UNIVERSITY OF PITTSBURGH LAW REVIEW
Vol. 85 ● Summer 2024

FROM LIKES TO LOSSES: A CALL FOR REGULATORY ACTION IN THE DOMAIN OF SOCIAL MEDIA AND CRYPTOCURRENCY

Cadina Mancini

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

This journal is published by Pitt Open Library Publishing.

FROM LIKES TO LOSSES: A CALL FOR REGULATORY ACTION IN THE DOMAIN OF SOCIAL MEDIA AND CRYPTOCURRENCY

Cadina Mancini*

ABSTRACT

Since its inception in 2009, cryptocurrency has become an increasingly popular alternative for investment and payment. The rise of social media has been a key contributor to its growth, offering an effective way to promote cryptocurrencies and draw in more users. However, as interest grows, regulators face new challenges in managing risks and safeguarding consumers. This Note seeks to examine the impact of social media on the cryptocurrency market, and the risks and opportunities it poses for investors and regulators alike.

* J.D., 2024, University of Pittsburgh School of Law; B.S.B.A., 2021, The Ohio State University. Thank you to my family and friends. I would not be where I am today without your encouragement and support.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

INTRODUCTION

The rise of cryptocurrency, also known as "crypto," has been one of the most significant financial developments in recent years, with millions of people worldwide taking an interest in this emerging asset class. Social media has played a crucial role in this growth by enabling cryptocurrency projects and exchanges to reach a broader audience and engage with their users in real-time.[1] The speed and convenience of social media have made it easier for investors to access and trade cryptocurrencies, while also providing a platform for innovation and new ideas.[2] However, the lack of regulation around cryptocurrency on social media has raised concerns about the risks associated with investing in this asset class. As such, it is essential to examine the relationship between cryptocurrency and social media and the resulting need for more regulatory oversight in this space.

Unfortunately, the current laws and guidelines surrounding cryptocurrency are sparse, providing an opportunity for nefarious actors to prey on naive investors.[3] According to the Federal Trade Commission (FTC), more than 46,000 consumers reported losing over one billion dollars from cryptocurrency scams in 2021, with nearly half of the individuals scammed reporting that the con "started with an ad, post, or message on a social media platform."[4] Some scammers are individuals promoting fraudulent ventures and others are "social media influencers" who use their platforms to endorse cryptocurrencies and take advantage of their follower's goodwill for personal gain.[5] These promotions typically target the general public and retail investors, who may not understand how crypto-assets work or the risks involved.[6] By portraying cryptocurrency as safe and credible, these public figures

[1] *See* Shama Hyder, *How Social Media Is Helping Cryptocurrency Flourish: A Case Study With Jonathan Jadali*, FORBES (Nov. 23, 2020, 5:30 PM), https://www.forbes.com./sites/shamahyder/2020/11/23/how-social-media-is-helping-cryptocurrency-flourish/?sh=7ce40adc2a36.

[2] *See id.*

[3] *See* Emma Fletcher, *Reports Show Scammers Cashing in on Crypto Craze*, FED. TRADE COMM'N (June 3, 2022), https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze.

[4] *Id.*

[5] Timothy M. Barry, *#Notfinancialadvice: Empowering the Federal Trade Commission to Regulate Cryptocurrency Social Media Influencers*, 16 OHIO ST. BUS. L.J. 279, 279 (2022).

[6] Megan Miller, *To the Moon: Finfluencers, Meme Stocks, and Regulatory Response*, 41 REV. BANKING & FIN. L. 16, 21, 23 (2021).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

fail to indicate how risky crypto can be compared to traditional financial assets.[7] This negatively impacts the general public and highlights the need for regulations that prioritize consumer protection.

This Note argues that the current laws and guidelines surrounding cryptocurrency are insufficient and seeks to detail ways in which lawmakers can regulate cryptocurrency on social media to protect consumers and reduce financial fraud. Part I of this Note makes the case for why regulation is necessary by describing crypto's dangers and how it can negatively impact investors and the overall financial market. Part II examines the role that social media plays and how it exasperates the problem. Part III discusses how different regulatory agencies have approached regulating this emerging asset class. Finally, Part IV provides an overview of the several specific actions that lawmakers can take to regulate cryptocurrency on social media.

I. BACKGROUND

A. What is Cryptocurrency?

Cryptocurrency is a broad term that encompasses multiple types of digital assets.[8] Depending on its use, an individual unit may be referred to as a coin or token.[9] These digital assets utilize cryptography and distributed ledger technology, typically blockchains, to secure transactions.[10] Cryptocurrency was initially developed as a way to decentralize digital financial transactions and act as an alternative currency or payment instrument.[11] The idea was to create a system that would "enable people to exchange money for goods and services electronically

---

[7] Tonantzin Carmona, *Opinion: Crypto Was Billed as a Vehicle to Wealth. For Many Black Investors, It's Been Anything but*, CNN, https://www.cnn.com/2022/12/23/opinions/crypto-black-investors-carmona/index.html (Dec. 24, 2022, 9:49 PM).

[8] For purposes of this Note, the term cryptocurrency refers to digital "coins" or assets that are based on blockchain technology. The crypto market is ever evolving and encompasses many different types of cryptocurrency. This Note aims to conduct a more general overview of the cryptocurrency ecosystem, in order to understand the interaction between all forms of crypto-assets and social media.

[9] Jack J. Longley, *The Crypto-Currency Act of 2020: Evaluating First Steps Toward Clarifying the Digital-Asset Regulatory Landscape*, 54 SUFFOLK U. L. REV. 549, 557–58 (2021).

[10] Terri Bradford, *The Cryptic Nature of Black Consumer Cryptocurrency Ownership*, FED. RSRV. BANK OF KAN. CITY 1 (June 1, 2022), https://www.kansascityfed.org/research/payments-system-research-briefings/the-cryptic-nature-of-black-consumer-cryptocurrency-ownership.

[11] *See* Longley, *supra* note 9, at 552.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

without relying on a . . . third-party intermediary to verify transactions."[12] By reducing reliance on third party intermediaries like banks and financial institutions, cryptocurrency promised users more security and privacy, in addition to facilitating faster and less costly transactions.[13] Despite its original objective, cryptocurrencies today have been primarily used as an investment asset.[14] These digital assets quickly went from an obscure idea to a mainstream investment, reaching a total market capitalization of over $3 trillion at its peak in 2021.[15]

Crypto advocates believe that the technology has the potential to revolutionize financial services.[16] The genesis of cryptocurrencies can be traced back to the 2008 financial crisis, when trust in financial institutions hit rock bottom.[17] Cryptocurrency's rapid rise can be partially attributed to the fact that "it accurately puts its finger on real economic problems."[18] The United States is grappling with increasing wealth inequality, with the top ten percent of households owning over two-thirds of all wealth, while the bottom half owns just three percent.[19] This problem is exasperated by racial inequities, with the average white American holding more than six times the wealth of a Black American.[20] The traditional banking system perpetuates these issues by utilizing expensive and exclusive practices, such as punitive overdraft fees and discriminatory language barriers.[21] As a result, families find it challenging to store their savings securely in the traditional banking system.[22]

---

[12] *Id.*

[13] *Id.* at 549–50.

[14] *Id.* at 550.

[15] Lindsay Sain Jones, *Beyond the Hype: A Practical Approach to CryptoReg*, 25 VA. J.L. & TECH. 175, 187 (2022); Ari Levy & MacKenzie Sigalos, *Crypto Peaked a Year Ago—Investors Have Lost More than $2 Trillion Since*, CNBC, https://www.cnbc.com/2022/11/11/crypto-peaked-in-nov-2021-investors-lost-more-than-2-trillion-since.html (Nov. 14, 2022, 3:07 AM).

[16] Jones, *supra* note 15, at 189.

[17] *Id.* at 192.

[18] Emily DiVito & Joseph Miller, *Crypto's False Promises, and What True Financial Inclusion Looks Like*, ROOSEVELT INST.: CORP. POWER (Nov. 22, 2022), https://rooseveltinstitute.org/2022/11/22/cryptos-false-promises-and-what-true-financial-inclusion-looks-like/.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

Cryptocurrency is an attractive alternative because it can increase access to financial markets while reducing reliance on these traditional financial institutions.[23] Proponents argue that cryptocurrency provides these individuals with the opportunity to build wealth and invest in sophisticated financial products that have traditionally been unavailable to them.[24]

B. Why Do We Need More Regulation for Cryptocurrency?

Though there are many potential advantages of cryptocurrency, there are some major perils to be aware of. Increasing access to a novel asset class comes with significant amounts of risk for consumers and the overall market.[25] The director of the FTC's Bureau of Consumer Protection bluntly stated that:

> While it's important we recognize and harness the potential benefits of cryptocurrency and its underlying technology, we should be wary of some of these claims. The last time an 'innovative' financial product exploded in popularity was two decades ago, when subprime mortgages were touted as a tech-driven financial vehicle that would empower working class and middle class families to realize the American dream. Of course, that experiment ended in catastrophe for millions of American families.[26]

Cryptocurrency exhibits specific characteristics that enhance the probability of consumers and investors encountering improper conduct. These assets are not backed by a government, and are unregulated, highly speculative, and volatile, making them an attractive target for nefarious uses and exposing consumers to an unstable market.[27] The following paragraphs outline the major risks associated with cryptocurrency to justify the need for more stringent regulation.

---

[23] *See* FIN. STABILITY OVERSIGHT COUNCIL, REPORT ON DIGITAL ASSET FINANCIAL STABILITY RISKS AND REGULATION 12 (2022).

[24] *See id.*

[25] *Id.*

[26] Samuel Levine, Dir., Bureau of Consumer Prot., Fed. Trade Comm'n, Remarks at Financial Literacy and Education Commission Public Meeting: Cryptocurrency Fraud and the Evolving Risks to Crypto Consumers (Mar. 8, 2022).

[27] Bradford, *supra* note 10, at 4; Jones, *supra* note 15, at 195.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

1. Speculation and Price Volatility

One of the reasons that cryptocurrency is so risky is that its value is primarily derived from the level of interest it receives, causing it to be almost entirely speculative.[28] Crypto assets are predominantly driven by sentiment and future expectations as opposed to being rooted in a current fundamental economic use case.[29] Unlike traditional assets like gold or real estate that have something tangible or valuable backing them, cryptocurrency is not backed by anything, causing it to be vulnerable to artificial inflation and unpredictability.[30] History demonstrates that large volumes of speculative activity drives cryptocurrency prices exceedingly high and subsequently leaves them vulnerable to substantial declines.[31] Prices of an individual coin can increase by more than 100% in just a few hours, and then decrease just as rapidly shortly thereafter.[32] This market volatility can undermine investor trust and confidence in cryptocurrency, which further drives down prices and leaves consumers vulnerable to sizeable losses.[33]

Reports have suggested that price volatility may even be "a feature [that] market participants deliberately seek out."[34] Cryptocurrency promotors advertise these assets using terms that "highlight the emphasis on speculation."[35] For example, some crypto has been endorsed as "hype coins" or "meme coins."[36] These labels are used to indicate that the "assets . . . have no apparent utility beyond speculative hype

---

[28] Emily DiVito & Joseph Miller, *Crypto's Red Flags, and the Need for Regulation*, ROOSEVELT INST.: CORP. POWER (July 21, 2022), https://rooseveltinstitute.org/2022/07/21/cryptos-red-flags-and-the-need-for-regulation/.

[29] FIN. STABILITY OVERSIGHT COUNCIL, *supra* note 23, at 27.

[30] DiVito & Miller, *supra* note 28.

[31] FIN. STABILITY OVERSIGHT COUNCIL, *supra* note 23, at 28.

[32] Paul Delfabbro, Daniel L. King & Jennifer Williams, *The Psychology of Cryptocurrency Trading: Risk and Protective Factors*, 10 J. BEHAV. ADDICTIONS 201, 202 (2021).

[33] U.S. DEP'T OF THE TREASURY, CRYPTO-ASSETS: IMPLICATIONS FOR CONSUMERS, INVESTORS, AND BUSINESSES 46 (2022).

[34] FIN. STABILITY OVERSIGHT COUNCIL, *supra* note 23, at 28.

[35] *Id.*

[36] *Id.*

or jokes."[37] This allows nefarious individuals to attract uninformed investors to the market because it downplays the risk involved with cryptocurrency.

The cryptocurrency market's volatility and speculative nature are further exacerbated by the ease of creating new cryptocurrencies and bringing them to market. Unlike traditional financial markets, where securities must meet certain requirements and undergo rigorous evaluations by gatekeepers such as stock exchanges and regulatory bodies, anyone can create a new cryptocurrency by modifying existing code and releasing it to the public.[38] With the availability of readily accessible code on the Internet, a new token can be created that is immediately investable in less than thirty minutes.[39] This has led to an explosion of cryptocurrencies, many of which lack a clear use case or utility. As of January 2023, there were over 12,000 crypto tokens listed, compared to the 3,626 securities on the NASDAQ and approximately 2,400 on the NYSE.[40]

The lack of regulation and oversight, combined with the ease of entry, has resulted in an excessive number of crypto tokens flooding the market, making it difficult for investors to discern the true value of a cryptocurrency.[41] Smaller and newer tokens often have low liquidity, leading to rapid price fluctuations and making it challenging for investors to make informed decisions.[42] This creates an environment where a few transactions can artificially inflate the market price of a coin, leading other investors to jump in and ride the trend, further driving up prices.[43] Such an environment increases the likelihood of speculative bubbles forming, exposing investors to significant risks.

2. Investor Losses

The extreme price fluctuations in cryptocurrency have led to significant investor losses, which has disproportionately affected minority groups.[44] The market

---

[37] *Id.*

[38] *See* Kenneth J. Merkley, Joseph Pacelli, Mark Piorkowski & Brian Williams, *Crypto-Influencers* 9–11 (May 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4412017.

[39] *Id.* at 9–10.

[40] *Id.* at 9.

[41] *See id.* at 10–11.

[42] *Id.* at 11.

[43] *Id.*

[44] *Hearing on Crypto Crash: Why Financial System Safeguards are Needed for Digital Assets Before the S. Comm. on Banking, Hous., & Urb. Affs.*, 118th Cong. 5 (2023) [hereinafter *Hearing*] (statement of Lee

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

has been characterized by sharp price movements since its infancy, and after reaching a record high of more than three trillion dollars in total value in November 2021, the market experienced a sharp and sustained downturn.[45] In fact, since its peak, the cryptocurrency market has lost more than two trillion dollars, which represents a decline of over 70% in market value.[46]

Crypto backers have long claimed that cryptocurrency will "promote[] financial inclusion by providing easy access to financial services and an opportunity to build wealth."[47] In particular, these promotors have targeted African American and Latino communities because they have been historically excluded or marginalized in the traditional finance and banking industries, limiting their access to secure investment opportunities.[48] Cryptocurrency has a lower barrier to entry compared to more traditional wealth-building methods like homeownership, making it an attractive option for those seeking to build wealth.[49] However, the potential for fast gains must be weighed against the risks of high volatility and potential losses.

Because of this, there is an imbalance in the distribution of cryptocurrency ownership, with 24% of crypto owners being Latino and 8% being Black, despite Latino and Black households holding only 2.8% and 2.9% of total wealth in the United States, respectively.[50] Studies by Charles Schwab and Pew Research indicate that Black, Asian, and Latino Americans are more likely than white Americans to invest in cryptocurrency, which increases their vulnerability to the frequent fluctuations in cryptocurrency values.[51] Thus far, the claims of greater financial inclusion and opportunity for wealth building have largely failed to materialize and

Reiners, Policy Director, Duke Financial Economics Center, Duke University), https://www.banking.senate.gov/imo/media/doc/Reiners%20Testimony%202-14-23.pdf.

[45] PAUL TIERNO, CONG. RSCH. SERV., R47425, CRYPTOCURRENCY: SELECTED POLICY ISSUES 7 (2023).

[46] *Id.* at Summary.

[47] *Hearing*, *supra* note 44, at 5.

[48] DiVito & Miller, *supra* note 28.

[49] *Id.*

[50] *Id.*

[51] *Ariel-Schwab Black Investor Survey (2022)*, CHARLES SCHWAB: SCHWAB MONEYWISE, https://www.schwabmoneywise.com/tools-resources/ariel-schwab-survey-2022 (last visited Apr. 16, 2023); Andrew Perrin, *16% of Americans Say They Have Ever Invested In, Traded or Used Cryptocurrency*, PEW RSCH. CTR. (Nov. 11, 2021), https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/; DiVito & Miller, *supra* note 28.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

instead crypto may have caused more harm than good to those groups that it purports to serve.[52] According to Lee Reiners, policy director of Duke Financial Economic Center, the evidence overwhelmingly suggests that cryptocurrency does not promote greater financial inclusion; rather, it has the opposite effect.[53] In his testimony to the Senate, Reiners stated that most people who have invested in cryptocurrency have lost money, with minorities and low-income Americans being disproportionately affected.[54] This is an example of what he calls "predatory inclusion."[55]

3. Fraud

Apart from the potential financial losses that arise from the extremely unstable nature of cryptocurrency, there is also a significant risk of loss resulting from fraudulent activities.[56] Numerous frauds, scams, and cons have led to millions of regular investors becoming victims within the cryptocurrency realm.[57] The Federal Trade Commission found that consumers lost over one billion dollars to crypto scams in 2021.[58] Crypto scammers frequently exploit this novel investment mechanism to carry out deceptive schemes.[59] They take advantage of lax regulations and their target's lack of knowledge about the product, and often emphasize or guarantee significant profits without referencing losses or providing comprehensive disclosures.[60]

Cryptocurrencies possess several distinctive characteristics that make them particularly appealing and prone to use for illicit activities.[61] The removal of third-party intermediaries, the lack of legal protections, and the fact that transactions cannot be reversed all attract criminals to the crypto market and may help explain

---

[52] *Hearing*, *supra* note 44, at 5.

[53] Nolan D. McCaskill, *'Financial Criminals Love Crypto' and Other Takeaways from a Senate Hearing on Cryptocurrency*, L.A. TIMES (Feb. 14, 2023, 1:00 PM), https://www.latimes.com/politics/story/2023-02-14/financial-criminals-love-crypto-and-other-takeaways-from-a-senate-hearing-on-cryptocurrency.

[54] *Id.*

[55] *Id.*

[56] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 26.

[57] *Hearing*, *supra* note 44, at 5.

[58] Fletcher, *supra* note 3.

[59] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 26, 40.

[60] *See id.* at 26, 29, 40, 53.

[61] *Id.* at 26.

why consumers are so vulnerable to crypto scams.[62] In traditional investment markets, there are financial advisors who help prevent fraud and scams by screening potential investments for quality and legitimacy before they are available to consumers.[63] On the other hand, the cryptocurrency system operates without third parties, eliminating the "gatekeeping" function that those intermediaries once served.[64] The crypto market operates without a centralized authority to identify suspicious transactions and make efforts to prevent fraudulent activities before they occur.[65]

Furthermore, those who are scammed are often left without any recourse or ability to get their money back. Unlike other payment methods like credit or debit cards, cryptocurrencies are not safeguarded by the same legal protections.[66] As a result, if an unauthorized transfer takes place, there is no intermediary to provide coverage for any resulting financial losses.[67] Additionally, crypto transfers cannot be reversed; once money is sent to a scammer, there is no getting it back.[68] There is also no way to identify scammers because crypto allows individuals to conduct transactions securely and anonymously.[69] This leaves consumers totally unprotected, making cryptocurrencies the "perfect vehicle for scams," thereby attracting even more bad actors with bad intentions.[70]

---

[62] Fletcher, *supra* note 3.

[63] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 31.

[64] *See id.*

[65] Fletcher, *supra* note 3.

[66] Jones, *supra* note 15, at 196.

[67] *Id.*

[68] Fletcher, *supra* note 3.

[69] Silvia Foster-Frau, *Locked Out of Traditional Financial Industry, More People of Color are Turning to Cryptocurrency*, WASH. POST (Dec. 1, 2021, 2:53 PM), https://www.washingtonpost.com/national/locked-out-of-traditional-financial-industry-more-people-of-color-are-turning-to-cryptocurrency/2021/12/01/a21df3fa-37fe-11ec-9bc4-86107e7b0ab1_story.html.

[70] Jones, *supra* note 15, at 196 (quoting Nathanial Popper, *As Bitcoin Bubble Loses Air, Frauds and Flaws Rise to Surface*, N.Y. TIMES (Feb. 5, 2018), https://www.nytimes.com/2018/02/05/technology/virtual-currency-regulation.html).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

II. SOCIAL MEDIA'S ROLE AND HOW IT AMPLIFIES THE PROBLEMS

Cryptocurrencies are one of the most appealing markets for financial speculation. As a consequence, they have attracted an unparalleled surge of interest in them on social media. Social media platforms have enabled the exchange and circulation of information to billions of users worldwide.[71] However, this has also made them prime platforms for promoting and distributing of "illegal, harmful, and objectionable content," particularly in the realm cryptocurrencies.[72] The platforms use algorithms to quickly disseminate content that generates high levels of user engagement, making cryptocurrencies uniquely vulnerable to exploitation.[73] Social media's rapid reach has facilitated the spread of misinformation, criminal activities, and scams, causing significant harm.

A. Social Media Influencers

Social media influencers have emerged as a significant and influential force in the industry, often posting and offering investment advice to their large followings.[74] While influencers can serve as a valuable source of information, especially when breaking down complex topics like cryptocurrency, they often lack the necessary expertise and qualifications to provide sound financial advice.[75] Many of them downplay the risks associated with cryptocurrency and leave out critical information that would enable investors to assess value and make informed decisions.[76] Since there are sparse regulations, these influencers can post almost anything they want without facing repercussions "because nobody is monitoring what they say."[77]

---

[71] Jason A. Gallo & Clare Y. Cho, CONG. RSCH. SERV., R46662, SOCIAL MEDIA: MISINFORMATION AND CONTENT MODERATION ISSUES FOR CONGRESS 1 (2021).

[72] *Id.*

[73] *See id.*

[74] Merav Ozair, *Social Media Crypto Influencers: Are They Advisers? Experts? How Seriously Should I Take Them?*, NASDAQ (Dec. 9, 2022, 1:03 PM), https://www.nasdaq.com/articles/social-media-crypto-influencers%3A-are-they-advisers-experts-how-seriously-should-i-take.

[75] *See* Finn Miller, *Crypto Influencers 2023: Who You Need to Know About*, DAILYCOIN (Jan. 29, 2023, 4:00 PM), https://dailycoin.com/crypto-influencers-you-need-to-know-about/.

[76] *See* U.S. DEP'T OF THE TREASURY, *supra* note 33, at 47.

[77] Shane Hickey, *As 'Finfluencers' Spread Through Social Media, Beware the Pitfalls*, GUARDIAN (Aug. 22, 2021, 4:00 PM), https://www.theguardian.com/money/2021/aug/22/as-finfluencers-spread-through-social-media-beware-the-pitfalls.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

Consequently, these influencers are able to amass substantial followings by promising generous returns or endorsing questionable products.[78]

Regulators must recognize the considerable influence that the individuals have on consumer investment decisions. A recent survey found that about a third of Americans indicated that they "trust the financial advice of celebrities and social media influencers."[79] Crypto companies have taken advantage of this by partnering with influencers and celebrities, using targeted advertisements to lure in new investors.[80] These influencers often highlight their own profits from investing at a low price, using visually appealing graphics that depict projected growth, creating a sense of urgency and prompting potential investors to take immediate action.[81]

This problem is amplified by the fact that the demographic that typically invests in cryptocurrency is more likely to rely on the Internet, specifically social media, as a source of investment information.[82] Cryptocurrency owners tend to be younger, and many have reported that social media has impacted their financial decisions.[83] Recent surveys indicate that these advertisements have been effective in raising awareness and promoting the trading of cryptocurrencies.[84] Consequently, investors, particularly those who are "heavily targeted by crypto-asset marketing," may view cryptocurrencies "as stable consumer financial products, rather than as speculative financial assets," leading them to invest "money they are not expecting, and may not be able to afford, to lose."[85] One commenter described a popular influencer's post regarding a crypto asset as "urging her 251 million Instagram followers to get involved in a highly volatile, speculative market that's little different than gambling

---

[78] Mia Stefanou, *"Finfluencers in the Wild" A Call for Regulation Addressing the Growth of Online Investment Advice*, 88 BROOK. L. REV. 959, 964–66 (2023).

[79] Jonathan Su, *Redirecting the Herd: Informing Cryptocurrency Regulations Through the Lens of Behavioral Science*, 14 HASTINGS SCI. & TECH. L.J. 123, 131 (2023).

[80] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 47.

[81] Delfabbro et al., *supra* note 32, at 204.

[82] Charlotte Principato, *Kim Kardashian, Cryptocurrency and Celebrity Clout*, MORNING CONSULT (Sept. 21, 2021, 3:00 PM), https://morningconsult.com/2021/09/21/kim-kardashian-crypto-celebrity.

[83] *Id.*

[84] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 47.

[85] *Id.*

in the world's most fraudulent casino."[86] Ultimately, investors who followed this influencer's recommendation would have lost 95% of their investment.[87]

Companies will pay influencers large sums of money to promote their cryptocurrency, hoping to increase its value through online hype.[88] According to the *New York Times*, some companies have been offering influencers as much as $400,000 to promote their cryptocurrency.[89] The significant sums of money paid to influencers increase the likelihood that they will post advertisements that contain "reckless and untrue statements."[90] For example, Ben Armstrong, a prominent crypto influencer, admitted to taking payments from crypto companies to promote DistX, a new coin, to his subscribers.[91] In his promotion, he stated that DistX was "his most trusted coin" and encouraged his followers to invest.[92] However, he later stated that "the project itself ended up being a scam" and many of his followers lost significant amounts of money.[93]

Further, many individuals will shamelessly promote cryptocurrencies without disclosing their personal or financial ties to the projects they promote on their platforms.[94] A notable case involves Lark Davis, a prominent crypto influencer who presented himself as an analyst discussing emerging trends in the cryptocurrency landscape.[95] In reality, he was promoting new coins to his followers while

[86] Sonia Rao, *The Celebs Have Gone Crypto*, WASH. POST (Feb. 4, 2022, 6:00 AM), https://www.washingtonpost.com/arts-entertainment/2022/02/04/celebrities-cryptocurrency-nfts/.

[87] Merkley et al., *supra* note 38, at 1 n.1.

[88] David Yaffe-Bellany, *How Influencers Hype Crypto, Without Disclosing Their Financial Ties*, N.Y. TIMES (May 28, 2022), https://www.nytimes.com/2022/05/27/technology/crypto-influencers.html.

[89] *Id.*

[90] Johnathan Brogden, Millie Bailey & Yara Alshighri, *Keeping Up with Crypto Fraud—Social Media Influencers Beware!*, DAC BEACHCROFT (Dec. 13, 2022), https://www.dacbeachcroft.com/en/gb/articles/2022/december/keeping-up-with-crypto-fraud-social-media-influencers-beware.

[91] Eamon Javers, Paige Tortorelli & Scott Zamost, *Some Social Media Influencers Are Being Paid Thousands to Endorse Cryptocurrency Projects*, CNBC (Aug. 11, 2022, 8:10 AM), https://www.cnbc.com/2022/08/11/some-influencers-paid-thousands-to-endorse-cryptocurrency-projects.html.

[92] *Id.*

[93] *Id.*

[94] Yaffe-Bellany, *supra* note 88.

[95] *See* Leo Schwartz, *How a Dodgy Crypto Influencer Got Rick on YouTube and Twitter—While the Platforms and the SEC Failed to Act*, YAHOO! FIN. (Nov. 8, 2022), https://finance.yahoo.com/news/dodgy-crypto-influencer-got-rich-131500343.html.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

simultaneously benefiting from early access as a presale investor, selling the tokens when their value surged due to his followers' purchases.[96] In another instance, Maren Altman, a popular cryptocurrency influencer, accepted $30,000 from the crypto lender Celsius in exchange for marketing and promotional posts during the months leading up to the Celsius' declaration of bankruptcy.[97] Altman produced favorable content about Celsius, even when the company was facing financial challenges, while also failing to disclose the payments she received.[98] Unfortunately, many investors have lost significant amounts of money after following investment advice from influencers and celebrities who did not disclose their financial interests. These examples underscore the need for transparency and regulatory measures within the cryptocurrency industry to shield investors from misinformation and deceit.

B. Social Media and Market Manipulation

The speculative nature of cryptocurrency makes its prices "particularly susceptible to manipulation."[99] Social media platforms provide an ideal breeding ground for such activities, and because cryptocurrencies have a relatively low trading volume, the market is highly sensitive to any form of excitement or hype, such that even a single post on *Twitter* or *Reddit* can trigger a flurry of market activity that leads to swift and significant price fluctuations.[100] The prices of cryptocurrencies can quickly fluctuate due to various factors like changes in sentiment, celebrity endorsements, or a single comment that gains popularity on a social media platform.[101] This gives influencers and celebrities the ability to cause rapid and drastic changes in the value of an asset with a single post, impacting the entire market.[102]

Unfortunately, following online crypto advice, especially from self-proclaimed "experts," has the potential to bring significant financial losses. Research by Harvard Business School professor Joseph Pacelli found that "mentions of cryptocurrencies

---

[96] *Id.*

[97] Sage D. Young, *Popular Bitcoin Astrologer's Star Falls on Twitter Following $30K in Celsius Payments*, COINDESK (May 8, 2023, 11:59 PM), https://www.coindesk.com/business/2022/10/13/popular-bitcoin-astrologers-star-falls-on-twitter-following-30k-in-celsius-payments/.

[98] *See id.*

[99] Jones, *supra* note 15, at 197.

[100] *Id.* at 197–98.

[101] Delfabbro et al., *supra* note 32, at 202.

[102] *See generally* Barry, *supra* note 5.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

in tweets are associated with a 1.83% return in the first day, but are subsequently associated with significant negative returns—an average loss of 19 percent after three months."[103] "These research findings are consistent with widespread suspicions about so-called 'pump-and-dump' schemes" in which fraudsters promote a coin to artificially inflate its value ("pump") before rapidly selling off their holdings ("dump").[104] Due to the volatile nature of cryptocurrency, prices of a pumped coin can drastically rise and subsequently fall within a very short time period, usually minutes.[105] Once the assets are "dumped" ordinary investors are left with a worthless asset.[106]

Such schemes are not uncommon in the crypto market and are not limited to just social media influencers. There are official groups that coordinate with each other to bid on a specific currency at a set time to push the price up and attain a quick payday.[107] Social media has become the scammers' platform of choice because it enables them to remain anonymous and quickly spread false information to generate hype around the cryptocurrencies they aim to pump.[108] Organizers of pump-and-dump schemes utilize social media platforms such as Telegram and Discord to inform their followers about when they plan to execute a scheme, as well as to report the results of previous schemes.[109] According to a *Wall Street Journal* analysis, groups like this "generated more than $825 million in trading activity in 2018 alone."[110] There are numerous social media groups, often referred to as "pump

---

[103] Kristen Senz, *When Celebrity 'Crypto-Influencers' Rake in Cash, Investors Lose Big*, HARV. BUS. SCH. (Apr. 7, 2023), https://hbswk.hbs.edu/item/when-celebrity-crypto-influencers-rake-in-cash-investors-lose-big.

[104] *Id.*

[105] Huy Nghiem, Goran Muric, Fred Morstatter & Emilio Ferrara, *Detecting Cryptocurrency Pump-and-Dump Frauds Using Market and Social Signals*, EXPERT SYS. WITH APPLICATIONS, Nov. 2021, at 1, 2, https://doi.org/10.1016/j.eswa.2021.115284.

[106] *Id.*; DiVito & Miller, *supra* note 28.

[107] Paul Vigna, *GameStop Frenzy Echoes Sharp Moves Long Seen in Cryptocurrency Markets*, WALL ST. J. (Feb. 10, 2021, 9:00 AM), https://www.wsj.com/articles/gamestop-frenzy-echoes-sharp-moves-long-seen-in-cryptocurrency-markets-11612965608.

[108] Mehrnoosh Mirtaheri, Sami Abu-El-Haija, Fred Morstatter, Greg Ver Steeg & Aram Galstyan, *Identifying and Analyzing Cryptocurrency Manipulations in Social Media*, 8 IEEE TRANSACTIONS ON COMPUTATIONAL SOC. SYS. 607, 607 (2021).

[109] Nghiem et al., *supra* note 105.

[110] Vigna, *supra* note 107.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

channels," where these fraudulent schemes are organized.[111] Organizers encourage group members to join relevant social platforms and promote the scheme on other channels to engage more people.[112] They also utilize *Twitter* bots to "disseminate their invitational links to chat groups in *Discord* and *Telegram*."[113]

C. Social Media and Scale for Financial Scams

Further, the Internet has rapidly increased the scale and speed at which financial scams can be carried out. Regulators have begun to recognize this shift and the impact that social media has had on traditional finance schemes.[114] Pulling off a pump-and-dump scheme before social media would require cold calling each individual person, so scammers were limited in their reach.[115] However social media has changed this. Take for example Kim Kardashian, who was charged by the SEC for unlawfully touting the crypto asset, EthereumMax, on social media.[116] Kim Kardashian has over 300 million followers.[117] Even if only one percent of her audience saw her post endorsing a coin and decided to purchase crypto, it would still result in more than three million people inflating the value of a highly volatile asset.[118]

Social media has also become a breeding ground for various scams and frauds. The FTC reported that a significant portion of money lost to scams, a staggering 53%, was due to fraudulent investment opportunities promoted through social networks.[119] This is because "[s]ocial media gives scammers an edge in several

---

[111] Nghiem et al., *supra* note 105.

[112] *Id.*

[113] *Id.*

[114] Christian Zilles, *The SEC Takes on the Big Social Media Influencers*, SOC. MEDIA HQ (Jan. 26, 2023), https://socialmediahq.com/the-sec-takes-on-the-big-social-media-influencers/.

[115] *Id.*

[116] Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security (Oct. 3, 2022), https://www.sec.gov/news/press-release/2022-183.

[117] Zilles, *supra* note 114.

[118] *Id.*

[119] Emma Fletcher, *Social Media: A Golden Goose for Scammers*, FED. TRADE COMM'N (Oct. 6, 2023), https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2023/10/social-media-golden-goose-scammers.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

ways."[120] Scammers are able to exploit the platform's capabilities, utilizing fake personas or even compromising user profiles to swindle others.[121] They tailor their tactics based on shared personal information and even use tools available to advertisers to target individuals based on their demographics, interests, and purchase history.[122]

In addition, potential scammers face almost no entry barriers, since joining and posting on social media platforms are free and accessible to anyone.[123] This allows them to put together an entire cryptocurrency or stock market scam swiftly and inexpensively.[124] Moreover, they can obtain credibility and trust by simply amassing a large number of followers.[125] With social media, it is relatively easy and quick for seedy individuals to acquire thousands of followers, given that it is possible to purchase them in the open market.[126] Instead of a random call from an unknown individual, it is a seemingly "famous" person who a lot of other people look to. Having a few thousand followers can create an illusion of trustworthiness and provide scammers with the necessary credibility to lure unsuspecting individuals into their fraudulent schemes.[127] Moreover, cryptocurrency's features have made it notably easier for scammers to execute fraudulent schemes and evade identification because it is anonymous, hard to trace, and there are few regulations.[128]

III. CURRENT LEGAL AND REGULATORY FRAMEWORK

A. Overview of Current Regulation

Due to its novel and unique nature, regulators have faced challenges fitting cryptocurrency within the existing regulatory framework. The term cryptocurrency encompasses a broad range of digital assets, each of which possesses differing qualities. However, there is currently no comprehensive regulatory framework

---

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] Zilles, *supra* note 114.

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] Foster-Frau, *supra* note 69.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

specifically addressing these assets.[129] As a result, various state and federal financial industry regulators have attempted to apply existing frameworks and regulations where digital assets resemble traditional financial products.[130] Depending on the circumstances, regulators may treat cryptocurrency as securities, commodities, or currencies.[131] The regulatory treatment of cryptocurrency is determined by a variety of factors, including the nature of the asset, the activities involved, and the classification of the entities or service providers.[132] Thus, the regulatory landscape in the United States is complex and evolving.

Consequently, multiple agencies have stepped in to regulate the space under their jurisdiction, leading to a patchwork of regulations that are often incomplete and fail to address all issues related to cryptocurrencies.[133] This is particularly true when it comes to regulating social media promotions of cryptocurrencies, as there are gaps in each regulatory framework that need to be filled to effectively regulate cryptocurrencies and protect consumers going forward. Currently, several regulatory agencies oversee cryptocurrency promotions, including the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and the Commodity and Futures Trading Commission (CFTC).

1. FTC

The FTC is primarily responsible for consumer protection and guards against deceptive advertising and promotional content.[134] While the FTC does not have specific regulations targeting cryptocurrencies, it has been actively enforcing existing advertising and consumer protection laws to combat deceptive practices within the crypto space. The FTC has focused on ensuring that endorsements and promotional content related to cryptocurrencies are transparent and that individuals and entities disclose any financial relationships or incentives they have with the

---

[129] PAUL TIERNO, CONG. RSCH. SERV., IN12047, WHAT HAPPENED AT FTX AND WHAT DOES IT MEAN FOR CRYPTO 2 (2022).

[130] *Id.*

[131] *Id.*

[132] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 39.

[133] *See* TIERNO, *supra* note 129.

[134] Tamany Vinson Bentz & Carolina Veltri, *The Indirect Regulation of Influencer Advertising*, 75 FOOD & DRUG L.J. 185, 187 (2020).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

promoted products or projects.[135] In the absence of clear rules specific to cryptocurrencies, the FTC relies on its general authority to address fraudulent and deceptive practices in advertising and endorsements. Thus far, the FTC has employed the FTC Act and the Gramm-Leach-Bliley (GLB) Act to target cryptocurrency companies engaging in misleading advertising practices.[136] The FTC Act prohibits unfair or deceptive practices affecting commerce, while the GLB Act makes it illegal for financial institutions to utilize deceptive or misleading statements to obtain consumer financial information.[137]

A recent example of the FTC's actions involves the now-bankrupt cryptocurrency company, Voyager, which falsely claimed that their accounts were "FDIC insured" in order to lure customers into depositing money with them.[138] Specifically, the FTC relied on a social media post in which Voyager tweeted, "Have you heard? USD held with Voyager is FDIC insured up to $250K. Our customers' security is our top priority."[139] Shortly thereafter, Voyager filed for bankruptcy, and since the accounts were not FDIC insured, customers lost over one billion dollars.[140] In a similar instance, the FTC charged another bankrupt company, Celsius Network, for using deceptive practices on social media platforms like *YouTube* and *Twitter* to attract consumers.[141] Despite promoting itself as "safer than a bank," Celsius misappropriated customer deposits, treating them as a source of funds to pay corporate bills, among other things.[142] Furthermore, the FTC alleged that the promotional videos and messages on social media created a façade of financial

---

[135] *See* Hannah Taylor, *FTC Says It's Investigating Crypto Companies Over Digital Asset Advertising*, FRANKFURT KURNIT KLEIN & SELZ PC (Dec. 7, 2022), https://advertisinglaw.fkks.com/post/102i308/ftc-says-its-investigating-crypto-companies-over-digital-asset-advertising.

[136] *See* Lesley Fair, *Crypto Platform Celsius Feels the Heat from FTC Lawsuit Alleging Unfair and Deceptive Practices*, FED. TRADE COMM'N: BUS. BLOG (July 13, 2023), https://www.ftc.gov/business-guidance/blog/2023/07/crypto-platform-celsius-feels-heat-ftc-lawsuit-alleging-unfair-deceptive-practices [hereinafter *Celsius*]; *see also* Lesley Fair, *Set Phasers to False: FTC Challenges Crypto Company Voyager's Bogus "FDIC Insured" Claim*, FED. TRADE COMM'N: BUS. BLOG (Oct. 12, 2023), https://www.ftc.gov/business-guidance/blog/2023/10/set-phasers-false-ftc-challenges-crypto-company-voyagers-bogus-fdic-insured-claim [hereinafter *Voyager*].

[137] 15 U.S.C. § 45(a)(1); 15 U.S.C. § 6821(a)–(b).

[138] *Voyager*, *supra* note 136.

[139] *Id.*

[140] *Id.*

[141] *Celsius*, *supra* note 136.

[142] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

strength, claiming to have "billions of dollars in liquidity," even as the company's fiscal health deteriorated.[143] In both cases, the FTC handed out fines of over a billion dollars and banned the companies from offering, marketing, or promoting any product or service that facilitates the deposit, exchange, investment, or withdrawal of any assets in the future.[144] These cases highlight the significance of social media as a channel for misleading cryptocurrency advertising.

2. SEC

Cryptocurrency promotions may also run afoul of federal laws surrounding the marketing of securities.[145] The SEC oversees advertisements related to "securities and securities derivatives and their associated markets and intermediaries."[146] However, the main issue is whether these crypto-assets are "security," thus giving the SEC power to regulate.[147] The *Howey* test is used to determine whether an investment is a security or not.[148] It defines a security as "the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others."[149] Generally, if a financial product is considered a security, it will be subject to disclosure and registration requirements.[150] While cryptocurrencies themselves may not be deemed securities, the SEC has concluded that some tokens, especially those offered through Initial Coin Offerings (ICOs), are securities and thus subject to SEC enforcement.[151]

The SEC has been active in pursuing enforcement actions against influencers who promote cryptocurrencies without proper disclosures.[152] Recently, the SEC has

---

[143] *Id.*

[144] *Voyager*, *supra* note 136; *Celsius*, *supra* note 136.

[145] Yaffe-Bellany, *supra* note 88.

[146] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 39.

[147] Alexander Bussey, Todd Fishman & Eugene Ingoglia, *SEC Builds on Crypto Influencer Enforcement with USD1.26 Million Settlement with Kim Kardashian*, JD SUPRA (Oct. 11, 2022), https://www.jdsupra.com/legalnews/sec-builds-on-crypto-influencer-5646937/.

[148] Matt Levine, *The SEC Cracks Down on Crypto*, BLOOMBERG (Feb. 13, 2023, 11:30 AM), https://www.bloomberg.com/opinion/articles/2023-02-13/the-sec-cracks-down-on-crypto#xj4y7vzkg.

[149] *Id.*

[150] *Id.*

[151] Barry, *supra* note 5, at 292–94.

[152] Senz, *supra* note 103.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

charged more than a dozen high-profile social media influencers with violating U.S. securities laws.[153] The SEC claims that these influencers violated securities laws by not properly disclosing their compensation for promoting cryptocurrencies.[154] Through enforcement actions, the SEC has stated that cryptocurrency "influencers can be held legally liable if they fail to disclose their financial ties to the companies they promote."[155]

One high-profile case involved reality star Kim Kardashian, who settled with the SEC in October 2022 for $1.26 million.[156] The agency alleged that Kardashian violated the U.S. Securities Act of 1933 "touting" provision by failing to disclose that she received compensation for promoting the EthereumMax crypto token on her social media page.[157] Another example is Lindsay Lohan, who, in February 2021, shared with her eight million followers on *Twitter* "that she was 'exploring' decentralized finance" and "was 'already liking' Tronix (TRX) tokens, a crypto product whose founder was recently charged with fraud ."[158] Lohan failed to disclose that she received $10,000 in exchange for her tweet from Tron Foundation, a company owned by Justin Sun.[159] The SEC alleged that Sun instructed Lohan and seven other celebrity TRX promoters, including Soulja Boy and Jake Paul, to keep quiet about their compensation.[160] The eight influencers ultimately settled with the SEC by paying a total of $400,000, without admitting to any wrongdoing.[161]

3. CFTC

The CFTC regulates commodities, including certain cryptocurrency-deemed derivatives and futures contracts. In the context of social media promotions, the CFTC has been particularly vigilant in identifying fraudulent scams and Ponzi

---

[153] *Id.*

[154] Shubham Pandey & Kyle Baird, *Will Lawsuits Against FTX Backers Silence Other Crypto Influencers?*, BEINCRYPTO (Mar. 23, 2023, 4:45 AM), https://beincrypto.com/influencers-slapped-billion-lawsuit-promoting-ftx/.

[155] *Id.*

[156] Wayne Duggan, *How Does the SEC Regulate Crypto?*, FORBES ADVISOR (June 30, 2023, 9:41 AM), https://www.forbes.com/advisor/investing/sec-crypto-regulation.

[157] *Id.*

[158] Senz, *supra* note 103.

[159] *Id.*

[160] *Id.*

[161] *Id.*

schemes in the crypto sector. The CFTC "oversees commodity derivatives and associated markets and intermediaries and maintains anti-fraud and anti-manipulation enforcement over commodities that are not securities."[162] The term "commodity" is defined broadly and includes all "goods and articles . . . and all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in."[163] As it relates to social media endorsements, the CFTC "prohibits any person from making statements regarding the sale of digital assets that are untrue, materially misleading, or missing material information."[164] However, like the SEC's enforcement power, the CFTC's authority is limited to cases involving commodities. Like the SEC, the CFTC has also determined that certain cryptocurrencies fall under its jurisdiction.[165]

In 2021, the CFTC initiated a case against John McAfee and his associates, alleging that they engaged in "a manipulative and deceptive digital asset 'pump-and-dump' scheme."[166] The CFTC contended that McAfee secretly bought various cryptocurrencies and then deceptively promoted them as valuable long-term investments on his social media channels.[167] Furthermore, despite being compensated by the coin founders for endorsing their projects on social media, McAfee failed to disclose this financial arrangement, camouflaging his tweets as impartial investment advice.[168] Due to MacAfee's status, the value of the cryptocurrencies increased rapidly following his social media posts.[169] Subsequently, McAfee sold the assets off for a two million dollars profit.[170] Although charges

---

[162] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 39.

[163] 7 U.S.C. § 1a(9).

[164] Herbert F. Kozlov, *Celebrity ICO Endorsements: SEC, FTC, and CTFC Oversight*, REED SMITH (Nov. 9, 2017), https://www.reedsmith.com/en/perspectives/2017/11/celebrity-ico-endorsements-sec-ftc-and-cftc-oversight.

[165] *Id.* at 89.

[166] Press Release, Commodity Futures Trading Comm'n, CFTC Charges Two Individuals with Multi-Million Dollar Digital Asset Pump-and-Dump Scheme (Mar. 5, 2021), https://www.cftc.gov/PressRoom/PressReleases/8366-21 [hereinafter Digital Asset Pump-and-Dump Scheme].

[167] *Id.*

[168] Abdelaziz Fathi, *US Regulator Drops Case Against John McAfee, Settles With His Advisor*, FINANCEFEEDS (July 20, 2022, 3:42 PM), https://financefeeds.com/us-regulators-drops-case-against-john-mcafee-settles-with-his-advisor/.

[169] Digital Asset Pump-and-Dump Scheme, *supra* note 166.

[170] *Id.*

against McAfee were dropped following his death, the CFTC ordered Jimmy Gale Watson, an executive advisor on McAfee's crypto team, "to disgorge over $146,000 he received in ill-gotten gains from the scheme and also to pay an equal amount in a civil monetary penalty."[171]

In another instance, the CFTC brought an enforcement action against Benjamin Reynolds, the owner of Control-Finance Limited.[172] In this case, the CFTC alleged that Reynolds orchestrated a deceptive scheme by convincing nearly 1,000 customers to purchase and transfer Bitcoin to Control-Finance.[173] Reynolds falsely claimed that Control-Finance employed expert virtual currency traders, and guaranteed daily profits on all Bitcoin deposits.[174] Leveraging an elaborate pyramid scheme through social media, customers were incentivized to refer friends and family in exchange for Bitcoin credits.[175] These customers were presented with misleading account balances, fictitious profit figures, and fabricated trade reports.[176] Ultimately, the CFTC obtained a default judgment on the matter and ordered Reynolds to pay $143 million in restitution to victims and a $429 million civil penalty.[177]

B. Issues with Current Regulation

The current regulatory landscape concerning cryptocurrency and its interaction with social media presents a host of challenges and deficiencies. Cryptocurrencies are a novel and multifaceted asset class, and their unique characteristics often do not fit within existing regulatory frameworks.[178] As a result, regulators have grappled

[171] Fathi, *supra* note 168.

[172] Press Release, Commodity Futures Trading Comm'n, Federal Court Orders UK Man to Pay More Than $571 Million for Operating Fraudulent Bitcoin Trading Scheme (Mar. 26, 2021), https://www.cftc.gov/PressRoom/PressReleases/8371-21 [hereinafter Fraudulent Bitcoin Trading Scheme].

[173] *Id.*

[174] *Id.*

[175] David Lucking & Vinod Aravind, *Cryptocurrency as a Commodity: The CFTC's Regulatory Framework*, ALLEN & OVERY LLP 4 (2020), https://www.allenovery.com/global/-/media/allenovery/2_documents/news_and_insights/publications/2020/08/global_legal_insights_guide_-_cryptocurrency_as_a_commodity_the_cftcs_regulatory_framework.pdf.

[176] *Id.*

[177] Fraudulent Bitcoin Trading Scheme, *supra* note 172.

[178] TIERNO, *supra* note 45, at 20–21.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

with applying traditional financial regulations to this innovative space.[179] Compounding the problem, there is no overarching and comprehensive regulatory framework that explicitly addresses the many facets of cryptocurrency, leading to regulatory ambiguity.[180] This regulatory ambiguity has given rise to a patchwork of fragmented and sometimes conflicting regulations across different agencies, rendering the overall framework incomplete and ineffective.[181] The FTC, SEC, and CFTC each play a distinct role; however, their jurisdictional boundaries create a complex and sometimes overlapping regulatory landscape.[182] Despite their efforts to combat deceptive practices and promote transparency, the regulatory environment remains fragmented and inadequate to address the full spectrum of issues arising from cryptocurrencies on social media.

Furthermore, the existing enforcement powers of these agencies, though significant, come with limitations. The FTC is primarily charged with consumer protection and promoting competition, and thus lacks the specialized expertise and resources to navigate the intricate world of financial instruments.[183] The SEC and CFTC, though equipped to regulate financial assets, face constraints as their oversight extends only to assets classified as securities or commodities.[184] Given the cryptocurrency market's broad scope, which defies neat classification, these agencies are ill-equipped to address the entirety of the cryptocurrency landscape, resulting in regulatory gaps.[185] The absence of consistent and well-defined rules for cryptocurrencies on social media poses serious concerns for investor protection. As cryptocurrencies and social media continue to evolve and integrate, these regulatory gaps are becoming more apparent, leaving consumers exposed to fraudulent schemes and misleading promotions.

IV. PROPOSED ACTIONS LAWMAKERS CAN TAKE

To protect consumers, regulators need to address how cryptocurrencies are marketed online, especially given the increasing reliance on online financial

---

179 *Id.*

180 *Id.*

181 *Id.*

182 *Id.*

183 *See* Stefanou, *supra* note 78, at 984.

184 *See* Barry, *supra* note 5, at 303.

185 *See id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

information. The current lack of comprehensive rules and penalties has resulted in an unclear and confusing regulatory scheme that fails to safeguard consumers from the perils of cryptocurrencies. When people begin to heavily invest their money in a market riddled with risky assets, "the federal government has a responsibility to prevent fraud, abuse, and the resulting economic precarity faced when overhyped markets crash."[186] Crypto's definitional gray zone has allowed bad actors to exploit vulnerabilities and manipulate consumers, highlighting the need for comprehensive rules and penalties, among other measures, to create a clear regulatory scheme and protect consumers.

Achieving significant change in cryptocurrency regulation will likely remain elusive until Congress passes comprehensive legislation. However, powerful means are already available to curb some of the most pressing problems related to cryptocurrency and social media. This section proposes some specific actions that lawmakers can implement to address the impact of social media on the cryptocurrency market. Suggestions include collaborative cross-agency initiatives, developing laws and guidance for financial influencers, expanding consumer education plans, and cooperating with social media platforms. By implementing some of these suggestions, regulators can protect consumers and prevent a repeat of past financial crises.

A. Collaborative Cross-Agency Initiatives

Given the seriousness of potential harm that crypto promotions can have on consumers, the FTC should work together with the SEC and CFTC to regulate social media posts about cryptocurrency. Because cryptocurrencies are a novel and rapidly evolving financial product that can potentially involve the interests and jurisdictions of various regulatory and law enforcement agencies, it is crucial to establish active collaboration and coordination among them.[187] The FTC has more knowledge when it comes to regulating advertisements and endorsements on social media, while the SEC and CFTC possess greater enforcement power and more specialized knowledge of the finance industry.[188] By working together, these agencies can leverage their expertise and resources to create a more comprehensive regulatory framework that addresses the risks posed by social media influencers and other actors in the cryptocurrency space. A collaboration like this would not be unprecedented, as the

---

[186] DiVito & Miller, *supra* note 28.

[187] U.S. DEP'T OF THE TREASURY, *supra* note 33, at 2.

[188] *See generally* Barry, *supra* note 5 (arguing that the FTC should broaden its enforcement scope to include cryptocurrency endorsement).

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

FTC already works with the FDA to monitor and enforce health claims on social media under the 1971 Memorandum of Understanding.[189]

One approach to collaborative regulation involves establishing a task force that brings together representatives from each agency to develop a coordinated strategy. This task force would be responsible for identifying potential risks and trends in the social media space related to cryptocurrency and developing strategies to mitigate those risks.[190] The task force could also work to create clear guidelines and standards for advertising and communications related to cryptocurrencies. These standards can ensure that information provided is accurate, and advertisements comply with relevant regulations. In addition to the task force, collaborative regulation could also involve joint enforcement actions against bad actors in the space.[191] By pooling their resources and expertise, the agencies could investigate and prosecute cases of fraud and other illegal activities related to cryptocurrency.[192] This could include working together to identify and shut down fraudulent initial coin offerings and other investment schemes, as well as going after individuals and entities that engage in manipulative practices or other forms of market abuse. By working together, the FTC, SEC, and CFTC will be able to tackle the issue of social media and crypto more effectively and ensure that consumers are protected.

B. Specific Regulations and Guidance Directed at Influencers

Lawmakers can also develop targeted regulations and guidance specifically directed at influencers within the financial space. While several countries have acknowledged and initiated measures to tackle these new investment advisors, the United States lags behind in establishing comprehensive regulations for this sector.[193] Examining the regulatory frameworks adopted in Spain and Australia can offer the United States valuable insights and actionable recommendations for its own regulatory development.

One possibility is imposing more stringent requirements on social media influencers, especially those with substantial follower bases. Spain, for instance, has

[189] Sofia Martinez-Guasch, *At Your Disclosure: How Influencers' Endorsements Will Be Put to the Test by the F.D.A. and F.T.C.*, 22 J. HIGH TECH. L. 401, 418–19 (2022).

[190] *See* THE BD. OF THE INT'L ORG. OF SEC. COMM'NS, RETAIL MARKET CONDUCT TASK FORCE FINAL REPORT 59–62 (2023) [hereinafter IOSCO REPORT].

[191] *Id.* at 55.

[192] *Id.*

[193] Stefanou, *supra* note 78, at 986.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

proposed rules that define how influencers, their sponsors, and others can promote cryptocurrencies.[194] Under these proposed regulations, influencers with over 100,000 followers would be obligated to submit any cryptocurrency advertisements they are being paid for to the National Securities Market Commission (CNMV) for approval at least ten days for publication.[195] Failure to comply could result in significant fines up to 300,000 euros (around $342,000).[196] Moreover, influencers receiving payments for cryptocurrency promotions would be required to offer clear and impartial warnings about the associated risks, emphasizing cryptocurrency investments are "not regulated, potentially unsuited for retail investors and could lead to loss of all the assets invested."[197] These regulations aim to raise the bar for influencers, recognizing that their promotions carry greater stakes for consumers in the financial domain, where well informed decision-making is crucial. As the Chief of the CNMV emphasized, failing to cover influencers could create a regulatory gap, allowing deceptive practices to persist.[198]

Another option is to develop educational tools and guidelines tailored specifically to financial influencers, similar to those in Australia. While the FTC provides endorsement guidelines for influencers, these guides are generally focused on conventional consumer products, like fashion or cosmetics, and do not adequately address the unique complexities and obligations inherent in promoting financial products.[199] In Australia, regulatory authorities have created a guide specifically directed at social media influencers who endorse investment products.[200] These guides serve to educate influencers about the rules and best practices related to

---

[194] Jesús Aguado, *Spain Moves to Rein in Crypto-Asset Advertising*, REUTERS (Jan. 17, 2022, 9:02 AM), https://www.reuters.com/business/autos-transportation/spain-moves-rein-crypto-asset-advertising-2022-01-17/.

[195] *Id.*

[196] Daniel Dombey, Joshua Oliver & Sam Fleming, *Spain Leads European Crackdown on Crypto Promotions*, FIN. TIMES (Jan. 17, 2022), https://www.ft.com/content/a119dc9e-189d-4a87-ae02-a81a37260196.

[197] *Id.*

[198] *See id.* ("If influencers [aren't] covered there would be a backdoor to avoid regulation.").

[199] *See* FTC Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255 (2023).

[200] *See Discussing Financial Products and Services Online*, AUSTRALIAN SEC. & INVS. COMM'N (Mar. 2022), https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

financial product endorsements.[201] They also provide specific examples and scenarios to help influencers better understand how and when the laws apply to them.[202]

Additionally, Australia sets a noteworthy example by requiring influencers who provide financial product advice or arrange for their followers to deal in a financial product to hold an Australian Financial Services License.[203] Operating a financial service business without the necessary license in Australia can result in both civil and criminal penalties.[204] The Australian Securities and Investments Commission (ASIC) offers comprehensive guidance and examples for influencers. It clarifies that influencers who receive benefits or payments in exchange for posting about a financial product are likely providing financial product advice, indicating an intention to influence their audience.[205] ASIC further defines what constitutes "[a]rranging for a person to deal in a financial product."[206] Sharing a unique link to a financial trading platform in which they receive a commission for is considered providing a financial service, necessitating a license.[207] In contrast, merely sharing the names or details of a platform does not qualify as a financial service.[208] Furthermore, Australia's regulations prohibit influencers from posting misleading or deceptive content related to financial products or services.[209] They require all statements made by influencers to be truthful, accurate, and substantiated.[210] Predictions regarding financial products, such as future returns or risk levels, must be supported by reasonable grounds.[211]

Incorporating some of these approaches from other countries into U.S. regulations can help protect consumers from misleading or harmful financial

---

[201] *See id.*

[202] *See id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] *Id.*

[208] *Id.*

[209] *Id.*

[210] *Id.*

[211] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

information promoted by influencers on social media platforms. Such measures will encourage transparency, accountability, and ethical marketing practices, ultimately fostering a safer environment for individuals navigating the complex world of cryptocurrency investments.

C. Expanded Consumer Education

Another essential aspect of regulation is education and outreach to investors. According to the International Organization of Securities Commissions, investor education is a "well-established and important regulatory tool for addressing (and preventing ex-ante) retail investor harm."[212] A recent study established a strong correlation between financial literacy and cryptocurrency ownership, indicating that enhanced financial literacy significantly influences the decision to own cryptocurrency, even when accounting for other factors such as age, income, and digital activity.[213] Individuals with higher financial literacy exhibited a decreased likelihood of owning cryptocurrencies, highlighting the need for further financial education to guide informed decision-making in this emerging digital asset class.[214]

To ensure effective education and outreach, regulatory bodies should establish a dedicated website or resource center that provides accurate and reliable information about cryptocurrencies, and conduct outreach campaigns through social media and other channels to reach a wider audience.[215] For example, the Coronavirus.gov website previously provided accurate information about the virus and how to prevent its spread, and the government utilized social media platforms to provide timely updates and communicate important information to the public.[216] Similarly, the government can work with experts and academics to provide education and outreach to citizens about cryptocurrency investing, to prevent misleading information from spreading, and ensure that investors are equipped with the knowledge they need to make informed decisions about cryptocurrency investments.[217]

---

[212] IOSCO REPORT, *supra* note 190, at 44.

[213] Santiago Carbo-Valverde, Pedro J. Cuadros-Solas & Francisco Rodriguez-Fernandez, *Cryptocurrency Ownership and Biases in Perceived Financial Literacy* 32 (July 14, 2023), https://ssrn.com/abstract=4509931.

[214] *Id.*

[215] *See* IOSCO REPORT, *supra* note 190, at 46.

[216] *See COVID-19*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/index.html (last visited Jan. 18, 2024).

[217] *See* IOSCO REPORT, *supra* note 190, at 46.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

Social media is becoming more influential on investor decision-making, and the pandemic has further accelerated this trend.[218] Recent research reveals that 39% of Gen Z investors rely on *YouTube* for education about investing and personal finance, and 25% use *TikTok* and *Instagram*.[219] Recognizing younger investors' preference for social media-based education, regulators must utilize these platforms for disseminating educational materials. To effectively educate these demographics, U.S. regulators should follow countries like Thailand and France, which integrated *TikTok* into their crypto-asset risk awareness campaigns, targeting younger individuals who prefer digital, video-based financial education.[220]

In addition to traditional educational tools, regulators should consider implementing interactive campaigns or simulations to actively engage investors. For example, Hong Kong regulators developed an online campaign that stimulated the process of falling into an investment scam.[221] They strategically placed web banners on "local discussion forums, mobile investment applications and financial news website[s]."[222] These banners included language that fraudsters typically use to entice potential victims to join scam-related chat groups.[223] Once users clicked on these banners, they were directed to a government webpage that offered warnings about unsolicited stock tips and signs of pump-and-dump schemes.[224] Interactive campaigns like this empower investors by providing practical experience in identifying and avoiding fraudulent schemes.

D. Collaborate with Social Media Platforms

In addition to educating consumers, regulators can collaborate with social media platforms to curtail the dissemination of false or misleading information. Regulators are often constrained in their ability to take immediate action against harmful content, as social media platforms are the ones who have real-time access to

---

[218] *Id.*

[219] Sienna Wrenn, *Top Financial Literacy Education Gaps Across Generations*, INVESTOPEDIA (Apr. 4, 2022), https://www.investopedia.com/financial-literacy-survey-5223919.

[220] *See* IOSCO REPORT, *supra* note 190, at 45.

[221] *Id.* at 53.

[222] *Id.*

[223] *Id.*

[224] *Id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

the material and the capacity to quickly identify and remove harmful content.[225] On the other hand, while social media platforms possess the authority to regulate content on their sites, their interests may not always align with those of regulators.[226] Consequently, cooperation between regulators and social media platforms is vital in preventing the dissemination of false or misleading information.

Regulators can offer valuable resources and guidance to social media companies on the implementation of policies designed to safeguard consumers from false or fraudulent information regarding cryptocurrencies. For instance, regulators may recommend that social media companies introduce clear labels that provide real-time warnings when users encounter suspicious investment advice.[227] Research has shown that such labeling can prevent misinformation from being shared and reposted, thereby reducing its spread.[228] During the coronavirus pandemic, the World Health Organization worked with tech companies to devise content moderation strategies such as tagging or removing misinformation, along with promoting credible sources from recognized health authorities.[229] Similar strategies, such as placing a warning about the potential for false information on a post about cryptocurrency accompanied by a link to a webpage offering further information, can be employed to prevent the dissemination of false or fraudulent information.[230] Moreover, regulators can work in tandem with these tech companies to develop algorithms and tools that can identify and flag misinformation.[231] This could involve training machine learning models or utilizing artificial intelligence to detect fraudulent conduct and to identify patterns of behavior that are common among bad

---

[225] *See* Caroline Atkinson, Paul Barrett, Lynda Clarizio, Dipayan Ghosh, John Haigh, Thomas Melia, Michael Posner, Vivian Schiller & Clint Watts, *Recommendations to the Biden Administration on Regulating Disinformation and Other Harmful Content on Social Media* 4 (Harvard Univ. Mossavar-Rahmani Ctr. for Bus. & Gov't, Working Paper No. 2021-02, 2021), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/FWP_2021-02.pdf.

[226] *Id.*

[227] Stefanou, *supra* note 78, at 988.

[228] Erica O'Connell, *Navigating the Internet's Information Cesspool, Fake News and What to Do About It*, 53 U. PAC. L. REV. 251, 264 (2022).

[229] Malaka Gharib, *WHO Is Fighting False COVID Info on Social Media. How's That Going?*, NPR (Feb. 9, 2021, 11:26 AM), https://www.npr.org/sections/goatsandsoda/2021/02/09/963973675/who-is-fighting-false-covid-info-on-social-media-hows-that-going.

[230] Stefanou, *supra* note 78, at 988.

[231] *See* IOSCO REPORT, *supra* note 190, at 55–57.

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu

actors.[232] Such tools would enable social media companies to quickly identify harmful content, and either label or remove it, thereby preventing the spread of misleading information.[233]

By working together, regulators and social media platforms can develop innovative and proactive solutions to protect consumers from the risks associated with false or fraudulent information about cryptocurrencies. Together, they can create effective content moderation strategies, provide users with reliable information, and prevent bad actors from exploiting consumers.

V. CONCLUSION

In summary, the current legal framework surrounding cryptocurrency on social media falls short in providing adequate protection to investors. The cryptocurrency market, as a disruptive new asset class, has been greatly influenced by social media, yet the lack of regulation has resulted in the rise of fraudulent activities. Given the susceptibility of cryptocurrencies to market manipulation, it is imperative that lawmakers take appropriate measures to safeguard the interests of consumers. Collaborative cross-agency initiatives, guidance for social media influencers, consumer education, and working with social media companies are some of the actions that regulators can take to address the risks associated with cryptocurrency on social media. Through such measures, regulators can help protect investors and prevent a repeat of past financial crises.

---

[232] *See id.*

[233] *See id.*

ISSN 0041-9915 (print) 1942-8405 (online) ● DOI 10.5195/lawreview.2024.1022
http://lawreview.law.pitt.edu