



A Real Approach to Cryptocurrency Regulation

Ripple's Vision for How Existing Financial Regulatory Frameworks Can Be Used to Advance Innovation and Enhance Consumer and Market Protections

Introduction

At Ripple, we recognize that novel and fast-growing technologies like cryptocurrency and blockchain require new regulatory paradigms. While providing consumer and market protections through regulations is imperative, opportunity for innovation and growth must also be at the heart of any policy framework.

We believe clear communication and collaboration between private and public actors will be key in developing an effective policy framework for cryptocurrencies. That is the reason why we have proactively discussed the issue on a bipartisan basis with a wide range of policymakers. These conversations have provided perspective on the type of regulatory clarity the cryptocurrency industry and broader ecosystem need, as well as the type of requirements regulators should demand from industry.

As the debate continues, we wanted to share our vision of a pragmatic regulatory framework for cryptocurrencies, blockchain-enabled payments and digital assets. This proposal reflects our hope for a regulatory framework that encourages the unleashed potential of cryptocurrency and blockchain technologies, while also establishing important consumer and market protections.

Public-private collaboration should be at the core of any legislative proposals

Any legislation or policy framework intended to regulate cryptocurrencies should promote an active dialogue between regulators and market participants. Public-private collaboration will lead to more tailored and effective policy outcomes for the industry and consumers alike.

Fostering this type of open dialogue is precisely the aim of the [Eliminate Barriers to Innovation Act](#) (H.R. 1602), which was introduced on a bipartisan basis by House Financial Services Committee Ranking Member Rep. Patrick McHenry (R-NC-10) and Financial Technologies Task Force Chair Rep. Stephen Lynch (D-MA-8). The bill—which requires the establishment of a collaborative working group consisting of appointees from the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) as well as representatives from fintech companies, financial firms, and small businesses—passed the House and remains pending in the Senate.

As Rep. McHenry and House Agriculture Committee Ranking Member Rep. Glenn "G.T" Thompson (R-PA-15) noted in their [letter](#) to SEC Chair Gary Gensler and CFTC Acting Chair Rostin Behnam, the SEC and CFTC have existing authority to establish a working group tasked with exploring "how to effectively use their current jurisdiction cooperatively." This work could provide Congress "with additional information and clarity" to protect against regulatory overreach and ensure proper market oversight mechanisms are in place without being too constrictive. A collaborative forum that brings regulators and industry stakeholders together to build a rational and holistic framework for cryptocurrency and blockchain together would represent a step forward toward achieving regulatory clarity.

“

We believe clear communication and collaboration between private and public actors will be key in developing an effective policy framework for cryptocurrencies.

— Susan Friedman, Ripple Head of Public Policy

”



Existing Financial Regulatory Frameworks Can Be Utilized to Regulate Cryptocurrencies

U.S. financial markets are considered first in class and that is due in part to the existing regulatory framework under which they operate. We believe that framework, as adapted to account for some of the unique attributes inherent to cryptocurrencies, can provide the clarity innovators seek - and the market protections consumers deserve. At least two legislative proposals have already been proposed to accomplish exactly that.

The [Securities Clarity Act \(SCA\)](#) - reintroduced on a bipartisan basis by Reps. Tom Emmer (R-MN-6), Darren Soto (D-FL-09) and Ro Khanna (D-CA-17) earlier this year seeks to address ambiguities in the SEC's application of the Supreme Court's 1946 *Howey* case to digital tokens issued as part of an investment contract. Specifically, the bill proposes a new term—"investment contract asset"—and makes clear that such assets should be considered separate and distinct from any securities offerings they may have been a part of. That is, digital tokens are not transformed into securities merely because they may have been issued in connection with an investment contract. Rather, the bill [clarifies](#) that "[t]hese assets are in fact, and always were, commodities."

Of course, when securities laws do not apply to a digital token, other regulatory mechanisms are needed to ensure safe and orderly markets. During the last Congress, former Rep. Mike Conaway (R-TX-11), as well as Reps. Emmer, Soto, Dusty Johnson (R-SD-0), Austin Scott (R-GA-8), and David Schweikert (R-AZ-6) sought to address this issue through the introduction of the [Digital Commodity Exchange Act](#) (DCEA, H.R. 8373 in the 116th Congress). Complementary to the SCA, the DCEA seeks to create a federal definition of "digital

commodity exchanges" and charges the CFTC with authority to register and oversee them, similar to the requirements in commodity derivatives markets. The framework permits digital commodity exchanges to "opt-in" to federal oversight. While voluntary, we believe that allowing these exchanges to operate throughout the entire United States would create a strong incentive to opt-in, given the only regulatory option available to digital commodity markets currently is to apply for money transmitter licenses on a state-by-state basis. The bill also requires customer digital commodity assets to be held in a Qualified Digital Commodity Custodian established under minimum standards set by the CFTC.

The existing federal commodity market regulatory framework for commodity futures and swaps is suited to regulate digital commodity markets. CFTC's commodity market regulation is well established and widely accepted, and provides robust customer protection including core principles, segregation of customer assets, and legal certainty within the federal bankruptcy regime. The DCEA would also require regulations that prohibit abusive trading practices, require public reporting of trading activity, and address conflicts of interest, governance standards, and cybersecurity. Notably, the DCEA would continue to preserve state law authority on fraud liability, which balances the need for regulatory clarity with consumer protection. Finally, the DCEA preserves the SEC's authority over "pre-sold" tokens until such time as they are traded on CFTC-registered exchanges.

Importantly, both the SCA and DCEA seek to work within existing and well understood financial regulatory frameworks, but adapt them for the innovation that cryptocurrency and blockchain represents.



Cryptocurrency Innovation Sandboxes Should Be Fostered and Encouraged

The current uncertainty in the U.S. regulatory landscape discourages innovation and could cause a "[brain drain](#)" in the cryptocurrency and blockchain space. In order to incentivize innovation and inform the development of a clear and consistent regulatory framework for cryptocurrencies, we believe innovation sandboxes should be encouraged.

As [proposed](#) by SEC Commissioner Hester M. Peirce, U.S. financial regulators should consider the creation of a "safe harbor" regime under which network developers, under certain conditions and for a limited time, would be exempt from the registration provisions of federal securities laws. During this "safe harbor" period developers would be allowed to launch their products and develop their networks. Fraud, of course, would not be subject to any protections in the sandbox. While the proposal does not seek to solve for every regulatory problem in the cryptocurrency space, including how to deal with the many mature

projects already in existence, it is a prime example of how public-private collaboration could form the basis of rational regulation through a sandbox approach.

Conclusion

All of the proposed measures discussed in this framework seek to provide legal clarity to industry, markets, and consumers in a way that an ad hoc, regulation-by-enforcement approach simply cannot. Ripple believes that each of the above proposals – whether implemented separately or together – can succeed in keeping industry within the U.S. while also maintaining the strong consumer and investor protections that have made American capital markets the best in the world.

If you wish to discuss any of the comments raised in this proposal, please do not hesitate to contact Susan Friedman, Head of Public Policy at sfriedman@ripple.com.



Ripple provides one frictionless experience to send money globally using the power of blockchain technology. By joining Ripple's growing, global network RippleNet, financial institutions can process their customers' payments anywhere in the world instantly, reliably and cost-effectively. Banks and payment providers can use the digital asset XRP to further reduce their costs and access new markets.