On the Spot:
Remarks at “Regulatory Transparency Project Conference on Regulating the New Crypto Ecosystem: Necessary Regulation or Crippling Future Innovation?”

**[](https://www.sec.gov/about/commissioners/hester-m-peirce)**

**[Commissioner Hester M. Peirce](https://www.sec.gov/about/commissioners/hester-m-peirce)**

**June 14, 2022**

The topic of today’s event is “regulating the new crypto ecosystem.” It is a hot topic of conversation in Washington, DC. The conversation reminds me of a book for toddlers, Are You My Mother?[[1]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn1%22%20%5Co%20%22) In that book, a newly hatched bird searches for his mother. He asks a cat, dog, hen, cow, and front-end loader, each of which disappoints the baby bird with the news that it is not the baby bird’s Mom. Rest assured, baby bird and his actual mother are finally reunited. The crypto industry seems to be on a similar journey; only it is not looking for a mother, but is out looking for its regulator. In a bureaucratic twist on the story in the children’s book, in our story, every agency claims to be the regulator. So crypto is looking to Congress to decide who ought to regulate it. A bipartisan bill announced last week attempts to answer that question.[[2]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn2%22%20%5Co%20%22) Some people in the crypto industry are celebrating the allocation of certain authorities to the Commodity Futures Trading Commission (“CFTC”) instead of the Securities and Exchange Commission (“SEC”). This view is likely rooted in a disappointment that the SEC has not used more proactively the authorities it already has to sensibly regulate crypto. I understand and share that disappointment, but I am hopeful that we can change course and use our existing and any prospective authorities wisely.

Watching the SEC refuse over the past four years to engage productively with crypto users and developers has prompted feelings of disbelief at the SEC’s puzzling, out-of-character approach to regulation. The Commission, of course, occasionally has explained its actions—or inaction—but those explanations often have been confusing, unhelpful, and inconsistent. I have communicated my discomfort with the Commission’s behavior to my colleagues and the public, though the results to date seem to be underwhelming: the agency continues to brush off crypto products and services seemingly without consideration for the consequences. A concrete example, and the one on which I will dwell for a few minutes today, is the Commission’s persistent refusal to approve a spot bitcoin exchange-traded product.

Before going any further, let me give you a few important disclaimers. First, the views that I am expressing are my own views and not necessarily those of the SEC or my fellow Commissioners. Second, this speech is not an endorsement of bitcoin, bitcoin exchange-traded products, or any other crypto-related asset. People—exercising skepticism great enough to quell the dangerously seductive fear of missing out—should choose what to put in their portfolios when and in what quantities. Whether assisted by a financial professional or flying solo, investors should invest based on factors such as their own present and anticipated future circumstances, informed risk assessments of the asset they are considering buying and the portfolio of assets in which it will sit, and a candid gut-check of their stomach for market volatility and financial loss. They should be aware, as recent events illustrate, that past performance of an asset is no guarantee of future performance. People should not look to regulators to make investment decisions for them, and regulators should not seek to play that role. Third, although many of the early bitcoin exchange-traded product denials were issued by the staff under authority delegated from the Commission, my criticisms about these denials and other policy choices are leveled at the Commission, not the staff. The staff appropriately is following the Commission’s lead, and the Commission has not been leading well.

1. **It is time for the Commission to stop denying categorically spot crypto exchange-traded products.**

The Commission’s resistance to a spot bitcoin ETP is becoming almost legendary. “When is the Commission going to approve a bitcoin exchange-traded product?” is one of the most frequent questions I get. For the last four years, my answer has been approximately the same, “I have no idea,” tinged with a note of disbelief. Although bitcoin is a new asset, the concept of affording access to commodities through an exchange-traded product is not new. The Commission long has allowed investors to gain exposure to a number of non-securities instruments through these pooled investment vehicles, which have been a boon to investors, as their shares trade continually on national stock exchanges at market prices, much as a regular stock would. Through a process of creating and redeeming shares of the fund, institutional traders called authorized participants help to keep the price of these shares in line with the price of the assets in the investment pool.

The Commission has added crypto-specific hurdles to what used to be fairly straightforward processes for approving these pooled investment vehicles—whether exchange-traded funds (ETFs) under the Investment Company Act of 1940 (1940 Act) or commodity-based exchange-traded products (ETPs) under the Securities Act of 1933 (Securities Act). Indeed, although in the past eight months both ETFs and ETPs based on bitcoin futures have begun trading, the Commission has continued to disapprove ETPs based on the spot bitcoin market.

The reasons for this resistance to a spot product are difficult to understand apart from a recognition that the Commission has determined to subject anything related to bitcoin—and presumably other digital assets—to a more exacting standard than it applies to other products. In a 2018 letter, for example, the Division of Investment Management expressed a willingness to engage with 1940 Act fund sponsors interested in incorporating crypto assets into their funds, but outlined “significant outstanding questions concerning how funds holding substantial amounts of cryptocurrencies and related products would satisfy the requirements of the 1940 Act and its rules.”[[3]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn3%22%20%5Co%20%22) Those questions related to custody, valuation, liquidity, the arbitrage mechanism for ETFs, and manipulation and other risks. Asking these questions is not inherently problematic and might even be characterized as positive because it sparked important thought on these issues. The Commission, however, gave few external indications of progress on grappling with, let alone resolving, these issues.

Retail funds that tried to incorporate exposure to bitcoin into their portfolios encountered a series of challenges. The disclosure review process plays an important investor protection role, but the Commission has many subtle ways of exercising merit regulation, often without a clear legal basis for doing so. Certain funds looked for ways to get exposure to bitcoin, such as holding over-the-counter products, investing in companies with crypto exposure, or putting small sleeves of bitcoin futures in their portfolios. Closed-end funds, which do not provide daily redemption, were the first to incorporate bitcoin futures. But even as late as May 2021, the staff reminded closed-end funds “seek[ing] to invest in the Bitcoin futures market to consult with the staff, prior to filing a registration statement, about the fund’s proposed investment, anticipated compliance with the Investment Company Act and its rules, and how the fund would provide for appropriate investor protection.”[[4]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn4%22%20%5Co%20%22) The statement acknowledged that some open-end funds “are investing or seek to invest in Bitcoin futures and these funds believe they can do so consistent with” the securities laws, but warned that the staff would be watching their regulatory compliance and the effect of these funds’ “investments in Bitcoin futures on investor protection, capital formation, and the fairness and efficiency of markets.”[[5]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn5%22%20%5Co%20%22) Review to ensure that funds clearly disclose risks is an important Commission function, as is watching what is happening in the markets, but when we attempt to step into the shoes of the marketplace to assess whether a fund’s holdings are unacceptably risky, we have gone too far. The Commission appropriately works with fund sponsors to ensure that they disclose what kinds of assets funds are holding and the associated risks, but we have no authority to tell funds that they cannot hold particular assets.

Although a number of funds managed to hold bitcoin futures, many sponsors wanted to provide exposure to bitcoin in an exchange-traded form. The Commission continued to signal to would-be sponsors of such products that it would not look favorably if they sought to register such products. In October 2021, however, the SEC finally allowed futures-based bitcoin ETFs to begin trading. Enabling the change was a clear signal from Chair Gary Gensler, who pointed to the 1940 Act protections, along with the CFTC’s oversight of the futures markets, as a key basis for his comfort with such products.[[6]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn6%22%20%5Co%20%22) These funds proved popular, but demand for a spot-based product remains because futures products are more expensive to manage and may not as closely track the spot price.

Until this year, all of the futures-based exchange-traded products that were approved fell under the 1940 Act. In April of this year, however, the Commission approved the first non-1940 Act ETP holding bitcoin futures for listing and trading on an exchange. This approval implicitly acknowledged that the protections afforded by the 1940 Act are not relevant to the question of whether approval under the Securities Exchange Act of 1934 (Exchange Act) is appropriate. The protections the 1940 Act affords are, as industry commenters have highlighted, “designed and intended to protect investors against self-interested managers.”[[7]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn7%22%20%5Co%20%22) In other words, as another commenter described, “the 1940 Act’s protections do not address and thus are not relevant to the concern the Commission has repeatedly invoked to deny [Exchange Act] Rule 19b-4 applications for spot Bitcoin ETPs . . . : market manipulation and fraud in the underlying Bitcoin market.”[[8]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn8%22%20%5Co%20%22) Some observers found this development notable because spot-based bitcoin products would likewise be Securities Act products that would need to be approved by the Commission for listing and trading on an exchange under the Rule 19b-4 process. The Commission still has not approved any ETP based on the spot bitcoin market.

Despite the success of futures-based ETP applicants over the past eight months, using the same tired reasoning, the Commission keeps denying spot bitcoin ETPs. The Commission requires an applicant, which is the exchange on which the ETP will be listed, to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and in particular, the requirement that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”[[9]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn9%22%20%5Co%20%22) In demonstrating consistency with Section 6(b)(5), the exchange applying to list the ETP has a choice—show a surveillance agreement or a unique resistance to manipulation.[[10]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn10%22%20%5Co%20%22)

The first option is for the exchange to show that it has a comprehensive surveillance-sharing agreement with a regulated market or group of markets of significant size. An acceptable surveillance-sharing agreement would provide for the unimpeded sharing of information about market trading activity, clearing activity, and customer identity. Significant market size is determined, for example, by showing a reasonable likelihood that a person attempting to manipulate the ETP would have to trade on that market to successfully manipulate the ETP. Only then would a surveillance-sharing agreement assist in detecting and deterring misconduct. One way that a market could count as being significant in size is if it is reasonably likely that a person seeking to manipulate the ETP would also have to trade on that market to succeed in doing so and if trading in the ETP would be unlikely to be the predominant influence on prices in that market.[[11]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn11%22%20%5Co%20%22)

Alternatively, the exchange seeking to list the ETP can show that the underlying bitcoin markets are uniquely resistant to fraud and manipulation. The standard requires a level of resistance higher than what exists in traditional commodity markets or equity markets.

According to a majority of the Commission, no exchange successfully has made the case using either approach. An ETP disapproval order issued last month embodies the now standard denial rationale. The exchange here opted for alternative two—showing that the bitcoin markets are uniquely resistant to fraud and manipulation:

As with the previous proposals, the Commission here concludes that the Exchange’s assertions about the general liquidity, growth, and acceptance of the bitcoin market do not constitute other means to prevent fraud and manipulation sufficient to justify dispensing with the requisite surveillance-sharing agreement. While the Exchange states that the significant liquidity in the spot market and resultant minimal impact of market orders on the overall price of bitcoin mitigates the risk associated with potential manipulation, such assertion is general and conclusory.[[12]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn12%22%20%5Co%20%22)

The reasoning underlying the Commission’s denials of spot bitcoin ETPs is itself general and conclusory, which makes it difficult to know how approval could be achieved. The Commission does not grapple seriously with important characteristics of these products and the underlying spot markets, including the widely distributed nature of trading in bitcoin and the methods used by these ETPs to calculate their net asset value. It does not take into account the evidence from other jurisdictions where regulators have approved similar products. Absent a wholesale rejection of its now standard analysis, how does the Commission put itself in a position where it could approve these products? With each new disapproval, the SEC doubles down on its reasoning.

The continuing refusal of the SEC to approve a spot bitcoin ETP is puzzling to many agency observers. The bitcoin market has grown, matured, become more liquid, and attracted more, and more sophisticated (in the traditional financial market sense of the word), participants. At thirteen years old and as of about an hour ago, bitcoin has a market cap of approximately $430 billion and is trading at around $22,500.[[13]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn13%22%20%5Co%20%22) Bitcoin investors comprise natural persons and institutions, including regulated market participants. Many insurance companies, asset managers, university endowments, pension funds, large banks, and public companies have invested in bitcoin or are considering doing so. Increasingly sophisticated infrastructure has built up around bitcoin and crypto markets more generally. Like the traditional finance landscape, the crypto terrain is dotted with trading platforms, trading firms, venture capital firms, hedge funds, law firms, and accounting firms. In contrast to 2018 when the Division of Investment Management wrote that “we are not aware of a custodian currently providing fund custodial services for cryptocurrencies,”[[14]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn14%22%20%5Co%20%22) custodians now compete to offer their services.[[15]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn15%22%20%5Co%20%22) A cornerstone of institutional participation, bitcoin futures have been trading in the United States since late 2017. The daily notional value of open interest in the Chicago Mercantile Exchange (“CME”) bitcoin futures market hovers around $1.7 billion.[[16]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn16%22%20%5Co%20%22)

Spot ETPs have launched in other countries without incident and with great investor interest. In Canada, for example, the first spot bitcoin ETP reached $1 billion Canadian dollars in assets under management a month after launch in 2020.[[17]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn17%22%20%5Co%20%22) Spot crypto ETPs are also popular in Europe, where there are more than 70 crypto ETPs with an estimated total of $7 billion in assets.[[18]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn18%22%20%5Co%20%22) ETPs in these other jurisdictions have functioned, even in volatile markets.[[19]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn19%22%20%5Co%20%22)

Why is the SEC a holdout? At what point, if any, does the increasing maturity of the bitcoin spot markets and the success of similar products elsewhere tip the scale in favor of approval? Of course, the facts and circumstances of each application matter, but will I ever stop hearing that well-worn question: “When a spot bitcoin ETP?”

The approval of futures-based products first under the 1940 Act and more recently of a similar Securities Act product for listing and trading under the Exchange Act might appear to open a door to changing course on spot-based products, but the language of these orders provides precious little basis for optimism that the Commission will approve a spot bitcoin product. The futures-based approvals turn on the regulated nature of the futures market, the CME, which is where the assets held by the ETP themselves trade. The Commission explains, somewhat tautologically, that the CME “can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts.”[[20]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn20%22%20%5Co%20%22) This reasoning obviously does not apply to spot-based products, and it is difficult to see how it is even relevant for an instrument that trades on hundreds of exchanges worldwide.

It is true that, in these approvals, the Commission reiterated its position that its concerns about the lack of a surveillance-sharing agreement in filings seeking to list and trade spot-based ETPs could be addressed “by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the spot bitcoin ETP would have to trade on the CME,”[[21]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn21%22%20%5Co%20%22) but the Commission also went out of its way to state that the evidence does not demonstrate this type of connection between the two markets—an observation that was not necessary to the Commission’s approval of the futures-based ETPs.[[22]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn22%22%20%5Co%20%22) Perhaps the Commission could be persuaded that the similarity of pricing mechanisms for the futures-based product and the spot-based product undermines its rationale for treating them differently. The Commission’s willingness to be persuaded, though, turns on whether the Commission’s primary concern is legal and logical coherence with our approvals of bitcoin futures products and other commodity-based products and not, say, using the prospect of a spot bitcoin ETP approval as an inducement to get exchanges to come in and register.

Why does this matter? Investors might prefer a spot bitcoin ETP to other options, and we ought to care about what investors want. This kind of product, depending on how it is designed, could enable retail investors to gain exposure to bitcoin through a securities product that, because of the effective ETF arbitrage mechanisms, likely would track the price of spot bitcoin closely. It likely would be inexpensive to manage such a fund, so fees likely could be low. It could sit conveniently in investors’ brokerage accounts alongside other securities. It would allow investors to buy and sell their bitcoin exposure the same way they buy and sell other exchange-listed products. Investment advisers too would find it easier to assist clients seeking exposure to bitcoin if a straightforward spot-based ETP were available.

Some people might object to retail exposure to bitcoin, and thus might oppose a product that makes it easier for retail investors to get exposure to bitcoin. Making it harder to access bitcoin, however, does not mean investors will not find other ways of doing so. Some do and will continue to hold bitcoin directly. For the reasons I mentioned above, however, many investors want to get exposure to bitcoin through US securities markets. They have several options for doing so, but these methods can be a less direct and more expensive way to get exposure to bitcoin. They include holding shares of a fund that has bitcoin futures exposure, buying an over-the-counter product that lacks the arbitrage mechanism to keep prices in line with underlying bitcoin prices; buying a foreign spot-based ETPs, which are generally unavailable to U.S. retail investors;[[23]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn23%22%20%5Co%20%22) or buying a bitcoin futures-based ETP, which is unlikely to track spot bitcoin exactly and may be more costly given the complexities in managing such a fund. Are we really serving investors by keeping them in products that only approximate the exposure they are trying to get and might cost more? The Commission has deemed this question as irrelevant in its consideration of ETP applications.[[24]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn24%22%20%5Co%20%22)

Other people might object to a spot ETP on the grounds that its advocates stand to gain a tremendous amount when a spot ETP launches. Many advocates of a spot ETP are bitcoin investors who want to see the price go up. An ETP certainly could influence the price of bitcoin, but bitcoin markets do not always perform as people anticipate. A spot-based ETP, because of the ease with which it can be bought and sold, would be a way for more voices to weigh in on the value of bitcoin. Other types of ETPs have helped markets more efficiently incorporate information. Detractors of underlying ETP assets, therefore, can take comfort in the contribution that liquid, efficient markets play in working out the real value of those assets, whether they are shares of company, gold, or bitcoin.

Some bitcoin “hodlers” might themselves object to the introduction of a bitcoin ETP. One feature of a non-sovereign, censorship resistant mechanism for storing and transferring value is its ability to function outside of the traditional financial system. Why drag it inside tradfi and thus expose it to the meddling of incumbent financial firms and incumbent governmental regulators? To these people I say, the concern for liberty and personal autonomy that drives you to prefer “we-at” to fiat ought also cause you to reject a government that arbitrarily limits people’s investment options.

1. **It is time for the Commission to embark on a more productive path to crypto regulation.**

The Commission’s reluctance to approve a spot bitcoin ETP is of a piece with its more general reluctance to build a regulatory framework for crypto using standard regulatory processes. Instead the Commission has tried to cobble together a regulatory framework through enforcement actions. Enforcement *is* the appropriate tool to address the rampant fraud in the crypto space. One-off enforcement actions that represent the first time the Commission has addressed a particular issue publicly, however, are not the right way to build a regulatory framework. For that, Congress gave us other tools, including the authority to craft tailored exemptions and notice-and-comment rulemaking.

Enforcement actions short-cut the regulatory process. Consider the recent $100 million BlockFi settlement with the SEC and 32 states.[[25]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn25%22%20%5Co%20%22) BlockFi is one of a number of companies that offers crypto lending products, which were determined to be securities products. The Commission, in its settlement, set out a path pursuant to which BlockFi could register under the Securities Act and register or take steps to qualify under an Investment Company Act exemption from registration. The specific path laid out in settlement agreement crafted between BlockFi and the SEC, if successful, is likely to become the standard for regulation of crypto lending. Other crypto lenders, users of those services, consumer advocates, and other interested parties were not part of those negotiations, but the results affect them.[[26]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn26%22%20%5Co%20%22) A preferable approach would have been, once we identified crypto lending as implicating the securities laws, to commence a rulemaking or invite crypto lenders and other members of the public to come in and discuss the appropriate path forward through careful use of our exemptive authority. We might similarly consider, rather than a reactive enforcement approach, a proactive regulatory approach with respect to non-fungible tokens, stablecoins, decentralized exchanges, decentralized autonomous organizations, and other crypto innovations.

People doing things in crypto need to consider whether the laws, including the securities laws, govern their behavior. For this to happen in a more efficient and comprehensive way, the Commission needs to provide a level of clarity that heretofore has been absent. The SEC could think through issues with people in the crypto community with an eye toward achieving our regulatory objectives pragmatically. By doing so, we could both facilitate good actors’ compliance and inhibit bad actors much more effectively than we do through resource-intensive and delayed enforcement actions.

We have a number of suggestions and examples of how to proceed. My colleague Commissioner Caroline Crenshaw set up a special mailbox through which she solicited commentary about regulatory issues related to DeFi.[[27]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn27%22%20%5Co%20%22) Why not make that a Commission-wide request for input? Similarly, J.W. Verret, in a recent petition to the Commission, recommended opening a comment file so that people could discuss open questions about how to reconcile our securities laws with today’s technology.[[28]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn28%22%20%5Co%20%22) The Financial Accounting Standards Board, having heard a lot of concern about the current accounting standards for digital assets, recently opened a project to improve financial reporting for digital assets, including recognition, measurement, presentation, and disclosure.[[29]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn29%22%20%5Co%20%22) A group of crypto lawyers has put together a number of concrete proposals—an iteration on my safe harbor proposal[[30]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn30%22%20%5Co%20%22) and an exempt offering framework for digital assets[[31]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn31%22%20%5Co%20%22)—that could be starting points for Commission regulatory action in this space. CFTC Commissioner Caroline Pham and I recently called for the two agencies to conduct joint roundtables.[[32]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn32%22%20%5Co%20%22) Our two agencies have worked effectively in the past in areas where our jurisdictions are closely linked, and we can do so here also. Finally, a recent rule proposal that seems to implicate crypto platforms generated a number of comments from people and organizations willing to work with us on crafting an appropriate regulatory approach.[[33]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftn33%22%20%5Co%20%22) People stand ready to work through the myriad questions and regulatory concerns around crypto. Now all we have to do is extend them a hand.

1. **Conclusion**

Although, in today’s remarks, I have been quite critical of the SEC’s approach, I remain optimistic that we can change course. The agency just celebrated its 88th birthday last week, and there is no better age than 88 to start grappling with difficult, interesting regulatory questions around crypto to keep the agency’s mind sharp.

Regardless of what one thinks of crypto, it is in both investors’ and the SEC’s interest to take a more productive approach. Using the tools Congress has given us and drawing on public input, we can provide regulatory clarity, facilitate iterative experimentation, and pursue bad actors in the crypto space. I am looking forward to the upcoming panel, which I hope will include discussion of ways in which we can make substantive progress on regulating crypto responsibly.

[[1]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref1%22%20%5Co%20%22) P.D. Eastman, Are You My Mother? (1960).

[[2]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref2%22%20%5Co%20%22) A bill to provide for responsible financial innovation and to bring digital assets within the regulatory perimeter, S. 4356, 117th Cong. (2022).

[[3]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref3%22%20%5Co%20%22) Letter from Dalia Blass, Div. of Inv. Mgmt. Dir., SEC to Paul Schott Stevens, President and CEO, Inv. Co. Inst. and Timothy W. Cameron, Asset Mgmt. Grp. Head, Sec. Indus. and Fin. Mkt. Ass’n (Jan. 18, 2018) (https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm).

[[4]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref4%22%20%5Co%20%22) Div. of Inv. Mgmt. Staff, *Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market*, SEC (May 11, 2021), https://www.sec.gov/news/public-statement/staff-statement-investing-bitcoin-futures-market.

[[5]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref5%22%20%5Co%20%22) *Id.*

[[6]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref6%22%20%5Co%20%22) *See* Gary Gensler, Chair, SEC, Remarks before the Aspen Security Forum (Aug. 3, 2021), (https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03) (“I anticipate that there will be filings with regard to exchange-traded funds (ETFs) under the Investment Company Act (’40 Act). When combined with the other federal securities laws, the ’40 Act provides significant investor protections. Given these important protections, I look forward to the staff’s review of such filings, particularly if those are limited to these CME-traded Bitcoin futures.”). *See also* SEC Off. of Inv. Educ. and Advoc. and CFTC Off. of Customer Educ. and Outreach, Funds Trading in Bitcoin Futures – Investor Bulletin, SEC (June 10, 2021), https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib\_fundstrading (“Funds regulated under the Investment Company Act of 1940 and its rules (‘funds’) are required to provide important investor protections. For example, funds must comply with legal requirements related to valuation and custody of fund assets, and mutual funds and ETFs must comply with liquidity requirements.”).

[[7]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref7%22%20%5Co%20%22) *See* Letter from Kristin Smith, Exec. Dir. and Jake Chervinsky, Head of Pol’y, Blockchain Ass’n, to Vanessa Countryman, Sec’y, SEC (Nov. 29, 2021), at 3 (https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-9411437-263052.pdf).

[[8]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref8%22%20%5Co%20%22) *See* Letter from Davis Polk & Wardwell, to Vanessa Countryman, Sec’y, SEC (Nov. 29, 2021), at 4 (https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-9410842-262990.pdf).

[[9]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref9%22%20%5Co%20%22) 15 U.S.C. § 78f(b)(5).

[[10]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref10%22%20%5Co%20%22) The discussion of these two options is based on the analysis first set forth in Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust, Exchange Act Release No. 83723, 83 Fed. Reg. 37579 (published July 26, 2018).

[[11]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref11%22%20%5Co%20%22) *See*, *e.g.*, Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Teucrium Bitcoin Futures Fund under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts), Exchange Act Release No. 94620, 87 Fed. Reg. 21676, 21678 (published April 6, 2022) [hereinafter Order Granting Approval to List and Trade Shares of the Teucrium Bitcoin Futures Fund].

[[12]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref12%22%20%5Co%20%22) Order Disapproving a Proposed Rule Change to List and Trade Shares of the One River Carbon Neutral Bitcoin Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Exchange Act Release No. 94999, 87 Fed. Reg. 33548, 33553 (published May 27, 2022).

[[13]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref13%22%20%5Co%20%22) *Real-time Bitcoin Price*, CoinDesk, https://www.coindesk.com/price/bitcoin/ (last visited June 14, 2022).

[[14]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref14%22%20%5Co%20%22) *See* Letter from Dalia Blass, Div. of Inv. Mgmt. Dir., SEC to Paul Schott Stevens, President and CEO, Inv. Co. Inst. and Timothy W. Cameron, Asset Mgmt. Grp. Head, Sec. Indus. and Fin. Mkt. Ass’n (Jan. 18, 2018) (https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm).

[[15]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref15%22%20%5Co%20%22) Tomio Geron, *Companies Compete to Be Cryptocurrency Custodians,*The Wall Street Journal (Sept. 17, 2019), https://www.wsj.com/articles/companies-compete-to-be-cryptocurrency-custodians-11568772060.

[[16]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref16%22%20%5Co%20%22) CME Bitcoin Futures Report (Jun. 3, 2022), https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin\_Futures\_Liquidity\_Report.pdf.

[[17]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref17%22%20%5Co%20%22) *Purpose Investments Bitcoin ETF Crosses $1 Billion in Assets Under Management on One-Month Fund Anniversary*, GlobeNewswire (Mar. 18, 2021), https://www.globenewswire.com/news-release/2021/03/18/2195821/0/en/Purpose-Investments-Bitcoin-ETF-Crosses-1-Billion-in-Assets-Under-Management-on-One-Month-Fund-Anniversary.html.

[[18]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref18%22%20%5Co%20%22) Tanzeel Akhtar, *Crypto Exchange-Traded Products Are Blossoming in Europe*, CoinDesk (Mar. 1, 2022, 2:57 PM), https://www.coindesk.com/markets/2022/03/01/crypto-exchange-traded-products-are-blossoming-in-europe/; Submission by the Sponsor to the Commission in connection with a meeting between representatives of the Sponsor, BZX, and Commission staff on September 8, 2021, https://www.sec.gov/comments/sr-cboebzx2021-039/srcboebzx2021039-250110.pdf [hereinafter Sponsor Submission] (comparing numbers with the with btc-focused analysis from the SEC).

[[19]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref19%22%20%5Co%20%22) *See* Letter from Paul Grewal, Chief Legal Officer, Coinbase to Vanessa Countryman, Sec’y, SEC (Mar. 3, 2022) (https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-20118548-271429.pdf) (noting Figures 10-16 presenting data on foreign spot-based ETPs). Our statutory authority is unique, but the foreign experiences with bitcoin ETPs are nevertheless helpful windows into how a US ETP might perform.

[[20]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref20%22%20%5Co%20%22) Order Granting Approval to List and Trade Shares of the Teucrium Bitcoin Futures Fund, *supra*note 11, at 12.

[[21]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref21%22%20%5Co%20%22) Order Granting Approval to List and Trade Shares of the Teucrium Bitcoin Futures Fund, *supra*note 11, at n.46.

[[22]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref22%22%20%5Co%20%22) Order Granting Approval to List and Trade Shares of the Teucrium Bitcoin Futures Fund, *supra*note 11, at n.47. The Commission has repeatedly suggested that this connection could be demonstrated by using a lead-lag analysis showing that futures prices consistently lead prices in the spot market. *See*, *e.g.*, Order Disapproving a Proposed Rule Change to List and Trade Shares of the NYDIG Bitcoin ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Exchange Act Release No. 94395, 87 Fed. Reg. 14932, 14938 n.91 (published March 10, 2022) (stating that “[t]he Commission considers [lead-lag] analysis to be central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the CME bitcoin futures market”).

[[23]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref23%22%20%5Co%20%22) The Canadian Purpose Bitcoin ETF, for example, offers a class of units that is U.S. dollar denominated. *See* Initial Public Offering, *Purpose Bitcoin ETF*at 18(Feb. 11, 2021), https://documents.purposeinvest.com/Docs/BTCC/prospectus/en/Purpose%20Bitcoin%20ETF%20Prospectus%202021-02-11.pdf. *See also* Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Exchange Act Rel. No. 93822, 86 Fed. Reg. 73360, 73365 (published Dec. 17, 2021) (noting that “several U.S. exchange-traded funds are using Canadian bitcoin ETPs to gain exposure to spot bitcoin.”).

[[24]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref24%22%20%5Co%20%22) *See* Order Granting Approval to List and Trade Shares of the Teucrium Bitcoin Futures Fund, *supra*note 11 at 21682 (dismissing access to purportedly preferable investment options as a basis for approval of listing and trading new products).

[[25]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref25%22%20%5Co%20%22) Press Release, SEC, BlockFi Agrees to Pay $100 Million in Penalties and Pursue Registration of its Crypto Lending Product (Feb. 14, 2022) (https://www.sec.gov/news/press-release/2022-26).

[[26]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref26%22%20%5Co%20%22) *See* Hester M. Peirce, Commissioner, SEC, Statement on Settlement with BlockFi Lending LLC (Feb. 14, 2022), https://www.sec.gov/news/statement/peirce-blockfi-20220214.

[[27]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref27%22%20%5Co%20%22) Caroline A. Crenshaw, Commissioner, SEC, Remarks at SEC Speaks: Digital Asset Securities – Common Goals and a Bridge to Better Outcomes (Oct. 12, 2021), https://www.sec.gov/news/speech/crenshaw-sec-speaks-20211012.

[[28]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref28%22%20%5Co%20%22) Petition from J.W. Verret, to Vanessa Countryman, Sec’y, SEC (via email) (2022) (https://www.sec.gov/rules/petitions/2022/petn4-782.pdf).

[[29]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref29%22%20%5Co%20%22) *Accounting for exchange-traded digital assets and commodities*, Fin. Acct. Standards Bd. (May 11, 2022), Topic 1, https://fasb.org/page/PageContent?pageId=/meetings/pastmeetings.html&isStaticpage=true#vc.

[[30]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref30%22%20%5Co%20%22) *SafeHarbor2.0,*GitHub (Apr. 13, 2021), https://github.com/CommissionerPeirce/SafeHarbor2.0*;*Statement, Hester M. Peirce, Commissioner, SEC, Token Safe Harbor Proposal 2.0 (Apr. 13, 2021), https://www.sec.gov/news/public-statement/peirce-statement-token-safe-harbor-proposal-2.0.

[[31]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref31%22%20%5Co%20%22) *Reg-X-Proposal-An-Exempt-Offering-Framework-for-Token-Issuances*, Github (Apr. 26, 2022), https://github.com/LeXpunK-Army/Reg-X-Proposal-An-Exempt-Offering-Framework-for-Token-Issuances; *SafeHarbor X*, Github (Jan. 8, 2022), https://github.com/lex-node/SafeHarbor-X.

[[32]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref32%22%20%5Co%20%22) Caroline D. Pham & Hester M. Peirce, *Making progress on decentralized regulation — It’s time to talk about crypto together*, The Hill (May 26, 2022 5:30 PM), https://thehill.com/opinion/congress-blog/3503277-making-progress-on-decentralized-regulation-its-time-to-talk-about-crypto-together/.

[[33]](https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference%22%20%5Cl%20%22_ftnref33%22%20%5Co%20%22) *See, e.g.*, Letter from Michelle Bond, Chief Exec. Officer, Ass’n for Digit. Asset Mkts. (ADAM) to Vanessa Countryman, Sec’y, SEC (Apr. 18, 2022) (https://www.sec.gov/comments/s7-02-22/s70222-20124008-280142.pdf) (“ADAM and its members are committed to working with lawmakers and regulators to promote responsible innovation in the digital asset space in a manner that expands the availability of financial services.”); Letter from Renata K. Szkoda, Chair, Glob. Digit. Asset & Cryptocurrency Ass’n to SEC (Apr. 18, 2022) (https://www.sec.gov/comments/s7-02-22/s70222-20123954-280109.pdf) (“it is not too late for the SEC to study and consult with the industry and the CFTC about how exchange and ATS rules might be applied to platforms that trade what the SEC might seek to classify as investment contracts as well as non-security commodities.”); Letter from Sheila Warren, Chief Exec. Officer, Crypto Council for Innovation to Vanessa Countryman, Sec’y, SEC (Apr. 18, 2022) (https://www.sec.gov/comments/s7-02-22/s70222-20124040-280166.pdf) (“We look forward to collaborative and constructive engagement to move closer toward a clear and effective regulatory environment for crypto—one that not only protects investors and furthers the remainder of the SEC’s mission, but that also preserves the competitive edge of the United States as the leading innovator of financial technologies that will drive the world through the 21st century.”).

# Renegade Pandas: Opportunities for Cross Border Cooperation in Regulation of Digital Assets

**[](https://www.sec.gov/about/commissioners/hester-m-peirce)**

**[Commissioner Hester M. Peirce](https://www.sec.gov/about/commissioners/hester-m-peirce)**

**Singapore**

**July 30, 2019**

## Remarks before the SUSS Convergence Forum: Inclusive Blockchain, Finance, and Emerging Technologies

Thank you, Robby [Greene], for that kind intro. I am delighted to see that Robby, once my research assistant, has clearly gone on to bigger and better things. I also am delighted to be here in Singapore, by some accounts the global crypto-hub,[[1]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn1) and appreciate the hospitality of the Singapore University of Social Sciences. I am particularly grateful for the opportunity to learn about the developments in crypto in Asia, which, as I do not need to tell this audience, is home to a very active part of the crypto community. Before I get too far along in my remarks, I should note that the views I express are my own and not necessarily those of the United States Securities and Exchange Commission or my fellow Commissioners.

One view in which I am undoubtedly alone is my perspective on pandas. Black-and-white pandas are all the rage in the United States. They do look adorable, but I find them a bit pedestrian. Red pandas, the so-called lesser pandas, are much more interesting. Being in Asia brings me closer to red pandas’ natural habitat than I have ever been before, although I believe that the only red pandas in Singapore are residents of River Safari Wildlife Park. We also have red pandas back in Washington, DC at the zoo, and it was one of these red pandas that first sparked my interest in the species. Several years ago, one of our local red pandas, “Rusty,” made a daring break for freedom by climbing up a tree and out of his cage into the wide world beyond the zoo.[[2]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn2) During his days of freedom, the renegade red panda developed quite a following, particularly after a Twitter account appeared in his name. As it turns out, Rusty was not alone among his brethren in his quest for freedom. A Google search for red panda escapes reveals something of a trend: red pandas have escaped from zoos in Virginia, Washington state, North Dakota, Australia, and Ireland, just to name a few. A few of these red pandas have been on the loose for quite some time. What a contrast red pandas offer to black and white pandas who sit comfortably within the view of the PandaCam[[3]](https://www.sec.gov/news/speech/speech-peirce-073019%22%20%5Cl%20%22_ftn3%22%20%5Co%20%22) looking cute and munching on bamboo. Although I am not advocating zoo breaks, red pandas’ seemingly innate desire to explore the world outside the fences has an inherent appeal as a symbol of human innovation.

Innovators explore the world on the other side of the fences of conventional wisdom and experience by thinking about new ways to solve old problems. They find cheaper, better, safer, and faster ways to get things done. For regulators, such fence-jumping can be unwelcome. It is easier to deal with entities that we know doing things in ways with which we are familiar than to confront new technologies with new players and think about how those technologies and market participants fit within our regulatory scheme. We would rather turn on the PandaCam to get a glimpse of the staid and predictable black-and-white pandas than head into the outside world to see what those adventurous red pandas are up to. Yet, innovation in blockchain and cryptocurrency has forced us to look beyond the PandaCam and challenged us to think about how better to accommodate innovation in general. Because so much of the activity is taking place outside the United States, we have to think about our regulation with a sensitivity for cross-border considerations, cooperation, and what I call co-learning.

The challenges of cross-border regulation are, of course, not new at all, but they have accelerated over the years as technology has facilitated the integration of our world, and with it, the financial markets. Although there have been overseas investors in American markets since the colonial period, more recent innovations in technology—especially the internet—have greatly facilitated the integration of our world. Cross border transactions now occur almost instantaneously, without either party ever leaving its own country’s shores. In 1987, then Acting SEC Chairman Charles Cox testified before a congressional subcommittee, “[a]s a result of a number of factors, including technological advances and the removal of restrictions on foreign participation by many of the world’s securities markets, internationalization is more than a developing trend, it is a present day reality.”[[4]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn4) A law text from 1991 remarks on the increased globalization of the capital markets facilitated by “fiber optics, the microwave relay, and the satellite[.]”[[5]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn5)

Today, more than 800 foreign issuers are registered with the SEC. Foreign investors regularly deploy their assets to fund U.S.-listed companies, foreign companies come to the U.S. to raise funds, and U.S. investors proactively seek opportunities for portfolio growth and diversification in markets overseas. Investment advisers, broker-dealers, clearinghouses, and trading venues from outside the U.S. serve clients in the U.S. In addition, our derivatives markets are global; companies using derivatives markets to manage their risk routinely transact with counterparties based in another country. Our regulation of companies based in other jurisdictions has required both the U.S. Congress and the Commission to think through how our rules can and should apply to companies wishing to access our capital markets. In some cases, we have simply required that any company, foreign or domestic, that wants to solicit investment in the U.S. to comply with the same set of rules. This approach is not always appropriate, however, and so we have, in other cases, exempted certain foreign issuers from our registration requirements, as in the case of the exemption available under Regulation S for foreign private issuers, or permitted them to use different standards, as in the case of permitting them to file financial statements using IFRS instead of U.S. GAAP.

Regulators’ concerns today about the cross-border regulation of digital assets in many ways mirror concerns they have more generally in regulating cross-border market activity. These concerns include the fear that we will not be able to examine foreign entities registered to operate in our markets and, more generally, that our ability to enforce domestic rules will be stymied by our inability to regulate outside our borders. We also think about whether the application of our regulatory framework matches investor expectations. If the investors, the platforms on which they are transacting, and the companies in which they are investing are all operating in one country, the investor knows which country’s rules apply, but things get more complicated when multiple jurisdictions are involved. Another regulatory concern is understanding which assets will be available to meet domestic obligations if a foreign entity fails and what rules will govern the wind-down of the institution and protect any affected investors.

The cross-border regulatory concerns in crypto track these standard concerns, but are magnified for several reasons. First, countries all over the world are still in the early stages of determining how and whether to regulate crypto. Uncertainty about what the rules in any particular country are makes a determination of which country’s rules apply even more difficult. Second, much of the allure of cryptocurrency is the ability to join people from all across the world in common enterprises, which makes pinning down a domicile for these enterprises difficult. Third, the precise nature—currency, commodity, security, derivative—of many of the assets at issue is difficult to determine. Accordingly, academics and regulators are thinking through cross-border questions in the digital asset context.[[6]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn6)

To address cross-border regulatory concerns, regulators have had to follow the lead of the markets and work with their foreign counterparts. The International Organization of Securities Commissions, a consortium of many of the world’s securities regulators, was formed in the 1980s and provides a forum for national securities regulators to share information and discuss policy goals across international borders.[[7]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn7) The Organization for Economic Cooperation and Development, which was formed shortly after World War II, has also turned its attention to the implications of cross border regulation in the wake of technological innovation.[[8]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn8) Since the 2007-2009 financial crisis, the Financial Stability Board has facilitated communication and joint exploration of market and regulatory issues by member countries.[[9]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn9) These organizations have recently taken up the question of how best to coordinate regulation of digital assets and distributed ledger technology.

International communication and internationalization of markets need not lead to the internationalization of our regulations. Absent an explicit decision by citizens of a jurisdiction to cede their regulatory authority to an international organization, a jurisdiction should determine what rules work best for its investors and markets. We can look to our fellow regulators for shared consideration of difficult issues and coordination, but not for regulatory directives. In the case of the developing realm of digital asset regulation, many countries are working on regulatory frameworks to address the novel challenges these assets present. Although the existence of many jurisdictions can create regulatory friction, it also can create regulatory competition, which is healthy because it enables us to learn from one another.

This competition, and the opportunity to develop multiple regulatory solutions to a single problem, is a feature of the United States’ own system. As a federation of sovereign states, we have fifty states, plus several territories and the District of Columbia, that create their own laws and own regulatory regimes. In the U.S., we often refer to our states as “laboratories of democracy.” Instead of implementing all policy at the federal level, different states try different policies. Policies that prove to be highly effective can serve as models for federal-level policy, and can inform the development of policy by the other states. Sometimes a regime that is effective for a particular state, however, is not as desirable in other parts of the country, because of differences, for example, in culture, demographics, economy, or size. There are difficulties when state laws conflict, and it is burdensome for a cross-border enterprise to comply with several states’ laws. We have seen the difficulty in the digital asset space as companies have to comply with a multiplicity of state money transmission laws. That said, the benefits of our system typically outweigh the costs. When the costs overwhelm the benefits, Congress sometimes preempts state law. Hence, while we have state securities law, their reach is curtailed by preemption, which leaves the SEC’s rules as the only rules in certain contexts.

Just as states take different approaches and learn from one another in the U.S., crypto regulation affords international regulators the opportunity to learn from one another. I often have expressed my concern that the U.S. will fall behind other countries in attracting crypto-related businesses unless we are more forward-leaning in establishing a regulatory regime with discernible parameters. The U.S. SEC can look to our counterparts overseas for ideas in untangling some of our most difficult legal and policy questions in this area. Other countries, the citizens of which are already actively trading and using crypto currencies, are confronting the same questions we are as they create their own regulatory regimes.[[10]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn10) The resulting regulatory competition will allow us to see what works well and what does not work at all. My fondness for competitive markets extends to regulatory markets.

As I have expressed elsewhere, I would like to see more focused momentum at the U.S. SEC toward finalizing our regulatory regime for digital assets. We have not been sitting idle, however, and I would like to take a few minutes now to outline the steps we have taken. The most basic, but essential, of these steps is our efforts to understand digital asset technology and markets. We established a Strategic Hub for Innovation and Financial Technology, known as FinHub, which coordinates our approach to digital assets. FinHub staff have met with hundreds of market participants to hear what they are working on and where they need regulatory clarity. At the end of May, FinHub held a one-day FinTech Forum to consider issues arising in several key areas of securities law: capital formation, secondary trading and markets, and investment management. The participants explored and provided us with market insight into how initial coin offerings (ICOs) proceed, what issues auditors face in auditing digital assets, how brokers can think about custody, and what investors might consider in deciding to buy digital assets.[[11]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn11)

One of the peculiarities of the U.S. system is the sheer number of regulators. Not only do we have the state-federal allocation of responsibility that I just mentioned, but we have multiple federal financial regulators. The SEC regulates *only* securities; other agencies regulate commodities, currencies, many derivatives, and bank products. Even the federal securities space is shared with a quasi-private regulator, the Financial Industry Regulatory Authority (FINRA), which regulates broker-dealers, and with other non-governmental regulators.

Another notable feature of U.S. law is that the definition of what constitutes a security is a bit nebulous. Unlike many other countries, we do not have an exclusive list of what counts as a “security.” The term of course includes stock, bonds, debentures, notes, puts, calls, and other classic “security” instruments, but it also includes “investment contracts.”[[12]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn12) The courts have defined the investment contract category of securities by considering whether it encompasses particular assets presented in litigation. In the grandfather of these cases, *SEC v. Howey*, our Supreme Court established a test for determining whether something was an investment contract and therefore a security under our laws. *Howey* involved interests in an orange grove, so it is clear that an instrument need not look, smell, or taste like a traditional security in order to be deemed one by our laws. Under *Howey*, something—including something that is a digital asset—is a security if it involves an investment in a common enterprise with an expectation of profits derived solely through the efforts of others.

In July 2017, six months before I joined the Commission, the SEC issued a report on its investigation of the DAO, a decentralized autonomous organization, which had sold digital assets with the intention of using the proceeds of those sales to fund projects, the proceeds of which belonged to token purchasers.[[13]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn13) The DAO’s Curators would review proposed projects and create a whitelist. Token purchasers could vote to select which of these approved projects should be funded, using the proceeds from previous DAO projects. The Commission concluded that in selling these tokens, the DAO had conducted an unregistered securities offering in violation of our federal securities laws because the tokens were securities under *Howey*. Subsequent enforcement actions involving unregistered offerings of digital tokens have repeated the reasoning of the DAO report with more serious consequences for the token projects at issue.[[14]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn14) Other enforcement actions that have focused on fraudulent, rather than simply unregistered, offerings should help the development of the digital asset sector by discouraging people from riding the crypto wave to defraud people.[[15]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn15)

In April of this year, the staff issued a statement outlining a framework for analyzing whether a digital asset may be an investment contract and thus a security under our law.[[16]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn16) The framework includes a lot of factors that someone contemplating a token offering can consider in making this determination. Last month, the SEC staff issued a second guidance document, this time joint with FINRA. Whereas the earlier guidance document addressed the question of when a digital asset may be a security, the more recent guidance considers the questions of how digital asset securities can be custodied in accordance with our rules, how customers who own such securities can be adequately protected, what specific challenges secondary trading may present, and how broker-dealers who hold digital asset securities can comply with other regulatory requirements, such as maintaining proper books and records.[[17]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn17) While many of these questions remain unanswered, the guidance may help to crystalize the outstanding issues for those in the market who are actively pursuing solutions.

The staff has shed some more proactive light on how token offerings can occur within the confines of our existing regulatory framework. Earlier this month, the staff qualified two token offerings under Regulation A+, a streamlined approach to conducting a public offering.[[18]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn18) The staff also issued two no-action letters, in which the staff pledges not to recommend enforcement action by the Commission in connection with two token offerings.[[19]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn19) The conditions that constrain this no-action relief are quite restrictive and the relief is specific to the tokens at issue. FINRA, our partner regulator for broker-dealers, recently approved applications for two non-custodial digital asset broker-dealers, and has indicated that additional approvals could come.

The U.S. SEC is not the only regulator tackling these questions. Singapore, as you likely know better than I do, has been at the forefront of much crypto-related activity, which may be attributable to the clarity it has offered to issuers in this market.[[20]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn20) In a recent paper, Robby Greene and Professor Lee described the link between the clarity of Singapore’s regulatory approach and the leading role Singapore plays as a home to digital asset projects, including notably a relatively high proportion of projects that “have resulted in operational networks or minimum-viable-products.”[[21]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn21) Elsewhere in Asia, regulators have found paths to drawing digital asset offerings into their countries’ regulatory frameworks. Thailand established a regulatory framework in 2018 specifically for digital assets.[[22]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn22) This framework designates some digital assets as cryptocurrency and some as digital tokens, which function like securities, depending on how they are used. Those serving as digital asset brokers, exchanges, or dealers must, in general, obtain a license and comply with specific regulatory requirements. Japan has recently passed legislation to bring securities offerings of digital assets within its existing legal framework for securities offerings.[[23]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn23) This follows its 2017 adoption of a registration regime for cryptocurrency exchanges. In Hong Kong, the Securities and Futures Commission has released guidance stating that security tokens are “likely to be ‘securities’” under Hong Kong securities laws, which is similar to the approach we have taken so far in the U.S. Hong Kong, however, also has issued a circular requiring funds – the virtual currencies of which exceed ten percent of aggregate assets – to be licensed by the SFC, and another which places cryptocurrency trading platforms within a regulatory “sandbox.”[[24]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn24)

In Europe, Malta, a relatively early adopter of crypto regulation, passed legislation in 2018 that separates digital assets into unregulated virtual tokens and regulated Virtual Financial Assets.[[25]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn25) Switzerland also acted early; it provided preliminary guidance for ICOs in 2017 and issued more detailed guidance in 2018.[[26]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn26) France recently announced a new licensing regime for initial coin offerings and digital asset service providers.[[27]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn27) This regime is optional for some activity, but mandatory for providers of digital asset custody services to third parties.[[28]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn28)

Bermuda is one of the only jurisdictions to address the custody question in detail. In conjunction with a regulatory regime for digital asset businesses, the island also released draft guidance for crypto custodial services, which addresses such difficulties as how to store private keys for hot and cold storage while preserving necessary liquidity, what safeguards should be in place to prevent unauthorized access, and how to frame internal audit of transactions to ensure their integrity.[[29]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn29)

These “laboratories of regulation” operated by our international counterparts have me thinking about possible paths for the U.S. to become more welcoming of crypto innovation. After all, we need some red pandas in the United States too! I look forward, for example, to learning more about Bermuda’s custody framework to see if we can draw from it as we think about how our custody rules apply in the crypto context. Motivated in part by the approach taken by Singapore, which does not treat every token offering as a securities offering, I would support the creation of a non-exclusive safe harbor for the offer and sale of certain tokens. As the SEC’s Director of the Division of Corporate Finance, Bill Hinman, pointed out in a speech in June 2018, if a token network were to become sufficiently decentralized, tokens that were issued as securities might then become non-securities “utility” tokens.[[30]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn30) It is not clear, however, how this transition could happen if the tokens were initially offered as securities. How could decentralization be accomplished? For tokens that are designed to serve as an alternative method of payment online or as utility tokens, deeming every sale of a token, including transactions in which tokens are used to compensate developers, to be a transfer of a security would almost surely eliminate the possibility that a transformation to a functioning network could occur. As Greene and his coauthors point out, “[o]pen digital token offerings facilitate participation in open-source software development and create a sense of empowerment and ownership, thus mobilising programmers to test and improve underlying software.”[[31]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn31) That kind of empowerment is difficult when token distribution is constrained by the securities laws.

A non-exclusive safe harbor would permit issuers to offer tokens under an alternative regime with robust requirements. The relief could be time-limited to guard against reliance on the safe harbor by projects without a workable plan to build operational networks. The requirements would be tailored to the needs of purchasers digital assets in a way that our current regulations are not. Trading to get tokens in and out of the hands of developers and users would be permitted. Disclosures important to purchasers of tokens intended for use in open-source networks are likely to differ from disclosures important to purchasers of common stock. Professor Chris Brummer, among others, has pointed out that the information that token purchasers want is not necessarily the same as the information the securities laws would give them.[[32]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn32) Legislative proposals to exempt token offerings from the securities laws also recognize that the securities framework may not be the appropriate one for all tokens.[[33]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftn33)

A token offering made in reliance on the safe harbor would have to comply with certain requirements—for example, providing clear disclosure of the assets’ functionality, including the mechanisms for changing holders’ rights and explaining how funds are to be used—before the issuer could use the safe harbor. At the SEC staff’s recent FinTech Forum, one of the participants explained the types of disclosures that are particularly relevant in the digital asset context: how many tokens have been issued, what the process is for issuing more, and how to address inconsistencies between a plain English description of the tokens’ functionality and the functionality as written in the code.[[34]](https://www.sec.gov/news/speech/speech-peirce-073019%22%20%5Cl%20%22_ftn34%22%20%5Co%20%22) Such a safe harbor would be non-exclusive, meaning that an offering that did not meet its requirements might still comply with other of our rules, such as our private placement exemption. This concept is very preliminary and needs a lot more work, but it might be a way to ensure that the legal regime does not inadvertently choke token networks off before they get off the ground.

Whatever direction we go in the United States, continued communication among the world’s financial regulators will be important. While I believe a single global regulatory framework would be unwise, regulators can create a healthy environment for this new market to grow by sharing information that will smooth cross-border transactions while stamping out fraud and other harmful activity. We also can continue to learn from one another to fill the gaps in our own regulation and borrow, when appropriate, from frameworks developed and tested in other places.

Thank you all for being here today to think through some of the issues surrounding recent technological innovations. Having the opportunity to meet with innovators has been one of the highlights of this job. Indeed, just yesterday, I met with a number of crypto projects here in Singapore and with regulators and innovators from the region thinking about how to regulate and use blockchain technology. I welcome others to visit me in Washington, D.C. I greatly enjoy hearing about the work of traditional market participants, but the red pandas—the people who are constantly hopping outside the fences of conventional thinking—make the life of a regulator especially interesting.

[[1]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref1) Ravi Kurani, *Which Are the Best Locations for Blockchain Companies? – We Asked Our Well-Travelled Crypto Friends*, Medium (Feb. 22, 2019), <https://medium.com/birds-view/which-are-the-best-locations-for-blockchain-companies-bd816c940456>.

[[2]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref2) *See*Michael Ruane & Trishula Patel, *Missing Red Panda Found in Adams Morgan*, Wash. Post (June 24, 2013), <https://www.washingtonpost.com/local/red-panda-missing-at-national-zoo/2013/06/24/350e8b4c-dcdd-11e2-85de-c03ca84cb4ef_story.html?utm_term=.95753ff78fee>;

[[3]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref3) Giant Panda Cam, Smithsonian’s Nat’l Zoo & Conservation Biology Inst., <https://nationalzoo.si.edu/webcams/panda-cam> (last visited July 30, 2019).

[[4]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref4) *Internationalization of the Securities Markets: Hearing Before the H. Subcomm. on Telecomms. And Fin.*, 100th Cong. 4 (1987) (statement of Charles Cox, Acting Chairman, Sec. & Exch. Comm’n).

[[5]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref5) James D. Cox Et al., Securities Regulations: Cases and Materials 327 (1991) (quoted in Andreas Roquette, *New Developments Relating to the Internationalization of the Capital Markets: A Comparison of Legislative Reforms in the United States, The European Community, and Germany*, 14 U. Pa. J. Int’l Bus. L. 565, 566 (1993)).

[[6]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref6) *See, e.g.*, Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms, IOSCO (2019), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD627.pdf>; U.S. Gov’t Accountability Office, GAO-14-496, Virtual Currencies: Emerging Regulatory, Law Enforcement, and Consumer Protection Challenges (2014); Omri Marian, *Blockchain Havens and the Need for Their Internationally-Coordinated Regulation*, 20 N.C. J. L. & Tech. 529 (2019); Philipp Maume & Mathias Fromberger, *Regulation of Initial Coin Offerings: Reconciling U.S. and E.U. Securities Laws*, 19 Chi. J. Int’l L. 548 (2019).

[[7]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref7) *See About IOSCO*, OICV-IOSCO, <https://www.iosco.org/about/?subsection=about_iosco> (last visited July 29, 2019).

[[8]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref8) *See, e.g.*, Javier Gonzalez, *Hitchhiker’s Guide to Cross-Border Data*Flows, OECD (June 3, 2019), <https://www.oecd.org/trade/hitchhikers-guide-cross-border-data-flows/> ; *see also* International Regulatory Co-Operation, OECD (2018), <http://www.oecd.org/gov/regulatory-policy/international-regulatory-cooperation-policy-brief-2018.pdf>; Report on the Cross-Border Enforcement of Privacy Laws, OECD (2006), <http://www.oecd.org/sti/ieconomy/37558845.pdf>.

[[9]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref9) *See About the FSB*, FSB, <https://www.fsb.org/about/> (last visited July 29, 2019).

[[10]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref10) *See* *How Asia’s Trading Culture Results in a Vastly Different Crypto Scene*, Unchained (July 2, 2019), <https://unchainedpodcast.com/how-asias-trading-culture-results-in-a-vastly-different-crypto-scene/> (discussing different approaches to trading crypto in parts of Asia). *See also* *Regulation of Cryptocurrency Around the World*, Library of Congress (2018), <https://www.loc.gov/law/help/cryptocurrency/cryptocurrency-world-survey.pdf>.

[[11]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref11) *Fintech Forum,*Sec. & Exch. Comm’n(May 31, 2019),<https://youtu.be/FbGKFdDuN0s>.

[[12]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref12) Securities Act of 1933 §2(a)(1), 15 U.S.C. §77b(a)(1) (2012).

[[13]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref13) Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017), <https://www.sec.gov/litigation/investreport/34-81207.pdf>.

[[14]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref14) *See, e.g.,*CarrierEQ, Inc., D/B/A Airfox, Securities Act Release No. 10575, 2018 WL 6017664 (Nov. 16, 2018), <https://www.sec.gov/litigation/admin/2018/33-10575.pdf>; Munchee, Inc., Securities Act Release No. 10445, 2017 WL 10605969 (Dec. 11, 2017), <https://www.sec.gov/litigation/admin/2017/33-10445.pdf>; Paragon Coin, Inc., Securities Act Release No. 10574, 2018 WL 6017663 (Nov. 16, 2018), <https://www.sec.gov/litigation/admin/2018/33-10574.pdf>.

[[15]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref15) SEC Adds Fraud Charges Against Purported Cryptocurrency Company Longfin, CEO, and Consultant, Litigation Release No. 24492 (June 5, 2019), <https://www.sec.gov/litigation/litreleases/2019/lr24492.htm>; SEC Emergency Action halts ICO Scam and Obtains Appointment of a Receiver to Protect Digital Assets, Litigation Release No. 24088 (Mar. 29, 2018), <https://www.sec.gov/news/press-release/2018-8>; SEC Obtains Emergency Order Halting Alleged Diamond-Related ICO Scheme Targeting Hundreds of Investors, Litigation Release No. 24473 (May 21, 2019), <https://www.sec.gov/litigation/litreleases/2019/lr24473.htm>.

[[16]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref16) Statement on “Framework for ‘Investment Contract’ Analysis of Digital Assets” by Bill Hinman, Dir. of Div. of Corp. Fin., SEC, & Valerie Szczepanik, Senior Advisor for Digital Assets and Innovation, SEC (Apr. 3, 2019), <https://www.sec.gov/news/public-statement/statement-framework-investment-contract-analysis-digital-assets>.

[[17]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref17) Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities, Div. of Trading & Mkts., U.S. Sec. & Exch. Comm’n (July 8, 2019), <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>.

[[18]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref18) Blockstack Inc., Offering Statement (Form 1-A/A) (July 8, 2019), <https://www.sec.gov/Archives/edgar/data/1693656/000110465919039476/a18-15736_1ex1a2acharterd1.htm>; YouNow, Inc., Offering Statement (Form 1-A/A) (July 10, 2019), <https://www.sec.gov/Archives/edgar/data/1725129/000162827919000254/younow1-aa2a.htm>.

[[19]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref19) Pocketful of Quarters, Inc., SEC No-Action Letter (July 25, 2019), <https://www.sec.gov/corpfin/pocketful-quarters-inc-072519-2a1>; TurnKey Jets, Inc., SEC No-Action Letter, 2019 WL 1471132 (Apr. 2, 2019).

[[20]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref20) *See*Robert Greene & David Chuen, *Singapore’s Open Digital Token Offering Embrace: Context & Consequences*, The JBBA (2019). *See also* Laney Zhang, *Singapore: Payment Services Act Passed, regulating Cryptocurrency Dealing or Exchange Services*, Library of Congress (Apr. 17, 2019), <https://www.loc.gov/law/foreign-news/article/singapore-payment-services-act-passed-regulating-cryptocurrency-dealing-or-exchange-services/> (explaining the recently passed PSA and its effects on cryptocurrency in Singapore); Dharma Sadasivan, *Clarifications from the Monetary Authority of Singapore on Digital Token Offerings*, BR Law (Dec. 19, 2018), <https://www.brlawcorp.com/news-and-insights/clarifications-from-the-monetary-authority-of-singapore-on-digital-token-offerings> (discussing the Monetary Authority of Singapore’s “Guide to Digital Token Offerings,” released in November 2018).

[[21]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref21) Greene, *supra*note 20, at 7.

[[22]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref22) Emergency Decree on Digital Asset Businesses, B.E. 2561 (Thai. 2018), <https://www.sec.or.th/EN/Documents/EnforcementIntroduction/digitalasset_decree_2561_EN.pdf>.

[[23]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref23) Hisashi Oki, *Japan Hopes to Set Global Crypto Law Benchmark with Latest Regulatory Update*, CoinTelegraph (June 5, 2019), <https://cointelegraph.com/news/japan-hopes-to-set-global-crypto-law-benchmark-with-latest-regulatory-update> (discussing how the Financial Instruments and Exchange Act has been revised to include ICOs and STOs).

[[24]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref24) Enoch Yiu & Georgina Lee, *Cryptocurrency Rules Unveiled by SFC as Hong Kong Aims to Become Major Trading Hub*, South China Morning Post (Nov. 1, 2018).

[[25]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref25) Virtual Financial Assets Act, (Malta 2018). *See also* Virtual Financial Assets Framework: Frequently Asked Questions, Malta Fin. Serv. Auth. (2019), <https://www.mfsa.mt/wp-content/uploads/2019/01/20190125_VFARFAQs_v1.01.pdf>.

[[26]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref26) *See*FINMA Guidance: Regulatory Treatment of Initial Coin Offerings, FINMA (2017) Guidelines for Enquiries Regarding the Regulatory Framework for Initial Coin Offerings (ICOs), FINMA (2018).

[[27]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref27) *See*Frank Guiader & Jennifer D’Hoir, *The Pacte Bill and New French Regulatory Regime for Crypto-Asset Service Providers*, Societe Generale (June 20, 2019), <https://www.securities-services.societegenerale.com/en/insights/views/news/pacte-bill-french-regulatory-regime-crypto-asset-service-providers/>.

[[28]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref28) *Towards a New Regime for Crypto-Assets in France*, Autorite des Marches Financiers (Apr. 15, 2019), <https://www.amf-france.org/en_US/Reglementation/Dossiers-thematiques/Fintech/Vers-un-nouveau-regime-pour-les-crypto-actifs-en-France>.

[[29]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref29) Digital Asset Custody Code of Practice, Berm. Monetary Auth. (Berm. 2018), <https://cdn.crowdfundinsider.com/wp-content/uploads/2019/05/Bermuda-2018-12-29-05-19-21-Digital-Asset-Custody-Code-of-Practice.pdf>.

[[30]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref30) William Hinman, Director, Sec. & Exch. Comm’n Div. of Corp. Fin., Remarks at the Yahoo Finance All Markets Summit: Digital Asset Transactions: When Howey Met Gary (Plastic) (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

[[31]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref31) Greene, *supra*note 20, at 5. *See also* Saman Adhami et al., *Why do Businesses go Crypto? An Empirical Analysis of Initial Coin Offerings*, J. of Econ. & Bus. 10 (2018),

[[32]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref32) Chris Brummer et al., *What Should be Disclosed in an Initial Coin Offering?*, OUP Press (forthcoming 2019), <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3293311>.

[[33]](https://www.sec.gov/news/speech/speech-peirce-073019#_ftnref33) Token Taxonomy Act, H.R. 2144, 116th Cong. (2019).

[[34]](https://www.sec.gov/news/speech/speech-peirce-073019%22%20%5Cl%20%22_ftnref34%22%20%5Co%20%22) *FinTech Forum*, *supra* note 11, at 1:15.