

## **VI. *Regulating Virtual Currency Risk***

### **A. Introduction**

Trading virtual currency, also known as cryptocurrency, may be the future of the financial world,<sup>1</sup> but regulatory bodies are attempting to address the many risks posed by such trading. Virtual currency exchanges have grown to the point that governments around the world are taking a hard look at the potential risks virtual currencies pose to investors and the overall economy,<sup>2</sup> as well as the risk of misappropriation for criminal purposes.<sup>3</sup>

According to the website CoinMarketCap.com, the virtual currency industry has a global market capitalization of over \$253 billion, as of March 30, 2018.<sup>4</sup> The popularity of virtual currencies has put many important actors in the financial world on notice.<sup>5</sup> In the United States, some groups, including traditional banks, have come out strongly against virtual currencies,<sup>6</sup> in part because they view the new

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<sup>1</sup> Dyani Sabin, *Everything You Need to Know About Cryptocurrency and Why It's the Future of Money*, FUTURISM (Jan. 3, 2018), <https://futurism.com/cryptocurrency-future-money-bitcoin/> [https://perma.cc/WXD6-BR8M] (“Most experts agree that, in the future, countries will turn to cryptocurrency, as money is already moving from the physical to the digital realm.”).

<sup>2</sup> Steve Yang, *China Escalates Crackdown on Cryptocurrency Trading*, BLOOMBERG TECH (Jan. 15, 2018 6:17 AM), <https://www.bloomberg.com/news/articles/2018-01-15/china-is-said-to-escalate-crackdown-on-cryptocurrency-trading> [https://perma.cc/4MZW-PZ47] (“Regulators around the world are stepping up scrutiny of cryptocurrencies amid concerns over excessive speculation, money laundering and tax evasion.”).

<sup>3</sup> Cynthia Kim, *South Korea to Ban Cryptocurrency Traders from Using Anonymous Bank Accounts*, REUTERS (Jan. 22, 2018 9:08 PM), <https://www.reuters.com/article/us-southkorea-bitcoin/south-korea-to-ban-cryptocurrency-traders-from-using-anonymous-bank-accounts-idUSKBN1FC069> [https://perma.cc/7KDP-HG5D].

<sup>4</sup> *Cryptocurrency Market Capitalization*, COINMARKETCAP.COM, <https://coinmarketcap.com/> [https://perma.cc/46YU-NWQ7] [hereinafter Market Cap].

<sup>5</sup> See Lea Nonninger, *Governments Speak out about Cryptocurrency*, BUS. INSIDER (Jan. 26, 2018, 9:30 AM), <http://www.businessinsider.com/governments-speak-out-about-cryptocurrency-2018-1> [https://perma.cc/F229-WS4D] (reporting perspectives on cryptocurrencies from Russia's Finance Ministry and the British Prime Minister).

<sup>6</sup> Fred Imbert, *JPMorgan CEO Jamie Dimon Says Bitcoin Is a 'Fraud' That Will Eventually Blow Up*, CNBC (Sept. 12, 2017, 1:27 PM), <https://www.cnbc.com/2017/09/12/jpmorgan-ceo-jamie-dimon-raises-flag-on-trading->

technology as greater competition and a threat to their business.<sup>7</sup> Some countries want enforce restrictions essentially banning virtual currencies trading, such as China.<sup>8</sup> These big banks have even gone so far as banning consumers from purchasing virtual currencies using their credit cards.<sup>9</sup> At the same time, groups supporting virtual currencies, including Coin Center Inc., the Chamber of Digital Commerce, and The Bitcoin Foundation, have voiced support for the promising future of virtual currencies and have called for a cautious approach to regulating virtual currencies.<sup>10</sup> These pro-crypto groups fear overly strict regulation will stifle the growth of an innovative, “powerful tool for startups and businesses” seeking funding.<sup>11</sup> Other actors, including government agencies such as the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC)

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revenue-sees-20-percent-fall-for-the-third-quarter.html [https://perma.cc/H6CD-M3TN].

<sup>7</sup> Evelyn Cheng, *Bank of America Is Worried about the Threat of Cryptocurrency to Its Business*, CNBC (Feb. 23, 2018), <https://www.cnbc.com/2018/02/23/bank-of-america-worried-about-threat-of-cryptocurrency-to-its-business.html> [https://perma.cc/L24C-XMAW].

<sup>8</sup> Xie Yu, *China to Stamp Out Cryptocurrency Trading Completely with Ban on Foreign Platforms*, S. CHINA MORNING POST (Feb. 5, 2018, 11:53 AM), <http://www.scmp.com/business/banking-finance/article/2132009/china-stamp-out-cryptocurrency-trading-completely-ban> [https://perma.cc/K8M3-FXBX] (“China is to block all websites related to cryptocurrency trading and initial coin offerings (ICOs)—including foreign platforms—in a bid to finally quash the market completely.”).

<sup>9</sup> Naeem Aslam, *Banks Banning Cryptocurrency Purchase on Credit Cards, Why?*, FORBES (Feb. 5, 2018, 9:55 AM), <https://www.forbes.com/sites/naeemaslam/2018/02/05/banks-banning-cryptocurrency-purchase-on-credit-cards-why/#6eebe2d3cf9> [https://perma.cc/HGU9-X752].

<sup>10</sup> See Press Release, Chamber of Dig. Commerce, Blockchain Industry and Regulatory Leaders Launch Token Alliance (Sept. 18, 2017), <https://digitalchamber.org/blockchain-industry-and-regulatory-leaders-launch-token-alliance/> [https://perma.cc/JZR8-HWV7] (“The Token Alliance will work with the community to recommend legal frameworks that drive innovation and promote investment, balanced with protections for market participants.”); see also *The Bitcoin Foundation Manifesto*, BITCOIN FOUND., [https://bitcoinfoundation.org/wp-content/uploads/2017/03/Bitcoin\\_Foundation\\_Manifesto.pdf](https://bitcoinfoundation.org/wp-content/uploads/2017/03/Bitcoin_Foundation_Manifesto.pdf) (listing the benefits of Bitcoin); *About Us*, COIN CTR., <https://coincenter.org/about> (enunciating a mission to “promote a regulatory climate that preserves the freedom to innovate using permissionless blockchain technologies”).

<sup>11</sup> Press Release, *supra* note 10.

have expressed reserved optimism when discussing the growth of virtual currencies, but these same agencies made it clear they will take steps to protect investors while assessing the classification of or the extent to which to regulate virtual currencies.<sup>12</sup> Congress has made it clear regulating virtual currencies is on their agenda.<sup>13</sup> However, a tremendous amount of uncertainty surrounds the manner in which virtual currencies should be regulated. The next step taken by the U.S. governmental actors will be crucial in determining the future potential of the virtual currency industry.

This article discusses the most recent viewpoints of the various groups that have a role, or hope to have a role, in virtual currency regulation. First, Section B provides a quick overview of what virtual currencies and the growth of the industry. Second, Section C highlights perspective of groups opposing virtual currencies and favoring a strict regulatory approach. Third, Section D discusses the arguments made by pro-virtual currency advocates who favor a measured approach to regulating virtual currencies. Fourth, Section E highlights comments made by regulatory agencies, specifically the SEC and the CFTC. Fifth, Section F delves into viewpoints in academia regarding virtual currencies.

## **B. The Rise of Virtual Currencies**

According to the CFTC, broadly, “virtual currencies are a digital representation of value that may function as a medium of exchange, a unit of account, and/or a store of value.”<sup>14</sup> “Virtual currencies generally run on a decentralized peer-to-peer network of computers, which rely on certain network participants to validate and log transactions on a permanent, public distributed ledger, commonly

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<sup>12</sup> See Ali Breland & Sylvan Lane, *Senate Committee to Hold Bitcoin Hearing*, HILL (Jan. 11, 2018, 11:20 AM), <http://thehill.com/policy/technology/368492-senate-committee-to-hold-bitcoin-hearing-with-regulators-report> [https://perma.cc/K57J-JG5H] (“[The CFTC and SEC] have largely not taken firm regulatory action on bitcoin or other cryptocurrencies over the past several months, but have issued warnings to investors about digital currencies over recent months.”).

<sup>13</sup> *Id.* (“The Senate Banking Committee will hold a hearing with top financial regulators in early February examining the implications of bitcoin.”).

<sup>14</sup> Press Release, Commodities Futures Trading Comm’n, Written Testimony of Chairman J. Christopher Giancarlo before the Senate Banking Committee (Feb. 6, 2018), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37> [https://perma.cc/C5J2-9QSQ].

known as the blockchain.”<sup>15</sup> Essentially, the goal of virtual currencies is to replace traditional currencies and make transactions easier.<sup>16</sup>

A confusing element of the virtual currency industry is the myriad of terms. For example, cryptocurrency and Bitcoin are often mistakenly discussed interchangeably.<sup>17</sup> In reality, Bitcoin is a popular type of virtual currency with an extremely large market capitalization compared to other virtual currencies.<sup>18</sup> As a result, many people use the term Bitcoin to refer to the entire virtual currency market.<sup>19</sup> However, the market is made up of much more than just Bitcoin.<sup>20</sup> As of March 23, 2018, Bitcoin has a market capitalization of over \$113 billion, but other virtual currencies, such as Ethereum and Ripple, have market capitalizations of over \$37 billion and \$19 billion, respectively.<sup>21</sup> According to coinmarketcap.com, there are over 100 virtual currencies with market capitalizations over \$80 million.<sup>22</sup> The proliferation of virtual currencies is important to consider when thinking about the regulatory approach—regulators will need to regulate many virtual currencies, not just Bitcoin.

### C. **Opposition: Virtual Currencies Are Risky and Deserving of Strict Regulations**

In September 2017, JP Morgan CEO Jamie Dimon famously called Bitcoin a fraud.<sup>23</sup> Interestingly, Dimon’s comments came “at a time when some of the most well-known figures on Wall Street were starting to embrace virtual currencies.”<sup>24</sup> It is possible traditional bank-

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (“Virtual currencies seek to replace the need for a central authority or intermediary with a decentralized rules-based and open consensus mechanism.”).

<sup>17</sup> Gerri Martin, *What is Blockchain?*, CROSSPOINTE CONSULTING GROUP (Feb. 19, 2018), <https://crosspointecg.com/what-is-blockchain/> [<https://perma.cc/9V7N-2XSB>].

<sup>18</sup> Market Cap, *supra* note 4 (reporting that Bitcoin has a market capitalization equal to about forty-five percent of the market capitalization of the entire cryptocurrency market).

<sup>19</sup> Martin, *supra* note 17 (“Bitcoin is merely *one* of the ‘exchanges’ on which cryptocurrencies are tracked.”).

<sup>20</sup> Market Cap, *supra* note 4 (listing top 100 virtual currencies).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Imbert, *supra* note 6.

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

ing powerhouses like JP Morgan came out strongly against virtual currencies because they view the growing use of virtual currencies as a threat to their business model.<sup>25</sup> Banks earn revenue by charging fees for processing transactions and sometimes even just for holding onto money.<sup>26</sup> Virtual currencies allow people to trade directly with one another, eliminating the need for a traditional bank.<sup>27</sup> As a result, if consumers do not use banks to process transactions, banks do not earn any fees. The lack of need for a traditional bank by using virtual currencies may shape the behavior of banks. Whatever their true motive, big banks may be able to influence the U.S. regulatory approach to virtual currencies through lobbying.<sup>28</sup> Banks spend a tremendous amount of money on political activity.<sup>29</sup> Some of the biggest banks in the United States, including Wells Fargo, Citigroup, Prudential, and Goldman Sachs spent more than \$10 million each on political activity from the beginning of 2015 to the end of 2016.<sup>30</sup> Large financial institutions may use their spending to significantly influence the law-making process to help them protect their earnings.<sup>31</sup>

Interestingly, in spite, or perhaps because of, this threat to the traditional banking business model, big banks like JP Morgan have revisited their view on virtual currencies.<sup>32</sup> JP Morgan issued a com-

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<sup>25</sup> See Jeff Parsons, Opinion, *Here's Why Banks and Governments Hate the Bitcoin Cryptocurrency*, MIRROR (Nov. 2, 2017), <https://www.mirror.co.uk/tech/why-banks-hate-bitcoin-cryptocurrency-11433562> [https://perma.cc/B2AZ-XAGW] (explaining how virtual currencies remove the need for traditional banks).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (“[Cryptocurrency] enables one digital wallet . . . to directly connect with another securely and process a transaction. As such, it removes the need for any kind of traditional bank or regulator.”).

<sup>28</sup> Pete Schroeder, *Banks Spent Record Amounts on Lobbying in Recent Election*, REUTERS (Mar. 8, 2017, 12:07 PM), [www.reuters.com/article/us-usa-banks-lobbying/banks-spent-record-amounts-on-lobbying-in-recent-election-idUSKBN16F26P](http://www.reuters.com/article/us-usa-banks-lobbying/banks-spent-record-amounts-on-lobbying-in-recent-election-idUSKBN16F26P) [https://perma.cc/RW7B-P357] (“The financial sector spent \$2 billion on political activity from the beginning of 2015 to the end of 2016 . . .”).

<sup>29</sup> *Id.* (reporting the financial sector spent \$1.2 billion in campaign contributions from the beginning of 2015 to the end of 2016).

<sup>30</sup> *Id.*

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

<sup>32</sup> Gerelyn Terzo, *JPMorgan: Cryptocurrency is Unlikely to Disappear [Yes, Really]*, CCN (Feb. 12, 2018 19:41), <https://www.ccn.com/jpmorgan-cryptocurrency-unlikely-to-disappear-btc-price-could-lose-50/> [https://perma.cc/3LY8-4E67]

prehensive report to investors on virtual currencies.<sup>33</sup> The traditional banking giant even went so far as to say that virtual currencies are “here to stay.”<sup>34</sup> However, this does not mean big banks will wholeheartedly accept virtual currencies.<sup>35</sup> The JP Morgan virtual currency report did point out to investors that virtual currencies face regulatory hurdles.<sup>36</sup> This may simply speak to the idea that big banks now see virtual currencies as a means of profit, an interesting area of development will be to track how big banks react to virtual currency regulations in the near future.

#### **D. Advocacy: Leaders in the Cryptocurrency Industry Warn Against Stifling Innovation**

Virtual currency advocates are vying to ensure they also get a say in the lawmaking process.<sup>37</sup> The Token Alliance, an industry-led initiative formed by the Chamber of Digital Commerce, promotes responsible “token and digital asset issuances.”<sup>38</sup> The idea is, by opening communication lines with government agencies and regulatory bodies, these groups will be able to ensure any new laws do not stifle innovation.<sup>39</sup> Virtual currency advocates have an incentive to speed up the regulatory process and promote clear rules.<sup>40</sup> If advocates are able to accomplish their goals relatively quickly and ensure clarity in

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(“Perhaps the most revelatory finding in the bitcoin bible is the bank’s realization that cryptocurrencies aren’t going anywhere.”).

<sup>33</sup> *Id.*

<sup>34</sup> Brian Patrick Eha, *JPMorgan: Cryptocurrencies ‘Could Have a Role’ in Investor Portfolio*, AM. BANKER (Feb. 12, 2018 5:54 PM) <https://www.americanbanker.com/news/jpmorgan-cryptocurrencies-could-potentially-have-a-role-in-investor-portfolios>.

<sup>35</sup> *Id.* (“As bullish as this might sound, the report doesn’t necessarily represent a full about-face for JP Morgan.”).

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

<sup>37</sup> Press Release, *supra* note 10.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* (detailing the Token Alliance co-chairman’s statement regarding his desire to help shape the dialogue for regulating the virtual currency industry in a way that enables future innovation).

<sup>40</sup> *See id.* (“With the SEC’s recent finding regarding ICOs, combined with the CFTC’s determinations and enforcement, it is clear that proactive industry efforts are imperative and timely.”).

enforcement, the regulations can provide a strong sense of certainty to the industry.<sup>41</sup>

Other cryptocurrency supporters, such as Coin Center, have put forth proposals detailing how regulatory bodies should approach cryptocurrencies.<sup>42</sup> As a self-described non-profit research and advocacy organization aimed at better understanding virtual currencies and “[promoting] a regulatory climate that preserves the freedom to innovate” and grow,<sup>43</sup> Coin Center argues “the key to preserving the freedom to innovate is to make sure regulators take a sensible approach” to regulation.<sup>44</sup> Specifically, Coin Center advocates for policymakers following the Clinton Administration’s approach to regulating the Internet.<sup>45</sup> This would involve creating “a federal safe harbor for non-custodial uses of cryptocurrencies” to “address some of the drawbacks of the current state-based regime.”<sup>46</sup> In addition, Coin Center calls for a federal preemption of state money transmissions licensing currently regulating many U.S.-based cryptocurrencies.<sup>47</sup> Coin Center firmly believes federal, not state, regulation is best to regulate virtual currency.<sup>48</sup> In order for cryptocurrencies to reach their full potential, policymakers may need to avoid placing it in one regulatory box and

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<sup>41</sup> See *id.* (“[R]egulatory uncertainty and compliance continues to be a challenge for the industry.”).

<sup>42</sup> Jerry Brito, *How the SEC and CFTC can Address Cryptocurrency While Preserving U.S. Innovation*, COIN CTR. (Jan. 25, 2018), <https://coincenter.org/entry/how-the-sec-and-cftc-can-address-cryptocurrency-while-preserving-us-innovation> [<https://perma.cc/QKM6-P2E3>] (“By all indications the agencies are taking the right approach. Here’s how they can take it a step further.”).

<sup>43</sup> *About Us*, *supra* note 10.

<sup>44</sup> Jerry Brito, *Coin Center Takes Off: Who We Are and What We Do*, COIN CTR. (Jan. 6, 2015), <https://coincenter.org/entry/coin-center-takes-off-who-we-are-and-what-we-do> [<https://perma.cc/EFK4-TJDE>].

<sup>45</sup> Brito, *supra* note 42.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (“Congress should consider some form of federal preemption of state-by-state money transmission licensing, which no longer makes sense in an age of global internet payment services.”).

<sup>48</sup> Peter Van Valkenburgh, *Cryptocurrencies Are Far From Unregulated*, COIN CENTER (Feb. 5, 2018), <https://coincenter.org/entry/cryptocurrencies-are-far-from-unregulated> [<https://perma.cc/Q5DK-VUUY>] (“State-by-state regulation of inherently global internet money transmitters is inefficient and hurts innovation, financial inclusion, consumer protection and American competitiveness.”).

let the private sector lead the way.<sup>49</sup> Clearly, advocacy groups like Coin Center want to be involved in the policymaking process that is already well underway.

### E. Government Actors Are Getting Involved

On February 6, 2018, Jay Clayton, Chairman of the SEC, and J. Christopher Giancarlo, Chairman of the CFTC, testified in front of the Senate Banking Committee.<sup>50</sup> The topic of discussion was the type of regulatory approach required to mitigate virtual currency risks.<sup>51</sup> Interestingly, this hearing took place at a time when politicians on both sides of the aisle began to publicly embrace virtual currencies.<sup>52</sup>

#### 1. The SEC

While one may be tempted to think that, with news of strict virtual currency regulations in China and other countries, U.S. regulatory agencies would recommend strict rules to monitor virtual currencies. However, SEC Chairman Jay Clayton told the Senate Banking Committee he is “very optimistic” about the future potential impact of financial technology and the “promising investment opportunities for institutional and Main Street investors alike.”<sup>53</sup> At the same time, Chairman Clayton made it clear the SEC would do everything in its

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<sup>49</sup> See Brito, *supra* note 42 (“In the early 90s, policymakers could have made the mistake of shoving the Internet into one regulatory box.”).

<sup>50</sup> Hallie Detrick, *The Senate is Holding Bitcoin Hearings Today. What You Need to Know.*, FORTUNE (Feb. 6, 2018), [fortune.com/2018/02/06/bitcoin-senate-hearing-sec-cftc/](https://fortune.com/2018/02/06/bitcoin-senate-hearing-sec-cftc/) [<https://perma.cc/SP6K-FPM3>].

<sup>51</sup> *Id.* (“[T]he Senate Banking Committee will hear testimony . . . on the opportunities, challenges and dangers of bitcoin and other cryptocurrencies.”).

<sup>52</sup> Tess Bonn, *Politicians are Getting in on the Cryptocurrency Craze to Fund Campaigns*, CNBC (Mar. 2, 2018), <https://www.cnbc.com/2018/03/01/cryptocurrency-candidates-politicians-embrace-bitcoin.html> [<https://perma.cc/52ZH-24RU>] (reporting Democratic and Republican politicians started to accept Bitcoin campaign donations).

<sup>53</sup> *Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 115th Cong. 2 (2018) (testimony of Jay Clayton, Chairman, U.S. Securities and Exchange Commission) [hereinafter *Testimony*], (statement available at <https://www.banking.senate.gov/imo/media/doc/Clayton%20Testimony%20202-6-18.pdf> [<https://perma.cc/W6VH-VTDR>]).



power to ensure investors receive “the benefits of state and federal securities laws and sellers and other market participants must follow these laws.”<sup>54</sup> The SEC has also made it clear they will go so far as to suspend trading in companies trying to unfairly inflate stock prices using public announcements regarding virtual currencies.<sup>55</sup>

In his testimony before Congress, Chairman Clayton also proceeded to discuss that the current regulatory approach is not designed to address the type of trading that virtual currency platforms promote.<sup>56</sup> While Chairman Clayton was very hesitant to commit to the idea that more regulation is required to protect investors, he did make it clear that the SEC will be a part of a discussions involving members of the government to determine if more federal regulation of virtual currency is needed.<sup>57</sup> Overall, for the crypto community, Chairman Clayton’s statement does not definitively illustrate the scope of future SEC regulations, but it seems clear the agency’s current approach will undergo some modifications.<sup>58</sup> For now, Chairman Clayton’s testimony indicates that although coin developers may classify their offering as a “currency,” the SEC may not adopt the same stance.<sup>59</sup> If the SEC determines a product is a security, the promoter would be required to comply with U.S. securities laws and regulations.<sup>60</sup>

Soon after SEC Chairman Clayton testified before Congress, the SEC published a public statement advising investors and market participants.<sup>61</sup> The SEC is concerned “many online trading platforms appear to investors as SEC-registered and regulated marketplaces

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<sup>54</sup> *Id.* at 3.

<sup>55</sup> Press Release, U.S. Sec. Exch. Comm’n, SEC Suspends Trading in Three Issuers Claiming Involvement in Cryptocurrency and Blockchain Technology (Feb. 16, 2018), <https://www.sec.gov/news/press-release/2018-20> [<https://perma.cc/CAL4-TAKE>].

<sup>56</sup> *Testimony, supra* note 53, at 5 (“In short, the currently applicable regulatory framework for cryptocurrency trading was not designed with trading of the type we are witnessing in mind.”).

<sup>57</sup> *Id.*

<sup>58</sup> *See id.* at 2.

<sup>59</sup> *Id.* at 5 (“[S]imply calling something a ‘currency’ or a currency-based product does not mean that it is not a security.”).

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

<sup>61</sup> Public Statement, U.S. Sec. Exch. Comm’n, Statement on Potentially Unlawful Online Platforms for Trading Digital Assets (Mar. 7, 2018), [www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading](http://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading) [<https://perma.cc/6N2R-768Z>].

when they are not.”<sup>62</sup> In the statement, the SEC provides a number of ways for investors to determine whether a platform is actually registered with the SEC.<sup>63</sup> The public statement also reiterated Chairman Clayton’s Congressional desire to closely assess which market participants must comply with federal securities laws.<sup>64</sup>

## 2. *The CFTC*

In his testimony before the Senate Banking Committee, CFTC Chairman J. Christopher Giancarlo highlighted the importance of greater understanding and clarity.<sup>65</sup> This must be very encouraging for virtual currency advocates, who hope to have a say in the regulatory process.<sup>66</sup> Chairman Giancarlo’s indication that the CFTC seeks to bring clarity to the virtual currency discussion may signal to leaders of the virtual currency industry that the CFTC is willing to listen to their point of view.

Even more encouraging for virtual currency advocates, Chairman Giancarlo pointed to the “do no harm” regulatory approach used to regulate the Internet as a potential model for virtual currency regulation.<sup>67</sup> However, Chairman Giancarlo argues virtual currencies will most “likely require more attentive regulatory oversight in key areas, especially to the extent that retail investors are attracted to this space.”<sup>68</sup> Specifically, capital requirements, cyber security standards, prevention of fraud and price manipulation and anti-money laundering, and know-your-customer protections are just some of the critical areas to focus on for consumer protection,<sup>69</sup> a key CFTC concern.<sup>70</sup>

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Press Release, *supra* note 14 (“Amidst the wild assertions, bold headlines, and shocking hyperbole about virtual currencies, there is a need for much greater understanding and clarity.”).

<sup>66</sup> See Brito, *supra* note 44.

<sup>67</sup> Press Release, *supra* note 14.

<sup>68</sup> *Id.* (“Virtual currencies, however, likely require more attentive regulatory oversight in key areas, especially to the extent that retail investors are attracted to this space.”).

<sup>69</sup> *Id.*

<sup>70</sup> Press Release, U.S. Commodity Futures Trading Comm’n, CFTC Issues First Pump-and-Dump Virtual Currency Customer Protection Advisory (Feb. 15, 2018), <https://www.cftc.gov/PressRoom/PressReleases/pr7697-18> [<https://perma.cc/J5JR-WFAZ>].

## F. Perspectives in Academia

The academic world is also involved in the virtual currency regulatory discussion.<sup>71</sup> A popular discussion area among academics is potential tax implications for virtual currency investors.<sup>72</sup> However, for this article's purposes, the discussion involving the overall U.S. regulatory approach to virtual currencies is more relevant.

Some scholars assert the United States should define virtual currencies, such as Bitcoin, as a currency.<sup>73</sup> By defining Bitcoin as a currency, the United States would be able to compete against European countries that already define Bitcoin as a currency.<sup>74</sup> Others argue the U.S. government needs to avoid using its old regulatory schemes to regulate virtual currencies and should instead create an entirely "new regulatory framework."<sup>75</sup> This approach could include creating a new regulatory agency to monitor the virtual currency industry.<sup>76</sup> Though there are several potential proposals, as more academics become immersed in the virtual currency field, more robust theories for a U.S. regulatory scheme may arise in the years to come.

## G. Conclusion

Virtual currencies are an exciting and new emergence from the overlap between finance and technology. These currencies may lead to more efficient markets and could possibly create wealth for a wide range of investors. Various actors involved in proposing the opti-

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<sup>71</sup> See, e.g., Sean McLeod, *Bitcoin: The Utopia or Nightmare of Regulation*, 9 ELON L. REV. 553, 578 (2017) (providing a broad overview of cryptocurrency regulation).

<sup>72</sup> See, e.g., Austin Elliott, *Collection of Cryptocurrency Customer-Information: Tax Enforcement Mechanism or Invasion of Privacy*, 16 DUKE L. & TECH. REV. 1, 17 (2017); Sarah-Jane Morin, *Tax Aspects of Cryptocurrency*, 64 PRAC. LAW. 21, 30 (2018) (discussing basic tax aspects of cryptocurrency).

<sup>73</sup> Gregory V. Ficcaglia, *Heads or Tails: How Europe Will Become the Global Hub for Bitcoin Business if the United States Does Not Reexamine Its Current Regulation of Virtual Currency*, 40 SUFFOLK TRANSNAT'L L. REV. 103, 137 (2017) ("[T]he United States must define Bitcoin as a currency.").

<sup>74</sup> *Id.* at 136–37 ("In order to maintain a competitive edge in the development of new financial technologies centered around Bitcoin and the blockchain, the United States must define Bitcoin as a currency.").

<sup>75</sup> Di Ma, *Taking a Byte out of Bitcoin Regulation*, 27 ALB. L.J. SCI. & TECH. 1, 21 (2017) (offering a new approach to regulating virtual currencies).

<sup>76</sup> *Id.* at 22.

mal approach to regulate this industry have approached the discussion with different goals shaping their arguments. This article explored some of these arguments and the potential motivations for these views. As of now, it is unclear how the U.S. government will regulate virtual currencies long-term, but it is clear the next step will have a major impact on the future of the virtual currency industry. The industry is in a very early stage, and if governmental actors take the proper approach, the industry can reach its full potential. The main takeaway is that while virtual currency advocates have set forth the importance of avoiding overly restrictive regulations, the government's focus may be on protecting investors. With so many groups wanting to shape the industry and regulatory framework, uncovering the path forward will be interesting to observe.

Jackson Heald<sup>77</sup>

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<sup>77</sup> Student, Boston University School of Law (J.D. 2019).