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ANOTHER GOLD RUSH: THE PROMISE OF CYRPTO AND THE WEALTH GAP

❖ Note ❖

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I. INTRODUCTION

At the Aspen Security Forum, Gary Gensler, chair of the SEC, compared the state of cryptocurrency regulation to the "Wild West," noting its lack of investor protection.[1] Gensler has continued to repeat the "Wild West" metaphor when discussing the challenges and lack of cryptocurrency regulation, which leave individual investors and financial markets vulnerable to fraud.[2] Although the Internal Revenue Service ("IRS"), Financial Crimes Enforcement Network ("FinCEN"), Commodity Futures Trading Commission ("CFTC"), and U.S. Securities and Exchange Commission ("SEC") have used existing laws to regulate cryptocurrencies, Congress has not enacted legislation specifically targeting them.[3] Currently, no single U.S. regulatory authority governs private cryptocurrency exchanges.[4] Since the majority of cryptocurrency activity occurs beyond the boundaries of government regulation, Gensler worries about the continued potential for crime, financial instability, and threats to national security.[5]

Thus, it is not hard to imagine the world of cryptocurrency as a virtual Wild West with its lack of unified regulatory authority like the lawless environment of the American frontier. The scattered regulations issued in the face of fraud feel more like lone county sheriffs catching and apprehending outlaws in the Wild West than a unified police force responding to criminal activity. However, Gensler's Wild West metaphor extends beyond the lawless, and correspondingly dangerous American frontier. As the Wild West provided the promise of fortune through free land and untapped resources, cryptocurrency likewise shares the promise of fortune through "democratiz[ing] access to financial markets and giv[ing] individual investors control of their

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[1] Paul Kiernan, *Crypto 'Wild West' Needs Stronger Investor Protection, SEC Chief Says*, WALL ST. J. (Aug. 3, 2021, 6:21 PM), https://www.wsj.com/articles/sec-will-police-cryptocurrencies-to-maximum-possible-extent-chair-gary-gensler-says-11628007567.

[2] *SEC Chairman on New Regulations on Cryptocurrencies and Climate Risk*, WALL ST. J. (Dec. 12, 2021, 6:00 PM), https://www.wsj.com/articles/sec-chairman-on-regulations-on-cryptocurrency-and-climate-risk-11639165931.

[3] John Marinelli, *Meet New Boss, Same as Old Boss: How Federal Agencies Have Leveraged Existing Law to Regulate Cryptocurrency*, 57 AM. CRIM. L. REV. ONLINE 34, 34 (2020).

[4] Kiernan, supra note 1.

[5] *Id.*

destiny."[6] Just as the American frontier offered the landless access to real property, cryptocurrency offers the promise of wealth to communities historically excluded from financial markets in an almost virtual gold rush.

Through its use of blockchain technology, cryptocurrencies are able to decentralize marketplaces.[7] While traditional currencies require users to trust governmental and banking institutions, cryptocurrencies use a blockchain, digital ledger that is neither owned by any particular entity nor affiliated with any political group, negating the user's need to trust traditional institutions.[8] Thus, the promise of cryptocurrency is especially appealing to communities historically excluded from financial markets because it does not require users to trust institutions that previously discriminated against them or their communities.[9] Consequently, cryptocurrencies provide an opportunity for individuals to finally enter the market and build generational wealth without relying on governmental or banking institutions.[10]

This note will argue that despite calls for greater government regulation, cryptocurrency exchanges should be left to self-regulate to preserve the promise and appeal of cryptocurrency. Part II will provide background information on the wealth gap in the United States, demographic information about cryptocurrency users, and the landscape of cryptocurrency regulation. Part III analyzes the current piecemeal approach to cryptocurrency regulation and considers the relationship between regulations and social equity. Part IV argues that while creating a new governmental agency to regulate cryptocurrency could address the wealth gap, allowing cryptocurrency exchanges to self-regulate best accomplishes the dual purpose of protecting investors and preserving the anti-institution appeal of cryptocurrency. Part V will conclude.

II. BACKGROUND

A. *The Wealth Gap*

From 1989 to 2016, the wealth gap in the United States more than doubled.[11] A family's wealth, or net worth, is measured by totaling the assets they own minus outstanding debt, providing a more holistic understanding of financial well-being than merely considering income.[12] In 1989 the richest 5% of families owned more than 114 times as much wealth as lower-income families, with lower-income families belonging to the second wealth quintile (bottom 20-40%).[13] Seventeen years later, the ratio increased to 248.[14] Furthermore, upper-income families were the only group in the United States to increase their wealth from 2001 to 2016.[15] Middle and lower income families lost wealth during the same period.[16] Consequently, not only is there a wide gap between the wealth owned by the richest families in the United States, but the gap is also growing.

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[6] Tressie McMillan Cottom, *The Strange Allure of the Blockchain*, N.Y. TIMES (Jan. 24, 2022), https://www.nytimes.com/2022/01/24/opinion/crypto-blockchain-nfts.html?searchResultPosition=3.
[7] Makan Delrahim, *Regulation Will Be Good For Crypto*, WALL ST. J. (Jan. 20, 2022, 6:35 PM), https://www.wsj.com/articles/regulation-will-be-good-for-crypto-blockchain-currency-economy-stablecoins-sec-fdic-11642714529?page=1).
[8] McMillan Cottom, *supra* note 6.
[9] *Id.*
[10] *Id.*
[11] Juliana Menasce Horowitz, Ruth Igielnik & Rakesh Kochhar, *Trends in U.S. Income and Wealth Inequality*, PEW RSCH. CTR. (Jan. 9, 2020), https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*

Additionally, race and ethnicity are unequally represented through the rungs of wealth distribution in the United States. In 2019, the median White family's wealth totaled $184,000 while the median Black family's was $23,000 and the median Hispanic family's was $38,000.[17] Furthermore, 82% of Black families and 76% of Hispanic families owned less wealth than the median White family.[18] Not only did the median Black and Hispanic family own less wealth than the median White family, but the entire curve of Black and Hispanic wealth distribution shifted toward less wealthy when compared to the White wealth distribution curve.[19] Thus, Black and Hispanic families are overrepresented among the country's less wealthy families, and correspondingly disproportionately affected by the widening wealth gap.

Historic and systemic barriers in the United States contribute to the current inequity in wealth accumulation. Excluding Black families from participating in governmental programs and policies, such as the Homestead Act, the Social Security Act of 1935 and the G.I. Bill of 1944, prevented families from building generational wealth.[20] However, White families were able to take advantage of these programs to build generational wealth through inheritance and education.[21] The inequities in wealth accumulation continue through ongoing systemic barriers with Black and Hispanic families facing discrimination in the labor market and in the criminal justice system.[22] When Black and Hispanic individuals are overrepresented in the incarcerated population and do not have the same ability to access the labor market as White individuals, they do not have the same opportunities to accumulate wealth, further exacerbating the wealth gap.

B. *Cryptocurrency Users*

While cryptocurrency is a relatively new technology, the vast majority of Americans are familiar with it.[23] Furthermore, in 2021 16% of U.S. adults reported using cryptocurrency in some capacity, including investing and trading.[24] The average cryptocurrency trader is thirty-eight years-old and 55% do not have a college degree.[25] Furthermore, 44% are not White, 41% are women, and 35% have household incomes under $60,000.[26]

While cryptocurrency traders trail behind Americans owning stock, with 56% of Americans owning stock in 2021, data suggests that a different demographic is investing in cryptocurrency.[27] Stock ownership is correlated with income, and while 24% of individuals making less than $24,000

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[17] Ana Hernandez Kent & Lowell Ricketts, *Wealth Gaps Between White, Black and Hispanic Families in 2019*, FED RSRV. BANK ST LOUIS: ON THE ECONOMY (Jan. 5, 2021), https://www.stlouisfed.org/on-the-economy/2021/january/wealth-gaps-white-black-hispanic-families-2019#.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Andrew Perrin, *Sixteen Percent of Americans Say They Have Invested in, Traded, or Used Cryptocurrency*, PEW RSCH. CTR. (Nov. 11, 2021), https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/.
[24] *Id.*
[25] *More Than One in Ten Americans Surveyed Invest in Cryptocurrencies*, NORC AT THE UNIV. CHI. (July 22, 2021), https://www.norc.org/NewsEventsPublications/PressReleases/Pages/more-than-one-in-ten-americans-surveyed-invest-in-cryptocurrencies.aspx.
[26] *Id.*
[27] Lydia Saad & Jeffrey M. Jones, *What Percentage of Americans Owns Stock*, GALLUP, https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx (Aug. 13, 2021).

per year own stock, 89% of individuals making over $100,000 own stock.[28] However, cryptocurrency use is not correlated to income level.[29] Furthermore, Asian, Black, and Hispanic individuals were more likely to use cryptocurrency in 2011 when compared to Whites.[30] In contrast, White individuals were more likely to own stock when compared with other racial or ethnic groups in 2011.[31] Thus, just as Black and Hispanic families are more likely to own less wealth than White families, they are also less likely to own stock. However, although Black and Hispanic individuals are underrepresented in traditional investment methods, as seen through lower stock ownership levels, they are overrepresented, along with Asian individuals, in cryptocurrency use.[32]

Despite the allure of cryptocurrencies, few individuals have made significant money using them. Of all cryptocurrencies in circulation, Bitcoin is the most popular with the greatest value of "coins" in circulation.[33] While Bitcoin's value is volatile, only 0.07% of American Bitcoin users had Bitcoin assets worth over one million dollars in 2019.[34] In contrast, 75% of users had Bitcoin assets worth about one hundred dollars.[35] When compared with the U.S. population, only 0.05% of Americans have Bitcoin assets worth over $100,000.[36] With so few individuals owning or gaining any significant wealth from Bitcoin, it is too early to determine how cryptocurrency use will affect the wealth gap.

C. *Cryptocurrency Regulation*

While few cryptocurrency users have generated significant wealth, several government agencies have attempted to regulate cryptocurrency. However, Congress has not enacted any federal legislation to regulate it, nor does a single governing authority oversee it.[37] The Securities and Exchange Commission ("SEC"), the Internal Revenue Service ("IRS"), the Financial Crimes Enforcement Network ("FinCEN"), and the Commodity Futures Trading Commission ("CFTC") have all defined cryptocurrency to fall within their jurisdiction under existing law.

The SEC has become the major regulator of cryptocurrencies, defining many blockchain tokens as securities.[38] Thus, since cryptocurrencies use blockchain technology, the SEC is able to consider cryptocurrency a security. Outside of the SEC, the IRS, FinCEN, and CFTC have also regulated cryptocurrencies under their respective capacities. The IRS defined cryptocurrency as property, subjecting it to the IRS' collection authority whenever users purchase, sell, or trade cryptocurrencies.[39] FinCEN defined cryptocurrencies as funds.[40] It further indicated that cryptocurrency use, including using applications to purchase cryptocurrency with cash or debit cards

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[28] *Id.*
[29] Perrin, *supra* note 23.
[30] *Id.*
[31] Saad & Jones, *supra* note 27.
[32] Perrin, *supra* note 23.
[33] Kat Tretina & John Schmidt, *Top Ten Cryptocurrencies in March 2022*, FORBES, https://www.forbes.com/advisor/investing/top-10-cryptocurrencies/ (Mar. 1, 2022, 9:17 AM).
[34] Aaron Hankin, *No, Everyone Is Not Getting Rich Off Bitcoin*, INVESTOPEDIA, https://www.investopedia.com/news/no-everyone-not-getting-rich-bitcoin/ (June 25, 2019).
[35] *Id.*
[36] *Id.*
[37] Marinelli, *supra* note 3.
[38] *Id.*
[39] I.R.S. Notice 2014-21, 2014-16 I.R.B., https://www.irs.gov/irb/2014-16_IRB#NOT-2014-21.
[40] FinCEN Guidance FIN-2019-G001 (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%C20CVC%C20FINAL%20508.pdf.

or using cryptocurrency wallets, may be considered money services businesses (MSB).[41] Since FinCEN has the authority to require institutions to report on MSBs, FinCEN may exercise authority over some uses of cryptocurrencies. Finally, the CFTC has defined cryptocurrencies as "commodities" and regulated them as such.[42] Thus, governmental agencies have defined cryptocurrency as securities, property, funds, and commodities.

Additionally, case law has recognized the use of cryptocurrency. Both the Eastern District of New York[43] and the District Court of Massachusetts recognized cryptocurrencies as commodities.[44] Furthermore, the Eastern District of New York found that "simply labeling an investment opportunity as a 'virtual currency' or 'cryptocurrency' does not transform an investment contract--a security--into a currency," and concluded a jury could find that blockchain tokens constitute securities.[45]

III. ANALYSIS

A. Existing Regulation

In its 2018 Joint Economic Report, Congress noted the lack of unified regulation of cryptocurrencies, and it urged regulatory agencies to coordinate efforts to ensure effective and consistent regulations.[46] Four years later, the U.S. continues to regulate cryptocurrencies at the federal level using a piecemeal approach. The IRS, CFTC, FinCEN, and SEC all exercise regulatory authority, primarily in response to fraud or other criminal activity.[47] Thus, regulations tend to be reactive instead of proactive measures to protect investors and preserve the value of their assets.

Of the agencies regulating cryptocurrencies, the IRS takes a reactive approach to regulation. In 2014, the IRS defined cryptocurrency as property.[48] Since then, cryptocurrency use has been subject to the IRS' collection authority.[49] In 2001, the Cyber Crime Unit of the IRS seized 3.5 Billion dollars' worth of cryptocurrency.[50] Of that 3.5 Billion, the IRS seized one billion dollars' worth of cryptocurrency in connection with the conviction of Ross Ulbricht, the founder of Silk Road, an online black marketplace using the darknet.[51] Ulbricht was convicted of conspiracy to commit money laundering and conspiracy to distribute narcotics.[52] While the seizure enforced the principle that cryptocurrency should be used for legal financial transactions and purposes, it did not affect ordinary cryptocurrency users, who were unconnected to the seizure. Thus, while the seizure may have enforced the legitimacy of cryptocurrency, it did nothing to protect individual investor's ability to accumulate wealth. Instead, the IRS merely reacted to crime. However, given the purpose of the IRS, it is unlikely that its current structure would accommodate any proactive cryptocurrency regulation.

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41 *Id.*
42 In the Matter of: Coinflip, Inc., CFTC No. 15-29, 2015 WL 5535736, at *2 (C.F.T.C. Sept. 17, 2015).
43 *Id.*
44 Commodity Futures Trading Comm'n v. My Big Coin Pay, Inc., 334 F. Supp. 3d 492, 498 (D. Mass. 2018).
45 United States v. Zaslavskiy, No. 17 CR 647 (RJD), 2018 WL 4346339, at *7 (E.D.N.Y. Sept. 11, 2018).
46 H.R. REP. NO. 115-596, at 224 (2018).
47 Marinelli, *supra* note 3.
48 I.R.S. Notice 2014-21, *supra* note 39.
49 *Id.*
50 I.R.S., 2021 INTERNAL REVENUE SERV. CRIM. INVESTIGATION ANN. REP. 8 (2021), https://www.irs.gov/pub/irs-pdf/p3583.pdf.
51 *Id.*
52 *Id.*

The CFTC has also taken a reactive approach in regulating cryptocurrency. In *Commodity Futures Trading Comm'n v. McDonnell*, the Eastern District of New York defined cryptocurrency as a commodity and held the CFTC had jurisdiction to exercise authority over it.[53] The defendants in the case offered cryptocurrency trading and investment services to individuals in exchange for a membership fee.[54] They promised members that they could generate profits of two to three hundred percent; however, once the defendants received the membership fee, they did not provide any significant trading advice and did not share any returns on investments.[55] The court held that cryptocurrency may be considered a commodity and the CFTC has the authority to "exercise its enforcement power over fraud related to virtual currencies sold in interstate commerce."[56] It then granted an injunction to prevent further action by the defendants.[57] Later that year, the District Court of Massachusetts also affirmed that cryptocurrencies could be considered commodities and subject to regulation by the CFTC in *Commodity Futures Trading Comm'n v. My Big Coin Pay, Inc.*[58] It further asserted the CFTC could assert a sufficient fraud claim against the defendant due to the defendant's misleading and fraudulent sale of cryptocurrency.[59] While the CFTC had the authority to respond to fraudulent activity, its response was reactive. Like the IRS, it merely responded to criminal activity involving cryptocurrency and did not issue proactive regulation to protect investors from initially becoming involved in the fraudulent activity and losing money.

Additionally, FinCEN has also exercised its authority over cryptocurrencies. It has defined them as funds and indicated that cryptocurrency use, including using applications to purchase cryptocurrency with cash or debit cards or using cryptocurrency wallets, may be considered money services business ("MSB").[60] Since FinCEN has the authority to require institutions to report on MSBs, FinCEN may exercise authority over some uses of cryptocurrencies. However, while FinCEN may enforce sanctions for financial crimes involving cryptocurrency, it does not have the authority to regulate the market.[61] Thus, FinCEN does not have the ability to proactively regulate cryptocurrency because it can only respond to criminal activity. At best, FinCEN can only achieve similar reactionary regulations such as the ones issued by the IRS and CFTC.

Finally, the SEC has exercised authority over cryptocurrency by defining it as a security; however, unlike the reactive regulations of the IRS, CFTC, or FinCEN, the SEC has the ability to play a proactive role in cryptocurrency regulation. In *United States v. Zaslavskiy*, the court recognized that blockchain tokens may be considered securities and subject to regulation by the SEC.[62] Since cryptocurrencies use blockchain tokens, they may be subject to SEC regulations. Furthermore, the current and previous SEC chairs have suggested that cryptocurrency use, including Initial Coin Offerings, may be subject to the SEC's authority under existing law.[63] Additionally, the SEC has already brought dozens of successful actions alleging fraud or other harm to investors.[64] However,

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[53] Commodity Futures Trading Comm'n v. McDonnell, 287 N.E.3d 213, 230 (E.D.N.Y. 2018).
[54] *Id.* at 217.
[55] *Id.* at 217-18.
[56] *Id.* at 230.
[57] *Id.*
[58] Commodity Futures Trading Comm'n v. My Big Coin Pay, Inc., 334 F. Supp. 3d 492, 498 (D. Mass. 2018).
[59] *Id.* at 498-99.
[60] FinCEN Guidance FIN-2010-G001 (2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%C20CVC%C20FINAL%20508.pdf.
[61] Casey Bessemer, *Cryptocurrency: Legality and Role Within U.S. Fin. Insts.,* 36 SYRACUSE J. SCI. & TECH. L. 3, 18 (2020).
[62] United States v. Zaslavskiy, No. 17 CR 647 (RJD), 2018 WL 4346339, at *7 (E.D.N.Y. Sept. 11, 2018).
[63] Gary Gensler, Chair, U.S. Secs. and Exch. Comm'n, Remarks Before the Aspen Security Forum (Aug. 3, 2021), *in* https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03#_ftnref6 (last visited Mar. 18, 2022).
[64] *Id.*

despite these successful actions, Gary Gensler, the current SEC chair, called for greater investor protection for cryptocurrency users.[65] Investor protection, along with maintaining fair, orderly, and efficient markets and facilitating capital formation, form the three components of the SEC's mission.[66] In defining its commitment to protecting investors the SEC states, "[w]e protect investors by vigorously enforcing the federal securities laws to hold wrongdoers accountable and deter future misconduct. We provide investor education and resources through our Office of Investor Education and Advocacy."[67] However, even if the SEC seeks greater protection for investors, their mission does not explicitly focus on bringing in individuals historically excluded from financial markets.

B. *Equity Focused Regulation*

Critics suggest authorities should regulate cryptocurrency with the focus on protecting investors from marginalized groups.[68] In the *New York Times*, Paul Krugman compared the risks of cryptocurrency with the subprime mortgage crisis.[69] While he acknowledged that cryptocurrency users and assets are not yet significant to affect the economy in the same way the subprime crisis threatened the financial system, he emphasized, "the risks of crypto are falling disproportionately on people who don't know what they are getting into and are poorly positioned to handle the downside."[70] Thus, just as financially vulnerable families were overrepresented in those affected in the subprime crisis, financially vulnerable individuals may also be disproportionately affected by the risk of cryptocurrency. Krugman explicitly mentioned the 44% of crypto investors that are not White and the 55% of individuals without a college degree as groups cryptocurrency regulators should specifically look to protect.[71]

However, better government regulation may not be sufficient to best protect investors historically excluded or underrepresented in financial markets. In *Commodity Futures Trading Comm'n v. McDonnell*, the Eastern District Court of New York expressed frustration at the lack of unified cryptocurrency regulation, and it suggested eight potential cryptocurrency regulators, in addition to offering the possibility of leaving cryptocurrency unregulated.[72] Cryptocurrency could be regulated by the Department of Justice ("DOJ"), CFTC, SEC, FinCEN, IRS, private cryptocurrency exchanges, individual states, or a combination of any of the previous.[73] Other than private exchanges or no regulation, all the suggested regulations require government involvement. However, a solution using an existing government agency or body may present additional challenges when considering the population of cryptocurrency users.

Cryptocurrency promises to democratize access and decentralize financial markets without relying on governmental institutions, so relying on these traditional institutions may undermine the purpose and appeal of cryptocurrency. Although traditional currencies require users to trust

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[65] *Id.*
[66] U.S. SECS. AND EXCH. COMM'N, *What We Do*, SEC.GOV, https://www.sec.gov/about/what-we-do (Nov. 22, 2021).
[67] *Id.*
[68] *See* Paul Krugman, *How Crypto Became the New Subprime*, N.Y. TIMES (Jan. 27, 2022), https://www.nytimes.com/2022/01/27/opinion/cryptocurrency-subprime-vulnerable.html; Tressie McMillan Cottom, *Wealth Inequality Drives the Appeal of Crypto*, N.Y. TIMES (Jan. 31, 2022), https://www.nytimes.com/2022/01/31/opinion/crypto-nfts-inequality.html?searchResultPosition=2.
[69] Krugman, *supra* note 68.
[70] *Id.*
[71] *Id.*
[72] Commodity Futures Trading Comm'n v. McDonnell, 287 N.E.3d 213, 220-22 (E.D.N.Y. 2018).
[73] *Id.*

governmental and banking institutions, cryptocurrencies use a blockchain, digital ledger that is neither owned by any particular entity nor affiliated with any political group, negating the user's need to trust traditional institutions.[74] In this way, cryptocurrency's use of blockchain technology irrevocably guarantees ownership. Tressie McMillan Cottom discussed how this adds to the appeal of cryptocurrency among marginalized groups, "[i]f I live in a community where the police absolutely use eminent domain to claim my private property and I cannot do anything about it, that sense of everyday powerlessness would make the promise of blockchain sound pretty good."[75] McMillan Cottom's illustration of the police claiming eminent domain highlights one of the systemic barriers marginalized communities have faced, which has prevented wealth accumulation and led to wealth disparity. In other words, she emphasizes that cryptocurrency particularly appeals to those adversely affected by the wealth gap because it provides an opportunity to generate wealth without needing to rely on institutions that have perpetuated the wealth gap. Seeking government regulation from traditional agencies does little to resolve this tension.

IV. Recommendation

Given cryptocurrency's appeal among communities historically and systemically excluded from financial markets, cryptocurrency regulation provides an opportunity to reach these communities and offer support in wealth accumulation. If cryptocurrency use continues to grow, regulation could ultimately be used to address the wealth gap. In "Cryptocurrency: Legality and Role Within the US Financial Institutions," Casey Bessemer added to the *Commodity Futures Trading Comm'n v. McDonnell* regulatory body suggestions by offering that Congress could create a new agency to regulate cryptocurrencies.[76] Congress previously enacted legislation to create the current agencies regulating cryptocurrencies, such as the SEC and CFTC, so it would be possible for Congress to similarly create a new agency.[77] However, since this would require that Congress pass legislation, it would take a long time to enact, even if Congress were to approve such legislation.[78] Thus, Bessemer determined that it likely made most sense to regulate cryptocurrency through an existing agency.[79]

While the time delay required to create a new agency poses a challenge, creating a new agency provides some appealing benefits. Furthermore, because there are currently not enough cryptocurrency users and assets to affect financial markets,[80] the time required to enact legislation may not be detrimental. Not only would a new agency be able to take the burden of regulating cryptocurrency from existing agencies and offer a unified approach to regulation, but Congress could specifically create the new agency to focus on social equity. Just as the SEC's mission seeks to protect investors,[81] the new agency could explicitly seek to protect investors from backgrounds historically excluded from financial markets. Thus, given the significant involvement of cryptocurrency users from communities that are adversely affected by the wealth gap, Congress could create the new agency to explicitly support them in accumulating wealth. In doing so,

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[74] McMillan Cottom, *supra* note 6.
[75] *Id.*
[76] Bessemer, *supra* note 61, at 11.
[77] *Id.* at 23.
[78] *Id.*
[79] *Id.*
[80] Krugman, *supra* note 68.
[81] *See* U.S. Secs. and Exch. Comm'n, *supra* note 66 (stating the SEC's mission).

Congress could eliminate the danger of using an agency that has historically limited wealth accumulation.

However, even if Congress were to create a new agency to regulate cryptocurrency, another regulatory body would still be needed during the time it took for Congress to enact the legislation. Furthermore, a new agency still requires cryptocurrency users to trust the government, albeit using a new agency. Thus, letting cryptocurrency exchanges self-regulate provides another appealing alternative. Cryptocurrency exchanges are websites that allow users to buy, sell, or trade cryptocurrencies.[82] While exchanges are not free from fraud, they have an incentive to ensure legitimate transactions to maintain their reputation.[83] Since there are numerous cryptocurrency exchanges, users can use the platform that they believe is most trustworthy.[84] Thus, allowing exchanges to self-regulate protects individual investors because the websites have an incentive to maintain investor confidence by preventing fraud. Not only does self-regulation protect an investor's ability to generate wealth, but it also preserves the anti-institution appeal of cryptocurrency since self-regulation involves no governmental agencies or involvement.

Thus, despite calls for a unified government response to regulating cryptocurrency, cryptocurrency exchanges should be left to self-regulate.[85] Not only would an exchange's reputation help guard against fraud, protecting individual investors, but it would also allow individuals to participate in financial markets without governmental interference. In doing so, cryptocurrency's promise to combat "that sense of everyday powerlessness," created by the government's practice of preventing certain communities from accumulating wealth, remains because the government is not involved in cryptocurrency exchanges.[86] Thus, if cryptocurrency's promise continues to attract individuals from groups historically excluded from financial markets, the investing landscape may change. While the corresponding growth of cryptocurrency investment could encourage Congress to create a new agency to regulate it, Congress could then take advantage of the opportunity to create an agency with the explicit purpose to support communities systemically excluded from financial markets, instead of relying on an existing authority.

V. CONCLUSION

As historic and current governmental practices contribute to the widening wealth gap, cryptocurrency, with its promise to democratize and decentralize financial markets, provides an appealing method to generate wealth without relying on traditional institutions. Thus, despite calls for greater government intervention and standardization in regulating cryptocurrencies, cryptocurrency exchanges should be left to self-regulate, allowing the promise and appeal of cryptocurrency to endure.

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[82] Ameer Rosic, *The Best Cryptocurrency Exchanges: Most Comprehensive Guide List*, BLOCKGEEKS, https://blockgeeks.com/guides/best-cryptocurrency-exchanges/ (Oct. 26, 2021).
[83] Bessemer, *supra* note 61, at 20.
[84] *See* Rosic, *supra* note 82 (listing the numerous cryptocurrency exchanges).
[85] *See* H.R. REP. NO. 115-596, at 224 (2018) (urging regulatory agencies to coordinate efforts to ensure effective and consistent cryptocurrency regulations).
[86] *See* McMillan Cottom, *supra* note 6 ("If I live in a community where the police absolutely use eminent domain to claim my private property and I cannot do anything about it, that sense of everyday powerlessness would make the promise of blockchain sound pretty good.").