

Feds: 'Cryptos are securities. Change my mind.'

Article

News roundup: On Wednesday, eight crypto firm executives, including **Alesia Haas, the CFO of Coinbase**, will testify before a US House banking panel regarding the “challenges and benefits of financial innovation.”

- Last week, the Office of the Comptroller of the Currency told banks **they need permission to hold cryptos or stablecoin-backing deposits.**

- Earlier this week, federal bank regulatory agencies—including the **Federal Reserve Board**, **Federal Deposit Insurance Corporation**, and **Office of the Comptroller of the Currency (OCC)**—issued a joint statement on their work related to crypto assets.
- A few days later, at an industry conference in New York, **former SEC Chairman Jay Clayton**, who now advises crypto companies, interviewed **Gary Gensler**, the current SEC chief.

What's going on: Amid the public-forum policy discussions, **the federal agencies are developing a crypto asset road map to clear up** whether banks can legally conduct certain crypto activities.

The agencies started by focusing on building commonly agreed-on crypto terminology, identifying key risks related to cryptos, and analyzing current crypto regulations to see how they can be built out and clarified.

The regulators have reviewed [crypto custody](#), facilitating customer crypto transactions, loans collateralized by crypto assets, and payments—including with stablecoins.

Meanwhile, crypto firms that have enjoyed this past year's boom in adoption are braced for more regulatory oversight.

- Crypto lobbying interests have **collectively spent \$2.4 million** this year, in part to combat a tax-reporting regulation in the bipartisan infrastructure framework President Biden signed into law last week.
- [Coinbase](#) set aside a **\$4 billion cash pile** anticipating increased compliance costs. It also axed its crypto-lending product launch due to SEC pushback.

Factors Influencing Cryptocurrency and Blockchain Adoption at Multinational Corporations According to Executives Worldwide, April 2021

% of respondents

Clarity on regulations

52.4%

Continuous need to seek out new sources

40.8%

Continuous need to improve data quality

36.8%

Continuous need to improve data security

35.2%

Greater profits

34.4%

Retaining and attracting customers

30.4%

Entering and regaining markets

25.2%

Organization leader's support

18.0%

Buy-in and support of other organizations

17.2%

Source: PYMNTS.com, "Cryptocurrency, Blockchain and Cross-Border Payments: How Multinationals Leverage New Technology to Optimize Business Payments" in collaboration with Circle, Nov 11, 2021

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What's at stake: The global crypto market cap hovered around **\$2.6 trillion in value** last week, per [CoinMarketCap](#).

But what is this crypto thing? Clayton, Gensler, and federal agencies all suggest crypto tokens are “largely” used to raise money for entrepreneurs—and, as such, meet “**the time-tested definitions of an investment contract and are thus under the securities laws,**” in Gensler’s words.

This would mean **crypto issuers that fail to register with the SEC are violating the law and could be subject to enforcement actions.** But despite the seeming consensus, the government still hasn’t legally classified cryptos—so agencies like the Fed and the SEC have limited powers over them. This means crypto issuers are not held to standard disclosure requirements.

- Insiders have more information than investors when companies raise money through unregistered tokens, and investors don’t receive the “full and fair disclosure” to make prudent risk/reward assessments. Disclosure requirements would address this imbalance.
- This also leads to money-laundering concerns and fears that bad actors could use crypto to transfer funds and sidestep the traditional banking system.

Operating with limited and changing guidance, crypto players fear sudden shutdowns or lawsuits—like the SEC’s now year-old [action](#) against **Ripple Labs** for offering unregistered securities.

- They worry that innovation and growth in crypto-related services will be severely inhibited through “regulation by enforcement,” [according](#) to Stuart Aldroty, Ripple’s general counsel.
- They claim the government is trying to legislate a technology without first understanding it and as a result is [blind](#) to the collateral consequences.

What's coming? Crypto players like Coinbase, **Binance**, and Ripple have [weighed in](#) with policy proposals, “wish lists” for crypto regulation, and vociferous [criticism](#) of how regulators decided that cryptos were securities.

But as we [predicted](#), **cries of government overreach have fallen on deaf ears.** Blockchain technology and trends change quickly, but securities laws do not. Regulators are moving toward formal rule-making with their usual deliberation.

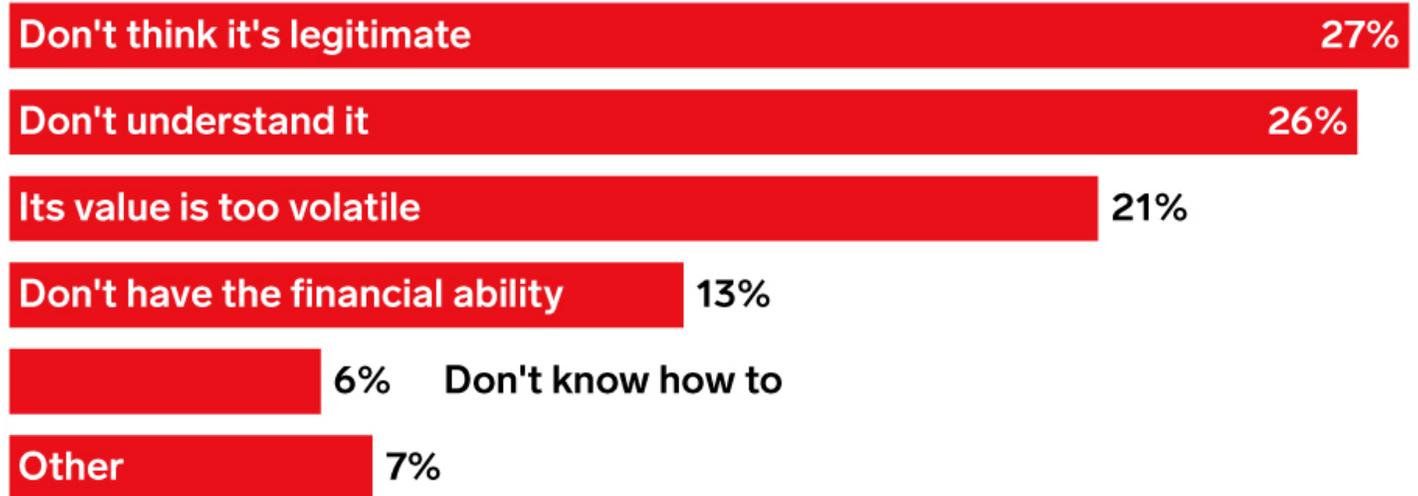
They've picked up the pace a little—working in “[policy sprints](#),” in Agile methodology—which has led **Morgan Stanley** analysts to predict they'll hand down guidance [sooner than expected](#). But the analysts also cautioned that moving too fast could lead to “measures that inadvertently inhibit adoption of cryptocurrencies.”

There's no question that the entry of the SEC will change the way in which cryptocurrency markets work. But regulatory measures are unlikely to prohibit the assets altogether or [“spread peanut butter”](#) over the booming crypto market. They're more likely to promote mainstream acceptance:

- Crypto markets won't flourish without a regulatory framework. **52.4% of executives at multinational companies want [clarity](#) on regulations** before engaging in crypto and blockchain tech.
- **Regulation will also reassure wary consumers about the [legitimacy](#) of digital assets and alleviate concerns they're risking their nest eggs in a lawless [Wild West](#).**
- More jurisdictions aligning on crypto regulation will allow crypto firms to safely innovate and create new products and services.
- This will also help firms create risk management strategies that protect consumers and the financial system.

Main Reason for Not Investing in Cryptocurrency According to US Adults, week of May 13, 2021-week of Sep 8, 2021

% of responses



Note: n=18,171

Source: CivicScience as cited in company blog, Sep 8, 2021

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