MARKETS
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Digital Assets Across Borders

A Comparative Analysis of U.S. and EU Regulation and the Path Forward for a Stronger Global Framework

Examining how digital assets are regulated in the United States and the European Union and how these frameworks will improve innovation, competition, and opportunity.



PRESENTED BY

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INTRODUCTION

I. Blockchain and the Regulatory Problem

Blockchain technology challenges a regulatory system built around identifiable issuers, intermediaries, custodians, and geographic jurisdictions. The central policy question is, therefore, not whether blockchain should be regulated, but how existing legal frameworks should apply to decentralized technology without unnecessarily restricting innovation and use.

a. The Father of Modern Accounting

Luca Pacioli was born between 1446 and 1448 in Tuscany, Italy. Educated in mathematics, he later studied theology and became a Franciscan friar. In Renaissance Italy, that vocation meant embracing poverty and obedience—in sharp contrast to the era's growing wealth and luxury. Pacioli's greatest achievement was the *Summa de arithmetica*, a comprehensive account of mathematics known at the time. Its section on accounting described double-entry bookkeeping, a system that spread across Italy, Europe, and eventually the world. The same basic ledger system remains in use today.

Pacioli's ledger uses debits and credits to track the movement of money. Modern financial institutions still rely on this basic structure, maintaining centralized ledgers that record account balances and transactions rather than setting aside physical currency for each entry. The system, therefore, depends on trust: consumers must trust the institution's solvency, the stability of the currency, and the security of their funds.

That trust has generally served the financial system well, but major crises have tested it. The Great Depression reshaped the nation's monetary and financial framework, while the 2008 Financial Crisis renewed public concern about institutions that control financial ledgers. In the aftermath of the 2008 crisis, blockchain technology offered a fundamentally different approach to recording and verifying transactions.

b. A New Age

On October 31, 2008, an anonymous person or group using the name Satoshi Nakamoto released a white paper proposing a new peer-to-peer electronic cash system. [1] Unlike the government-led reforms that followed the Great Depression, this innovation came from outside government—from cryptographers, mathematicians, and computer scientists.

Blockchain technology was designed to enable a decentralized, or "trustless," system in which participants need not rely on a traditional financial intermediary to validate each transaction. Instead, transactions can be recorded on a distributed ledger that preserves a durable record of activity.

Blockchain technology and cryptocurrency are distinct, though often used interchangeably. The blockchain is used for a variety of purposes, for example, keeping records, tracking supply

[1] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (Oct. 31, 2008)

chains, and creating traceable tokens for various purposes. Cryptocurrency is the financial mechanism used to participate monetarily on the blockchain. It only encompasses financial transactions. The most popular cryptocurrency is Bitcoin, developed by Satoshi Nakamoto. In the U.S., existing law struggles with decentralized networks because we have relied on centralized ledgers and the presence of third-party intermediaries to control our finances since the birth of our nation, and long before that. Because no single entity controls the blockchain, there is no concise regulatory framework that accounts for this level of decentralization—yet.

REGULATORY JURISDICTION AND MARKET STRUCTURE

The U.S. federal government has taken many different approaches to characterizing blockchain-based assets. These characterizations have led to a broad and often uncoordinated regulatory regime that has left many users and operators uncertain of how to continue using the blockchain legally. Some of these characterizations include securities, commodities, currencies/payment instruments, stablecoins, tokenized traditional assets, non-fungible tokens, or something outside existing categories. The overarching question here is: should blockchain assets continue to be fitted into legal categories developed decades before blockchain existed, or should Congress establish blockchain-specific classification?

I. U.S. Securities and Exchange Commission (SEC)

The Securities Act of 1933 defines a "security" broadly and expressly includes an undefined "investment contract."[2] The U.S. Supreme Court established the framework now known as the *Howey* test for determining whether an arrangement constitutes an investment contract. Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293, 298-299 (1946). (determining that an investment contract is an investment of money in a common enterprise with an expectation of profits to be derived from the efforts of a third party).

As initial coin offerings expanded in the United States throughout the 2010s, the SEC increasingly relied on enforcement actions to apply existing securities laws, including the *Howey* test, to digital assets. One of the most notable examples of this enforcement effort was in the SEC's 2020 lawsuit against Ripple Labs.[3] In this lawsuit, the SEC alleged that Ripple had offered up to $1.3 billion in unregistered securities. Ripple argued that the token they were offering (XRP) functioned more like currency than a security. The U.S. District Court for the Southern District of New York ultimately rejected a categorical characterization of XRP as a security, instead applying the *Howey* test to the circumstances surrounding particular transactions.

This enforcement action reflects the approach taken late under President Trump's first Administration and the entirety of the Biden Administration. That approach shifted in 2025 as the second Trump Administration moved away from "regulation by enforcement" and Congress pursued legislation intended to provide clearer rules for the market.[4],[5] Ultimately, the SEC and Ripple came to a settlement agreement in May 2025.[6]

In March 2026, the SEC issued joint guidance with the U.S. Commodity Futures Trading Commission (CFTC) explaining that they now believe many digital assets to be commodities,

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[2] 15 U.S.C. § 77b(a)(1)
[3] Securities and Exchange Commission v. Ripple Labs, Inc., 682 F. Supp. 3d 308, 324-26 (S.D.N.Y. 2023)
[4] Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act), Pub. L. No. 119-27, 139 Stat. 419 (2025)
[5] Digital Asset Market Clarity Act, H.R. 3633, 119th Cong. (2025)
[6] Securities and Exchange Commission v. Ripple Labs, Inc., Settlement Agreement, No. 1:20-cv-10832 (S.D.N.Y. May 8, 2025)

not securities.[7] Recently, in August 2026, the SEC issued a proposed rule "to create a tailored offering regime for certain investment contracts involving crypto assets."[8] This proposed rule is meant to complement Congress's efforts in creating a market structure and capital formation plan for digital assets. See *supra* 4 and 5.

The SEC's recent decisions answer the question above by clarifying that, in conjunction with Congress, new classifications should exist for digital assets.

II. U.S. Department of the Treasury (Treasury)

Treasury approaches digital assets differently from other financial federal regulators because its principal regulatory concerns arise from the movement of value through the financial system rather than from the investment or commodity characteristics of a particular asset.

a. Internal Revenue Service (IRS)

In 2014, the Internal Revenue Service issued guidance treating convertible virtual currency as property for federal tax purposes.[9] As a result, many dispositions of cryptocurrency—including exchanges for goods or services and trades for other digital assets—can trigger gain or loss recognition. Even small transactions may require users to track basis, calculate gain or loss, and maintain records for tax reporting.

As a member of the House Ways and Means Committee, I am particularly concerned about tax uncertainty and the lack of parity for digital asset users. Because the IRS treats cryptocurrency as property, ordinary transactions can create tax consequences that do not arise when consumers spend U.S. dollars. That mismatch creates friction in everyday use and makes compliance more burdensome than it should be.

Consider a routine purchase made with Bitcoin. The transaction may require the purchaser to determine basis and calculate gain or loss, while the seller has separate reporting obligations. Requiring taxpayers to account for small, everyday digital asset transactions creates unnecessary complexity and discourages broader adoption.

The industry needs clear, predictable, and fair rules. Digital assets can implicate tax, securities, commodities, and money-transmission laws at the same time, and rules written for traditional assets do not always translate cleanly to blockchain-based transactions.

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[7] Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Securities Act Release No. 33-11412, Exchange Act Release No. 34-105020, 91 Fed. Reg. 13714 (March 17, 2026)

[8] Regulation Crypto Assets, Securities Act Release Nos. 33-11434; 34-106150, 91 Fed. Reg. 54510 (August 21, 2026)

[9] IRS Notice 2014-21, 2014-16 I.R.B. 938

b. Financial Crimes Enforcement Network (FinCEN)

Economists traditionally define money by the functions it performs. In *Money and the Mechanism of Exchange* (1875), William Stanley Jevons identified four: a medium of exchange, a measure of value, a standard of value, and a store of value. Those functions remain a useful framework for evaluating whether a digital asset operates as money.

Federal courts have recognized that Bitcoin can function as money. See United States v. Harmon, 474 F. Supp. 3d 76, 88–94, 100–09 (D.D.C. 2020); United States v. Freeman, 147 F.4th 1, 10–11 (1st Cir. 2025) (addressing "funds" as money or something generally accepted as a medium of exchange, measure of value, or means of payment); United States v. E-Gold, Ltd., 550 F. Supp. 2d 82, 85, 94–97 (D.D.C. 2008) (recognizing that money-transmission businesses may operate outside the traditional financial-institution system).

Accordingly, FinCEN generally does not determine whether a digital asset is a "security" or a "commodity" before applying its regulatory framework; instead, it examines whether the asset functions as a medium of exchange or as "value that substitutes for currency" and whether a person is engaged in accepting and transmitting that value.[10]

Through FinCEN, Treasury administers the Bank Secrecy Act and focuses primarily on preventing money laundering, terrorist financing, sanctions evasion, and other forms of illicit finance. This functional approach reflects Treasury's distinct statutory mandate: whereas securities regulators principally focus on investor protection and securities markets, and commodities regulators focus on derivatives and commodity markets, Treasury is concerned with the use of financial channels to transfer value and the illicit-finance risks those transactions may create. This is why it is important for FinCEN to characterize blockchain-based assets as "money."

III. U.S. Commodity Futures Trading Commission (CFTC)

The CFTC regulates blockchain-based assets through the lens of its authority under the Commodity Exchange Act (CEA). The CEA defines "commodity" broadly. Most relevant here, the definition extends to goods, articles, services, rights, and interests in which contracts for future delivery are or may be traded.[11] Federal courts have also treated virtual currencies as commodities within the CFTC's regulatory authority.[12]

The CFTC has long recognized certain digital assets, including Bitcoin and Ether, as commodities, and current federal guidance provides that non-security crypto assets may fall within the CEA's definition of a commodity. See *supra* note 6 and 7. Importantly, however, classification as a commodity does not necessarily mean that the CFTC comprehensively regulates the asset itself. The Commission exercises full regulatory and enforcement authority over derivatives involving digital commodities, including futures and options, but its authority

[10] Fin. Crimes Enf't Network, U.S. Dep't of the Treasury, FIN-2019-G001, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies 7-8 (May 9, 2019)
[11] 7 U.S.C. § 1a(9)
[12] Commodity Futures Trading Commission v. McDonnell, 287 F. Supp. 3d 213 (E.D.N.Y. 2018)

over cash or "spot" digital-commodity markets has traditionally been more limited, principally allowing the agency to police fraud and market manipulation.

This functional limitation distinguishes the CFTC from the SEC, which regulates digital assets and transactions that fall within the federal securities laws, as well as from the Department of the Treasury, whose jurisdiction focuses more heavily on money transmission, anti-money-laundering requirements, sanctions, and illicit finance.

Consequently, a blockchain-based asset may implicate multiple federal regulatory regimes depending not only on the characteristics of the asset, but also on how it is offered, sold, traded, or used. The CFTC's role, therefore, illustrates a central challenge of U.S. digital asset regulation: federal jurisdiction is divided according to agencies' statutory mandates rather than according to blockchain technology itself, creating circumstances in which the same blockchain ecosystem may simultaneously implicate commodities, securities, banking, and financial-crime regulation.

IV. Banking and Payments Regulation

Federal banking and payments regulation adds another layer to the regulation of blockchain-based assets because distributed ledger technology increasingly performs functions traditionally associated with banks and payment systems. Unlike the SEC and CFTC, whose jurisdiction generally turns on the nature of an asset or transaction under the federal securities and commodities laws, federal banking regulators—including the Office of the Comptroller of the Currency (OCC), Federal Reserve, and Federal Deposit Insurance Corporation (FDIC)—focus principally on whether regulated financial institutions may engage in blockchain-related activities and whether those activities can be conducted safely and soundly.

Banks may participate in the digital asset ecosystem by providing custody services, maintaining stablecoin reserves, facilitating payments and settlement through distributed ledgers, issuing or using stablecoins, and offering other services connecting traditional financial institutions with blockchain networks. Federal banking regulators therefore evaluate risks such as liquidity, capital adequacy, cybersecurity, operational resilience, consumer protection, and financial stability rather than simply determining whether a particular digital asset constitutes a security or commodity.[13]

Payment stablecoins further blur the distinction between digital asset and traditional banking regulation because they can function as mechanisms for storing and transferring dollar-denominated value and potentially compete with conventional bank deposits and payment services. Congress's enactment of the GENIUS Act established a federal regulatory framework specifically for payment stablecoins, including requirements designed to preserve stable value through reserve backing and regulation of permitted issuers. See *supra* 4.

Accordingly, banking and payments regulation demonstrates that federal oversight of blockchain is determined not merely by what a digital asset is, but also by who issues or holds it, how it is used, and the financial function that the underlying technology performs.

[13] Fed. Deposit Ins. Corp., Financial Institution Letter FIL-7-2025

V. The Case for a Unified Federal Framework

The fragmented nature of federal digital asset regulation presents a compelling case for Congress to establish a unified federal framework for blockchain-based assets and activities.

Under the existing regulatory structure, jurisdiction depends largely on which statutory regime applies to a particular asset, transaction, entity, or activity. The SEC regulates transactions involving securities; the CFTC regulates derivatives markets and exercises certain authority over commodities; Treasury administers anti-money-laundering, sanctions, and other illicit-finance requirements, as well as tax administration; and federal banking regulators oversee blockchain-related activities conducted by regulated financial institutions. Although each agency's jurisdiction reflects a legitimate regulatory objective, applying these separate regimes to an interconnected blockchain ecosystem can create overlapping requirements, jurisdictional uncertainty, and regulatory gaps.

A unified federal framework could reduce this uncertainty by establishing clear statutory classifications for digital assets, defining the respective jurisdiction of federal regulators, and applying consistent requirements to economically similar activities regardless of the technology or regulatory classification involved. Such a framework could also provide clearer rules governing digital asset trading platforms, custody, disclosures, stablecoins, decentralized finance, and other blockchain-based financial activities while preserving specialized agency expertise in areas such as investor protection, market integrity, banking safety and soundness, and illicit finance.

Greater regulatory certainty could encourage responsible innovation and investment in the United States by allowing market participants to determine their legal obligations before introducing new products or services, rather than relying heavily on enforcement actions or case-by-case determinations to establish regulatory boundaries. At the same time, a comprehensive framework could strengthen consumer and investor protections by addressing activities that may otherwise fall between existing regulatory regimes.

Accordingly, the principal argument for federal harmonization is not that blockchain requires a single regulator or an entirely separate body of law, but that Congress should establish a coherent statutory architecture in which jurisdiction, regulatory obligations, and protections correspond predictably to the economic functions and risks presented by blockchain-based activities.

UNRESOLVED ISSUES

The central challenge for digital assets is regulatory fragmentation. Different regulators—and different jurisdictions—can classify the same or similar assets in different ways, creating uncertainty for consumers, businesses, and investors.

I. International Competitiveness

The European Union illustrates the problem. The Court of Justice of the European Union treated Bitcoin exchange transactions as involving currency for purposes of a value-added-tax exemption.[14] That decision provided greater consistency within the EU, but differences between European and U.S. treatment still complicate cross-border use of digital assets.

While the European Union's Markets in Crypto-Assets Regulation (MiCA) establishes a comparatively harmonized regulatory framework for crypto-assets and crypto-asset service providers across EU Member States, the United States divides oversight among multiple federal regulators according to the characteristics and economic functions of a particular asset or activity. As a result, an EU user seeking to transact with a U.S.-based blockchain platform may encounter a service that is simultaneously subject to securities, commodities, banking, payments, anti-money-laundering, and sanctions requirements in the United States, without a single federal authorization establishing that the platform may provide the full range of its services. This fragmentation complicates cross-border compliance because satisfying the requirements of one U.S. regulator does not necessarily establish compliance with another regulator's statutory regime, nor does U.S. compliance automatically satisfy MiCA's requirements for providing crypto-asset services within the European Union.

MiCA generally requires firms providing covered crypto-asset services within the Union to obtain appropriate authorization and sharply limits the ability of third-country firms, including U.S. firms, to provide such services without authorization to situations in which an EU client initiates the service at the client's own exclusive initiative.[15] Consequently, U.S. providers may need to navigate multiple domestic regulatory regimes while separately determining whether their interactions with European customers constitute the provision or solicitation of services within the European Union. These differences can increase compliance costs, restrict the availability of U.S.-based blockchain products to European users, and encourage platforms to limit services geographically rather than risk violating either jurisdiction's requirements.

More broadly, the contrast between the EU's harmonized framework and the United States' agency-specific approach demonstrates how domestic regulatory fragmentation can become an international market-access issue: without clearer classifications and jurisdictional boundaries at home, U.S. blockchain businesses may face greater difficulty demonstrating regulatory equivalence, structuring cross-border products, and competing in jurisdictions that have adopted more comprehensive digital asset frameworks.

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[14] Skatteverket v. Hedqvist, Case C-264/14, ECLI:EU:C:2015:718 (Oct. 22, 2015)

[15] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-assets, art. 61, 2023 O.J. (L 150) 40, 116-17

WHERE DO WE GO FROM HERE?

I. Policy Questions for Congress

Congress has begun addressing these discrepancies. In September 2026, the House Ways and Means Committee considered digital asset tax legislation designed to provide clearer rules for these transactions, establish appropriate anti-abuse protections, and create greater parity between digital and traditional assets. The goal should be straightforward: a tax code that provides certainty, protects taxpayers, and allows American innovation to compete and grow.

Additionally, the U.S. House and Senate have taken up the GENIUS and CLARITY Acts, with the GENIUS Act becoming public law in July 2025. See *supra* 4 and 5. Unfortunately, the CLARITY Act is still facing political and legislative hurdles in the U.S. Senate.

The strides taken by Congress in the 119th to regulate blockchain-based assets has established momentum for the future. However, there is still a long way to go. Some questions should be considered by Members of Congress and our European counterparts to ensure this technology can be utilized properly without hindering development or encouraging bad actors.

Can the United States establish a single federal classification system for digital assets that is sufficiently compatible with classifications used by major foreign jurisdictions, particularly the European Union? Congress should examine whether clearer definitions of digital commodities, securities, stablecoins, and other digital assets would make it easier for foreign regulators and market participants to determine how U.S. law applies.

Should the United States create a single federal authorization or registration pathway for digital asset service providers? Congress should consider whether a compliant U.S. provider should have to establish its status separately under multiple federal regimes before a foreign regulator can assess it, or whether there should be a recognizable federal regulatory status for qualifying digital asset businesses.

Could the United States negotiate mutual-recognition or equivalence arrangements with jurisdictions such as the European Union? For example, Congress could examine whether a U.S.-regulated provider meeting substantially equivalent standards for custody, disclosures, capital, conflicts of interest, and consumer protection could receive streamlined treatment abroad—and whether the United States should reciprocate for appropriately regulated foreign providers.

How should a blockchain transaction's jurisdiction be determined? This is a particularly important question. Congress should consider whether jurisdiction should depend on the user's location, service provider's location, issuer's location, location of an interface, governing entity, or some combination of factors. A decentralized blockchain itself may have no meaningful geographic location.

How can Congress prevent regulatory arbitrage without effectively closing U.S. markets to foreign blockchain businesses? This is the balance Congress needs to strike. If foreign

providers can avoid U.S. requirements simply by operating offshore, domestic regulation loses effectiveness. But if accessing the U.S. market requires duplicative compliance despite equivalent foreign regulation, the United States may unnecessarily discourage international participation.

What would make a U.S. regulatory framework sufficiently clear that foreign regulators could confidently recognize it? This may be the most important question. Mutual recognition becomes difficult when foreign authorities cannot readily determine whether a U.S. digital asset business is primarily supervised by the SEC, CFTC, banking regulators, Treasury, states, or some combination thereof.

CONCLUSION

Blockchain technology represents a fundamental change in the way financial transactions can be recorded, verified, and transferred. For centuries, financial systems have depended on centralized ledgers maintained by trusted intermediaries. Blockchain challenges that model by allowing participants to transact through decentralized networks without relying on a single institution to maintain the authoritative record. That technological change, however, has exposed the limitations of a regulatory system designed around identifiable issuers, intermediaries, institutions, and geographic jurisdictions.

In the United States, those limitations are most apparent in the division of regulatory authority among federal agencies. The SEC approaches digital assets through the federal securities laws and the *Howey* framework; the CFTC applies the Commodity Exchange Act to digital commodities and derivatives; Treasury, through the IRS and FinCEN, focuses on taxation, the movement of value, money transmission, and illicit finance; and federal banking regulators address the safety and soundness of financial institutions participating in blockchain-based activities. Banking and payments regulation further complicates this structure as stablecoins and distributed-ledger payment systems increasingly perform functions traditionally associated with banks. Each regime serves an important purpose, but together they demonstrate that the legal treatment of a blockchain transaction can depend on what an asset is, how it is used, who uses it, and which financial function it performs.

That fragmentation is no longer solely a domestic regulatory problem. The European Union's adoption of MiCA illustrates the consequences of operating across jurisdictions with substantially different regulatory architectures. While the European Union has created a comparatively harmonized framework for crypto-asset service providers, a U.S. provider may remain subject to overlapping securities, commodities, banking, payments, tax, anti-money-laundering, and sanctions requirements. The resulting uncertainty can increase compliance costs, complicate cross-border transactions, and make it more difficult for American firms to demonstrate their regulatory status to foreign authorities.

Congress has begun addressing these problems through the GENIUS Act, the CLARITY Act, and proposed reforms to the taxation of digital assets, but the larger task remains unfinished. A durable federal framework should provide clear classifications, predictable jurisdictional boundaries, and appropriate protections while preserving the specialized expertise of existing regulators. It should also consider how U.S. rules interact with foreign regulatory systems, including whether mutual recognition, regulatory equivalence, or a recognizable federal authorization could facilitate lawful cross-border activity. The objective should not be regulation for its own sake, nor should it be the elimination of oversight. It should be a framework in which innovators, consumers, investors, financial institutions, and foreign regulators can determine with reasonable certainty which rules apply before a transaction occurs. The technology is global and decentralized; the law governing it must become sufficiently coherent to meet that reality.[16]

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[16] The organizational framework of this paper was informed, in part, by the author's study of digital asset regulation under Professor Douglas J. Pepe at The George Washington University Law School. The analysis and conclusions presented herein are independently developed.