



# VIRTUAL CURRENCY LAW: CRYPTO'S TRAJECTORY AND THE EMERGING LEGAL AND REGULATORY FRAMEWORK AND CHALLENGES-AND THE UKRAINE INVASION

REGULATING CRYPTO CURRENCIES: PROTECTING INVESTORS AND MITIGATING  
ENVIRONMENTAL DAMAGE WEBINAR

PUBLIC POLICY EXCHANGE, INTERNATIONAL CENTRE FOR PARLIAMENTARY  
STUDIES

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# CRYPTO AND ITS TRAJECTORY

- Since the advent of bitcoin in 2008 it has quickly exploded into an emerging financial ecosystem composed of an ever growing number of digital assets that are non-government backed currency.
- Today, all virtual currencies have an aggregate global market cap of more than \$2.0 trillion and growing
- Gemini, Cornerstone and other studies show that over 15% of U.S. consumers-30-40 million people-own crypto, and 50 million estimated to invest this year; 31% of ages 18-29 invest
- It poses exciting possibilities in payment systems, money transmission, mobile payments, finance, potential increased financial inclusion, and increasing investment opportunities for both retail and corporate investors e.g., Microstrategy and Tesla, both investing billions of dollars in crypto in 2021.
- In this light, it looks like crypto is here to stay and is gradually embedding in both the U.S. and global economy.
- But see other views: see, e.g., [SEC's Gensler doesn't see crypto lasting long](https://www.foxbusiness.com/markets/sec-gensler-cryptocurrencies-lasting-long), Fox Business News (updated September 21, 2021)(referencing SEC Chairman Gensler comments at a virtual webinar hosted by the Washington Post: "he doesn't see much long-term viability for cryptocurrencies."
- <https://www.foxbusiness.com/markets/sec-gensler-cryptocurrencies-lasting-long>

# CRYPTO AND ITS TRAJECTORY

- While initially viewed with great skepticism and even as an existential threat to the traditional banking and payments systems, see JP Morgan's 2017 annual report (below), an increasing number of major U.S. banks are investing in the "Bitcoin boom."
- Morgan Stanley, JP Morgan Chase, BBVA, USAA, U.S. Bancorp, State Street and others have recently announced the introduction of bitcoin-related products, services, investments and ventures.
- For example, in 2019 JP Morgan created JPM Coin, a digital payment coin:  
<https://www.jpmorgan.com/solutions/cib/news/digital-coin-payments>
- Analysts project the creation of a new system of blockchain "smart contracts" to conduct business transactions.

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J.P. Morgan Chase added a segment on cryptocurrencies to the “*Risk Factor*” section of their 2017 [annual report](#) filed with the [US Securities and Exchange Commission](#) (SEC) on February 27, 2018.

The annual report mentions cryptocurrencies under the “*Competition*” subsection when describing how new competitors have emerged that threaten J.P. Morgan’s operations:

“Both financial institutions and their non-banking competitors face the risk that payment processing and other services could be disrupted by technologies, such as cryptocurrencies, that require no intermediation.”

The report notes that these new technologies “*could require JPMorgan Chase to spend more to modify or adapt its products to attract and retain clients and customers or to match products and services offered by its competitors, including technology companies.*”

This competition could potentially “*put downward pressure on prices and fees for JPMorgan Chase’s products and services or may cause JPMorgan Chase to lose market share.*”

# CRYPTO AND ITS TRAJECTORY

- At the same time, crypto has been dogged from its inception by law enforcement and regulatory concerns-and now even national security concerns regarding its uses related to illicit activities:
- Use in narcotics trafficking, terrorism, money laundering and other illegal activities, beginning with 2013 Silk Road prosecutions
- Online hacking and theft of crypto accounts-recent U.S. prosecution of record \$3.6 billion crypto theft
- Ransomware-use of opaque “private coins”
- “the quantum threat”: hostile nation states and their affiliates using new powerful quantum computer technology to attempt to compromise blockchain ledgers
- Unregulated crypto trading exchanges: insider trading, manipulation, fraud and facilitating illegal activities
- Crypto is part of the discussion of policy issues related to Russia’s invasion of Ukraine has raised national security concerns that crypto can be used to evade effective sanctions regimes through, among other things, unregulated crypto trading exchanges; interestingly enough, Ukraine government has raised crypto donations for its defense and humanitarian aid

# CRYPTO AND ITS TRAJECTORY

- Concerns about virtual currency posing an existential threat to government –backed fiat currencies Q: fight or get on board?
- China: in early October 2021, the central bank of China announced that all crypto related transactions are illegal and forbid overseas crypto trading exchanges from opening accounts for its citizens:  
<https://fortune.com/2022/01/04/crypto-banned-china-other-countries/>.
- The Central Bank of Russia has recommended a similar ban under Russian law for all crypto activities; however, it recently announced it is moving forward with a digital ruble:  
<https://www.coindesk.com/policy/2022/02/16/bank-of-russia-proceeds-with-digital-ruble-renews-push-for-crypto-ban/#:~:text=The%20Bank%20of%20Russia%20plans,about%20such%20services%2C%20Forbes%20wrote.>
- On the other hand, some countries have issued their own cryptocurrencies, including **Ecuador, Senegal, Singapore, Tunisia**, though these countries will not be standing alone for long with announcements that Estonia, Japan, Palestine, and Sweden-and even the U.S.-are actively exploring various forms of central bank digital currencies.
- In January, The Federal Reserve Board issued for public comment [Money and Payments: The U.S. Dollar in the Age of Digital Transformation](#), a paper described as “the first step in a public discussion between the Federal Reserve and [its] stakeholders about central bank digital currencies.”

# CRYPTO AND ITS TRAJECTORY-EMERGING U.S. LEGAL REGULATORY FRAMEWORK

- There is no comprehensive regulatory scheme of virtual currency regulation; rather, there is an emerging legal and regulatory framework driven by state and federal government and regulatory agencies as they determine that crypto shares characteristics found in more traditional regulated financial services, products, activities and investments.
- Examples: securities, banking, money transmission, commodities, commercial, anti-money laundering, tax, data privacy, cybersecurity and Constitutional commercial speech issues regarding Big Tech bans on crypto products and services advertising.
- The Biden Administration recently convened a Presidential Working Group (PWG), chaired by the U.S. Treasury Department, to undertake a “whole of government” assessment of crypto regulation. See Jeff Stein, *White House Reviews “Gaps” in Cryptocurrency Rules as Bitcoin Swings Wildly*, Wash. Post (May 25, 2021).
- Among other things, the PWG recommended that all stable coins-digital coins backed by US dollars-be registered with the Office of the Comptroller of the Currency (OCC), the primary national bank regulator.
- This PWG proposal raises substantial questions about the OCC’s legal authority to create a non-bank charter for stable coin registration absent an explicit statutory grant of authority, issues that have previously resulted in litigation regarding the OCC’s authority to authorize a non-bank fintech charter. See *Lacwell v OCC*, Case No. 19-4271 (2nd Cir. June 3, 2021)(NYDFS claims of injury from OCC’s actions are not ripe for adjudication).

# CRYPTO AND IT TRAJECTORY

- National security concerns about crypto raised in the context of Russia's recent Ukraine invasion; have accelerated policy discussion of the need for federal crypto regulation. A suggested list of potential questions for policy debate, decision making and proposed legislation:



# CRYPTO AND ITS TRAJECTORY

- Should one federal agency be charged with consolidated federal regulation and policy regarding all crypto activities? Should this agency should be a member of the National Security Council in order to integrate national security and regulatory policy and should the US formally conclude that crypto is a matter of national security?
- Since the Treasury Department already is currently charged with overseeing the implementation of sanctions policy, should it be the logical agency to oversee consolidated regulation and policy governing crypto regulation? If so, should a new office within Treasury be created to focus on this responsibility. If not, then which agency ?
- Designated categories of newly created cryptocurrencies e.g., stable coin, would be required to be registered with the Treasury?
- Should the Federal Stability Oversight Council (FSOC) be given specific authority to coordinate national policy on crypto regulation? Currently chaired by the Treasury and composed of the major federal financial agencies, FSOC's current mission is to provide collective accountability for identifying risks and responding to emerging threats to financial stability. This mission should be expanded to address crypto risks?

# CRYPTO AND ITS TRAJECTORY

- The numerous federal agencies currently involved in various aspects of crypto regulation should be given the statutory authority they need to regulate crypto activities that fall within their respective jurisdiction and oversight?
- All US financial institutions and publicly held companies should be required to fully disclose all crypto activities in their regulatory and securities reports so that regulators and investors will have a full understanding of these activities and any potential risks?
- The US intelligence community needs to implement a 21st-century crypto threat info sharing database with regulators and financial institutions, and all US companies and regulators must be required by law to share any identified crypto-threats and hack attempts in a common database?
- To date, there are no federal registration or licensing requirements to operate a crypto trading exchange. A federal scheme should be adopted with standards similar to those in place for federally regulated securities and commodities dealers, and self-regulatory organizations with enforcement powers to sanction regulatory violations?
- The U.S. should work with its allies and global organizations, including the Basle Committee, FATF, IMF and World bank to adopt effective global policies for regulation of crypto trading exchanges, including to combat money laundering, enforce compliance with U.S. sanctions and protect consumers?