BerkeleyLaw
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Berkeley Center for Law, Business and the Economy

University of California, Berkeley
School of Law
2850 Telegraph Ave, Suite 500
Berkeley, CA 94705-7220

Ph: 510.642.0532 – Fax: 510.643.7095
E-mail: BCLBE@law.berkeley.edu
http://www.law.berkeley.edu/bclbe.htm

U.S. Financial Watchdogs Call for Federal Oversight of Cryptocurrency Trading

By Hayley Dardick, J.D. Candidate 2019 | February 23, 2018

In a hearing on Tuesday February 6, 2018, U.S. regulators encouraged Congress to consider expanding federal oversight of cryptocurrency trading. The volatility of bitcoin and other cryptocurrencies has many banks and lawmakers apprehensive. Bitcoin increased in value by more than 1,300% last year, reaching a high of $20,000 in December. Early 2018 has seen that valuation fall by more than 50% to below $7,000 on Tuesday. The hearing was intended to discuss how virtual currency fits into U.S. financial regulation and how to best protect investors and consumers moving forward.

Jay Clayton, chairman of the Securities and Exchange Commission (SEC) testified that cryptocurrency is analogous to securities, commodities, and currency exchanges, which are regulated at the federal level with oversight by the SEC or the Commodity Futures Trading Commission (CFTC). U.S. cryptocurrency exchanges currently register as "money-transmission services," which are regulated at the state level, often with great variation from state-to-state. Clayton stressed that replacing this patchwork approach with a federal regulatory framework will protect investors while continuing to foster innovation.

CFTC Chairman J. Christopher Giancarlo testified "appropriate federal oversight may include: data reporting, capital requirements, cyber security standards, measures to prevent fraud and price manipulation and anti-money laundering and 'know your customer' protections."

Financial groups are eager to create bitcoin and general cryptocurrency-exchange-traded funds (ETFs) to make the currency more accessible to investors. Previous attempts at a bitcoin ETF were not approved by the SEC, but expanding regulatory authority and federal oversight could provide the foundation for cryptocurrency ETFs in the near future.

So far, the SEC has been focused on initial coin offerings (ICOs). An ICO enables a company to raise funds by offering investors virtual tokens in return for their cash or cryptocurrency, rather than obtaining shares in the company as in a traditional public offering. Investors are supposed to eventually be able to redeem the digital coins for goods and services. Clayton believes many ICOs have been done illegally. He says every ICO thus far has been a securities offering, with none of them registering with the SEC. Clayton warned that professionals structuring these transactions, namely lawyers and accountants, "are squarely in the cross-hairs of [the SEC's] enforcement division."

For its part, Giancarlo reported that the CFTC is preparing to bring more enforcement actions against fraudsters targeting investors through virtual coin scams.

The crypto industry's response to the hearing has been overall positive. Jerry Brito, executive director of Coin Center, a blockchain think tank in Washington D.C., said the hearing

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demonstrated that lawmakers want to fight crypto frauds and scams while letting Americans exercise a right to own cryptocurrencies.