating a thriving ecosystem. Major payments companies, enterprise technology firms, consumer internet applications, financial technology (“FinTech”) firms, and digital asset companies use Circle technology to power solutions built on USDC.

And USDC has continued to be built on strong market infrastructure and underlying liquidity, with Circle having minted more than \$558 billion of USDC and redeemed more than \$502 billion of USDC from January 1, 2021 to March 31, 2025—redemptions that have always been one-for-one with the U.S. dollar.<sup>219</sup>

### Summary Risk Factors

Space limitations for any single law journal article prohibit much additional discussion of lessons learned from the Circle Internet Group, Inc. disclosures. However, the following prospectus listing of summary risk factors is considered to be of particular value:

#### **Summary risk factors**

Our business and Class A common stock are subject to many risks, as more fully described in the “Risk factors” section immediately following this “Prospectus Summary” section. These risks include, among others:

- Competition from new and existing issuers offering competing products, combined with the rise of yield-bearing digital assets, including TMMFs, that are attractive to digital asset trading participants, may reduce market demand and circulation of Circle stablecoins
- Stablecoins may face periods of uncertainty, loss of trust, or systemic shocks resulting in the potential for rapid redemption requests (or runs). Extreme scenarios, such as market shocks that affect the value of USDC’s reserves or simultaneous requests to redeem all or substantially all USDC in circulation, or concerns related to Circle stablecoin reserves, may lead to redemption delays and USDC reserves being insufficient to meet all redemption requests
- As a relatively new innovation, stablecoins are particularly susceptible to operational challenges and risks, including due to surges in demand

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<sup>219</sup> *Id.* at 1.

- Any negative publicity regarding stablecoins or the broader digital asset industry may have an outsized negative effect on consumer confidence
- The acceptance of Circle stablecoins could be negatively impacted by the disruptions in secondary marketplaces that facilitate the purchase and sale of Circle stablecoins
- Although we have concluded that Circle stablecoins are not “securities” under U.S. federal securities laws and our offers and sales of Circle stablecoins are not securities transactions, any classification of Circle stablecoins as a “security,” or our offer or sale of Circle stablecoins in securities transactions, would subject us to additional regulation and could materially impact the operation of our business
- We hold a substantial amount of USDC reserves in the Circle Reserve Fund and thus are subject to risks associated with the issuer, the manager, and the custodian of the Circle Reserve Fund
- Any significant disruption in our or our third-party service providers’ or partners’ technology could result in a loss of customers or funds and adversely impact our business, results of operations, financial condition, and prospects
- Our customers’ funds and digital assets may fail to be adequately safeguarded by us or the third-party service providers upon whom we rely
- Our inability to maintain existing relationships with financial institutions and similar firms or to enter into new such relationships could impact our ability to offer services to customers
- We are subject to credit risks in respect of counterparties, including banks and other financial institutions
- If we are unable to maintain existing distribution and partnership arrangements or enter into additional distribution or partnership arrangements on less favorable financial terms, USDC and EURC in circulation and Circle’s financial results may be adversely affected.
- Our products and services may be exploited by our customers, employees, service providers, and other third parties to facilitate illegal activity such as fraud, money laundering, terrorist financing, gambling, tax evasion, and scams.
- Our compliance and risk management methods might not be effective
- Fluctuations in interest rates could impact our results of operations
- We are subject to an extensive and highly evolving regulatory landscape
- The regulatory environment to which we are subject gives rise to various licensing requirements, significant compliance costs and other restrictions, and noncompliance could result in a range of penalties, including fines, compliance costs, operational restrictions, reputational damage, and loss of licenses.

- We are subject to laws, regulations, and executive orders regarding economic and trade sanctions, anti-bribery, AML, and counter-terrorism financing that could impair our ability to compete in international markets or subject us to criminal or civil liability if we violate them. As we continue to expand and localize our international activities, our obligations to comply with the laws, rules, regulations, and policies of a variety of jurisdictions will increase and we may be subject to investigations and enforcement actions by U.S. and non-U.S. regulators and governmental authorities
- Insiders will continue to have substantial control over us after this offering and could limit your ability to influence the outcome of key transactions, including a change of control.<sup>220</sup>

### Merchants and Others Explore Stablecoin Issuance

Reports emerge that “Some of the biggest merchants are exploring how to issue or use stablecoins, potentially shifting their high volumes of transactions outside the traditional financial system and saving billions of dollars in fees. Walmart, Amazon.com and other multinational giants have...explored whether to issue their own stablecoins...”<sup>221</sup> As might be expected, “A move to launch crypto-based payments by Walmart or Amazon that bypasses the traditional payments system would send shivers through the nation’s banks and card-network giants.”<sup>222</sup> In addition, “Financial-technology giant Fiserv plans to launch a stablecoin and platform that could be used by its clients, which include roughly 3,000 regional and community banks...[and] is expected to be compatible... for easy connection with the other 10,000 financial institutions and millions of merchant locations that Fiserv works with.”<sup>223</sup>

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<sup>220</sup> *Id.* at 24.

<sup>221</sup> Gina Heeb, AnnaMaria Andriotis & Josh Dawsey, *Walmart, Amazon Are Exploring Issuing Stablecoins of Their Own*, WALL ST. J., June 14-15, 2025 at A1.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

## IX. THE CYBERSECURITY THREAT

Reports of successful cyber hacks across all aspects of society—business, governments, and the general population, are legion.<sup>224</sup> Corporate boards struggle to ensure the integrity of their corporate data systems.<sup>225</sup> For example, UnitedHealthcare reports a cyberbreach exposing the personal data of 190 million individuals.<sup>226</sup> *The Wall Street Journal* reports on June 4, 2025 that retailers “Victoria’s Secret, North Face And Cartier Log Cyber Attacks.”<sup>227</sup> The very next day, the same newspaper describes a request by the Department of Justice and SEC for information regarding “a software bug in [a] company’s software [that] knocked millions of computers offline... [and] delayed thousands of flights, broke back-end systems and rendered laptops temporarily unusable.”<sup>228</sup> Also on June 5, 2025 “the main distributor to grocery chain Whole Foods Market” reports a cyberattack prohibiting “Whole Foods and other customers... [from

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<sup>224</sup> See generally Scott Shackelford, Janine Hiller, Christos Makridis, Iain Nash, Kathryn Kisska-Schulze & Hannibal Travis, *Moving Slow and Fixing Things*, 100 IND. L.J. 1611 (2025).  
Carla Reyes & Christine Hurt, *The Contractarian Joint Venture*, \_\_ ALA. L. REV. (forthcoming), <http://ssrn.com/abstract=4739274>.

<sup>225</sup> See generally H. Justin Pace & Lawrence J. Trautman, *Mission Critical: Caremark, Blue Bell, and Director Responsibility for Cybersecurity Governance*, 2022 WISC. L. REV. 887 (2022), <http://ssrn.com/abstract=3938128>; Neal F. Newman, Lawrence J. Trautman & Brian Elzweig, *The SEC Proposed Cybersecurity Infrastructure Rules and New Disclosure Requirements*, 94 UMKC L. REV. (forthcoming), <https://ssrn.com/abstract=4536669>; Lawrence J. Trautman, Scott Shackelford, Brian Elzweig & Peter C. Ormerod, *Understanding Cyber Risk: Unpacking and Responding to Cyber Threats Facing the Public and Private Sectors*, 78 U. MIAMI L. REV. 840 (2024), <https://ssrn.com/abstract=4262971>; Lawrence J. Trautman & Kara Altenbaumer-Price, *The Board’s Responsibility for Information Technology Governance*, 28 J. MARSHALL J. COMP. & INFO. L. 313 (2011), <http://www.ssrn.com/abstract=1947283>; Lawrence J. Trautman, *E-Commerce, Cyber and Electronic Payment System Risks: Lessons from PayPal*, 16 U.C. DAVIS BUS. L.J. 261 (Spring 2016), <http://www.ssrn.com/abstract=2314119>.

<sup>226</sup> Benjamin Ryan, *UnitedHealth’s Move to End Cyberattack Loan Lifeline Upsets Medical Providers*, N.Y. TIMES, (May 5, 2025), <https://www.nytimes.com/2025/05/05/health/unitedhealth-cyberattack-loans-lawsuits.html>.

<sup>227</sup> Suzanne Kapner, *Victoria’s Secret, North Face And Cartier Log Cyber Attacks*, WALL ST. J., June 4, 2025 at B4.

<sup>228</sup> Connor Hart, *CrowdStrike Discloses Federal Probe Into Outage*, WALL ST. J., June 5, 2025 at B2.

placing] orders through regular digital channels leaving many grocery store shelves bare.”<sup>229</sup>

Insurer Aflac found “suspicious activity on its U.S. network on June 12 and that it was able to stop the intrusion within hours... [and] said files potentially affected by the cyberattack contain claims information, health information, social-security numbers, and/or other personal information, related to customers, beneficiaries, employees, agents and other individuals.”<sup>230</sup> The same report mentions “Global cyberattacks rose 44% [during 2024]... marked by an increasing role of generative artificial intelligence, according to a January report from cyberthreat intelligence provider Check Point Research.”<sup>231</sup> Just days later, reports emerge that the *Washington Post* suffered a breach of certain journalist’s email accounts— “targeted include those on the national-security and economic-policy teams, including some who write about China, the people said.”<sup>232</sup> Start-up enterprises,<sup>233</sup> venture capitalists,<sup>234</sup> and all entrepreneurs must be aware of the laws and regulations involved with capital formation<sup>235</sup> and the crypto environment. Issues of privacy breach remain a major source of risk.<sup>236</sup>

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<sup>229</sup> Kim S. Nash, *Hackers Dent Whole Foods Supplier’s Outlook*, WALL ST. J., June 28-29, 2025 at B10.

<sup>230</sup> Colin Kellaher, *Aflac Says Cyberattack Breached Sensitive Files*, WALL ST. J., June 21-22, 2025 at B10.

<sup>231</sup> *Id.*

<sup>232</sup> Dustin Volz, Isabella Simonetti & Robert McMillan, *Washington Post Gets Hit By a Cyberattack on Email*, WALL ST. J., June 16, 2025 at B2.

<sup>233</sup> Lawrence J. Trautman, Anthony J. Luppino & Malika S. Simmons, *Some Key Things U.S. Entrepreneurs Need to Know About The Law and Lawyers*, 46 TEX. J. BUS. L. 155 (2016), <http://ssrn.com/abstract=2606808>.

<sup>234</sup> David Nows & Lawrence J. Trautman, *The Growing Role of Venture Studios in Startup Finance*, 76(2) CASE W. RES. L. REV. (forthcoming), <http://ssrn.com/abstract=5124599>.

<sup>235</sup> Neal F. Newman, Lawrence J. Trautman & Brian Elzweig, *Capital Formation, The SEC, and Accredited Investors*, 27 U. PA. J. BUS. L. 130 (2024), <https://ssrn.com/abstract=4771089>.

<sup>236</sup> *See generally*, Lawrence J. Trautman, *Governance of the Facebook Privacy Crisis*, 20(1) PITT. J. TECH. L. & POL’Y 41 (2020), <http://ssrn.com/abstract=3363002>; Lawrence J. Trautman, *How Google Perceives Customer Privacy, Cyber, E-Commerce, Political and Regulatory Compliance Risks*, 10 WM. & MARY BUS. L. REV. 1 (2018), <https://ssrn.com/abstract=3067298>.

## Corporate Boards Tackle Cybersecurity

Directors organize their workload by utilizing a committee structure.<sup>237</sup> One of the biggest challenges facing corporate boards is protecting the corporation from cyberattacks.<sup>238</sup> Veteran of many large corporate boards, professional director Michele Hooper says:

Most of my boards do not have a specific risk committee which tends to be found in finance or insurance type companies, as opposed to other industries. So, one of the things that I view as our keen responsibility is to listen, understand, and make sure that there's mitigation and other attention being given alongside with outside benchmarking. But to me, one of my primary responsibilities is to make sure that the cyber teams have enough resources to do the job in today's world. Part of the problem is that in many organizations the budget within the cyber and the information area has been increasing enormously. And part of our responsibility on the audit committee and full board is protecting the employees that are in cyber functions and ensuring that management provides the attention and the resources that are needed. It is important that boards explore bringing an individual with cyber experience on to the board. However, in the absence of such cyber talent, one of the ways in which we manage is to have outside experts that come into the boardroom and talk to us. And one of the reasons that we tend to do it that way is that we found that cyber developments and the risks around cyber change so much. We found that if we brought somebody who's retired, their knowledge goes stale very quickly. And so that's how we tend to handle

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<sup>237</sup> See generally, Hon. Bernice Donald, Brian Elzweig, Neal F. Newman, H. Justin Pace & Lawrence J. Trautman, *Crisis at the Audit Committee: Challenges of a Post-Pandemic World*, 43 REV. BANKING & FIN. L. 119 (2023-2024), <http://ssrn.com/abstract=4240080>; Lawrence J. Trautman, *Who Qualifies as an Audit Committee Financial Expert Under SEC Regulations and NYSE Rules?*, 11 DEPAUL BUS. & COMM. L.J. 205 (2013), <http://www.ssrn.com/abstract=2137747>; Lawrence J. Trautman, *The Matrix: The Board's Responsibility for Director Selection and Recruitment*, 11 FLA. ST. U. BUS. REV. 75 (2012), <http://www.ssrn.com/abstract=1998489>; Lawrence J. Trautman, *Who Sits on Texas Corporate Boards? Texas Corporate Directors: Who They Are and What They Do*, 16 HOU. BUS. & TAX L.J. 44 (2016), <http://ssrn.com/abstract=2493569>; Lawrence J. Trautman & Janet Ford, *Nonprofit Governance: The Basics*, 52 AKRON L. REV. 971 (2018), <https://ssrn.com/abstract=3133818>.

<sup>238</sup> Lawrence J. Trautman, *Managing Cyberthreat*, 33 SANTA CLARA HIGH TECH. L.J. 230 (2016), <http://ssrn.com/abstract=2534119>; Lawrence J. Trautman & Peter C. Ormerod, *Industrial Cyber Vulnerabilities: Lessons from Stuxnet and the Internet of Things*, 72 U. MIAMI L. REV. 761 (2018), <http://ssrn.com/abstract=2982629>; Lawrence J. Trautman & Peter C. Ormerod, *Corporate Directors' and Officers' Cybersecurity Standard of Care: The Yahoo Data Breach*, AM. U. L. REV. 1231 (2017), <http://ssrn.com/abstract=2883607>; Lawrence J. Trautman, *The Board's Responsibility for Crisis Governance*, 13 UC L. BUS. J. 275 (2017), <http://ssrn.com/abstract=2623219>; Lawrence J. Trautman & Kara Altenbaumer-Price, *D&O Insurance: A Primer*, 1 AM. U. BUS. L. REV. 337 (2012), <http://www.ssrn.com/abstract=1998080>;

it. The other pandemic development is that the business environment is going virtual. As a result, ransomware is an area that is exploding in terms of risk—and boards need to be aware and focused on ransomware.<sup>239</sup>

### Nation-State Risk

An examination of several reported threats to the continued growth in international crypto markets is now presented. In particular, adversarial activities of North Korea, China, Russia and Iran are examined.

### North Korea

*The Wall Street Journal* documents “At 11:49a.m. on July 18, [2024] North Korean hackers pounced on a major cryptocurrency exchange handling hundreds of millions of dollars. The hackers slipped into the exchange’s virtual vault, took control and then started pilfering cryptocurrency tokens.”<sup>240</sup> Alarming, “Within a little more than an hour, the hackers had... [stolen] more than \$200 million for the Kim Jong Un regime. The shocking theft at WazirX, India’s largest cryptocurrency exchange, along with several other major recent heists... [establishes]... North Korea [as] the world’s most dangerous crypto thief.”<sup>241</sup> In total, North Korea “has swiped more than \$6 billion in cryptocurrency over the past decade—a sum so large that no one else compares.”<sup>242</sup> It was in February 2025 when North Korean scored its’ biggest heist “with a \$1.5 billion

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<sup>239</sup> Lawrence J. Trautman, Seletha Butler, Frederick R. Chang, Michele Hooper, Ron McCray & Ruth Simmons *Corporate Directors: Who They Are, What They Do, Cyber and Other Contemporary Challenges*, 70 BUFF. L. REV. 459 (2022), <http://ssrn.com/abstract=3792382>. See also H. Justin Pace & Lawrence J. Trautman, *Financial Institution D&O Liability After Caremark and McDonald’s*, 76 RUTGERS U. L. REV. 449 (2024), <http://ssrn.com/abstract=4566471>.

Lawrence J. Trautman, Mohammed T. Hussein, Emmanuel U. Opara, Mason J. Molesky & Shahedur Rahman, *Posted: No Phishing*, 8 EMORY CORP. GOV. & ACCOUNTABILITY REV. 39, 41–42 (2021) (discussing ransomware threats).

<sup>240</sup> Patricia Kowsmann & Timothy W. Martin, *North Korean Hackers Steal Billions in Crypto To Keep Regime Afloat*, WALL ST. J., April 4, 2025 at A1.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

raid of Bybit, one of the world’s biggest cryptocurrency exchanges, in the largest-ever such heist. That followed several hackings in 2024, when North Korea stole more than \$6 out of every \$10 dollars lost by the cryptocurrency industry, according to Chainalysis, which tracks crypto theft.”<sup>243</sup>

North Korea is reported to have dedicated over 8,000 hackers to this task, motivated by a “desperation for cash, and its lack of concern for diplomatic blowback.”<sup>244</sup> Prior past cyber offensives believed to be as a result of North Korean efforts; but, that have been denied, include: “the 2024 email hack of Sony Pictures Entertainment, 2016’s theft of \$81 million from Bangladesh’s central bank and the WannaCry ransomware attack in 2017.”<sup>245</sup> Another, among many examples of the U.S. seizure of over \$7.74 million.<sup>246</sup>

### China

Elsewhere, I write that the U.S. Intelligence Community’s “Annual Threat Assessment contends ‘The PRC remains the most active and persistent threat to the U.S. government, private sector, and critical infrastructure networks.’”<sup>247</sup> Rarely does the Opinion page of *The Wall Street Journal* focus on cybersecurity issues. However, in

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<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* See also Lawrence J. Trautman & Peter C. Ormerod, *WannaCry, Ransomware, and the Emerging Threat to Corporations*, 86 TENN. L. REV. 503 (2019), <http://ssrn.com/abstract=3238293>.

<sup>246</sup> Press Release, Department Files Civil Forfeiture Complaint Against Over \$7.74M Laundered on Behalf of the North Korean Government, DOJ (June 5, 2025), <https://www.justice.gov/opa/pr/department-files-civil-forfeiture-complaint-against-over-774m-laundered-behalf-north-korean>.

<sup>247</sup> Lawrence J. Trautman, *International Business, Terrorism, and the Impact of Rapid Technological Change*, \*17 (2025), *citing* Ann. Threat Assessment of the U.S. Intel. Community, Off. Dir. Nat’l Intell. 11 (Mar. 2025), <https://ssrn.com/abstract=5191287>.

June 2025 the Journal editors ran a column titled “Chinese Spyware, Only \$6.99.”<sup>248</sup>

Accordingly, Mike Hilgers, Attorney General of Nebraska, has filed a lawsuit alleging that Chinese e-shopping platforms Temu and Pinduoduo are promoting the installation of malware that gives the app access to personal “sensitive information.” According to the Op-Ed, “This includes the microphone, messages, photos and ‘information sufficient to track their movements.’ The malware is also is also designed to operate secretly and ‘avoid detection,’ the lawsuit alleges.”<sup>249</sup> Consider:

The data collection isn’t solely for the benefit of shopping optimization. A Center for Strategic and International Studies brief notes that the app ‘requests and gains access to users’ devices well above and beyond anything necessary for its function and, by design, is extremely difficult to delete or remove...

...

The fear is that consumer products marketed on Temu are the bait to get Americans to download an app that gives the company—and thereby the [Chinese Communist] Party—access to personal data, location tracking and other sensitive information.<sup>250</sup>

While “National security concerns are typically addressed by the federal government... state AGs can also hold Chinese companies accountable for actions that steal data, infringe copyrights and mislead consumers. Nebraska’s lawsuit could bring out more information during legal discovery.”<sup>251</sup> Consider that “By 2025 the U.S. Annual Threat Assessment contends that “The PRC remains the most active and persistent cyber threat to the U.S. government, private sector, and critical infrastructure networks.”<sup>252</sup> In addition, China’s “campaign to preposition access on critical infrastructure for attacks during crisis or conflict, tracked publicly as Volt Typhoon, and

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<sup>248</sup> Chinese Spyware, Only \$6.99, Opinion, WALL ST. J., June 12, 2025 at A14.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> See Trautman, *supra* note 247, citing Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence 11 (March 2025).

its more recently identified compromise of U.S. telecommunications infrastructure, also referred to as Salt Typhoon, demonstrates the growing breadth and depth of the PRC’s capabilities to compromise U.S. infrastructure.”<sup>253</sup>

Reports indicate that “Chinese state-sponsored hacking groups have often targeted international companies and government institutions, including in the United States and Europe.”<sup>254</sup> One of China’s “most active hacking groups, known as Mustang Panda... attracted the attention... of the Justice Department and the F.B.I. [saying] that Mustang Panda’s malware had infected thousands of computer systems.”<sup>255</sup>

### Russia

The 2025 the U.S. Annual Threat Assessment warns, “Russia’s advanced cyber capabilities, its repeated success compromising sensitive targets for intelligence collection, and its past attempts to pre-position access on U.S. critical infrastructure make it a persistent counterintelligence and cyber attack threat.”<sup>256</sup> The U.S. intelligence community writes “Regardless of how and when the war in Ukraine ends, Russia’s current geopolitical, economic, military, and domestic political trends underscore its resilience and enduring potential threat to U.S. power, presence, and global interests.”<sup>257</sup> It is expected that “Russia will continue to be able to deploy anti-U.S. diplomacy, coercive energy tactics, disinformation, espionage, influence operations, military intimidation, cyberattacks, and gray

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<sup>253</sup> *Id.*

<sup>254</sup> Megha Rajogopalan, *China Sets Hackers Upon Its Friend Russia, Seeking Military Secrets*, N.Y. TIMES, June 20, 2025 at A8.

<sup>255</sup> *Id.*

<sup>256</sup> See Trautman, *supra* note 247, *citing* Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence 19 (March 2025).

<sup>257</sup> See Trautman, *supra* note 247, *citing* Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence 16 (March 2025).

zone tools to try to compete below the level of armed conflict and fashion opportunities to advance Russian interests.<sup>258</sup>

### Iran

For many years now, Iran has been a credible threat to American cyber security. For example, “The U.S. has said hackers linked to the country have broken into critical infrastructure systems in Israel and other Middle Eastern and Western nations. It is considered one of the major cyber adversaries of the U.S., alongside Russia, China, and North Korea.”<sup>259</sup> In the United States, “Targets have included sensitive companies such as a water utility in Aliquippa, Pa., in 2023. Late last year, a joint advisory from U.S., British, Israeli and Canadian intelligence agencies warned that Iran-linked hackers were targeting industrial systems and outlined their tactics.”<sup>260</sup> On June 22, 2025, “The United States... warned Iran not to retaliate after a series of surgical strikes by American B-2 bombers and missiles caused what American officials described as ‘severe damage’ to Iran’s nuclear operations... Hours after the strikes, Iran’s Islamic Revolutionary Guards Corps threatened to retaliate...”<sup>261</sup>

### Multinational Organized Crime

In many countries, multinational organized crime, the illicit drug trade, bribery, and corruption are all challenges that must be navigated by those conducting international

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<sup>258</sup> *Id.* at 17.

<sup>259</sup> James Rundle & Yuliya Chernova, *Companies Alerted on Iranian Cyberattacks*, WALL ST. J., June 17, 2025 at A6.

<sup>260</sup> *Id.*

<sup>261</sup> Helene Cooper, John Ismay, Eric Schmitt, Ronen Bergman & Christian Maag, *U.S. Claiming ‘Severe Damage,’ Warns Iran Not to Strike Back: Tehran ‘Reserves All Options’ After Attack at Nuclear Sites*, N.Y. TIMES, June 23, 2025 at A1. *See also* Lawrence J. Trautman, *Is Cyberattack The Next Pearl Harbor?*, 18 N.C. J. L. & TECH. 232 (2016), <http://ssrn.com/abstract=2711059>.

business.<sup>262</sup> Increasingly, “the global and domestic culture of bribery, extortion, and corruption is an amorphous cancer eating away at our societies with the very real potential to destroy commerce between nations and produce destructive civil unrest.”<sup>263</sup>

### Budget Cuts for Cybersecurity?

To make room for tax cuts for the ultra-wealthy, reports emerge during June 2025 that The Cybersecurity and Infrastructure Security Agency is receiving a proposed budget cut of \$495 million (to \$2.38 billion) in President Trump’s FY2026 budget.<sup>264</sup> To be expected, “Democrats and some Republicans have criticized efforts to reduce CISA’s operations at a time when cyber threats are perceived to be at a record.”<sup>265</sup>

### What Could Possibly Go Wrong?

Professor David Krause writes, “El Salvador’s adoption of Bitcoin as legal tender in 2021 represented a bold but ultimately flawed experiment in national cryptocurrency integration.”<sup>266</sup> While “DeFi protocols aim to provide financial services, such as lending or automated trading directly on a blockchain, bypassing traditional intermediaries...

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<sup>262</sup> See *supra* notes 20 & 21 (discussion regarding bribery & corruption).

<sup>263</sup> See Fumiko Hayashi & Aditi Routh, *Financial Literacy, Risk Tolerance, and Cryptocurrency Ownership in the United States*, FRB of Kansas City Working Paper No.24-03 (2024), <http://ssrn.com/abstract=4765225> (observing “the market is also characterized by rampant theft, fraud, and illicit activities including money laundering,” and theft and fraud may be resulted from cybersecurity breaches or hacks). See also Mohammed T. Hussein, Munir Quddus & Lawrence J. Trautman, *The Impact of Technological Progression on Impoverished Countries*, (unpub. ms.), <http://ssrn.com/abstract=4504926>; Trautman, *supra* note 247 at \*11, citing Lawrence J. Trautman & Kara Altenbaumer-Price, *Lawyers, Guns, and Money: The Bribery Problem and the U.K. Bribery Act*, INT’L LAWYER 481, 483 (2013). See generally, Lawrence J. Trautman, *Rapid Technological Change and U.S. Entrepreneurial Risk in International Markets: Focus on Data Security, Information Privacy, Bribery and Corruption*, 49 CAPITAL U. L. REV. 67 (2021), <https://ssrn.com/abstract=2912072>.

<sup>264</sup> James Rundle, *Budget Would Hit U.S. Cyber Agency*, WALL ST. J., June 3, 2025 at A4.

<sup>265</sup> *Id.* See also generally Lawrence J. Trautman, *Congressional Cybersecurity Oversight: Who’s Who & How It Works*, 5 J. L. & CYBER WARFARE 147 (2016), <http://ssrn.com/abstract=2638448>; Lawrence J. Trautman, *Cybersecurity: What About U.S. Policy?*, 2015 U. ILL. J.L. TECH. & POL’Y 341 (2015), <http://ssrn.com/abstract=2548561>.

<sup>266</sup> David Krause, *The Rise and Fall of Bitcoin as Legal Tender: An Analysis of El Salvador’s Experiment*, INT’L J. CRYPTOCURRENCY RES. (Forthcoming), <http://ssrn.com/abstract=5164544>.

these protocols operate by holding user-deposited assets (collateral) within smart contracts, making them targets for cybersecurity breaches, or hacks.”<sup>267</sup>

In his 2018 article, Professor Kevin Werbach highlights the important question, “What Could Possibly Go Wrong?”<sup>268</sup> Professor Werbach reflects that “as successful as Bitcoin and other major blockchain systems have been in avoiding major security failures, the security of the cryptocurrencies is not a foregone conclusion. And as circumstances change, there is no guarantee it will continue.”<sup>269</sup> The subject of the potential for quantum computing to break current blockchain encryption during the future far exceeds the scope of this single law review article. Professor Werbach observes that “Blockchain technology, like any system built on computer code, is not perfect. There have been significant bugs discovered in the open source Bitcoin code, although they were addressed prior to any lasting damage. More serious vulnerabilities relate to the mining of proof of work process.”<sup>270</sup> This “Midas attack” vulnerability refers to a situation where 51% or more of the system’s mining power is controlled by a single entity.<sup>271</sup> Professor Joshua Fairfield also highlights that “blockchain software is still software... [and] was supposed to solve the problem of asset duplication... Ironically, it did not. Rather, blockchain created a difficult set of legal problems.”<sup>272</sup>

Cornell University professor Eswar Prasad writes “Politicians’ newfound love of crypto probably has more to do with a cynical bid for young voter support and Silicon

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<sup>267</sup> Pablo D. Azar, Sergio Olivas & Nish D. Sinha, *The Price of Processing: Information Frictions and Market Efficiency in DeFi*, FRB of New York Staff Rpt. No. 1153 (2025).

<sup>268</sup> Kevin Werbach, *supra* note 8.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* See also KEVIN WERBACH, *THE BLOCKCHAIN AND THE NEW ARCHITECTURE OF TRUST*, (MIT Press, 2018).

<sup>272</sup> Joshua Fairfield, *Crypto-Counterfeiting*, 15 WM. & MARY BUS. L. REV. \_\_ (2024), <http://ssrn.com/abstract=521554>.

Valley cash than a maturing of a financially perilous set of assets. If anything, crypto today presents even greater risks to investors and to our financial institutions...<sup>273</sup>

Professor Prasad warns:

The fact that the Republican Party is publicly celebrating crypto to the American voters could Only make matters worse...

I can tell you that Bitcoin has remarkable creative concepts and innovative technology behind it. Bitcoin and other such cryptocurrencies are in principle decentralized — which means they are not issued or managed by any institution or agency...

Unfortunately, some of these benefits have fallen by the wayside as cryptocurrencies gained in popularity and speculative forces in search of quick profits took hold. One major paradox of crypto is that there is now enormous centralization in this unregulated ecosystem. Apparently unwilling to put their full faith in a trustless technology, most users rely on cryptocurrency exchanges to hold their crypto assets and to trade them. The fraud perpetrated by Sam Bankman-Fried's FTX, in which its executives treated investor funds like a personal piggy bank, highlights this vulnerability. And the governments charges that Binance, the world's largest cryptocurrency exchange, engaged in money laundering and other forms of malfeasance show how the problems of concentrated market power can pervert the noble aims of crypto visionaries.

Despite the problems illustrated by FTX and Binance, regulation is scant and centralization remains pervasive...

...

Bitcoin, in particular, has essentially become a purely speculative financial asset, whose value seems to hinge solely on its scarcity rather than any useful purpose it serves. Its volatile value, which is evident in its wild price swings... high transition fees and slow processing times have rendered it ineffective as a means of payment, which was its original purpose.

But thanks to a loosening of restrictions by the Securities and Exchange Commission, retail investors, even nonprofessionals with modest savings, can now easily incorporate crypto into their portfolios via products that are offered by mainstream investment management firms. Endorsement by politicians further legitimizes crypto as an asset class...

...

For all its ostensible benefits, decentralized finance built around cryptocurrencies has essentially imported the fragilities of traditional finance, but with much less regulation and with many new risks. While being open to innovations that improve access to and efficiency in

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<sup>273</sup> Eswar Prasad, Op-Ed, *Beware Politicians' Newfound Love of Crypto*, N.Y. TIMES, Aug. 12, 2024 at A16.

financial markets, users, investors and regulators ought to beware of false promises and hype. Especially if that hype comes from politicians.<sup>274</sup>

As we go to press, *The Wall Street Journal* warns, “Hackers in recent months have retail sales in the U.K. and U.S. and stolen hundreds of millions of dollars from crypto holders by targeting the outsourced call centers that many U.S. corporations use to save costs.”<sup>275</sup> Due to the high rewards for criminals, “The hacks are often meticulously researched and use a variety of techniques, but they have one thing in common: low-level workers who staff call centers and have access to the kind of sensitive information that criminals need to commit crimes.”<sup>276</sup> These reports document how “the hackers typically impersonated high-level corporate executives and pressured tech-support workers to give them access to corporate networks, according to security researchers. This is the same technique that allowed hackers to Gain access to MGM resorts systems in 2023.”<sup>277</sup>

## X. CONCLUSION

The election of Donald Trump to a second presidential term was enthusiastically supported and financed by those advocating less regulation of digital assets. As the Trump administration took office, the appointment of Paul S. Atkins as SEC Chair made this vision a reality. In the fulness of time, investors and capital markets will learn whether removal of provisions to banking and securities regulation under the SEC’s ‘33 and ‘34 Acts and subsequent lessons provided by case law was prudent.

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<sup>274</sup> *Id.*

<sup>275</sup> Robert McMillan, *Hackers Turn Tech Support Into New Threat*, WALL ST. J., June 20, 2025 at A1.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*