Cryptocurrencies: Do We Need a New Regulatory Architecture?

The rise of cryptocurrencies brings questions about how they fit into the existing regulatory framework and whether an overhaul is needed. To address these questions, policymakers must grapple with the scope of existing regulatory agencies and issues such as whether a crypto-asset is a security or commodity.

Securities vs. Commodities

Securities laws and court precedents have provided ways to determine if an asset is a security or commodity with debates on how to apply them to crypto-assets and whether they need to be updated. The Howey Test is a legal standard currently used to determine if an asset is a security based on whether the asset is:

1. An investment of money
2. In a common enterprise
3. With an expectation of profit from the issuer
4. Based on efforts of the promoter or third party

What agencies could be relevant to crypto regulation?

Market regulators

Commodity Futures Trading Commission (CFTC)

Regulates the U.S. derivatives markets and has authority to counter fraud and market manipulation in commodity spot markets. The CFTC oversees crypto-assets deemed commodities with debates over whether their regulatory authority is sufficient.

Securities and Exchange Commission (SEC)

Oversees and regulates securities and securities markets with the goal of protecting investors, promoting market integrity, and facilitating capital formation. The SEC has authority over crypto-assets deemed securities and has engaged in various enforcement actions in the crypto space.

Bank Regulators

Federal Deposit Insurance Corporation (FDIC)

Supervises depository institutions and provides deposit insurance to consumers. The FDIC has issued guidance about the use of cryptocurrency for depository institutions they supervise.

Office of the Comptroller of Currency (OCC)

Charters, regulates, and supervises national banks and federal saving associations. Is an independent bureau of the U.S. Treasury Department. Legislation has been introduced for the OCC to create a charter designed specifically for stablecoin issuers.

Federal Reserve

Is the central bank of the United States and regulates bank holding companies and other banks that fall under its jurisdiction. The Federal Reserve has issued guidance for banks that want to engage in crypto activities.

Other

Consumer Financial Protection Bureau (CFPB)

Has certain regulatory authorities to protect consumers from unfair, deceptive, and abusive acts or practices. The CFPB has been fielding and reviewing complaints about scams involving cryptocurrencies.

Federal Trade Commission (FTC)

Enforces consumer protection and antitrust laws. The FTC has reported on scams in the crypto space and provided education material to help consumers avoid them.

Financial Crimes Enforcement Bureau (FinCEN)

A bureau of the U.S. Treasury designed to prevent and counter financial crimes like money laundering and illicit finance. FinCEN is monitoring cryptocurrencies to prevent financial crimes.

Financial Stability Oversight Council (FSOC)

A council of regulatory agencies designed to identify risks to the financial system and given certain designation powers. FSOC published a major report on digital assets identifying several regulatory gaps.

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