



○ **Cryptocurrency: From the
IRS to the SEC & Beyond**

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Table of Contents

Bloomberg Law

- 1** **INSIGHT: The IRS Should Be Encouraging Staking Activity in the U.S.**
- 3** **Looking at Unclaimed Property Issues in Cryptocurrency**
- 5** **ANALYSIS: BlockFi Order Sets SEC's Regulation of Crypto Lending**
- 7** **ANALYSIS: Crypto Drafting Trends Are Emerging in M&A Agreements**

Bloomberg Tax

- 10** **As Currency Gets Weaponized, Central Banks Design Money's Future**
- 15** **Circle Will Apply for U.S. Crypto Bank Charter in 'Near Future'**
- 16** **Crypto 'Altcoin Season' Returns as Bitcoin Dominance Fades**
- 18** **Where to Begin with Cryptocurrency**
- 21** **Security, Art or Mere Picture: Celebrities Draw Scrutiny to NFTs**

INSIGHT:

The IRS Should Be Encouraging Staking Activity in the U.S.

by Stephen Turanchik
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April 25, 2022

The IRS has failed to provide taxpayers with clarity about the correct tax treatment of various crypto-related transactions, notably for those who earn token rewards from staking on proof of stake blockchains. Stephen Turanchik of Paul Hastings says it's time for the U.S. to treat proof of stake fairly for the sake of American innovation.

Tax season has never been easy in the crypto space, and this year has been no exception. The IRS recently announced that it is stepping up its enforcement of crypto tax matters, most notably through "[Operation Hidden Treasure](#)," which seeks to ferret out unreported income related to cryptocurrencies. Enforcement of tax laws is a critical part of any well-functioning tax system.

Likewise, providing guidance to the public as to how the government interprets the tax laws is a key component of any system where taxpayers voluntarily report taxable income. To date, the IRS has failed to provide taxpayers with clarity about the correct tax treatment of various crypto-related transactions, notably for those who earn token rewards from staking on proof of stake blockchains.

With approximately 40 million Americans, or [some 16% of American adults](#), having purchased cryptocurrency—more than double the number in 2018—this lack of clarity affects more and more taxpayers. This is especially true for those involved with proof of stake blockchains, a growing part of the cryptocurrency ecosystem in which individuals can create new tokens through staking, an environmentally responsible process of validating transactions on proof of stake networks. [Between 2020 and 2021](#), proof of stake activity grew 571%, and it now comprises 31% of the crypto market, with 25 of the top 100 cryptocurrency networks utilizing this consensus mechanism.

Because there has been no guidance issued by the IRS on the appropriate tax treatment of staking rewards, the lack of clarity is leading many proof-of-stake stakers and staking businesses to take a conservative approach. Those taxpayers report the value of reward tokens as income the moment they are created instead of when they actually receive income by selling their reward tokens.

Taxing staking rewards as income at the time of creation is inconsistent with more than 100 years of tax law. For example, the artist does not realize income upon the completion of their painting. Rather, income is realized when the artwork is sold. Likewise, the farmer realizes income only when crops are sold, not when they are harvested. The same is true when the staker creates the reward tokens through efforts to secure a blockchain.

Aside from being inconsistent with established law, taxing staking rewards upon their creation—as opposed to disposition—is bad policy and risks disincentivizing participation in an emerging technology with implications for American competitiveness. Entities that engage in staking as a service are generating tens of thousands of reward tokens per hour and could have millions of taxable events per year if staking rewards are taxed as income at the time of creation. Recordkeeping, accounting, and paying taxes on each token at the time it is created results in an immense administrative burden that could deter participation in the industry for the vast majority of participants in the U.S.

In addition to the administrative burden on the taxpayer if reward tokens are taxed at the time of creation, this treatment has other adverse impacts on the taxpayer. If a staker is required to recognize gain on the staking reward at the time of creation, the staker will need to take one of the following steps to ensure that the income tax is paid: sell the recently created tokens; set aside—i.e., not stake—a portion of the validator's tokens; or set aside other liquid assets to pay the tax owed on the reward tokens. Each of these options has adverse consequences.

First, because the security of the protocol partially depends on the amount of staked tokens, by requiring the staker to sell those tokens, the protocol becomes comparatively less secure. Second, if the staker is required to set aside other liquid assets (like cash) to pay tax, those liquid assets have effectively been utilized to invest in the protocol. Third, due to the infancy of the technology, it is not unusual for tokens associated with a proof of stake network to heavily fluctuate in value, even in the course of a 12-month period. Fourth, there may not be a liquid market or even a market at all for the particular tokens in order to sell them. Taxing the value of the token on creation could very easily result in a tax on illusory income.

Taxpayers who want to avoid this unfair treatment are left with limited, expensive, and time-consuming options when considering how to receive appropriate tax treatment on staking rewards.

This has been demonstrated by a former client of mine, Josh Jarrett, who sued the U.S. for a tax refund in an attempt to obtain a court decision that reward tokens should only be considered income when they are sold. Jarrett, a Tennessee SmartGym owner and a staker on the Tezos blockchain, created 8,876 XTZ tokens through validating transactions in 2019. Though he did not sell or exchange these tokens, he took the conservative approach and paid income tax on the value of these tokens at the time of their creation. In 2020, he filed a claim for refund on this tax, arguing that he had not earned income through the generation of reward tokens, and they should only be considered income when they are sold—in line with the way all newly created property is taxed.

The IRS failed to either accept or deny his request for a refund. After six months, in May 2021, Jarrett sued the U.S. in the U.S. District Court for the Middle District of Tennessee to obtain a refund as well as a ruling that staking rewards would not be taxed as income at the time they are created. In December 2021, in an attempt to settle the case, the U.S. Department of Justice informed Jarrett that it would be instructing the IRS to issue the refund. The government's goal was simple: By issuing the refund the case, the government could say it provided the relief sought by Jarrett so there was no dispute left to resolve because he received the result he sought by bringing the lawsuit. The government, therefore, is attempting to use the offered refund to side-step a potential binding court ruling that staking rewards are only taxed upon disposition. Jarrett has

attempted to reject the refund, but his case may be dismissed for mootness.

The current tax landscape for stakers is untenable, as taxpayers are stuck between choosing prejudicial tax treatment on one hand or going through a multi-year administrative and legal process to receive fair treatment on the other. This is unfortunate because providing appropriate and fair tax treatment for all staking rewards is one way for the government to encourage the responsible growth of blockchain technology within the U.S. The Internal Revenue Code is filled with provisions designed to encourage or discourage certain activities, including the research and experimentation tax credit, the deductibility of home mortgage interest, favorable tax treatment for depreciable property used in a trade or business, and capital gains for funds invested in opportunity zones. Each of these Code provisions exist because, as a policy matter, the U.S. wanted to encourage a particular activity.

Proof of stake protocols use substantially less energy than proof of work protocols and offer a platform for a tremendous amount of technological innovation. By taxing reward tokens in the same way that the IRS treats all other newly created property, the U.S. could encourage this fledgling industry to develop deeper roots in this country as the security of the proof of stake protocols depends, in part, on the number tokens staked in the network.

It's time for the U.S. to treat proof of stake fairly for the sake of American innovation.

This article does not necessarily reflect the opinion of The Bureau of National Affairs, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Looking at Unclaimed Property Issues in Cryptocurrency

by Michael Giovannini
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Sept. 17, 2021

The use of cryptocurrency, like with any emerging technology, has drastically outpaced the speed of state and federal agencies in studying and regulating it. Alston & Bird's Michael Giovannini discusses recent and pending bills designed to subject cryptocurrency to state unclaimed property laws.

Cryptocurrency continues to take hold as an international social, economic, and cultural phenomenon. Like with any new and emerging technology, the speed at which users have adopted cryptocurrency has drastically outpaced the speed of state and federal agencies in studying, much less regulating, the technology. But that is starting to change, as there are dozens of cryptocurrency-related bills pending in state legislatures and Congress, [an executive proposal](#), and of course the numerous crypto laws that have been enacted within the last couple of years.

Among the various pieces of recent and pending state legislation are bills designed to subject cryptocurrency to state unclaimed property laws. All 50 states—plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam—have adopted custodial unclaimed property, or escheat, laws. These laws require holders of unclaimed property to report and remit such property to the state once it has become presumed abandoned. After escheatment, the owner of the property can recover the funds directly from the state.

At a high level, unclaimed property represents an obligation by a holder to pay money to an owner on a liability. Unclaimed property laws typically apply to items such as payroll (e.g., the employee did not cash their paycheck), accounts receivable credit balances (e.g., the customer double paid a bill and was not refunded), accounts payable (e.g., the holder sent a check to a vendor, but the vendor did not cash it), and funds held in bank accounts and other investment accounts. States also expressly require the escheat of certain non-cash obligations such as shares of stock, which the state will liquidate,

and a handful of states require the escheat of money equal to the value of unused gift cards and similar instruments. State unclaimed property agencies actively enforce these laws through audits conducted by third-party audit firms, typically involving multiple states. Holders can be subject to penalties and/or interest if the auditor finds that the holder has not been fulfilling its obligations to report and remit property to the state in a timely manner.

The Uniform Law Commission in 2016 promulgated the Revised Uniform Unclaimed Property Act, or RUUPA, which replaced the Uniform Unclaimed Property Act, adopted in 1995. RUUPA was an attempt to modernize aspects of the unclaimed property laws given the advancements in technology and property types during the intervening decades. Cryptocurrency is one such area that RUUPA addressed. In particular, RUUPA includes virtual currency within the definition of property subject to escheat and defines the term “virtual currency.” However, RUUPA does not establish the applicable protocol for escheating virtual currency, including the dormancy standards that apply for determining whether virtual currency is escheatable and how, exactly, holders are to remit the property to states.

As of today, 12 states have adopted all or substantially all of RUUPA. These states have taken different approaches to the treatment of virtual currency. On the one hand, Illinois has adopted a specific dormancy standard for virtual currency—five years after the last indication of interest in the property by the owner—and Illinois expressly requires holders to liquidate virtual currency before reporting and remitting it to the state. The statute provides that owners shall not have recourse against the holder or the state as a result of any loss in value that occurs post-liquidation. Kentucky similarly requires liquidation and includes a no-recourse provision, and Wisconsin's statute indicates that liquidation is required. (Without further details, our firm has been informed by the Wisconsin Department of Revenue that formal guidance is forthcoming, followed by a possible statutory amendment during the next legislative session.) On the other hand, the other states that have adopted RUUPA have either taken the standard approach or not addressed cryptocurrency at all—e.g., Maine.

In addition, a number of other states that have not adopted RUUPA have enacted or are considering enacting provisions addressing cryptocurrency, including Delaware, Nevada, and West Virginia. Like Illinois and Kentucky, Delaware's law requires holders of unclaimed crypto to liquidate and remit the proceeds to the state, and there is a no-recourse provision.

In light of these laws, companies operating within the cryptocurrency space will need to determine whether they may be a "holder" of unclaimed cryptocurrency and hence required to escheat to the state after the dormancy period has expired. However, the answers to crucial questions are not always clear despite the existence of statutory provisions. For example:

- Is the fact that the owner of the cryptocurrency has not interacted with their crypto and/or the company sufficient to indicate that the crypto should be escheatable?
- Except in the states that expressly require liquidation, how should holders remit crypto to the states?
- Will states without a liquidation provision be willing and able to accept the crypto in kind?
- Will states indemnify holders for escheating an owner's crypto to the extent the owner asserts a claim for loss in value post-liquidation, and does the answer depend on whether the holder or the state is the party that effectuates the liquidation?

These questions are magnified when companies are faced with claims for the escheat of cryptocurrency by states without express provisions. Indeed, an increasing number of state agencies and third-party auditors have indicated that cryptocurrency is escheatable as an administrative matter, notwithstanding the lack of a specific law in the state's unclaimed property code or duly promulgated regulation. These states have generally asserted that crypto is escheatable under the state's so-called catch-all provision, which applies to intangible property that is not otherwise covered by the law. Under a typical catch-all provision, property is escheatable to the extent that it remains unclaimed for the dormancy period after being payable or distributable to the owner. This type of provision raises obvious interpretational questions for crypto holders, such as when, if ever, crypto can be considered payable or distributable.

Related to this question, **courts have held** that non-cash property types, such as gift cards or merchandise credits, are not escheatable under a state's catch-all provision and must be addressed in a specific statute. Thus, by proceeding with escheat claims in the absence of a statutory provision, states impose unnecessary risk on holders and owners of crypto.

In sum, companies operating in the cryptocurrency space will need to carefully consider these questions and monitor the inevitable legislative efforts of states to amend (or interpret) their unclaimed property laws to require the escheat of unclaimed crypto.

This article does not necessarily reflect the opinion of The Bureau of National Affairs, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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ANALYSIS:

BlockFi Order Sets SEC's Regulation of Crypto Lending

by Robert Kim
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March 1, 2022

Securities law enforcement actions concluded against BlockFi Lending LLC in February imposed a hefty \$100 million in penalties, but it did something even more consequential for the crypto sector as a whole.

The Securities and Exchange Commission laid out its approach to regulating an emerging line of business—digital asset borrowing and lending platforms, aka crypto lending—and applied a federal securities law heretofore rarely discussed in the context of cryptocurrencies: the Investment Company Act of 1940, often shortened to the 40 Act.

BlockFi's Securities Law Problems

Crypto lending is one part of a range of emerging cryptocurrency financial services. It is an arrangement in which cryptocurrency holders lend their assets, in return for interest, to an investment vehicle. A crypto lending account resembles a savings account at a bank or credit union, but its deposits and interest are in cryptocurrency. Another significant difference is that crypto lending accounts do not receive deposit insurance from the Federal Deposit Insurance Corporation or the National Credit Union Administration.

How the securities laws apply to this form of investment vehicle was unclear entering 2022, and BlockFi was at the center of the issue.

BlockFi is a company providing cryptocurrency trading, lending, and borrowing services, including a depository account for cryptocurrencies, the **BlockFi Interest Account** (BIA). The BIA paid depositors a variable interest rate declared to be up to 7.5%, far higher than interest rates currently paid by conventional bank accounts.

In September 2021, multiple states **initiated enforcement actions** against BlockFi for violations of state securities laws. The North American Securities Administrators Association (NASAA) assumed leadership of these actions on behalf of its U.S. member states and territories.

On Feb. 14, the SEC and BlockFi settled allegations of federal securities law violations with a **cease and**

desist order that imposed a \$50 million penalty. (A simultaneous **settlement** of the state securities law issues with NASAA imposed an additional \$50 million penalty, to be shared equally between the 53 U.S. NASAA member jurisdictions.)

The SEC cease and desist order alleged multiple violations of the Securities Act. Finding that BIAs were offered and sold as investment contracts, meeting the definition of a security, the SEC alleged that BlockFi had made an offer and sale of securities without filing a registration statement, violating Sections 5(a) and 5(c) of the Securities Act. Finding misrepresentations by BlockFi about the BIAs, the SEC alleged untrue statements of material facts, violating Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Moreover, the SEC found that BlockFi had operated as an unregistered investment company in violation of Section 7(a) of the Investment Company Act.

Applying the Investment Company Act to crypto lending is a novel course of action for the SEC that I predicted in a **September 2021 analysis**. As explained in that analysis, the SEC raised the possibility that it would apply the Investment Company Act to crypto financial services as early as 2017, without actually having done so until now.

It shows that the SEC—in the absence of action by Congress to amend the securities laws to address the unique features of digital assets—is in the process of bringing the full scope of the federal securities laws to bear on digital asset financial services businesses.

BlockFi's Remedial Actions

The SEC cease and desist order described specific actions that BlockFi agreed to undertake to address the alleged securities law violations and to bring itself into compliance with the federal securities laws.

To address the Securities Act issues, BlockFi is ceasing to offer BIAs to new investors in the U.S. and ceasing to accept further investments or funds in the BIAs by current U.S. investors. BlockFi will register the offer and sale of a new investment product, BlockFi Yield, which will include the filing of an indenture and Form T-1 under the Trust Indenture Act of 1939.

To address the Investment Company Act issues, BlockFi will either (a) file a notification of registration pursuant to Section 8(a) of the Investment Company Act, and then within 90 days of filing such notification, file a registration statement with the SEC, on the appropriate form, or (b) complete steps such that BlockFi is no longer required to be registered under Section 7(a) of the Investment Company Act and provide SEC staff with sufficient credible evidence that it is no longer required to be registered under the Investment Company Act.

By accepting these corrective actions, the SEC is sending a clear signal that the agency is treating crypto lending platforms as substantively and legally similar to conventional investment companies. New technologies, new business models, and transacting in digital assets instead of dollars do not negate the applicability of any of the existing provisions of the Investment Company Act.

Gensler Prevails, Peirce Dissents

The BlockFi settlement represents a major step forward for SEC Chair Gary Gensler's [agenda](#) to expand and clarify the application of the federal securities laws to emerging cryptocurrency financial services.

"Today's settlement makes clear that crypto markets must comply with time-tested securities laws, such as the Securities Act of 1933 and the Investment Company Act of 1940," Gensler stated in the SEC's [press release](#) about the settlement. "It further demonstrates the Commission's willingness to work with crypto platforms to determine how they can come into compliance with those laws," he said.

Commissioner Hester Peirce disagrees to some extent with the latter view. She published a [statement](#) declaring her dissent from the SEC's decision, arguing that the \$100 million in combined penalties was disproportionate and criticizing the commission's decision for a variety of policy reasons.

These policy arguments included that the securities regulatory framework may not be well suited to crypto lending; that the 60-day timeframe for obtaining an exemption or exclusion from registration under the Investment Company Act is too short; and that the process of obtaining the exemption or exclusion does not add to investor protection.

Peirce's dissenting views may eventually prove to be influential. Like her 2020 proposal for a [safe harbor](#) for token sales, whose features appeared in two [House bills](#) on digital asset issues in 2021, her statement has no effect on SEC regulatory policies but does set the stage for future legislative initiatives.

Nevertheless, Gensler's approach has prevailed and is likely to continue unless Congress acts to implement legislation reflecting policy decisions differing from those of the commission.

Bloomberg Law subscribers can find information on U.S. federal and state regulatory actions toward cryptocurrencies and other digital assets on our [Fintech Compliance](#) resource, including the new [Financial Technology Developments Tracker](#), as well as track SEC administrative enforcement actions on the [SEC Admin Enforcement Analytics](#) tool.

ANALYSIS:

Crypto Drafting Trends Are Emerging in M&A Agreements

Grace Maral Burnett
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Feb. 17, 2022

The week following “**crypto bowl**” Sunday is a good time to check in on a drafting trend I’ve **had my eye on** for a while: the appearance of “crypto” in mergers and acquisitions agreements.

And it’s no coincidence that in the year leading up to the Super Bowl crypto ad debuts last weekend, the number of publicly available agreements containing references to cryptocurrencies and crypto-assets, such as “Bitcoin” and “digital assets,” reached its highest level ever.

Beyond their increased appearance in these agreements, the emerging provisions we’re now seeing may serve as the blueprint for how deal lawyers address crypto in future deals, as the need to do so potentially increases with growing crypto adoption.

As Hannah Miller of Bloomberg News **wrote** earlier this week, “There’s no more grandiose way for a business to declare it’s entered the mainstream than buying Super Bowl ads.” Applying this line of thought to M&A *pari passu*: There’s no more prosaic way for deal lawyers to know it’s time to pay attention to crypto than when it starts getting its own reps and MAE carve-outs in publicly filed deal agreements.

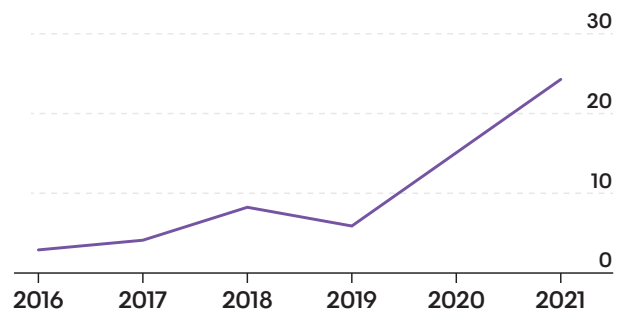
Agreements Containing Crypto References

A Bloomberg Law advanced precedent search of publicly available M&A agreements using the Boolean keyword string “crypto” OR “Bitcoin” OR “Ethereum” OR “stablecoin” OR “digital asset” OR “digital currency” yielded 24 unique M&A agreement results signed in 2021 that contain one or more of the quoted terms. (Access precedent search results [here](#).)

While it may seem like a small number of agreements, in the grand scheme, last year’s total is the highest ever for deals involving crypto references—and appears to be new territory for crypto’s presence in the realm of M&A agreements.

Crypto Is Making a Mark in M&A

Number of M&A agreements containing crypto references



Source: Bloomberg Law as of Feb. 16, 2022. The tally is of publicly available mergers and acquisitions precedents dated between Jan. 1, 2016 and Dec. 31 2021 containing one or more of the following terms: “crypto”, “Bitcoin”, “Ethereum”, “stablecoin”, “digital asset”, or “digital currency”. Duplicate agreements were not counted.

Last year was a record year for **M&A** overall and especially for investment involving entities with a **nexus to crypto**. The search results—which mostly include transactions involving these entities—illustrate this point.

Among the deals captured by our search were a number of **de-SPAC transactions** (see below for examples) and some large deals including the \$1.2 billion **BitGo Holdings Inc-Galaxy Digital Holdings Ltd.** merger signed in May and completed in December of last year.

Emerging Crypto Provisions

My review of recent M&A agreements found using the crypto search described above shows the emergence of certain drafting trends. These include some common provisions where crypto references repeatedly appear, as well as a few brand new provisions and carve-outs completely focused on crypto-related matters.

The following are some of the provisions containing crypto references in 2021 deal agreements:

- “Ownership of Digital Assets” standalone representation and warranty

- Crypto-focused representation and warranty paragraph added to end of “International Trade; Anti-Corruption” representation and warranty
- Crypto-specific Material Adverse Effect (MAE) carve-out
- “Material Contracts” representation and warranty
- Interim operating covenants exception to allow certain crypto-related transactions
- Definition of “Cash”
- Definition of “Indebtedness”
- Inclusion in description and formula for: calculation of assets at closing, closing consideration, closing working capital
- Termination provisions
- Closing statement specifications

Below are some examples of certain provisions listed above that are present in multiple deal agreements reviewed, excerpted from the agreements:

Crypto-Specific MAE Carve-Out, Example 1:

[...] (xi) any change in the price or relative value of any digital currency or cryptocurrency, or any other blockchain-based tokens or assets, including Bitcoin or EOS; (xii) any change in existence or legality of any digital currency or cryptocurrency, or any other blockchain-based token or asset, or any halt or suspension in trading of any such digital currency or cryptocurrency on any exchange, in each case including Bitcoin or EOS (except that this clause (xii) shall not exclude any changes in existence, public availability, legality, or trading volume of any digital currency or cryptocurrency, or any other blockchain-based token or asset, or any halt or suspension in trading of any such digital currency or cryptocurrency on any exchange, in each case including Bitcoin or EOS, which, reasonably foreseeably result from actions taken by the Target Companies) [...] (SAITECH Ltd.-TradeUP Global Corp. [Business Combination Agreement](#) dated Sept. 27, 2021 (governing law: Delaware, Cayman Islands))

Crypto-Specific MAE Carve-Out, Example 2:

[...] (c) any change in the price or relative value of any digital currency or cryptocurrency, including but not limited to Bitcoin, (d) any change in trading volume of any digital currency or cryptocurrency, or any halt or suspension in trading of any such digital currency or cryptocurrency on any digital currency exchange, in each case including but not limited to Bitcoin [...]

(Grid Holdco LLC-Adit EdTech Acquisition Corp. [Agreement and Plan of Merger](#) dated Nov. 29, 2021 (governing law: Delaware))

Ownership of Digital Assets Rep:

Ownership of Digital Assets. As of the date of this Agreement, the Target Companies own and have the exclusive ability to control, including by use of “private keys” or other equivalent means or through custody arrangements or other equivalent means, all of the crypto-currencies, blockchain-based tokens, and other blockchain asset equivalents (collectively, “Digital Assets”) set forth on Schedule 4.17(i) of the Company Disclosure Schedules, free and clear of all Liens except for Permitted Liens; provided, however, that such ownership and exclusive ability to control Digital Assets is subject to the continued existence, validity, legality, governance and public availability of the relevant blockchains. Except as set forth on Schedule 4.17(ii) of the Company Disclosure Schedules, the Target Companies and their Predecessors have taken no actions where any of them owns a substantial portion of all outstanding tokens in the then existing issued and circulating supply of such tokens on a blockchain to effectuate change through the governance process of that relevant blockchain that could reasonably foreseeably disrupt the continued existence, validity, legality, governance or public availability of the relevant blockchains. (Bullish Global-Far Peak Acquisition Corp. [Business Combination Agreement](#) dated July 8, 2021 (governing law: Delaware, Cayman Islands))

Crypto-Specific Rep Included Under “International Trade; Anti-Corruption”:

In the past five years, no Company Group Member has purchased or sold Bitcoin, or any other digital asset, in a transaction involving a counter-party whose identity was not verified in accordance with the Company’s sanctions compliance policy and any applicable know your customer/anti-money laundering laws or regulations. (Core Scientific Holding Co.-Power & Digital Infrastructure Acquisition Corp. [Agreement and Plan of Merger and Reorganization](#) dated July 20, 2021 (governing law: Delaware))

...And You’ve Got to See These as Well

Below are two provisions that I believe are worth noting, despite the fact that they each appeared only in a single agreement during 2021. One is a provision allowing for termination of the agreement

if the price of Bitcoin falls below a certain threshold, and the other is a post-closing covenant stipulating that certain compensation payments be converted into Bitcoin.

Termination:

Termination. This Agreement may be terminated at any time prior to the Effective Time (with respect to Sections 8.01(b) through 8.01(k), by written notice by the terminating party to the other party), whether before or, subject to the terms hereof, after approval of the Merger Partner Voting Proposal by the Shareholders of Merger Partner or approval of the Public Company Voting Proposals by the Shareholders of Public Company:

[...]

by Public Company, at any time prior to the Effective Time, if the seven day moving average price of Bitcoin, as reported on Binance as "MA(7)", falls below \$15,000. (Gryphon Digital Mining Inc.-Sphere 3D Corp. [Agreement and Plan of Merger](#) dated June 3, 2021 (governing law: Delaware))

Post-Closing Employee Compensation:

Post-Closing Covenants of the Buyer Parties. On the Closing Date, Buyer shall hire the employees, or engage the independent contractors, of Seller set forth in Schedule 6.04. The parties agree that budget for the compensation for the Persons set forth in Schedule 6.04 shall be One Million Three Hundred Four Thousand Dollars (\$1,304,000.00) for the twelve (12) month period commencing on the Closing Date. The compensation paid under this Section 6.04 shall be in United States Dollars, but, subject to compliance with Law, converted to bitcoin at the time of payment through the use of a cryptocurrency payment service provider reasonably mutually agreed by Seller and Troika, such as BitPay Send or BitWage. (Redeem LLC-Troika Media Group Inc. [Asset Purchase Agreement](#) dated May 21, 2021 (governing law: New York))

In addition to the examples above, M&A lawyers interested in looking at emerging crypto-related deal provisions might consider reviewing the Delaware-governed BitGo Holdings Inc.-Galaxy Digital Holdings Ltd. [Agreement and Plan of Merger](#), which contains a variety of crypto-specific definitions and terms. For example, it contains a robust definition of "Virtual Currency" and embeds crypto into financial terms like the definition of "Cash" and other consideration-related provisions.

The Future

Looking at how deal parties have begun to address crypto in otherwise standard M&A provisions gives us a sense of how crypto might be included in non-crypto-industry deals in the future.

If the crypto industry continues to grow, more crypto-industry deals will require a sophisticated approach to incorporating crypto holdings in their terms. Assuming the trend toward increasing crypto investment at the corporate level continues, there will likely also be more non-crypto-industry deals in which crypto is among the assets being acquired, creating the need to address the digital currency in their contract terms.

Bloomberg Law subscribers can find related content on our [M&A Deal Analytics](#) resource.

As Currency Gets Weaponized, Central Banks Design Money's Future

by Joanna Ossinger and Carolynn Look
Bloomberg News
April 13, 2022

When the U.S. and its allies decided to punish Russia for its invasion of Ukraine, they used their power over the global financial system to isolate the nation, crippling its economy and crushing the value of the ruble. But what if, in the future, countries don't need those U.S.-dominated payment networks?

That's one of the big questions also being asked now about China's digital yuan and the European Central Bank's plans for a [digital euro](#), just two of the many so-called central bank digital currencies (CBDCs) that are being tested or studied around the world. CBDCs have emerged amid the rise of thousands of cryptocurrencies, which are quickly disrupting traditional payment systems and pushing central bankers to innovate to compete.

It's not the first time. Consumers and businesses used to transact in numerous privately issued banknotes until central banks ended the chaos by monopolizing currency issuance in the 19th and early 20th century. Today, policymakers face a similar challenge of trying to maintain their footprint in global money supply.

CBDCs aim to make payment systems safer, faster, cheaper, and more reliable. Digital money also can give governments in poor nations an alternative to underdeveloped banking systems or help authorities provide lifesaving funds to citizens quickly during a crisis.

The [International Monetary Fund](#) estimates that about 100 countries have either rolled out CBDCs or are considering them. The U.S. is among those with a project that's still on the drawing board, though an executive order by President Joe Biden in March sought to prioritize the study of a digital dollar.

But isn't money already digital? For most of us, our savings or debts are just numbers on a computer or smartphone screen. We perform most transactions without ever touching paper currency or coins.

CBDCs are different in one important respect. The traditional dollars or euros or yuan on our screen today are actually the liabilities of a commercial bank or other financial institution, which makes them

vulnerable to that company's financial health as well as to actions taken by governments. But CBDCs, like physical cash, are direct liabilities of the central bank. In theory, a CBDC would allow a central bank to transfer currency directly to the digital wallet of an individual, corporation, or other counterparty without needing any other bank or intermediary. In practice, most central banks aren't willing to cut out the private financial sector completely.

As with most innovations, there are pluses and minuses. Governments will be able to track the movement of central bank digital currencies easily. That will help policymakers better understand how the economy is functioning. But it could also help in the surveillance of citizens. And given the enormous impact that CBDCs could have on economies, they have to work flawlessly if they're to be trusted. In their early days, that hasn't always been the case.

Some of the most-motivated nations are smaller, less-developed countries that aren't worried about sanctions—they're just trying to solve real-world problems for their people. Those issues include the high number of citizens without bank accounts, the costly system for sending money around the world, and even simple geographic isolation. For example, Palau, a cluster of tiny islands in the Pacific that use the U.S. dollar, sometimes runs out of pennies, so merchants have been known to give out pieces of candy as change instead.

What follows is a closer look at six key projects that are up and running, being tested in pilot programs, or close to being rolled out.

CHINA: Digital Yuan (e-CNY)

STATUS: In testing since 2020

USERS: 140 million people, more than 1.5 million merchants

Although the digital yuan is still in the pilot phase, the numbers are staggering: The virtual currency has been tested in about a dozen regions since 2020, with the number of individual users surging by late last year to 140 million, or about one-tenth of the population. More than 1.5 million merchants accept it, according to official data. China hasn't officially set a timeline for a national rollout, but more cities are expected to join the trial.

The central bank adopted a two-tier system for the digital yuan, officially known as the e-CNY. The People's Bank of China first issues e-CNY to commercial banks, which then distribute it to the public. In trials, banks have become partners with merchants, promoting use by handing out free digital cash and consumption vouchers and offering discounts on purchases in digital yuan. China tested the e-CNY during the Winter Olympics in Beijing, though the scope was limited because the games were open to only a small domestic audience because of the Covid-19 pandemic.

Despite making the fastest progress on a digital currency among major economies, China is taking a measured approach in its promotion of the e-CNY. It faces overseas scrutiny and criticism over the possibility that the government may track users' transactions. Domestically, it also needs to overcome challenges posed by WeChat Pay and Alipay, mobile-payment platforms operated by the nation's tech giants that the vast majority of the public relies on for day-to-day transactions. Officials from the PBOC said e-CNY wallets would actually collect less transaction information than private platforms.

Although some U.S. lawmakers worry that the digital yuan could be used to help a nation like Russia avoid sanctions, officials from the PBOC have stressed that the e-CNY is meant primarily for domestic retail transactions. The goal is to allow more people in rural areas to enjoy digital payments while providing a backup to private platforms and making the payment system more efficient.

EURO AREA: Digital Euro
STATUS: Being investigated

In 2018, European banks faced a dilemma. U.S. President Donald Trump's administration had reinstated sanctions on Iran against the wishes of European governments. One by one, Europe's banks pulled the plug on payments linked to trade with the country, defying the wishes of their own governments in an effort to comply with U.S. sanctions. European governments imposed a blocking rule against Trump's "secondary sanctions," which pressured banks into not cooperating with them, and tried to create a special-purpose vehicle for payments. Still, thousands of businesses were ultimately forced to cut ties with Iran.

The episode showed the leverage that Washington can wield over banks almost anywhere in the world. The European Central Bank took note. Concern over the sovereignty of the euro zone's payment infrastructure was a key reason it began to accelerate efforts to introduce a digital euro when the Covid pandemic struck about a year and a half later.

"We have a responsibility to ensure that our citizens have choice and cannot be excluded from the payments ecosystem due to the unilateral actions of others," ECB President Christine Lagarde said in a September 2020 speech. A digital euro would "ensure that sovereign money remains at the core of European payment systems."

The digital euro would also help bring down costs linked to electronic payments. Although cash use declined somewhat during the pandemic, the share of electronic payments is considerably lower in the euro zone than in other parts of the world—in part because vendors say they're expensive. The ECB doesn't want to let foreign service providers or cryptocurrencies take the lead in technological improvements.

Like other central banks, the ECB is toying with Bitcoin-like distributed ledger technology for its digital currency, but it already has an instant payments system called **TIPS**, short for Target Instant Payment Settlement, which could be expanded to allow retail use. Unlike the blockchains used by Bitcoin and other cryptos, it's a centralized ledger—and that makes it faster and likely more environmentally friendly. Officials say the plan is to have a functioning digital euro by the middle of this decade.

BRAZIL: Digital Real
STATUS: To begin testing in 2022

Latin America's largest economy is set to test its digital currency in parts of the country by the second half of this year. To Brazil's central bank chief, Roberto Campos Neto, a digital real is the natural next step in the country's evolution toward a faster, cheaper, and more inclusive payment system.

"We hope it will be part of everyday life, to be used in tandem with bank accounts, payment accounts, credit cards, and physical money," he said in late November at an online event.

Brazil's ambition for the digital currency in its initial phases is to promote investment and innovation rather than to serve as a traditional means of payment. Proposals are rolling in from companies in Brazil and around the world for projects that could be facilitated with digital money. Examples include creating digital tokens to represent ownership of vehicles and real estate and financing small businesses and projects in rural areas that would be more expensive or even unfeasible with traditional currency.

"We want to add services that don't yet exist in Brazil, such as new ways of payments and settlements—we see the digital real as the foundation of a smart-payment platform," says **Fabio Araújo**, who oversees the digital real working group at the central bank.

The digital real would build on existing projects, including Brazil's instant-payments platform Pix and open banking, a data system for financial institutions in which clients can share their personal information. Pix has been a success, with more than 113 million Brazilians and 8 million companies using it to make instant payments or transfers. But the government has ruled out allowing Brazilians to hold accounts directly with the central bank instead of commercial banks.

"We want to maintain the partnership we have with the financial system and open the door to new business and fintechs," Araújo says.

Allowing conversion from digital to physical money is a goal, meaning Brazilians could hold CBDC in their bank accounts or e-wallets and still withdraw cash from an ATM. That won't happen before 2024, because it requires changes in legislation to allow the circulation of digital money.

As of now, the central bank is collaborating with private companies on a set of projects to be implemented in small cities and other locations around the country.

"We want Brazilians to have a very natural relationship with the digital real," Araújo says. "It's not about saying 'now I'm using digital reais.' It's about allowing citizens to do transactions that were very difficult to implement in the past."

NIGERIA: eNaira

STATUS: Introduced in October 2021

USERS: About 700,000 at the end of January

Nigeria hopes its CBDC will bring basic financial services to more of its citizens, but so far it's been slow going. The eNaira went into circulation in October 2021 with the goals of improving monetary policy, boosting financial inclusion, allowing residents to increase remittances from Nigerians living abroad, and completing transactions more efficiently, according to the country's **central bank**. The regulator accelerated the project last year after banning financial institutions from transacting in cryptocurrencies, which it said posed a threat to the financial system.

The West African nation has been failing to meet its goal to bring more citizens into the regulated financial system. At the end of 2020, almost 36% of adults in Nigeria didn't have a bank account, according to Enhancing Financial Innovation & Access, a development organization that tracks the data. The government's 2013 goal was to cut that proportion to 20% by 2020.

The eNaira has also struggled to meet its objectives. Not enough people know about it, especially in rural areas. And as of now it's only available to bank customers, while the central bank monitors how secure it is before deciding when to extend it to the unbanked. Users need a smartphone and a biometric verification number (BVN) from their bank for the platform's security. Even those who qualify aren't always able to link the e-wallet with their BVN.

The scarcity of individual users has slowed merchant enrollment. About 700,000 customers from a population of 200 million were in the program at the end of January, according to Lagos-based **ThisDay** newspaper. Fewer than 10% of transactions were person-to-person or person-to-merchant and vice versa, while about 90% involved banks, Central Bank Governor Godwin Emefiele said in January.

For the eNaira to succeed, it "needs more consumers to download and fund the wallet, and the wallet needs to have multiple-use cases that appeal to customers and merchants," says Adesoji Solanke, director for frontier and sub-Saharan African banks and financial technology at Renaissance Capital.

Nigeria is working with banks to resolve the technical issues and make it easier to enroll, including enabling Nigerians who don't have

smartphones to use the currency, according to Emeifele. The central bank is working to get more people to understand the eNaira and also engaging fintechs to create products on the virtual platform to increase payments and broaden penetration, the governor said.

EASTERN CARIBBEAN: DCash

STATUS: Pilot launched in 2021

USERS: More than 4,000 people, 120 merchants

In April 2021, [La Soufrière](#) volcano erupted, covering many of the islands of St. Vincent and the Grenadines in ash and forcing more than 20,000 people—almost one-fifth of the population—to leave. Evacuees waited in line for hours for money transfers that could take days to clear and came with hefty fees.

The Eastern Caribbean Central Bank, issuer of the Eastern Caribbean Dollar used by eight island nations, had a solution. A month earlier, the bank had become the world's first currency union to mint CBDC. So it expedited its plan for St. Vincent, and by July it was offering suffering residents access to [DCash](#). With DCash, anyone with a mobile phone and a digital wallet could receive e-money immediately at no charge. No bank account, no problem.

The influx of money—particularly from relatives on neighboring islands—helped jump-start recovery efforts. DCash allowed people to pay for services remotely when they were cut off from their communities, says [Sharmyn Powell](#), chair of the Fintech Working Group at the ECCB. As with other central banks, the ECCB's prime reason for introducing DCash was to bring more people into the financial system and to boost the regional economy, Powell says.

"If you want innovation, you have to have a payment platform that supports innovation," she says. "If you want to support competitiveness and trade within countries, you need a payment method that gives people confidence that they can get quick, real-time settlement."

That's especially true during an emergency. When the Bahamas introduced the world's first CBDC, the [Sand Dollar](#), in 2020, one motivation was to be able to get money to far-flung islands after hurricanes. Jamaica and Haiti have similar ambitions for their own CBDCs.

DCash's initial rollout hasn't been smooth. Although more than 4,000 people have downloaded wallets and more than 120 merchants accept DCash, Covid and technical glitches have hampered its adoption, Powell says. In January the currency platform crashed, and it took the ECCB almost two months to fully restore it.

Even so, the e-currency is being used in Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. Anguilla, the final currency union member, is expected to come online soon. That will be followed by a broader marketing and education push, Powell says.

"In the next six months or so we will see a whole new picture in terms of penetration of DCash across the currency union," she predicts. "We are going to come out of this much stronger than before."

MARSHALL ISLANDS: Sov

STATUS: Made legal tender in 2018,

still under development

It's not easy for people—or money—to flow around the Marshall Islands. A population of about 68,000 is spread over 1,100 islands and islets scattered across 750,000 square miles of the Pacific.

The nation passed a law in 2018 making the blockchain-based Sov—short for "sovereign"—legal tender. Supply growth is meant to be limited to 4% each year to keep a lid on inflation. "It's as close to Bitcoin as it gets if you want a decentralized cryptocurrency issued by government," says Henri Arslanian, PwC's crypto leader.

Other countries in the Pacific with dispersed and isolated populations are working on their own projects.

"We've run out of pennies, run out of quarters," says [Surangel Whipps Jr.](#), the president of Palau. Sometimes, people even "get a piece of candy as a replacement for a coin."

The Pacific archipelago has formed a partnership with crypto firm Ripple to develop a digital currency strategy. Whipps sees potential for a stablecoin—a cryptocurrency meant to track the value of a traditional currency or other asset—based on the U.S. dollar.

“Innovation is coming from economies that need to create these things,” says **Josh Lipsky**, director of the Atlantic Council’s GeoEconomics Center. “Larger economies are looking at them to see whether they could apply that.”

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Circle Will Apply for U.S. Crypto Bank Charter in 'Near Future'

by Hannah Miller
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April 13, 2022

The crypto payments startup Circle Internet Financial said it's closer to submitting an application to operate as a bank in the U.S., pushing forward with a months-old plan even as regulators make it more difficult for crypto companies to secure this kind of license.

Circle, the issuer of the second-largest stablecoin, disclosed its intention to become a crypto bank in August and has held ongoing discussions with regulators since then, Chief Executive Officer Jeremy Allaire said in an interview. He declined to say when the company would submit the application, saying only that it would be "hopefully in the near future."

The company, which issues USD Coin, is deeply funded. On Tuesday, Circle said it raised \$400 million from BlackRock Inc., Fidelity Management and Research LLC and others. The startup plans to go public by merging with a special purpose acquisition company in a deal valued at \$9 billion.

The U.S. Office of the Comptroller of the Currency, which oversees bank charters, has discussed a variety of topics with Circle management in regards to the company's banking ambitions. Those include interoperability between blockchains and how to assess the operational risks of a specific blockchain, according to Allaire. A representative for the OCC declined to comment on the conversations with Circle.

The risk of connecting different blockchains was laid bare recently. Hacks involving crypto bridges totaled more than \$1 billion in a little over a year, including a \$600 million attack involving the crypto video game Axie Infinity.

If approved, Circle would be the fourth federally chartered crypto bank in the U.S. Those that have secured at least preliminary approval for a charter are Anchorage Digital, Protego Trust Bank NA and Paxos Trust Company. Getting a bank charter could be key to Circle's future. The Federal Reserve and other U.S. watchdogs have said stablecoins need more regulation and should be issued by banks.

Circle is "making good progress" as it prepares to submit a formal application, Allaire said in the interview in Miami, where Circle hosted events related to the Bitcoin 2022 conference. There hadn't been any delays or obstacles in working with the OCC, he said, even though the regulator **heightened supervision requirements** in November for banks looking to engage in crypto activities. The U.S. hasn't granted a new banking charter to any crypto-focused company in almost a year.

"They've been doing a lot of work laying the groundwork for how they're going to supervise crypto, how they're going to supervise stablecoin issuers specifically," Allaire said.

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Crypto 'Altcoin Season' Returns as Bitcoin Dominance Fades

by Vildana Hajric and Olga Kharif
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April 13, 2022

Watch out, Bitcoin, there's a whole new class of contenders seeking to dethrone the king of cryptocurrencies.

Smaller, lesser-known tokens are outperforming Bitcoin in another "altcoin season" as the world's largest digital asset has seen its dominance wane in recent weeks. An index of 100 coins is on pace to outperform Bitcoin for the second straight month, amid surges in Solana, Cardano, Avalanche and others. Meanwhile, many crypto firms are seeing greater client interest for these smaller tokens, with BlockFi last weekend noting a "flip" by its retail clients toward alternative coins.

"They are again outperforming Bitcoin – they call it alt-season," said Joseph Hickey, global head of trading at BlockFi. "It's a momentum asset class. When crypto is running – and because of the risk premium within the asset class – it has the trading momentum behind it. When you add layer-1s that have higher beta, that's where you have 20-30% moves in just a couple of days," he said, referring to an underlying type of blockchain that competes with Ethereum.

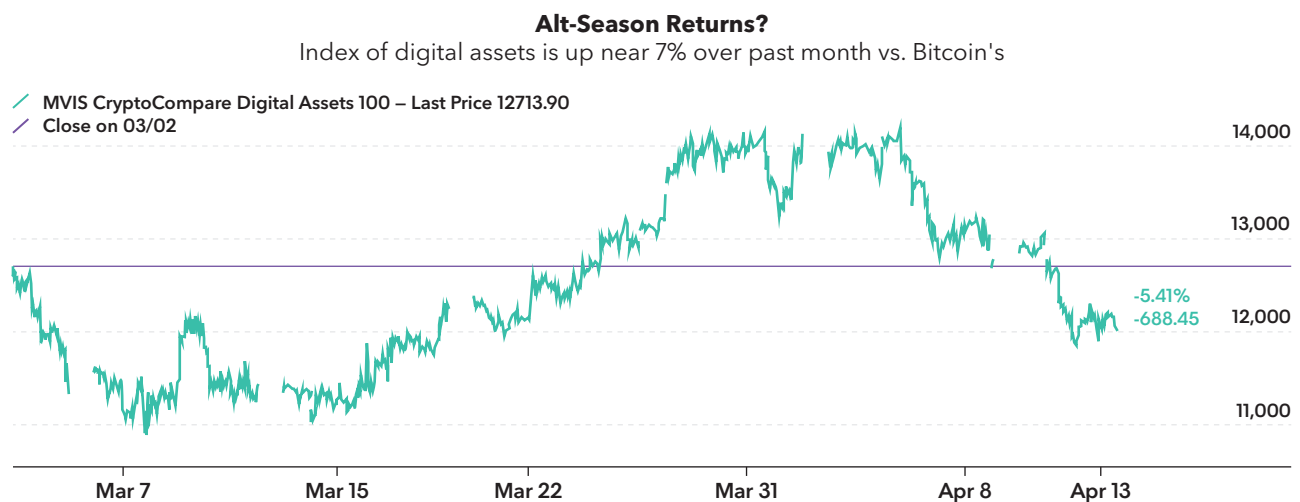
The crypto ecosystem has grown tremendously over the past two years, with all sorts of crypto-centric products seeing booms. New companies were founded during the pandemic period, nonfungible tokens took off in a big way and alternative coins gained new prominence as investors looked to diversify away from just the largest digital tokens.

Bitcoin's share of the market has fallen to about 40% from 65% at the start 2020, according to CoinMarketCap data.

The term "altcoin season" has been used plenty of times in the past. But, the market is undergoing a revolution, says Russell Starr, CEO and executive chairman of DeFi Technologies, a decentralized finance asset manager.

He likens it to the early internet days, when just a smattering of companies like Microsoft Corp. and Apple Inc. dominated the space. For a long time, as the digital-asset space was evolving, people thought "the only way to play that space was Bitcoin and Ethereum."

Starr says traditional finance companies and investors who wanted to dabble in the crypto space could really only do so via a handful of products, like Grayscale's Bitcoin trust. Now, his company is seeing



Source: Bloomberg

a surge in interest for Avalanche, Luna, Solana, Cardano and Polkadot.

To be sure, while these cryptocurrencies have the potential for big payoffs, they can be more volatile than Bitcoin or other larger tokens. During market downturns, they could suffer heavy losses, and Bitcoin's dominance could bounce back. That said, Bitcoin and other larger coins have all failed to break out meaningfully this year. The MVIS CryptoCompare Digital Assets 100 Index, which is dominated by Bitcoin and Ether but includes many others, is up roughly 9% over the past month compared with Bitcoin's 6% gain.

Some of the rallies over the past month for many smaller coins coincided with idiosyncratic announcements or developments. An analysis by Bank of America, for instance, found a spike in Twitter and Reddit mentions for Solana's SOL, which followed news Coinbase Wallet had added support for it, among other things.

The crypto market is seeing tons of technological innovation and many investors are looking to get in early, something only the digital-asset space can offer, said Noelle Acheson, head of market insights at Genesis Global Trading. They can either participate via the private venture-capital market or they might be intrigued by Ethereum, she said.

"Or they're going to be going even further down the market cap, and they're going to be looking at some of the new layer-1s that are coming up with new ways to incentivize participation, new ways to offer yield, new ways to experiment with governance," Acheson said by phone. "There are some fascinating things going on with many of the smaller layer-1s."

Acheson also points out that Bitcoin's command over the market has waned. The reading gives market-watchers an idea of prevailing sentiment. A lessening in its market-dominance can be seen as supporting "an increasing role for the rest of the market, which represents the innovative technology" side of it, she said.

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Where to Begin with Cryptocurrency

by Misyrlena Egkolfopoulou and Charlie Wells
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April 13, 2022

Cryptocurrency is seemingly everywhere. In just a few years, it's gone from the murky corners of the dark web to Wall Street banks, segments on Saturday Night Live and even Super Bowl ads.

This overwhelming interest – and inpouring of investment – has created a vast and growing constellation of cryptocurrencies. It's no longer just about Bitcoin, the world's largest and best-known coin. Ether, the No. 2 coin, has gained prominence as a token on the world's most actively used blockchain, Ethereum. (Blockchains are the technology used for verifying and recording transactions.) So, too, have dozens of other coins in a market worth nearly \$2 trillion that saw over 10,000 new coins minted just last year.

Buying cryptocurrencies is easier than ever. What's much harder: Determining which ones to add to your portfolio, if any at all. Inflation has reached multi-decade highs in many countries, and advocates often tout cryptocurrencies as hedges against rising prices. That's because many are designed to have a limited supply, which could theoretically prevent their devaluation. Yet others aren't so sure, or at least don't think the risks are worth it.

New research by the Federal Reserve Bank of Chicago suggests it's hard to pick winners and losers in the crypto market. Coin prices tend to move in similar directions. Coins are sensitive to shocks in similar ways. And recently, they have been correlated with movements in tech stocks and the Nasdaq. Yet the same Fed research shows that a small fraction of price movements can be attributed to the individual characteristics of coins. This suggests that learning more about the crypto market could help you discern investment opportunities. This guide is intended to help you get started.

By The Numbers

- \$762 billion The market cap for Bitcoin, the most well-known cryptocurrency in the world
- \$2 Trillion The market size of all digital assets
- 16% Of Americans say they have ever invested in, traded or used cryptocurrency, according to Pew Research Center

Why It Matters

Your Step-by-Step Guide:

The different types of crypto: All cryptocurrencies are digital assets that share one key quality: they are built on blockchains, which is a decentralized, time-ordered ledger of transactions. But not all cryptocurrencies are created equal.

For those just beginning to take the field seriously, the two big names in the \$2 trillion cryptocurrency market remain Bitcoin and Ether, the coin that fuels the Ethereum network. While the top two digital coins share some attributes, they are different in many ways.

Bitcoin was the first digital currency to successfully create a way to transfer value between two people anywhere in the world. The pseudonymous and still-unknown creator, or creators, of Bitcoin, Satoshi Nakamoto, made a crucial breakthrough by using a blockchain to record every Bitcoin transaction. It ensured that people couldn't send fake Bitcoin, or Bitcoin that had already been sent to someone else. It also meant Bitcoin transactions take place independently from involvement – or interference – by typical financial intermediaries like governments, banks or corporations.

Ethereum was invented by Vitalik Buterin, a Russian-Canadian teenager who released a white paper on the subject in late 2013. Nineteen at the time, Buterin set out to craft a system that could do more than record static quantities. His vision was of a blockchain that could host what came to be known as smart contracts: self-executing agreements in which a chain of actions could flow from defined conditions and contingencies. The only limit to the transactions that can run on Ethereum is the imagination of developers.

Both systems are publicly viewable and are built on open-source software, so developers can jump in and try to make improvements. Both networks also rely on members known as miners who race to perform the complex calculations used to verify the transactions and are rewarded with newly issued digital currency for doing so.

Then there's SOL, a cryptocurrency that runs on the Solana blockchain, which is being talked about as a potential long-term competitor with Ethereum.

That's because it's more than just a coin: Solana and Ethereum both have support among coder communities, who have built functions like smart contracts and non-fungible tokens on the platforms.

Compared with other dominant coins, SOL is relatively young. The idea for Solana was first published in 2017 by developer Anatoly Yakovenko, and SOL debuted last year.

One key advantage? Transactions on Solana's blockchain are extremely cheap, relatively speaking. The miners who validate transactions on Solana charge much less than those for Ethereum, because Solana's tech allows many, many more transactions per second – tens of thousands, compared with fewer than 100 for Ethereum. Essentially, that means there's not as much competition for space on the Solana blockchain.

SOL has been soaring on the promise that unlike Ethereum, its main competitor, transactions on Solana will be cheap and ultrafast. In other words, the project is rejecting the premise that blockchains have to be costly, slow and inefficient.

Environmental questions: Can you love Bitcoin and the **environment** at the same time?

The world's dominant cryptocurrency depends on so-called miners whose high-powered computers run day and night to process transactions. Miners try to solve complex cryptographic puzzles to validate blocks of Bitcoin transactions and get rewards when they succeed. The difficulty of the calculations grows along with the number of miners at work, and the biggest miners have tens of thousands of computers humming in cavernous warehouses.

Bitcoin's total estimated power consumption soared from an annual rate of 6.6 terawatt-hours at the start of 2017 to 138 terawatt-hours in early 2022 – more than a country like Norway – according to the **Cambridge Centre for Alternative Finance**, which keeps a running estimate. As for its carbon footprint, **Digiconomist** puts annualized emissions from Bitcoin mining at 114 million tons of carbon dioxide, comparable to those of Belgium.

Its energy consumption is ballooning so fast that it's alarming environmentalists, governments and other big energy users. China has banned Bitcoin mining entirely and billionaire Elon Musk won't take the token as payment for his Tesla cars until miners switch to at least 50% renewable power. With many

of them still hooked on electricity from fossil fuels, that's going to be a tall order.

The technology: Environmental concerns have spurred a growing number of entrepreneurs to explore other methods of ensuring the security of digital coins.

Most early cryptocurrencies are based on what's called proof of work, which is all those calculations the miners' computers do. The goal is to be the first to guess the answer to a complex problem, which gives the miner the right to record transactions in the system's blockchain – the digital ledger that proves who owns which coins and, crucially, doles out new ones. While many home computers were up to the task a decade ago, mining today requires sophisticated machines that gobble up vast amounts of power. And consumption typically climbs as the price of coins rises, because the complexity of the problems increases as more miners jump in.

The most popular alternative is called proof of stake, where various parties pledge their coins to become so-called validators. These people get new coins in exchange for checking the legitimacy of transactions and deciding which ones will be processed first. There's no need for special equipment; the competition isn't about quickly solving a problem, but rather how much each party is willing to put up as collateral, which also means less energy is needed. Advocates say the system is secure because those who approve transactions that turn out to be fraudulent lose the coins they've staked. Multiple validators typically vet each batch of transactions, but the bulk of new coins go to just one party, chosen in a sort of lottery in which those who stake more coins get more tickets.

Scams, regulations and the law: If you've heard that cryptocurrencies are risky, you've heard right. Politicians have called the space a "Wild West." Crypto scams should be considered the biggest threat to investors in 2022, according to a survey of securities regulators by the North American Securities Administrators Association. Scammers have nabbed billions of dollars in crypto from unwitting investors. **The tricks they use** are often sophisticated, and can lure even advanced investors. So it's crucial to proceed with caution.

Some hope that regulation might make crypto safer for users. Others, however, fear that it could stifle innovation.

President Joe Biden signed an executive order in March 2022 calling on government agencies to focus more on cryptocurrencies, including targeting illicit finance. Other countries are also contemplating stepped-up regulations. However, crypto is a difficult market to regulate because of its size and the speed of technological change.

A reminder about taxes: One of the biggest mistakes new crypto investors make is forgetting about their tax obligations. The IRS said in 2014 that crypto should be considered property and would be taxed like stocks, meaning it is subject to capital gains taxes when sold or traded. Cryptocurrency exchanges have not always been great about helping people figure out what they'll owe to the taxman but new rules are designed to rectify that and prevent some unwelcome surprises come tax time.

Central bank digital currencies: With so much hype around crypto, it's no surprise that governments around the world are starting to explore a digital version of their own fiat currencies. Several governments have laid out plans to provide central bank digital currencies, or CBDCs, in order to remain competitive with cryptocurrencies and other countries' legal tender. CBDCs could also provide a workaround to the U.S.-dominated global banking system, and potentially be used as a way to avoid sanctions.

All of this may sound confusing, since money already feels like it's digital through the use of apps like Apple Pay or Venmo. In reality, a digital version of fiat currencies wouldn't look much different on the surface. But the underlying technology and fundamentals that make up the financial system would change

There's pros and cons. CBDCs are a direct liability of a country's central bank, not commercial institutions. Consumers would rely less on third-party intermediaries to act as middlemen, and would essentially work directly with the government to complete certain transactions. This has the potential to enable near-instantaneous settlements as well as lower fees. A digital dollar could also offer the government a faster way to transmit things like tax refunds, stimulus checks and unemployment benefits to citizens.

But it could also threaten people's privacy and hurt U.S. banks that depend on deposits. The ledger underpinning the currency would likely be operated by the government, which would potentially give it the ability to monitor transactions, halt them or confiscate balances.

The Metaverse and the future of money: Then there's the metaverse. Imagine being able to live in a virtual world. You can go there any time, create a digital persona and hang out with your friends. You can collect gear and develop new skills. You can make money through your metaverse job. You can get married and even battle powerful computer-controlled monsters. The idea of the metaverse has captivated the attention of investors, executives and pundits over the past two years, hitting a fever pitch when the company formerly known as Facebook changed its name to Meta Platforms Inc.

It's still not exactly clear what the metaverse even is, but it has become an ecosystem in which cryptocurrencies seem to offer more utility than in the real world, at least for now. Crypto tokens serve as currencies within the metaverse, that people can earn, spend or invest in order to buy avatars, land or accessories.

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Security, Art or Mere Picture: Celebrities Draw Scrutiny to NFTs

by Misyrlena Egkolfopoulou
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April 13, 2022

Hollywood stars are making a swift march into the NFT universe as regulators struggle to oversee the space.

Hundreds of celebrities from Madonna and Reese Witherspoon to Paris Hilton and Justin Bieber, have bought, endorsed or invested in projects or companies that promote nonfungible tokens over the last year – in some cases sending the prices of digital assets soaring.

Now, all those Bored Apes, hopeful artists and profit-minded speculators clamoring aboard the Crypto Express are facing larger legal questions on how they promote their involvement in NFTs and whether they need to disclose paid endorsement deals.

“Celebrities and social media influencers have a lot of brand power,” said Bob Seeman, a tech and legal adviser and author of the book “Bitcoin: Unlicensed Gambling.” “But this is a whole new area with NFTs so the regulatory interpretation of it and how the regulators will treat it is unknown.”

A key legal question is whether digital assets including NFTs are securities, and therefore subject to the same rules as stocks. Separately, U.S. Securities and Exchange Commission rules stipulate that it is unlawful for any person to tout a security, like a stock, without disclosing a financial relationship or ownership to the source. In other words, celebrities that are being compensated would need to disclose their payment.

The SEC could determine whether or not NFTs are securities, but the regulator has yet to disclose a case in which they have categorized the assets as such, according to John Reed Stark, former chief of the SEC Office of Internet Enforcement. That doesn’t mean the SEC is not investigating certain NFTs, he added.

NFTs mostly therefore fall under the jurisdiction of the Federal Trade Commission, a civil regulatory organization that can issue warnings. In an email to Bloomberg News, FTC spokesperson Juliana Gruenwald reinforced that the agency assesses whether someone has not disclosed a paid

endorsement deal – especially if it affects how consumers evaluate the endorsement.

The NFT market exploded last year, drawing attention for multimillion dollar sales and buy-in from celebrities. About \$44 billion worth of crypto was sent to smart contracts on the Ethereum blockchain tied to NFTs during 2021, up from \$106 million the year before, according to [data](#) from Chainalysis.

To gauge celebrity interest in NFTs, look no further than the recent funding round announced by crypto-payment company MoonPay, which has focused on the checkout experience of buying and selling NFTs. On Wednesday, the company said that up to 16% of its \$555 million initial Series A funding round came from musicians, actors and other personalities. Names include Ashton Kutcher, Bruce Willis, Gal Gadot, Gwyneth Paltrow, Jason Derulo, Mindy Kaling, Shawn Mendes, Matthew McConaughey and Steve Aoki.

For MoonPay CEO Ivan Soto-Wright, it’s clear why artists and musicians are so attracted to NFTs: Web3 and the blockchain technology that underpins NFTs have the potential to disrupt how creators and artists manage their royalties without the help of middlemen, he said. Soto-Wright compared this disruption to artists who got into streaming early and benefited as a result.

NFTs have the potential to change the way films are made, produced and distributed by allowing film creators to maintain their royalties and bypass Hollywood’s existing order of financing by selling tokens. This system would also allow films to be owned by fans, the NFT owners.

“If we have to summarize what are we trying to solve here, it’s ownership. We now have an opportunity to express ownership digitally,” Soto-Wright said. “The key word of this year will be royalties – the idea that you can take this intellectual property and you can monetize it.”

Regulators are left to make sense of it all. In March, Bloomberg News reported that attorneys at the SEC had sent subpoenas demanding information about certain token offerings as part of a larger effort to scrutinize creators of NFTs and crypto exchanges. The inquiry is the latest attempt by SEC

Chair Gary Gensler to ensure the crypto market adheres to its regulations.

While the SEC has said that many tokens fall under its purview, some crypto enthusiasts argue regulations meant to police the equity markets shouldn't apply to virtual currencies.

"You have a lot of gray area," Stark said. "It's a little harder with an NFT to prove that it's a security and it's always going to be on a case by case basis."

As more high-profile figures enter the space, questions on whether celebrities are in fact paying in full for their digital goods, or simply promoting collections in exchange for money, have started surfacing.

Justin Bieber joined the Bored Ape Yacht Club back in January, after purchasing an NFT from the collection for 500 Ethereum, or \$1.5 million. Hours before his purchase, another wallet owned by the creators of another NFT collection, inBetweeners, dropped about 916 Ethereum into Bieber's – which experts say raised questions about whether Bieber paid for his ape with money received from an undisclosed endorsement deal.

Asked why the 916 Ethereum was transferred, a spokesperson at inBetweeners said Bieber was an owner in the project and that the Ethereum represented his proceeds from the "mint," or the process of publishing NFTs on the blockchain. A representative for Bieber declined to comment.

Madonna entered the metaverse last month, acquiring a Bored Ape NFT worth more than \$500,000. Maverick, the firm run by her manager Guy Oseary, late last year signed Yuga Labs, the parent company of Bored Ape Yacht Club, as a client.

That's not to say that celebrities haven't found themselves in trouble when promoting crypto projects that left investors with major losses. Kim Kardashian and Floyd Mayweather Jr. are being sued in a class action lawsuit for allegations that they promoted a little-known cryptocurrency called EthereumMax to their millions of followers on social media, artificially inflating its price. A few weeks after Kardashian's endorsement, the token's price plunged.

With assistance from Nathan Crooks.

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