Navigating the Current and Future Landscape of Blockchain and Cryptocurrency Regulation in the United States

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Introduction

The recent executive order, signed on March 9, 2022, from President Biden on digital assets represents an important step in the evolving relationship between the United States government and the digital asset industry. This article aims to analyze the present status and future potential of blockchain regulation in the United States using the executive order[1] as the foundational material.

The Current Landscape of Blockchain Regulation

President Biden's executive order acknowledges the rapid expansion of digital asset markets and their implications for various sectors, including consumer protection, financial stability, systemic risk, crime prevention, national security, human rights, financial inclusion, and climate change. The acknowledgment of these diverse implications underlines the significance of digital assets in today's world and the need for an evolved, integrated approach to their regulation. The executive order acknowledges the multifaceted implications of the rapid expansion of digital asset markets, and there are two significant takeaways from this.

Firstly, blockchain technology is deeply permeating all layers of our society. Its impact is comprehensive, from bitcoin's value recognition and currency payment functionality, Ethereum's transaction records and direct execution capabilities, peer-to-peer financial activities of decentralized exchanges, to decentralized information replacing state-backed information storage. It also includes Ponzi schemes and guaranteed return investment products that continually arise under the guise of these novel technologies. Rather than merely affecting investment choices, the ongoing development of blockchain will influence all aspects of people's lives and could even disrupt national sovereignty and existing systems.

Secondly, the existing regulations are struggling to keep up with the applications and developments of blockchain technology. The issues mentioned in the executive order—consumer protection, financial stability, systemic risk, crime prevention, national security, human rights, financial inclusion, and climate change—are all areas currently regulated by existing systems. These systems, however, were designed before the advent of the blockchain industry and were not tailor-made for blockchain or

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[1] CoinDesk, "Here's the Full Text of Biden's Executive Order on Cryptocurrency," https://www.coindesk.com/policy/2022/03/09/heres-the-full-text-of-bidens-executive-order-on-cryptocurrency/ (last visited June 27, 2023).

cryptocurrencies. Consequently, blockchain applications have become fundraising tools difficult to manage under current regulations. The unregulated markets that result is extremely unpredictable and not transparent. This creates a huge lack of information between those who use money services and those who provide them, often leaving consumers penniless. In response to fraud cases, the SEC promptly imposes broad restrictions on blockchain-related businesses, creating a regulatory approach that swings between laxity and strictness, a logic hard to discern. There are plenty of problems such as the inconsistency of Federal governance, as continued use of the 1946 Howey Test, which struggles to accurately differentiate blockchain applications subject to federal governance and the overlapping jurisdictions of the CFTC, FinCEN, and the SEC led to the same digital asset activities being regulated by multiple agencies, thereby increasing regulatory complexity and costs. This is particularly burdensome for financial institutions required to establish and maintain AML/CFT procedures in accordance with the regulations of different agencies[2].

I welcome President Biden's executive order because it signals that the U.S. is prepared to take blockchain technology seriously. For an industry with such vast developmental potential, this attitude is undoubtedly the right one.

The Role of Central Bank Digital Currencies (CBDCs)

Analyzing the content of the recent executive order, it is clear that Central Bank Digital Currencies (CBDCs) have captured the intense interest of both U.S. Congressional members and the public. As a digital form of legal tender, CBDCs carry many potential advantages and impacts. Firstly, CBDCs could enhance the efficiency of financial transactions and reduce costs, opening the financial system to a broader population. Secondly, CBDCs may stimulate economic growth and reinforce the U.S.'s pivotal position in the global financial system.

This scenario is set against the backdrop of an ongoing contest for supremacy between China and the U.S., mirrored in the development of CBDCs. China has secured an early lead with the introduction of a pilot program for its digital yuan, or e-CNY. For instance, in Changshu City, Jiangsu Province, public officials have begun receiving their salaries entirely in e-CNY. Over the 2023 Chinese New Year period, a cashless payment system was used to distribute e-CNY gifts worth over 180 million yuan[3]. China's vantage in the CBDC space is further cemented by established payment systems like Alipay and WeChat Pay, which are intrinsically connected with users' identity

[2] Kevin P. Milewski. "CFTC, FinCEN, and SEC Warn of Crypto AML Enforcement." The National Law Review. Available at: https://www.natlawreview.com/article/cftc-fincen-and-sec-warn-crypto-aml-enforcement. (last visited June 27, 2023).

[3] 葉祖昀,黃妤珊，中國用「數位人民幣」付公務員薪水！瞄準三大應用場景，背後還有哪些野心？Available at: https://web3plus.bnext.com.tw/article/710?. (last visited June 27, 2023).

information and asset accounts.

Conversely, the United States has approached CBDCs with more caution, commencing its development later. However, the U.S. acknowledges the importance of retaining its leadership in global finance, now prioritizing CBDC research and development, strategic payment system planning, and establishing an international regulatory framework for digital currencies[4].

Besides, the landscape is rapidly evolving. Notably, China, along with other BRICS nations (Brazil, Russia, India, South Africa), is striving to challenge the supremacy of the U.S. dollar. According to recent reports, an ambitious strategic alliance of 24 nations, led by the core BRICS countries, is forming with the explicit goal of contesting the role of the U.S. dollar as the world's reserve currency[5]. Several nations including Saudi Arabia, Iran, Argentina, UAE, Algeria, Egypt, Bahrain, Indonesia, as well as certain East and West African nations, have shown interest in joining this alliance[6].

Adding to the multi-dimensional challenge against the U.S. dollar, BRICS is in the early phases of creating a new global currency, potentially backed by precious metals like gold. The proposition of this new currency presents a formidable alternative to the U.S. dollar. More details about this initiative are anticipated at the forthcoming BRICS summit in South Africa in late August.

In this intricate scenario, the question arises whether the development of a U.S. dollar CBDC will suffice to counter these multifaceted challenges. While the U.S. is heading in the right direction with its strategic planning and regulatory framework, the threats posed by alternative global currencies and alliances cannot be overlooked. As the situation unfolds, it underscores the complexity of the global financial system and the potential seismic shifts that lie ahead."

In the face of mounting challenges from BRICS nations and their emerging alliances, the development of a U.S. dollar Central Bank Digital Currency (CBDC) could indeed serve as a robust strategy for the United States. A U.S. dollar CBDC could be instrumental in extending the dollar's global reach, particularly in nations with less advanced financial systems, thus fortifying its position of dominance. Furthermore, CBDCs are designed to facilitate faster, more efficient cross-border transactions. An efficient digital version of the U.S. dollar could revolutionize international trade,

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[4] Steven L. Schwarcz. "Regulating Digital Currencies: Towards an Analytical Framework." Proceedings of the CPMI-FSB Joint Workshop on Digital Currencies. Available at: https://www.bis.org/events/cpmi_ptfop/proceedings/paper13.pdf. (last visited June 27, 2023).

[5] DW, "A New World Order? BRICS Nations Offer Alternative to West," https://www.dw.com/[add exact article URL] (last visited July 27, 2023).

[6] The Daily Hodl, "24 Nations Align Against US Dollar As BRICS Looks to Launch New Global Currency," https://dailyhodl.com/2023/07/05/brics-has-ambition-to-create-new-global-currency-and-challenge-us-dollar-in-medium-to-long-term-says-official/ [1] (last visited July 27, 2023).

offering a compelling alternative to traditional banking systems and boosting the attractiveness of the U.S. dollar. Moreover, by offering a CBDC, the U.S. can promote financial inclusion and modernize its own financial system, potentially bringing unbanked and underbanked populations into the digital economy. Importantly, launching a U.S. dollar CBDC gives the U.S. the leverage to define the rules of its use, setting a precedent for global regulatory standards for digital currencies. The development of a U.S. dollar CBDC, therefore, serves not just as a defensive move against emerging global currencies and alliances, but also as a proactive measure that anticipates the digitization of finance.

Ensuring Financial Stability and Market Integrity

The lack of robust investor protection measures in the crypto asset space is a significant concern that needs to be addressed to ensure financial stability and market integrity[7]. Unlike traditional financial markets, the decentralized and unregulated nature of cryptocurrencies exposes investors to risks such as fraud, market manipulation, and scams.

The failure of FTX, once the third-largest crypto exchange, serves as a stark example of the urgent need for robust investor protection measures within the crypto asset space[8]. The reasons why internal regulations should have been in place at FTX become clear when considering the factors leading to its downfall.

FTX's bankruptcy resulted from allegations concerning its relationship with Alameda Research and issuance of unbacked FTT tokens, which led to significant customer withdrawals. In addition, the SEC charged Samuel Bankman-Fried, the former CEO and co-founder of FTX, with orchestrating a scheme to defraud equity investors in the crypto trading platform, revealing significant risks within unregulated intermediaries[9]. This highlights a significant issue: the lack of proper internal checks and balances and the dependence on autocratic leaders within the crypto market[10].

Internal regulation in FTX could have fostered a transparent, accountable, and trustworthy environment that would ensure the integrity of the platform and the security

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[7] CoinDesk, "Biden Issues Long-Awaited US Executive Order on Crypto," https://www.coindesk.com/policy/2022/03/09/biden-issues-long-awaited-executive-order-on-crypto/ (last visited June 27, 2023).

[8] State Street, "The Impact of the FTX Bankruptcy on Global Regulatory Efforts," https://www.statestreet.com/us/en/asset-manager/insights/ftx-bankruptcy-regulation (last visited July 27, 2023).

[9] OMFIF, "FTX bankruptcy will show importance of regulatory approach," https://www.omfif.org/2023/02/ftx-bankruptcy-will-show-importance-of-regulatory-approach/ (last visited July 27, 2023).

[10] WilmerHale, "FTX Bankruptcy—What Could Be Next for the Industry?," https://www.wilmerhale.com/insights/client-alerts/20221130-ftx-bankruptcy (last visited July 27, 2023).

of its users' assets. Such regulatory measures might include strict financial and operational audits, rigorous compliance procedures, and enhanced due diligence in its relationship with other entities such as Alameda Research.

If federal laws specific to crypto assets had been in place, they could have served as external checks to the operations of platforms like FTX. They could have imposed clear standards for financial transactions, transparency, and accountability, limiting the potential for market manipulation or fraudulent activities. If such laws existed, the behavior of FTX officials might have been curtailed or prevented entirely.

Moving forward, the lessons from FTX's bankruptcy should guide the creation of comprehensive regulatory frameworks, both internal and external, that consider the unique nature of cryptocurrencies. To safeguard investors, regulatory frameworks should be developed with adequate investor safeguards, including disclosure requirements, anti-fraud measures, and dispute resolution mechanisms.

Currently, observations indicate that despite the proactive enforcement actions taken by regulatory bodies like the SEC, including but not limited to Ripple Labs Inc., Telegram Group Inc. and so on. There is still a lack of comprehensive compliance regulations in the industry. While the enforcement actions serve as a deterrent, true Ensuring Financial Stability and Market Integrity can only be achieved by establishing stable and industry-appropriate legal compliance procedures at the earliest.

Present observations indicate that despite the Ripple Labs Inc. judgement which ruled that not all crypto tokens are securities[11], there remains a considerable lack of comprehensive compliance regulations within the industry. While these enforcement actions and court rulings serve as a point of reference and potential deterrent, the assurance of financial stability and market integrity can only truly be accomplished by establishing robust, industry-specific legal compliance procedures.

The recent SEC lawsuit against Binance has faced criticism for its lack of communication and explanation regarding regulatory compliance. Binance has reportedly reached out to the SEC multiple times to inquire about how to comply with regulations, but the SEC has not provided any clear responses[12]. This has raised concerns about the fairness and reasonableness of the SEC's decision to file the lawsuit against Binance in June 2023. The lack of a proper dialogue and guidance from the SEC has left Binance in a difficult position, unable to ensure compliance despite its efforts to seek clarity and alignment with regulatory requirements. The SEC's failure to provide clear responses to Binance's inquiries undermines the goal of establishing a fair and

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[11] Reuters, "'Ripple' effect from ruling in SEC crypto case could be a game-changer for class action defendants," https://www.reuters.com/legal/government/ripple-effect-ruling-sec-crypto-case-could-be-game-changer-class-action-2023-07-14/ (last visited July 27, 2023).

[12] SEC Suits Say Nearly 70 Cryptos Are Securities But Proving It Will Be Difficult, Forbes, available at https://www.forbes.com/sites/digital-assets/2023/06/29/sec-suits-say-nearly-70-cryptos-are-securities-but-proving-it-will-be-difficult/(last visited June 27, 2023).

predictable regulatory landscape.

As an attorney representing Binance, given the complexities and unpredictability noted in the aftermath of the Ripple case[13], I would take several steps:

1. Regulatory Compliance: First and foremost, ensure Binance is fully compliant with existing laws and regulations in all jurisdictions where it operates.
2. Monitor Regulatory Landscape: Keep an eye on the evolving regulatory landscape and adapt accordingly. This would include a thorough understanding of court rulings such as the Ripple Labs case and their potential impact on Binance's operations.
3. Engage with Regulators: Proactively engage with regulators to better understand their concerns, perspectives, and potential future regulation. This could also involve working with regulators to help shape upcoming rules and regulations.
4. Investor Protection: Implement comprehensive investor protection measures, including transparency in transactions, consumer protection, and robust risk management practices.
5. Education and Communication: Educate users about the legal and financial risks associated with crypto assets, ensuring they understand the volatile nature of the market, and the fact that not all crypto assets are considered securities.

These steps could help mitigate risk and position Binance as a responsible player in the crypto industry, in alignment with regulatory expectations and court precedents.

Fostering International Cooperation

The end of the executive order highlights the global nature of digital assets and emphasizes the importance of international cooperation to ensure high regulatory standards, prevent arbitrage, and maintain financial stability in the metaverse. It recognizes the need for international standards in digital payment architectures and central bank digital currencies (CBDCs), aiming for a harmonized global digital financial ecosystem. The metaverse, currently being developed by companies like Facebook, will require extensive international collaboration despite its current challenges. As the metaverse transcends national borders, the transition between the metaverse and the physical world will heavily rely on internationally established standards and cooperation. In the metaverse, decentralized records serve as its foundation, requiring all data to be recorded and publicly accessible. Assets within the

[13] Holland & Knight, "SEC v. Ripple: When a Security Is Not a Security," https://www.hklaw.com/en/insights/publications/2023/07/sec-v-ripple-when-a-security-is-not-a-security (last visited July 27, 2023).

metaverse, such as virtual cars and properties, hold the potential for significant value and the ability to convert them into real-world assets. However, the conversion between metaverse currencies and real-world currencies, as well as the linkage between metaverse and real-world assets, pose complex challenges that surpass the existing regulatory frameworks and international cooperation. When envisioning the future of the metaverse, it becomes evident that it will necessitate a significantly higher level of regulatory oversight than what is currently in place.

In light of the evolving landscape, it is crucial to consider the legal implications surrounding the metaverse. International arbitration may play a vital role in resolving disputes that arise within the metaverse. Arbitration offers a flexible and adaptable framework that can accommodate the unique aspects of metaverse-related disputes, such as ownership rights, virtual real estate, and illicit activities[14]. Additionally, several legal issues require attention, including ownership and intellectual property rights associated with cryptocurrency and non-fungible tokens (NFTs), regulations for virtual real estate ownership, trespassing, and illicit activities, as well as data protection and privacy concerns arising from personal data processing[15]. As the metaverse blurs the boundaries between virtual and real-world interactions, legal frameworks must be established to address user safety, potential harm, and inappropriate behavior within this digital environment. This entails defining legal personas for avatars, establishing accountability criteria, and determining jurisdictional considerations[16].

The International Monetary Fund (IMF) and the World Bank Group could indeed play a critical role in fostering international cooperation on the subject of metaverse regulation and the associated digital financial ecosystem. As the metaverse poses novel and complex challenges that surpass existing regulatory frameworks, these international institutions could leverage their global reach, influence, and expertise to foster a harmonized approach to these issues.

The IMF, with its mission to ensure the stability of the international monetary system, could play a key role in overseeing the harmonization of digital payment architectures and Central Bank Digital Currencies (CBDCs). It could also work to guide the regulation of metaverse currencies and the conversion between metaverse and real-world assets[17]. By providing policy advice and addressing global challenges like

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[14] Reed Smith LLP. "International Arbitration and the Metaverse." Perspectives. Available at: https://www.reedsmith.com/en/perspectives/2022/03/international-arbitration-and-the-metaverse. (last visited June 27, 2023).

[15] Pin Lean Lau. "The Metaverse: Three Legal Issues We Need to Address." Available at: https://theconversation.com/the-metaverse-three-legal-issues-we-need-to-address-175891. (last visited June 27, 2023).

[16] Thomson Reuters Institute. "Lawyers & the Metaverse." Available at: https://www.thomsonreuters.com/en-us/posts/legal/lawyers-metaverse/. (last visited June 27, 2023).

[17] IMF F&D, "A New Era of Digital Money," https://www.imf.org/external/pubs/ft/fandd/2021/06/online/digital-money-new-era-adrian-mancini-

currency substitution, the IMF could help mitigate the risk of fragmentation and maintain monetary control across the metaverse. Furthermore, the IMF's track record in providing financial assistance to countries for balance of payments adjustment and offering surveillance and technical assistance positions it well to meet the evolving needs of the global economy in the face of digital innovation[18].

Similarly, the World Bank Group, with its focus on reducing poverty and promoting sustainable development, could contribute by ensuring that the metaverse and its underlying financial systems are accessible and inclusive. By providing financing, policy advice, and technical assistance to developing countries, the World Bank Group could help these countries adopt the digital infrastructure necessary to participate effectively in the metaverse. The institutions within the World Bank Group could also help strengthen the private sector in developing countries and enhance their capacity to engage in the metaverse[19].

Given their broad member base and international standing, the IMF and World Bank Group are uniquely positioned to foster the required international collaboration and establish standards for the metaverse, helping ensure a seamless transition between the digital and physical worlds.

Conclusion

As we journey deeper into the realm of digital assets, it becomes increasingly imperative that we address the challenges that this rapidly evolving landscape presents. The unregulated nature of crypto assets, the need for robust internal and external regulatory measures, the growing metaverse, and the intricate complexities therein, all underscore the need for a comprehensive and proactive approach towards regulation.

The downfall of FTX serves as a potent reminder of the potential pitfalls in the crypto asset space, highlighting the need for robust investor protection measures, both at the institutional and industry-wide level. It's an urging call for the necessity of proactive measures like strict financial and operational audits, rigorous compliance procedures, and enhanced due diligence. Furthermore, the proactive engagement of platforms like Binance with regulatory bodies, a model that should be emulated industry-wide, is a testament to the need for clear, industry-specific legal compliance procedures to ensure financial stability and market integrity.

Simultaneously, the metaverse – an exciting frontier that transcends physical boundaries – presents new and unique challenges that necessitate a harmonized global

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griffoli.htm (last visited July 27, 2023).

[18] IMF F&D, "Bullet Train," https://www.imf.org/en/Publications/fandd/issues/2022/09/Bullet-train-Adrian-Mancini-Griffoli (last visited July 27, 2023).

[19] IMF F&D, "Explaining Central Bank Digital Currency to Mom," https://www.imf.org/external/pubs/ft/fandd/2021/03/what-are-central-bank-digital-currencies-mancini-griffoli.htm (last visited July 27, 2023).

approach. The metaverse calls for a renewed commitment to international cooperation, a commitment underpinned by entities such as the IMF and the World Bank. Their mandate to ensure a fair and stable global financial system positions them to be the shepherds of this digital revolution, guiding us towards a future where digital and physical realities intertwine seamlessly.

The emergence of the metaverse, coupled with the increasingly mainstream role of cryptocurrencies, necessitates that we not only adapt our existing regulatory frameworks but also envision new ones that cater to the distinctive challenges these spaces present. It is only through such an approach that we can truly unlock the full potential of these technologies while safeguarding the rights and interests of investors and users alike.

Ultimately, the objective is to harness the power and potential of these digital revolutions in a manner that promotes innovation, ensures financial stability, protects investors, and fosters international cooperation. The road ahead may be challenging, but with concerted efforts and global collaboration, a balanced and effective regulatory framework is within our reach. As the whole word are navigating in this digital era, let this article serve as a guiding beacon, illuminating the path to regulatory integrity in the realm of digital assets and the metaverse.