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Cryptocurrency Regulation Remains Hazy

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By: Benjamin F. Gould

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Experienced investors in cryptocurrencies have become accustomed to dramatic fluctuations in the value of their investments, particularly when U.S. government representatives make public statements about their views on the comprehensive regulation of cryptocurrencies. While certain activities related to the issuing and trading of cryptocurrencies, such as taxation and money laundering, are regulated by various agencies within the U.S. government, there is currently no comprehensive regulatory framework in existence for the regulation of cryptocurrencies. Several events in the last month would seem to indicate that the path to comprehensive cryptocurrency regulation by the United States government is anything but clear. Based on the lack of consensus amongst regulators and policymakers in the United States government, it would also appear that the development and implementation of a regulatory framework for cryptocurrencies is not imminently achievable.

In the United States, the regulatory bodies which would seem most likely to regulate cryptocurrency in the future would be the Federal Reserve, which regulates private banks, the Securities and Exchange Commission (SEC), which regulates the issuance and trading of securities, and the Commodity Futures Trading Commission (CFTC), charged with the regulation of derivatives and commodities. Despite having publicly commented in recent years about the risks to financial stability posed by cryptocurrencies, the chairman of the Board of Governors of the Federal Reserve System stated in a congressional hearing on September 30, 2021 that the Federal Reserve has no intention to ban or limit cryptocurrencies. Similarly, the chairman of the SEC, Gary Gensler, has repeatedly stated that he believes the cryptocurrency markets need regulation to ensure “full and fair disclosure” for investors, but also recently opined to a congressional committee that the SEC does not have the legal authority to ban cryptocurrencies.

The CFTC clearly views itself as a key regulator of cryptocurrency markets based on a recent increase in high profile regulatory actions by the CFTC, and the current chairman of the CFTC has gone on record with his opinion that bitcoin and ether are clearly commodities subject to regulation by the CFTC. However, the CFTC's authority is limited only to the regulation of commodities and derivatives, which would preclude its ability to enact more broad-based regulatory measures. With a number of legislators in the U.S. Congress making public statements that the authority for comprehensive regulation of cryptocurrencies rests only with Congress, but no such legislation having been introduced, it appears that the consensus required within the U.S. government for comprehensive action is nowhere near being reached.

