

***International Finance and Digital Trade -
Cryptocurrency Fundamentals,
International Observations, & An Approach to Multilateral Regulation***

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I. INTRODUCTION

How is cryptocurrency made and regulated? How does this medium of exchange impact international markets? This research paper will explore developing and existing regulations of cryptocurrency, how cryptocurrency works, and how it continues to impact global monetary environments. Currently, many laws are conflicting on how cryptocurrency should be regulated. Clear guidance on cryptocurrency interactions within the economy is essential to understanding this virtual asset, inhibiting criminal activities, and enhancing a new exchange market sector through proper regulation.

II. OVERVIEW OF THE CRYPTOCURRENCY MARKET

Understanding the fundamentals of cryptocurrency is vital to understand the importance of its regulation within the international market. This introduction aims to explain the basic components and functions of cryptocurrency prior to exploring the complex nature of cryptocurrency and needed regulations.

a. What is blockchain technology?

The concept of cryptocurrency was initially developed in 2008.² Satoshi Nakamoto authored the *Bitcoin White Paper*, detailing a unique and advanced method for the creation and distribution of virtual currencies without a third party, such as a financial institution, handling the transaction.³ This publication gave birth to the concept of decentralized transactions. This idea of digital transacting led to the creation of a software with the ability to verify and chronologically

² Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, bitcoin (Nov. 1, 2008), <https://bitcoin.org/bitcoin.pdf>.

³ *Id.*

track transactions on a digital record.⁴ Nakamoto created the first block and published the associated software enabling blockchain on January 3, 2009, opening the door to the digital currency sphere.⁵

Blockchain is the underlying technology used for enabling cryptocurrency. In the most basic definition, blockchain is routinely described as a decentralized network maintaining a public or private ledger of transactions; a “decentralized ledger.” A blockchain is a digital file distributed to all participants in a cryptocurrency network, it acts as a ledger tracking all transactions and is protected by cryptography.⁶ Considering the use of the term ledger conceptually, this works as a database, akin to an excel spreadsheet, storing information of all the transactions occurring across the database.

A blockchain ledger is considered decentralized because transactions are stored on computers connected to a network through the Internet, globally or domestically.⁷ Each computer contains a record of every transaction completed on a specific blockchain.⁸ Blockchains typically consist of two physical components: a node and a method for information to be received and disbursed from the nodes. Each node in the blockchain is running identical software to process transactions, mirroring other nodes on the blockchain⁹. This is how transactions are completed on the blockchain and information is shared throughout networks.

⁴ Marie Huillet, *11 Years Ago Today Satoshi Nakamoto Published the Bitcoin White Paper*, Cointelegraph (Oct. 31, 2019), <https://cointelegraph.com/news/11-years-ago-today-satoshi-nakamoto-published-the-bitcoin-white-paper> (last visited, Jan. 25, 2023).

⁵ *Id.*

⁶ Doug Fredrick, *Cryptocurrency and Blockchain: Here We Go Down the Rabbit Hole*, 74 J. Mo. B. 294, 295 (2018).

⁷ SHAWN S. AMUIAL, ET. AL, *THE BLOCKCHAIN: A GUIDE FOR LEGAL & BUSINESS PROFESSIONALS* § 1:2 (2016).

⁸ *Id.*

⁹ BitcoinCore, *Running A Full Node*, Bitcoin, <https://bitcoin.org/en/full-node#what-is-a-full-node>, (last visited Feb. 14, 2023).

The blockchain consist of a series of blocks, containing data about each transaction, and each block contains a cryptographic hash linking it to the block before, forming a chain of transactional information.¹⁰ The information included in the blockchain transaction is the public address of the party sending the cryptocurrency, the amount being transferred, and the recipients public address or where the cryptocurrency is being transferred.¹¹

Private blockchains are controlled by a single entity and are generally used to facilitate transactions between a small group of trusted entities.¹² Public blockchains, however, are available to the public for transactions between any set of companies or individuals that don't necessarily need to trust each other. The ability to securely control any digital asset represented on a digital ledger is fundamental to the value of blockchain technology.¹³ Bitcoin and Ethereum both operate as public blockchains and each are also offered as cryptocurrency coins available for trade.

b. What is Cryptocurrency?

Technological advancements in areas of financial technology (FinTech) and blockchain technology have paved the way for digital currency use. Digital or virtual currency is an electronic medium of exchange that is not a representation of United States or foreign currency.¹⁴

¹⁰ C. Alden Pelker et. al., *Using Blockchain Analysis from Investigation to Trial*, 69 DOJ J. Fed. L. & Prac. 59, 60 (2021).

¹¹ *Id.* at 60-62.

¹² Ronald Chichester, *What Is a Blockchain?*, ADVANCED BUS. L. 10.1, State Bar of Texas, 2021

¹³ See Shawn S. Amuial et. al., THE BLOCKCHAIN: A GUIDE FOR LEGAL & BUSINESS PROFESSIONALS §1.4 (2016) (defining cryptography as the study and practice of keeping secret information away from adversaries and describing how cryptographic codes include complicated algorithms and use computers to conduct both the encryption and decryption).

¹⁴ Bloomberg Law, *Cryptocurrency Laws and Regulations by State*, <https://pro.bloomberglaw.com/brief/cryptocurrency-laws-and-regulations-by-state/> (last visited Aug. 30, 2022).

Cryptocurrency is a type of digital currency utilizing cryptography to secure transactions which are digitally recorded on a distributed ledger, such as a blockchain.¹⁵ The United States Internal Revenue Service describes units of cryptocurrency as coins or tokens.¹⁶ Distributed ledger technology uses independent digital systems to record, share, and synchronize transactions, the details of which are recorded in multiple places at the same time with no central data store or administration functionality.¹⁷

Cryptocurrency trades on the blockchain in the form of coins, altcoins, and tokens. A coin is any cryptocurrency that uses its own independent blockchain.¹⁸ An altcoin refers to all cryptocurrencies other than Bitcoin.¹⁹ Main types of altcoins include mining-based cryptocurrencies, stablecoins, security tokens and utility tokens. Crypto coins include Bitcoin, Ethereum, and all other similar cryptocurrency platforms, and are strings of computer code representing an asset, concept, or project.²⁰ These can be tangible, virtual, or digital.

c. Cryptocurrency vs. NFT

Similar to coins, tokens are also digital assets available for purchase and sale. However, tokens are programmable assets that live within the blockchain of a given platform.²¹ Tokens use existing blockchains, not independent blockchains, allowing the user to create and execute unique smart contracts on the blockchain. These contracts can establish ownership of assets

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Carla Tardi, *Understanding the Different Types of Cryptocurrency*, SoFi Learn (July, 2022) <https://www.sofi.com/learn/content/understanding-the-different-types-of-cryptocurrency/> (last visited Jan. 25, 2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

outside the blockchain.²² Tokens represent units of value, including real world items like electricity, money, points, coins, digital assets, art, digital art, and even real estate.²³

Non-fungible tokens (NFT's) represent physical assets. An NFT is a cryptographic object for sale on a blockchain. The technology uses identification codes and metadata as unique markers to distinguish the transactions on the digitized ledger.²⁴ NFTs are digital representations of real-world concepts. The 'token' aspect, as mentioned above, represents virtual money, programs, applications, or other virtual services available on the blockchain. Unlike cryptocurrencies, NFT's cannot be traded or exchanged at equivalency.²⁵ An NFT utilizes a minting process that incorporates smart contracts to assign ownership and manage the transferability of the NFT.²⁶ This ensures the asset that is being digitally represented is unique, validated, and cannot be replicated in any way, which has special implications for intellectual property application – discussed later on in this Article.

d. How a Transaction Occurs

Putting all the above explanation together, this section will illustrate how a transaction is made on the blockchain. The easiest way to explain this will be to illustrate how an asset would be sold on the digital market, for example, an NFT. The first step in a token sale is digitizing an

²² *Id.*

²³ *Id.*

²⁴ Securities Laws and Securities Laws Handbook: § 1:6. *Non-Fungible Token or "NFT" and Securities Regulation*, 24 Securities Pub. & Priv. Offerings § 1:6 (2d ed.).

²⁵ Rakesh Sharma, Non-Fungible Token (NFT): What it Means and How it Works, Investopedia, (June, 2022) <https://www.investopedia.com/non-fungible-tokens-nft-5115211> (last visited, Jan. 25, 2023).

²⁶ *Id.*

asset. In theory, when purchasing a token, the purchaser is buying the bundle of rights associated with that token on the blockchain.²⁷

When purchasing an NFT, the buyer is obtaining the token and the art or asset linked to it. This transaction is registered on the blockchain, each token is unique to the work it is linked to, and when the token exchange is registered through purchase on the blockchain there is a permanent record of the sale and proof of ownership.²⁸ An NFT can be displayed, printed, or resold. The image, art, or real estate only belongs to a single user and cannot be traded. This enables NFT's to protect artists authorship and create a profitable sector in a secondary market for media and art.²⁹

Once determining an asset for digitization or digital representation, a user will select a blockchain to use for the sale; this could be on a public blockchain such as Bitcoin or Ethereum, or a private blockchain. Most public blockchains provide users a digital wallet to store their tokens and coins, but newer platforms such as Venmo, Paypal, and Apple Pay also offer a crypto feature.³⁰ An interested user is able to exchange real world currency to obtain tradeable coins for obtaining NFT's.

Next, a user selects a marketplace or the platform to sell their NFT. An NFT marketplace is basically the Amazon for virtual transactions. Examples of these platforms are OpenSea,

²⁷ Susan Schwartz, *Non-Fungible Tokens: A New Market for Artists and Other Creators*, 48 Int'l L. News 39,39 (2021).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Julia Kagan, *Digital Wallets*, <https://www.investopedia.com/terms/d/digital-wallet.asp> (last visited Mar. 17, 2022).

Mintable, or Nifty Gateway, but all are subject to the same kinds of legal agreement terms and privacy laws that a website would be.³¹

For example, when accessing a website, users agree to terms and conditions on the website or accept cookies. These are commonplace virtual enforceable contracts, allowing data collection or usage terms acceptance and are binding and enforceable. These contracts are subject to the same universal contract principles that physical contracts would be governed by.

Finally, a user can upload their digitized file and create the sale. This is a similar process to using Ebay, Poshmark, DePop, or Amazon for a market sale. The major difference is being crypto savvy enough to align all platforms and exchange systems to engage in this form of business.

All of these types of transactions occur on the blockchain and are protected by cryptography. Cryptography is the process of converting plain text into unintelligible data.³² While similar to standard data encryption, cryptography is a higher level of mathematical theory and computer science practices combined to protect data from theft, alteration, and to enable user authentication.³³

Technological advancements have led to the development of the blockchain and advanced data encryption but has also opened the door for heightened security concerns. There is an increasing possibility that computers enabled to utilize quantum computing will have enough tech power to use brute force attacks to destroy the effectiveness of public key cryptography.³⁴

³¹ The Ascent Staff, *Best NFT MarketPlaces*, <https://www.fool.com/the-ascent/cryptocurrency/nft-marketplaces/>, (last visited Jan 26, 2023).

³² THE ECONOMIC TIMES, Business News, *What is 'Cryptography,'* February 4, 2023, <https://economictimes.indiatimes.com/definition/cryptography> (last visited February 5, 2023).

³³ *Id.*

³⁴ *Supra*, note 12.

Plainly speaking, computers would inherently become so computationally powerful that they could run through all the possible alphanumeric combinations quick enough to guess and generate the correct private key.³⁵

However, the structural integrity of blockchain technology allows for improved technology, enabling swift integration of new techniques, stronger software, and enhanced cryptography. This means that quantum computing could be equally utilized to strengthen the cryptography and security measures within the blockchain and its network.³⁶ The bigger concern posed by this kind of technological advancement is how private users of quantum computing would interact with public cryptography. If public cryptography fails, then so will all the encryption currently used by the world's financial institutions and governments, posing a threat to society and not solely blockchain users.³⁷

III. CRYPTOCURRENCY IN THE INTERNATIONAL FINANCE INDUSTRY

a. Does crypto eliminate currency risk and the need for currency hedging through FX derivatives?

Financial derivatives are financial instruments that are linked to a specific commodity or other financial instrument, which allow for that instrument or commodity specific financial risks to be traded in financial markets.³⁸ The value of a financial derivative derives the price of an underlying item, such as an asset or index.³⁹ Financial derivatives enable parties to trade specific

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ INTERNATIONAL MONETARY FUND, *Data and Statistics: Financial Derivatives*, <https://www.imf.org/external/np/sta/fd/index.htm> (last visited February 6, 2023).

³⁹ *Id.*

financial risks who are more willing or better suited to take on these risks without trading the primary asset.⁴⁰

Derivative markets are important because their behavior influences the price dynamics of cryptocurrencies themselves.⁴¹ Traders and individuals can use derivative markets to hedge against price movements but derivative markets with high leverage may create instability cycles: volatility in cryptocurrency prices then causes more liquidations in derivative markets, which results in volatile cryptocurrency prices.⁴² Much of the crypto development over the last several years has been significantly volatile, exhibiting risk averse investor behavior.

Cryptocurrency is a highly volatile asset, yet much of the underlying assets of cryptocurrency are exposed to the same traditional risk factors many other financial instruments experience. However, cryptocurrency derivatives are unique because their functionality extends beyond a single investment portfolio by relying on an underlying asset associated with the crypto derivative. Derivatives are part of any mature financial system.⁴³ Thus, derivatives markets play a crucial role in developing cryptocurrency as a consistent, reliable, and recognized asset class and offering cryptocurrency derivatives in markets allows for more flexibility in hedging risk.

⁴⁰ *Id.*

⁴¹ Carnegie Mellon University, *Cryptocurrency Derivatives Markets Are Booming*, <https://www.cmu.edu/tepper/news/stories/2021/april/cryptocurrency-derivatives.html> (last visited Sept. 19, 2022).

⁴² *Id.*

⁴³ CoinTelegraph, *Crypto derivatives 101: a beginners guide on crypto futures, crypto options, and perpetual contracts*, <https://coingecko.com/trading-for-beginners/crypto-derivatives-101-a-beginners-guide-on-crypto-futures-crypto-options-and-perpetual-contracts> (last visited Sept. 19, 2022).

b. Why is blockchain technology and resulting cryptocurrency regulation important to international trade law and the global economy?

Cryptocurrency and blockchain technologies have emerged as disruptive technologies. This essentially means their efficiencies and capabilities render other technology or services unnecessary because the newer methods are more efficient and cost friendly. Blockchain technology could help global trade become fully electronic, more accessible, and more efficient.⁴⁴

Globally, banks are working to integrate financial technology into their services and processes to improve data encryption, mobile user accessibility, and to increase efficiency by automating many financial services. Similarly, international institutions could utilize the same blockchain technology to digitalize trade finance processes. The World Trade Organization's goal is to ensure that trade flows smoothly, predictably, and freely while navigating the rules of trade between nations.⁴⁵ Blockchain technology could help administer border and customs procedures, enhancing documentation verification using smart contracts.

Blockchain smart contract capabilities improve data verification and offer a transparent and secure platform for procedural trade compliance. This would allow improvement of the accuracy of trade data on a global scale by digitalizing trade finance, customs procedures, and imports and exports transportation and logistics.⁴⁶

⁴⁴ Emmanuelle Ganne, THE WORLD TRADE ORGANIZATION, *Can Blockchain Revolutionize International Trade?* (2018), https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf (last visited, February 5, 2023).

⁴⁵ THE WORLD TRADE ORGANIZATION, *The WTO*, https://www.wto.org/english/thewto_e/thewto_e.htm (last visited, February 5, 2023).

⁴⁶ *Supra* note 37.

By leveraging blockchain technology, trade platforms could utilize a blockchain network to connect all actors along the supply chain, including banks and customs authorities.⁴⁷ Using a blockchain network for trade data, logistics, and supply chain management of imports and exports would enhance transparency and increase the ability to track products throughout the supply chain, promoting trade efficiency on a worldwide level. According to the World Economic Forum, the removal of trade barriers through utilization of blockchain technology may potentially result in more than \$1 trillion (USD) of new trade in the next decade.⁴⁸

While cryptocurrency itself remains volatile, the technology enabling crypto improves payments systems. The tokenization of financial assets, money, and automation of payments innovation could significantly enhance trade efficiency. Encryption behind the payment systems of blockchain technology could cut trading costs by separating compliance checks from transactions so only authorized parties have access to sensitive information.

In facilitating cross border payments, public platforms could allow regulated financial institutions to trade digital representations of domestic central bank reserves across borders.⁴⁹ This enables parties to avoid being formally regulated by each central bank and would not require any major changes to national payment systems. The single ledger and programmability characteristics of blockchain payment's technology enables currencies to be simultaneously exchanged, decreasing party walk away risks. Additionally, risk-sharing contracts can be written,

⁴⁷ *Id.*

⁴⁸ Wolfgang Lehmacher, *Why blockchain should be global trade's next port of call*, World Economic Forum, (May 2017), Geneva: WEF, <https://www.weforum.org/agenda/2017/05/blockchain-ports-global-trades/> (last visited February 6, 2023).

⁴⁹ Adrian & Mancini-Griffoli, *Fintech: Technology Behind Crypto Can Also Improve Payments, Providing a Public Good*, International Monetary Fund, (February 2023), <https://www.imf.org/en/Blogs/Articles/2023/02/23/technology-behind-crypto-can-also-improve-payments-providing-a-public-good> (last visited March 7, 2023).

auctions can support thinly traded currency markets, and limits on capital flows can be automated.⁵⁰

For example, in a documentary sale of international goods between buyers and sellers, there are multiple parties to the associated sale. In this sale, the seller and buyer must coordinate with an issuing bank and a confirming bank, with various freight carriers and party agents facilitating the movement of goods.⁵¹ The issuing bank typically provides letters of credit and draft documents for the parties. The confirming bank typically ensures all documents presented by the parties, such as bills of lading for movement of goods, commercial invoices, and matching letters of credit, are valid and in compliance with each other in order to facilitate payment.⁵²

While there is more detail that goes into documentary sale of international goods transactions, the above is sufficient explanation to illustrate that the tokenization of, encryption of, and the integration of the transaction documents into smart contracts, could eliminate the need for the issuing bank and confirming bank. The banks in this transaction serve the purpose of document and funding validation. The tokenization and encryption of the requisite documents eliminates the issue of fraud through the use of unique metadata markers on the blockchain only validated by authorized users. *See* § II(c). Thus, the elimination of the banks in this transaction would increase efficiency and transparency while eliminating additional parties to the transaction.

Alternatively, central banks could play a vital role in the implementation of the digital trade world. Central banks promulgating digital currencies represent a dual nature as both a monetary

⁵⁰ *Id.*

⁵¹ John Head, *GLOBAL BUSINESS LAW: PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCE AND INVESTMENT*, Ch. 5, Carolina Academic Press, (4TH ed., 2018).

⁵² *Id.*

instrument and as infrastructure to clear and settle transactions.⁵³ As a monetary instrument, this role provides trade safety by alleviating counterparty risks and providing liquidity in payments from trusted sources. Implementing a central bank digital trade platform could offer a basic programming language to ensure smart contracts are trusted and compatible with one another, facilitating the use of crypto, tokenized transactions, and enhanced trade efficiency.⁵⁴

Further, blockchain technology removes trade barriers for small and medium sized businesses and producers from developing countries. The implementation of blockchain technology would facilitate small businesses participation in international trade by increasing access to trade finance, reducing difficulty of trade procedures, and overall reducing trade costs.⁵⁵ This would ultimately reduce barriers to entry in international trade for small to medium sized businesses. However, this may only be successfully integrated into international trade if global institutions first address issues of internet access globally and technical skills in developing countries to ultimately be able to utilize and promote this mechanism of trade.⁵⁶

i. Implications of NFT's on global intellectual property

As previously discussed, Non-Fungible Tokens (NFT's) operate on the blockchain with unique metadata to ensure the asset that is being digitally represented is unique, validated, and unable to be replicated. This use of blockchain capabilities could aid in administering intellectual property rights more efficiently.

Blockchain technology to enforce registered and unregistered rights can be used to provide proof of creation, existence, ownership and/or first use.⁵⁷ Such practice is becoming

⁵³ *Supra*, note 48.

⁵⁴ *Id.*

⁵⁵ *Supra* note 43, at 85.

⁵⁶ *Id.*

⁵⁷ *Supra* note 43, at 58

commonplace with the growth of NFT sales and could further facilitate the administration and management of IP rights on a global scale, decreasing counterfeit fraud.

In a recent case in the United States, international fashion brand Hermés won a trademark trial over ‘MetaBirkin’ NFT’s.⁵⁸ This case is one of the first intellectual property trials over NFT’s. The defendant, an NFT artist, began offering his ‘MetaBirkin’ NFT at an art fair in Miami, Florida, December 2021, and over \$1 million (USD) dollars’ worth of the ‘MetaBirkin’ NFT’s had traded in the following month.⁵⁹

The NFT artist was intending to spread awareness of animal-free luxury products through the distribution of digital fashion NFT’s, selling this ‘MetaBirkin’ as a Birkin bag in the metaverse, a digital trade space. Hermés states that the distribution of this NFT had hindered the company’s own plans for the digital trade space, while the defendant argued that his NFT’s were immune from suit, falling under the First Amendment protections for art. The jury found that the use of the ‘MetaBirkin’ NFT’s infringed on Hermés trademark rights and was not protected from liability by the First Amendment.⁶⁰ Ultimately, Hermés was awarded damages and the defendant has been found liable for trademark infringement, trademark dilution, and cybersquatting.⁶¹

This is the first case to consider whether NFT’s are expressive works entitled to United States First Amendment Protection in a trademark infringement analysis.⁶² Given that this area of

⁵⁸ Blake Brittain, *Hermes wins U.S. trademark trial over ‘MetaBirkin’ NFTs*, Reuters, (February, 2023), <https://www.reuters.com/legal/hermes-wins-us-trademark-trial-over-metabirkin-nfts-defendants-lawyer-2023-02-08/> (last visited, February 9, 2023).

⁵⁹ *Id.*

⁶⁰ *Hermés International and Hermés of Paris, Inc., v. Mason Rothschild*, 2023 WESTLAW 1458126 (S.D.N.Y., 2023).

⁶¹ *Id.*

⁶² WESTLAW, *Jury Finds MetaBirkin NFTs Infringe Hermés’ Trademark Rights*, Practical Law Intellectual Property & Technology (February, 2023), <https://today.westlaw.com/Document/I14cdac1ea7d811ed8636e1a02dc72ff6/View/FullText.html>

law is very new and still developing, a major luxury fashion brand successfully arguing its marks in NFTs are not protected arts will likely have implications for the use of NFTs as artistic expression in the years to come.

c. What does cryptocurrency mean for foreign exchange markets?

Cryptocurrency development has garnered much appeal in the global space because it is a user-friendly digital alternative to physical currency trading. Cryptocurrency compares to the traditional fiat financial system by enabling frictionless transacting, whereas the traditional system relies on central banks and governments to issue, regulate, and maintain monetary transactions. Exchanging fiat currency of one country for that of another on a decentralized, over the counter market, is what is colloquially considered foreign exchange (“forex”).⁶³

Similarly, each asset relies on supply and demand as price determining factors but vary in risk profiles.⁶⁴ Whereas forex trading markets operate five days per week, cryptocurrency markets are nonstop and never close.⁶⁵ However, both assets are exchanged through traders negotiating pricing based on supply and demand without governing oversight. Further, each carry associated risks in terms of trading, volatility, and complexity.⁶⁶

Many countries have strict capital controls established or impose taxes on their citizens to control to control the flow of money in the economy. Cryptocurrencies can be used to avoid

[?transitionType=CategoryPageItem&contextData=\(sc.Default\)&firstPage=true](#) (last visited, February 9, 2023).

⁶³ Riley Adams, *Crypto vs. Forex Trading: What You Need to Know*, Kiplinger Newsletter, (October 2021), <https://www.kiplinger.com/investing/cryptocurrency/603524/crypto-vs-forex-trading> (last visited, February 9, 2023).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

these controls and taxes, regardless of legality, which has led to increased demand in cryptocurrency use in markets.⁶⁷

IV. POTENTIAL FOR CRIMINAL BEHAVIOR IN CRYPTO MARKETS

The capacity for criminal activity in the crypto market has resulted in nations drafting policy to address the illegal uses of cryptocurrency for purposes of tax evasion, money laundering, illegal sales or purchases in the international space.⁶⁸ The popularity of cryptocurrency as a digital asset has led to its increased use as a payment method for illicit goods and services, fraudulent investments, cybercrime, and human trafficking.⁶⁹ The potential for abuse of the digital exchange space which crypto exists within emphasizes the importance of developing regulation on domestic and international markets.

a. Tax Evasion, International Regulatory Responses

In March 2021, the Internal Revenue Service of the United States announced that their office of civil fraud enforcement and criminal investigation would be working together to investigate cryptocurrency tax fraud.⁷⁰ A few months later, Congress empowered the Internal

⁶⁷ Justin Kuepper, *How Cryptocurrencies Affect the Global Market*, (Oct. 2021), <https://www.thebalance.com/how-cryptocurrencies-affect-the-global-market-4161278> (last visited Sept. 19, 2022).

⁶⁸ *Id.*

⁶⁹ Europol, *Cryptocurrencies: Tracing the Evolution of Criminal Finances*, Europol Spotlight Report Series (2021), <https://www.europol.europa.eu/cms/sites/default/files/documents/Europol%20Spotlight%20-%20Cryptocurrencies%20-%20Tracing%20the%20evolution%20of%20criminal%20finances.pdf> (last visited Sept. 19, 2022).

⁷⁰ Sam Brotman, *Penalties for Cryptocurrency Tax Evasion*, <https://www.sambrotman.com/virtualcurrencytaxation-chapter-7-penalties-for-cryptocurrency-tax-evasion> (last visited February 14, 2023).

Revenue Service to investigate cryptocurrency transactions, requiring crypto brokers to track and report transactions to the Internal Revenue Service.⁷¹

Several efforts have been made towards fighting criminal behavior in the crypto trade sphere. Currently, the United States government and financial intermediaries are working to combat tax evasion. The Foreign Account Tax Compliance Act (FATCA) is aimed at punishing foreign banks for failing to disclose the identities of accountholders, when those accountholders are U.S. taxpayers.⁷² As a result, the United States and other nations have been making arrangements to circumvent foreign bank secrecy laws, thus exposing tax evasion by United States citizens.⁷³

The anonymous attributes of cryptocurrency transactions on the blockchain and the lack of intermediaries make it difficult to continue the intermediary-based tax enforcement mechanisms, thereby creating an outlet for tax evaders.⁷⁴ Virtual currencies have drawn investor excitement and the scrutiny of tax regulators. The United States experienced a tax gap between the money taxpayers make from the transactions of these cryptocurrency and virtual assets and the amount of taxes paid to the Internal Revenue Service.⁷⁵ This tax gap results from the pure novelty of crypto assets, their inherent anonymity, their cross-border nature, and their independence from governmental or financial institutions.

There currently is no multilateral policy to cryptocurrency taxation. Globally, nations respond in different ways, some taking a more liberal approach than others to foster the

⁷¹ *Id.*

⁷² Omri Marian, *A Conceptual Framework for the Regulation of Cryptocurrencies*, 82 U. CHI. L. REV. DIALOGUE 53, 53-54 (2014).

⁷³ *Id.* at 41.

⁷⁴ *Id.* at 46.

⁷⁵ Amy Nguyen, *The Mysteries of NFT Taxation and the Problem of Crypto Asset Tax Evasion*, 25 SMU SCI. & TECH. L. REV. 323 (2022).

developing sector. Implementing tax controls on income and capital gains from Bitcoin, Ethereum, and other cryptocurrencies is trending upward. Despite countries beginning to address this new asset class, several countries are avoiding integrating taxation procedures to encourage innovation. To promote better adoption and innovation within the cryptocurrency industry, some countries turn to implement friendlier legislation allowing investors to buy, sell, or hold digital assets with little to no tax liabilities.⁷⁶

For example, Belarus implemented an experimental legislative approach in March of 2018.⁷⁷ This law legalized cryptocurrency activities in the state, exempting individuals and businesses involved in digital trade from taxes until this year, 2023.⁷⁸ The law aims to boost the development of a digital economy and technological innovation. Mining and investing in crypto are deemed personal investments for tax purposes in Belarus, thus exempting the assets from income tax and capital gains.⁷⁹

In other countries, such as Malaysia, digital currencies are still not considered assets or legal tender by government authorities.⁸⁰ Thus, in these jurisdictions, cryptocurrency transactions are tax free and do not qualify for capital gains tax. However, the profits may still be regarded as revenue and considered taxable income.⁸¹

In the Bahamas, the government views digital assets as potentially fueling economic activity, jobs, and tax revenue. In 2020, the Bahamas implemented a new central bank digital

⁷⁶ Graves & Hamacher, *11 Countries that Don't Tax Bitcoin Gains*, Decrypt, (Sept. 2021), <https://decrypt.co/43513/countries-that-dont-tax-bitcoin-gains> (last visited, February 9, 2023).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

currency; the Sand Dollar.⁸² The intent of the integration of the Sand Dollar is to increase the efficiency of the Bahamian payments system and reduce transaction costs in the economy.⁸³ Currently, the Bahamas response to the financial scandal surrounding FTX founder Sam Bankman-Fried is anticipated to impact the country's regulatory attitude towards cryptocurrency. Bahamas-based FTX and its United States affiliate is a bankrupt company that formerly operated a cryptocurrency exchange and cryptocurrency hedge fund.⁸⁴ The company specialized in derivatives and leveraged products, providing spot markets in more than 300 cryptocurrency trading pairs, leveraging tokens and smart contracts.⁸⁵

FTX collapsed in early November 2022, resulting from a lack of liquidity, mismanagement of funds, and alleged embezzlement. Bankman-Fried was arrested in the Bahamas and extradited to the United States for financial offenses against laws in the United States and Bahamas. Allegations consist of fraud charges, conspiracy to commit money laundering, conspiracy to defraud the United States, and conspiracy to violate United States campaign finance laws.⁸⁶ Reports further indicate the FTX founder used billions of customer funds to enhance his investment trading company.⁸⁷

⁸² Aliya Allen, *Blockchain & Cryptocurrency Laws and Regulations 2023 | Bahamas*, Global Legal Insights, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/bahamas#chaptercontent2>, (last visited, February 14, 2023).

⁸³ *Id.*

⁸⁴ Timothy Smith, *FTX: An Overview of the Exchange and its Collapse*, Investopedia, (January 2023), <https://www.investopedia.com/ftx-exchange-5200842> (last visited February 14, 2023).

⁸⁵ *Id.*

⁸⁶ Ryan Browne, *Bahamian regulator says it seized \$3.5 billion of FTX crypto assets for 'safekeeping'*, CNBC (December 2022), <https://www.cnbc.com/2022/12/30/bahamas-regulator-seized-3point5-billion-of-ftx-crypto-assets.html> (last visited, February 14, 2023).

⁸⁷ Peter Hoskins, *Sam Bankman-Fried: FTX Founder Arrested in Bahamas*, BBC, (December 2022), <https://www.bbc.com/news/business-63953096> (last visited February 14, 2023).

FTX, once valued at \$32 billion (USD), is now worthless and in bankruptcy.⁸⁸ After FTX initially filed for bankruptcy, a cyber hack drained \$477 million (USD) from the firm's crypto wallets. The firm still owes billions to its creditors. Risk of imminent dissipation of crypto assets and increased information concerning FTX cyberattacks led the Securities Commission of the Bahamas to move \$3.5 billion (USD) from the FTX into its own digital wallets, seizing the crypto assets for supposed safe keeping.⁸⁹ Over the course of 2022 cryptocurrencies experienced an overall slump, including Bitcoin, which lost more than 60% of its value.⁹⁰ The collapse of FTX closed out a tumultuous year for the crypto industry.

The use of the digital trade sphere for tax evasion is an international issue, and so is tax evasion. In a European Parliament session, members discussed the impact of new crypto and blockchain technologies on taxation.⁹¹ Members debated the importance of solving how to support improved tax compliance, accounting for the fast-moving values of crypto assets, the lack of obvious translation into fiat currency, and the overarching challenge for tax administrations to obtain reliable and timely information on these transactions.⁹²

The cryptocurrency and blockchain technology fueled sectors are still considered to be largely transitioning still and are not expected to stabilize in the near future. However, despite the projected volatility and potential growth yet to come in the industry, the need to assess and adapt to these new developments with a regulatory response persists.

⁸⁸ *Supra*, note 78.

⁸⁹ *Supra* note 80.

⁹⁰ *Supra*, note 81.

⁹¹ THE EUROPEAN PARLIAMENT, *Impact of new technologies on taxation: crypto and blockchain*, (October 4, 2022), https://www.europarl.europa.eu/doceo/document/TA-9-2022-0335_EN.html (last visited, February 9, 2023).

⁹² *Id.*

International institutions still need to promote the development of legislation to better supervise transactions and taxation of crypto assets. The European Parliament further highlights the need for frequent review and adaptation of tax policy in order to be able to respond to the evolutions of the sector, ensuring that regulation remains relevant in the face of technological and market developments related to virtual currencies and other emerging asset types.⁹³ It is understandable that governments do not want to enact legislation too swiftly. However, permitting gaps in regulation enables individuals to take advantage of the legal system, allowing criminal activity to persist.

The Organization for Economic Cooperation and Development (the “OECD”) has published a proposed framework aimed for tax authorities to achieve greater visibility on crypto transactions and the users behind them.⁹⁴ This framework requires reporting on certain crypto transactions. The aim is to capture taxation gaps among all businesses operating within the crypto space, including those typically subjected to minimal regulatory oversight.

The OECD has indicated that further work is required for the regulation of the digital sphere, and that there are several areas that need global regulatory development.⁹⁵ These include an international framework; such as a multilateral competent authority agreement, an information technology specification for secure exchange of information, implementation guides, such as tax

⁹³ *Id.*

⁹⁴ Turner Wright, *OECD releases framework to combat international tax evasion using digital assets*, CoinTelegraph, (October, 2022), <https://cointelegraph.com/news/oecd-releases-framework-to-combat-international-tax-evasion-using-digital-assets>, (last visited, February 9, 2023).

⁹⁵ *Id.*

guidance from authorities, and a coordinated implementation of a timeline for adoption across the international trade space.⁹⁶

Most recently, the collapse of Silicon Valley Bank has had rippling effects throughout the finance industry. However, a portion of the bank's collapse was attributed to long term debt that declined in market value as the United States Federal Reserve raised interest rates to fight inflation.⁹⁷ As a result, Silicon Valley Bank suffered severe losses when it had to sell those securities to raise cash to meet withdrawal volumes.⁹⁸

The collapse of Silicon Valley Bank and similar institutions has enabled significant changes in the crypto market and banking sector. It further has opened the opportunity for new players in these markets, opportunity for new companies with stricter compliance procedures and regulations to capitalize on this industry gap. The financial industry's swift response to similar challenges has been swift, with companies, regulators and government officials working together to stabilize the impacts.⁹⁹ As United States regulators continue to mitigate the effects, it remains to be seen how the long-term impact of the Silicon Valley Bank collapse may shape the financial industry going forward. However, this collapse underscores the importance of adaptability and evolving regulation in this new financial landscape.¹⁰⁰

⁹⁶ See EY Global Tax Alert, *OECD releases consultation document: Crypto-Asset Reporting Framework And Amendments to the Common Reporting Standard*, (April 2022), <https://taxnews.ey.com/news/2022-1570-oecd-publishes-final-crypto-assets-reporting-framework-and-amendments-to-common-reporting-standard> (last visited February 9, 2023).

⁹⁷ Jeanna Smialek, *Before Collapse of Silicon Valley Bank, the Fed Spotted Big Problems*, March 19, 2023, <https://www.nytimes.com/2023/03/19/business/economy/fed-silicon-valley-bank.html> (last visited March 21, 2023).

⁹⁸ *Id.*

⁹⁹ Jonas Schramm, *Silicon Valley Bank Collapse – Crypto Impact and Fed's Balancing Act*, March 18, 2023, <https://dailyhodl.com/2023/03/17/silicon-valley-bank-collapse-crypto-impact-and-feds-balancing-act/> (last visited March 21, 2023).

¹⁰⁰ *Id.*

b. Money Laundering

Tax evasion and money laundering are white collar crimes that tend to go hand in hand. However, certain cryptocurrency coins are intended to be inherently untraceable by design. It is possible to create a money laundering scheme through crypto transactions by using thousands of low-cost account transfers executed on a computer.¹⁰¹ Further, covering up these illicit activities proves relatively simple. Due to rapid exchange rate increases, some cryptocurrencies experience enormous growth in a short amount of time.¹⁰² This makes unexpected wealth easy to justify using cryptocurrency transactions.

Money laundering networks specialized in large-scale money laundering as a service have adopted cryptocurrencies and are offering their services to other criminal actors.¹⁰³ These networks can rely on pre-established infrastructure and other similar FinTech. Money laundering networks provide their services to other criminal networks, which may include the acquisition or trade of cryptocurrencies, the legalization of criminal assets, and the final cash out in the accounts of criminals.¹⁰⁴

i. a side note – cryptocurrency criminal activity is not limited to cybercrime

¹⁰¹ THE UNITED NATIONS, *Money Laundering through Cryptocurrencies*, <https://syntheticdrugs.unodc.org/syntheticdrugs/en/cybercrime/laundryingproceeds/moneylaunde ring.html> (last visited, (February 10, 2023).

¹⁰² *Id.*

¹⁰³ EUROPOL, *European Union Serious and Organized Crime Threat Assessment 2021 - A corrupting influence: the infiltration and undermining of Europe's economy and society by organized crime*, (2021) <https://www.europol.europa.eu/activitieservices/mainreports/european-union-serious-and-organised-crime-threat-assessment> (last visited February 14, 2023).

¹⁰⁴ EUROPOL, *Cryptocurrencies: Tracing the Evolution of Criminal Finances*, Europol Spotlight Report Series, Publications Office of the European Union, Luxembourg (2021), <https://www.europol.europa.eu/cms/sites/default/files/documents/Europol%20Spotlight%20-%20Cryptocurrencies%20Tracing%20the%20evolution%20of%20criminal%20finances.pdf> (last visited February 14, 2023).

Criminal uses of cryptocurrency are not confined to cybercrime activities. The expansion of the use of cryptocurrency has filtered into any crimes requiring monetary value transmissions, including fraud, drug trafficking, and human trafficking.¹⁰⁵ However, the scale and share of the illicit use of cryptocurrencies as part of criminal activities is difficult to estimate, but the pseudo anonymity and decentralized nature provides criminals a favorable exchange platform.

There is an increasing amount of third parties aiding traders in obscuring cryptocurrency transactions. This can be done through utilizing what is colloquially described as mixing services, privacy coins, and manipulating unregulated exchanges. Mixing services are offered by third party services for users participating in suspicious transactions to heavily obscure and encrypt the user's identity.¹⁰⁶ This process breaks down the connections between the transaction recipient and original sender by creating a complex web of transactions, hiding the sender's transactions and identities.¹⁰⁷ The mixing itself is accomplished by the original user sending their cryptocurrency to the wallet of the service provider. Next, the mixing service makes a series of transactions with the cryptocurrency after combining it with their own, and then transfers the cryptocurrency or funds to either the original or a different wallet.¹⁰⁸ This essentially cleans the cryptocurrency by removing any obvious indication of illicit use.

¹⁰⁵ *Id.*

¹⁰⁶ *What To Know About Cryptocurrency and Scams*, FED. TRADE COMM'N CONSUMER INFO. (Apr. 2021). <https://www.consumer.ftc.gov/articles/what-know-about-cryptocurrency-and-scams> (last visited February 14, 2023).

¹⁰⁷ Bruno Marcoux, *Top 10 Bitcoin Mixers And Bitcoin Tumbler Services – Review 2021*, Medium (Sept. 1, 2020) <https://medium.com/the-capital/top-10-bitcoin-mixers-and-bitcoin-tumbler-services-review-2020-1524445bf86d>.

¹⁰⁸ *Id.*

Alternatively, privacy coins offer increased anonymity through enabled software stealth features such as ring signatures and stealth addresses. Privacy coins are crypto coins on the blockchain with built in privacy functions masking the identities of the transacting parties to an exchange. These coins enable only the parties to a particular transaction to decipher the transaction data and access funds stored on the blockchain even when the transaction itself is posted to a public blockchain.¹⁰⁹

Enhanced anonymity behind crypto transactions makes the use of virtual currencies appealing in online marketplaces and has increased in use in online trafficking. Drug and human traffickers use peer to peer mobile payments because the transactions offer a blanket of pseudo anonymity, making detection more difficult.¹¹⁰ Human trafficking is lucrative for criminals and often requires moving around large amounts of money. Now, many credit card companies refuse to process transactions for websites that are suspected of facilitating sex trafficking.¹¹¹ Yet, this has in turn made cryptocurrency appear as a successful workaround for trafficking transactions and is increasingly used to facilitate these activities.¹¹²

In a report from June 2021, the United States Government Accountability Office (the “GAO”), found that 15 of the 27 online commercial sex marketplaces accepted

¹⁰⁹Mary Lacity, CRYPTO AND BLOCKCHAIN FUNDAMENTALS, 73 ARLR 363, 378 (2020); Mary Lacity et al., BLOCKCHAIN GOVERNANCE MODELS: INSIGHTS FOR ENTERPRISES 22, 45 (2019).

¹¹⁰ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *As Virtual Currency Use in Human and Drug Trafficking Increases, So Do the Challenges for Federal Law Enforcement*, (February 2022), <https://www.gao.gov/blog/virtual-currency-use-human-and-drug-trafficking-increases-so-do-challenges-federal-law-enforcement> (last visited, February 14, 2023).

¹¹¹ Khodarkovsky, et. al., *Prosecuting Sex trafficking Cases in the Wake of the Backpage Takedown and the World of Cryptocurrency*, DEPARTMENT OF JUSTICE, J. Fed. L. & Practice, Vol. 69, No. 3, IV. (May 2021).

¹¹² *Id.*

virtual currency payments.¹¹³ The United States government and law enforcement agencies have been developing blockchain analytics to investigate illegal activity on the blockchain. Algorithms to analyze behavioral patterns, interpret information on public blockchain ledgers, and collect transaction data into databases for decryption are examples of blockchain analytics being used to help identify payments associated with potentially criminal virtual currency wallets.¹¹⁴

Cryptocurrencies can be used as payments for criminal commodities and services, such as drugs or child sexual abuse material purchased online.¹¹⁵ This applies especially to dark web marketplaces where cryptocurrency is the main tool for payment. Different types of malware target cryptocurrencies for theft, for the mining of coins in the network of unaware victims, and for cybercriminal extortion schemes.¹¹⁶

The GAO recommends that the United States Financial Crimes Enforcement Network and Internal Revenue Service enhance their oversight of virtual wallets and transactions.¹¹⁷ The GAO emphasizes the need for better technology to address the use of privacy technology on the blockchain (privacy coins, mixing services, and other obscuring software).¹¹⁸ Enhanced privacy software conceals the movement of funds and mask digital market participant's noncompliance with anti-money laundering requirements, making it difficult to track illicit transactions.

¹¹³ *Supra*, note 96.

¹¹⁴ *Id.*

¹¹⁵ *Supra*, note 94 at 11.

¹¹⁶ *Id.*

¹¹⁷ *Supra*, note 102.

¹¹⁸ *Id.*

Continuing the focus on money laundering implications in the digital sphere, financial crime on the blockchain is not singular to individual traders. In 2022, Reuters investigated Binance's financial crime compliance. Binance is a cryptocurrency exchange for Bitcoin and altcoin transactions. Binance dominates the crypto trading markets, processing trades worth around \$1.6 trillion (USD) in October, responsible for nearly half of the cryptocurrency market trading volume.¹¹⁹

Reuters reporting indicated Binance keeping weak anti-money laundering controls, processing over \$10 billion (USD) in payments for criminals and companies seeking to evade United States sanctions.¹²⁰ These transactions and traders worked with Binance to evade regulators in the United States and elsewhere.¹²¹ An investigation into Binance by the United States Attorney's Office began in 2018, responding to a surge in lawsuits involving criminals using Binance to move illicit funds.¹²²

Cryptocurrency exchanges in the United States are required to be registered with the United States Treasury Department and comply with domestic anti-money laundering requirements if the exchange is conducting a “substantial” amount of business in the United States.¹²³ This law is codified by the U.S. Bank Secrecy Act, designed to protect the U.S. financial system from illicit finance. However, the company Binance has not complied with these anti-money laundering requirements despite its vast presence in the United States.¹²⁴

¹¹⁹ Berwick, et. al., *US Justice Department is Split over Charging Binance, Crypto World Falts*, REUTERS (December, 2022), <https://www.reuters.com/markets/us/us-justice-dept-is-split-over-charging-binance-crypto-world-falts-sources-2022-12-12/>, (last visited, February 10, 2023).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

In addition to the potential for criminal activity associated with the use of cryptocurrency, there are many countries with mismanaged domestic currencies quickly adopting crypto into the economy. This kind of behavior can be somewhat alarming. Because crypto is based on an underlying asset, governments or businesses creating their own cryptocurrency for trading may be misrepresenting the reliability or even existence of the asset the crypto is trading on.

For example, Venezuela's authoritarian regime has been experiencing severe inflation which has led to plummeting living conditions for millions of citizens without access to external currencies.¹²⁵ In response, the Venezuelan government launched its own cryptocurrency in 2018, allegedly backed by barrels of crude oil.¹²⁶ Due to the level of skepticism around the underlying assets legitimacy, the United States has outlawed its citizens from purchasing this Venezuelan cryptocurrency.¹²⁷

Globally uncoordinated regulatory efforts pose potential for destabilizing capital flows. From a financial aspect, the risks posed are systemic. There are operational and financial integrity risks from the current cryptocurrency atmosphere. These integrity risks include wide ranging security problems from crypto asset exchanges and wallets, investor protection issues, and inadequate reserves and inaccurate disclosures.¹²⁸ In emerging markets and developing economies, comparative to Venezuela and the Bahamas local economy digital currency integration, crypto can accelerate assets replacing domestic currency. One of the most pressing

¹²⁵ Kuepper, *supra* note 8.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Tobias Adrian, Dong He, Aditya Narain, *Global Crypto Regulation Should be Comprehensive, Consistent, and Coordinated*, International Monetary Fund, (Dec. 9, 2021), <https://www.imf.org/en/Blogs/Articles/2021/12/09/blog120921-global-crypto-regulation-should-be-comprehensive-consistent-coordinated>, (last visited, Oct. 16, 2022).

issues with crypto market development is the associated ability to circumvent exchange restrictions and capital account management measures.

V. EXISTING GLOBAL REGULATIONS AND CRYPTO MOVEMENTS

Cryptocurrency offers potential for high reward but is shadowed by much risk. As illustrated above, a lack of cryptocurrency regulation both on a domestic and international level leaves room for financial crimes and illegal exchanges.

The growth of digital assets in the market has opened a new space for regulatory development. One of the challenges associated with the crypto sector experiencing such growth – even with immense uncharted territory - is regulation for this space will likely take years to finalize. Currently, much of the regulatory response is best described as ad-hoc, rhetorical or driven by enforcement.¹²⁹ Adding to the challenge is the ambiguous nature of digital assets themselves and the lack of standardized definitions, thus creating questions of overlap and jurisdiction.¹³⁰ Below, this Article will examine four countries who have issued policy either for or against integrating cryptocurrency into their domestic economies.

a. Venezuela

As mentioned above, Venezuela recently created its own operating cryptocurrency. This cryptocurrency is called the Petro, backed by the value of Venezuelan oil.¹³¹ Prior to 2018, Venezuelan law enforcement penalized bitcoin miners and seized cryptocurrency assets. Present

¹²⁹ Susannah Hammond & Todd Ehret, Thomson Reuters: *Cryptos Report Compendium* (2022), <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/04/Cryptos-Report-Compendium-2022.pdf> (last visited Sept. 19, 2022).

¹³⁰ *Id* at 3.

¹³¹ *Id* at 9.

policy favors the crypto asset class. The country legalized cryptocurrency in September 2020 declaring it a legal medium of trade.¹³²

The Venezuelan government further responded to cryptocurrency growth by establishing the Superintendency of Crypto-assets and Related Activities of Venezuela as the governmental agency in charge of regulations, control, and protection of crypto-assets.¹³³ Current regulation requires all miners of cryptocurrency to be registered, all activities regulated by the national mining pool, and responsibility of distributing profits left to government oversight.

b. The United States

The United States is home to the largest number of crypto investors, exchanges, trading platforms, crypto mining firms and investment funds.¹³⁴ Much of the difficulty in producing legislation governing the regulation of the crypto market in the United States comes from authorities conflicting on asset class categorization. Agencies viewpoints differ regarding classifying crypto assets as securities, commodities, or currencies.

The challenge this discrepancy presents is each class is regulated differently. Thus, the inability to classify the medium cryptocurrency exists as has resulted in slow policy development. Solving regulatory differences, confusion about definitions, and jurisdiction will require pivotal involvement from the President's Working Group and the Financial Stability Oversight Council in the creation of a federal regulatory framework for the United States.¹³⁵ In March of 2022, the White House published an Executive Order directing agencies such as the

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id* at 5.

¹³⁵ *Id.*

Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and the Treasury to coordinate their regulatory efforts.¹³⁶

c. Iran

Comparatively, the Iranian Central Bank has taken a much more aggressive approach to regulating cryptocurrency within its economy. Iranian policy has authorized banks and currency exchanges to use cryptocurrencies mined by licensed crypto miners in the country.¹³⁷

Cryptocurrency mining is legal, but firms are required to sell cryptos to the Central Bank to fund imports.¹³⁸ Trading cryptocurrency outside the country has been banned, to stop capital flight and the use of cryptos for payments has also been banned.¹³⁹

In early 2022, the country said it was exploring the possible use of cryptos for international trade, which potentially would allow some businesses to make international payments using cryptos.¹⁴⁰ The international development impacts displayed in this example emphasizes the necessity of international cryptocurrency regulation.

d. Russia

Russia takes more of a middleman approach to its cryptocurrency regulatory policy. After previously banning digital currencies, one of the broader regulatory developments took effect in January 2021, regulating all digital financial asset transactions.¹⁴¹ This policy development

¹³⁶ THE WHITE HOUSE, *Executive Order on Ensuring Responsible Development of Digital Assets*, (Mar. 9, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/> (last visited, Sept. 20, 2022).

¹³⁷ The Central Bank of the Islamic Republic of Iran, Monetary Policy, https://www.cbi.ir/default_en.aspx (last visited, Sept. 2022).

¹³⁸ *Supra* note 14 at 33.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Supra* note 14 at 34.

recognized digital currencies as a payment and investment method. However, cryptocurrency cannot be used to pay for any goods and services.¹⁴²

Similar to Venezuela, the Central Bank of Russia has begun developing a digital central bank currency – dubbed the Digital Ruble. Despite the Central Bank’s opposition and pushback on cryptos, the Ministry of Finance introduced a bill “On Digital Currency” in February 2022, creating a mechanism for organizing the circulation of digital currencies.¹⁴³ Russia is considered a significant player in the crypto space, with estimated Russian ownership of cryptos at approximately 12% of the international crypto economy.¹⁴⁴

VI. PROPOSAL FOR INTERNATIONAL MULTILATERAL ACTION

As illustrated in this Article, the international regulatory space on cryptocurrency governance is dominated by domestic policy, a lack thereof, or defaults to existing bank regulations. Despite the uses of cryptocurrency for buying goods and services, there has been no uniform international law response on the matter. Thus, a new international body should be established to aid in developing policy on international cryptocurrency use, implementation of new technology to facilitate enhanced trade efficiency, and to create compliance and regulatory procedures for crypto and digital trading to avoid bank destabilization.

a. Cryptocurrency Regulation

The growth potential for the digital trade sphere, cryptocurrency use, and blockchain enabled software developments is undisputed. This proposal suggests the implementation of a new international governing body for the global digital and cryptocurrency market, addressing potential issues integrating this proposal at an international level. This governing body would aid

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

in the implementation of blockchain technology in the trade sphere as well as enact policy to regulate digital trade.

i. *The International Digital Currency Board*

Countries who have legalized cryptocurrency as a medium of exchange within their economies shall select qualified candidates experienced in digital finance, computer science, and blockchain technology to serve as representatives for their respective cryptocurrency markets. These representatives should be the ‘digital trade expert’ for their respective country’s digital economy. Representatives will serve on a committee for a set term for international cryptocurrency markets and governance, as an international digital trade and currency board (the “Committee”).

The Committee will meet semi-annually on the date the Agreement is executed and effective and exactly six-months thereafter to address rapid market changes. The Committee shall,

(1) facilitate the exchange of information regarding the implementation of policies governing cryptocurrency regulation,

(2) aid international financial institutions interested in participating in implementing blockchain payments systems,

(3) draft policy supplementing cryptocurrency regulations as the market continues to evolve,

(5) analyze the economic and social impacts of integrating cryptocurrency as a medium of exchange; and

(6) discuss proposals for continued developmental activities regarding the international cryptocurrency market.

This method of regulation will act as a multilateral response, conglomerating regulatory efforts at an international and local level to address the borderless character of the cryptocurrency market. Developing a new global market regulating body would better facilitate and coordinate cryptocurrency governance.

b. Integration Issues

However, some governments may not be interested in advancing the cryptocurrency market through integration into the global economy. In the UK, exchange tokens such as Bitcoin are not considered to be a currency or money, following the previous conclusions of both the Bank of England and the G20 Finance Ministers and Central Bank Governors.¹⁴⁵

Cryptocurrency coins are neither a reliable store of value due to their high volatility, nor are they widely accepted as a means of exchange or used as units of account. In the UK, fewer than 600 merchants are said to accept exchange tokens as a payment tool.¹⁴⁶ Transferring, buying, and selling exchange tokens such as Bitcoins or Ethers, including the commercial operation of cryptocurrency asset exchanges for these tokens, currently fall outside the UK regulatory perimeter. Economies that are hesitant to integrate cryptocurrency and regulations into their markets are likely cautious of their high volatility and potential to systematically disrupt local currencies.

Similarly, in France, cryptocurrency assets are neither regarded as a currency nor considered a means of payment by the Banque de France.¹⁴⁷ The majority of countries across the

¹⁴⁵ J. Lee and F. L'heureux, *A Regulatory Framework for Cryptocurrency*, EUR. BUS. LAW REV., (Apr. 9, 2020), <https://ore.exeter.ac.uk/repository/bitstream/handle/10871/120627/EULR2020018.pdf?sequence=4&isAllowed=y>, (last visited, Oct. 16, 2022).

¹⁴⁶ *Id* at 427.

¹⁴⁷ *Id* at 428.

EU do not recognize cryptocurrency assets as a form of currency, except for in policy addressing anti-money laundering and taxation. The international divide of acceptance and nonacceptance of cryptocurrency into commerce will pose the largest issue in implementing an international regulatory board. If implemented, the board will be charged with the duty of mitigating the risks and criminal potential associated with cryptocurrency.

At a minimum, a multilateral agreement between nations ought to be implemented for much needed consistent regulatory guidance of the digital trade sphere. Cryptocurrency may be the beginning of the digital trade sphere, potentially paving the way for an entirely new sector of trade. An international response is essential for safety of trade and the global economy.

V. CONCLUSION

The lack of regulation in the cryptocurrency market continues to raise concerns worldwide. Despite its versatility and potential for growth, there are still no international laws nor governance that regulate cryptocurrency assets. Its use is permitted in many developed countries, but fewer have accepted crypto and integrated it into their local economies as a medium of exchange. To match the regulatory environment with the economic developments and growth cryptocurrency has had on the international market, countries of the world must implement a functioning board for global crypto governance and guidance. Evolving and adapting regulation to meet the everchanging FinTech industry is essential to protecting markets and industry from potential negative impacts.