

Welcome to Morgan Creek Digital's weekly digital asset update. It is comprised of a thought piece from our team followed by a summary of what we consider the most compelling digital asset news during the last week. We hope you find this content interesting. Please let us know if you have any comments or questions or if you would like to speak to a member of the [Morgan Creek Digital team](#).

## Regulating Crypto - Whose Job Is It, Anyway? Everybody, Somebody, Anybody or Nobody?



On August 10<sup>th</sup>, the Senate passed the Infrastructure Investment and Jobs Act (“IIJA”), better known as the \$1 trillion infrastructure bill, including an infamous crypto tax-reporting provision. The IIJA proposed that “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person” is considered a “broker” under Section 6045.<sup>1</sup>

For reference, the historical broker definition is as follows: “a person or entity that arranges contracts and acts as an intermediary between a buyer and seller for a commission”. A broker is an independent party to a transaction and is not to be confused with an agent acting on behalf of a principal party.<sup>2</sup>

This new provision, if enacted, would require digital asset brokers to report their users’ annual transactions to the IRS effective by the year-end of 2022.<sup>3</sup> It has been estimated that the new regulation will raise \$28 billion in funds over the next decade.<sup>3</sup> Some crypto market participants, including investors, entrepreneurs, operators and lobbyists,

have argued that the ambiguous definition could be interpreted as including crypto miners, node validators and developers. Despite bipartisan support to amend the provision, the House voted 220-212 to advance the bill and agreed to a final vote on September 27<sup>th</sup>, thereby blocking any amendments.<sup>3</sup>

The opposition objects to the seemingly last-minute crypto tax provisions that were included without consultation from industry experts. Furthermore, the sentiment addresses a more pressing underlying theme of crypto **governance** and whether Congress is best suited to create such legislation. Texas Senator, Ted Cruz, said in a statement: *"Let's recognize that if we gathered all 100 senators in this chamber and asked them to stand up and articulate two sentences defining what in the hell a cryptocurrency is, that you would not get greater than five who could answer that question."* The notion that only 5% of the U.S. Senate could clearly articulate what a cryptocurrency is, made us think more broadly about crypto regulation. If not suitable for the federal government, who or what assortment of entities will assume the role? Let's explore.

### **The U.S. Treasury Department Governance**

In response to the regulation hysteria, an anonymous official from the U.S. Treasury Department reported to Bloomberg that only cryptocurrency companies it considers as brokers will need to comply with proposed IRS reporting provisions.<sup>4</sup> Other firms that make up the nearly \$2 trillion crypto market, including developers and miners to hardware and software providers, will not face new requirements if the firm does not act as a broker under the tax code.<sup>4</sup>

### **SEC and CFTC Governance**

What about the SEC's stance and role in crypto regulation which has been historically vague? New SEC Chairman and former MIT blockchain professor, Gary Gensler, suggested that crypto exchanges and peer-to-peer networks without centralized authorities will still be subjected to SEC oversight regardless of his affinity for blockchain.<sup>5</sup> He clarified that, while his priority is protecting investors, he will likely progress thoughtfully rather than issuing hasty regulations.<sup>5</sup> Policy advisor of the U.S. Commodity Futures Trading Commission, Brian Quintenz, weighed in and claimed that the SEC has no authority over pure commodities or trading venues, whether gold, oil, or cryptocurrencies. Instead, he believes that the CFTC has authority over digital assets.<sup>6</sup>

### **States' Rights and Self-Regulation**

The role of government over the crypto frontier is still largely undetermined. At the local level, the divide between cryptocurrency-friendly states, like Wyoming and Colorado, and more heavy-handed regulators, like New York, has in many ways created more confusion for companies and policymakers alike. The divergent approaches and conflicting jurisdictions certainly complicate matters further. Nevertheless, as we witnessed with the marijuana industry, the states generally hold sovereignty and regulation over new U.S. markets while federal laws tend to lag behind.

At Morgan Creek Digital, we are closely monitoring another form of governance - self-governance. We believe that crypto exchanges in particular will play a leading role in addressing these unchartered territories; for example, a crypto exchange leader, Binance, recently announced it has expanded its identification verification to include facial recognition and a government-issued ID. We believe that those that position themselves as the most secure and regulated networks will ultimately succeed as the industry grows and consolidates. We will continue to monitor how self-regulated exchanges differentiate themselves in the marketplace.<sup>7</sup>

### **THE RUNDOWN:**

**The Postal Service's Law Enforcement Arm Is Buckling Down on Crypto:** The U.S. Postal Inspection Service, the law enforcement arm of the U.S. Postal Service, is re-thinking the way it handles crypto-related investigations. According to an internal audit report published last Thursday, the agency said its management of seized

cryptocurrency assets and crypto-related investigative procedures need to be improved. [Read more.](#)

**Visa's secret crypto strategy: Fun:** “The competitive advantage crypto has that most people haven't understood yet is that we just have more fun,” says Cuy Sheffield, Visa's head of crypto. The payments giant is practicing what it preaches: It revealed on Monday that it followed the Internet's “cool kids” and purchased a non-fungible token, or NFT, of a CryptoPunk, one of 10,000 iconic computer-generated characters, for \$150,000. [Read more.](#)

**El Salvador to Create \$150M Bitcoin Trust to Facilitate Exchange to U.S. Dollars:** El Salvador's government has agreed to create a \$150 million bitcoin trust to facilitate exchange between bitcoin and U.S. dollars in the country, according to a report by local newspaper El Diario de Hoy. El Salvador's Minister of Economy, María Luisa Hayém Brevé, said there is a possibility of increasing the initial \$150 million allocation, which was agreed to on Monday by the deputies of the Finance Commission of the Legislative Assembly. [Read more.](#)

**Slovenia Financial Agency Proposes New 10% Crypto Tax:** Slovenia's tax agency, the Financial Administration, has proposed new rules for crypto taxation, the Slovenian Press Agency reported on Tuesday. According to the report, 10% tax will be imposed on any transactions when cryptocurrencies are spent on goods or exchanged for cash. [Read more.](#)

**Billionaire Investor John Paulson: Cryptocurrencies Will 'Go to Zero:'** Hedge fund manager John Paulson made \$20 billion predicting the downfall of the U.S. housing market in 2008. Now, he's predicting cryptocurrencies will “go to zero.” “Cryptocurrencies, regardless of where they're trading today, will eventually prove to be worthless,” Paulson told Bloomberg in an interview. “Once the exuberance wears off, or liquidity dries up, they will go to zero. I wouldn't recommend anyone invest in cryptocurrencies.” [Read more.](#)

<sup>1</sup>Sapirie, M. (2021, August 3). Tax information reporting is coming for cryptocurrencies. Forbes.

<https://www.forbes.com/sites/taxnotes/2021/08/02/tax-information-reporting-is-coming-for-cryptocurrencies>

<sup>2</sup>Legal Information Institute. (2020, May). broker. Legal Information Institute. <https://www.law.cornell.edu/wex/broker>

<sup>3</sup>Haig, S. (2021, August 25). Infrastructure bill set for a vote by Sept. 27 with no changes to crypto tax provisions. Cointelegraph.

<https://cointelegraph.com/news/infrastructure-bill-set-for-a-vote-by-sept-27-with-no-changes-to-crypto-tax-provisions>.

<sup>4</sup>Condon, C., & Davison, L. (2021, August 13). Treasury Seeks to Quell Fears Crypto Tax Rules Are Overly Broad. Bloomberg.com.

<https://www.bloomberg.com/news/articles/2021-08-13/treasury-seeks-to-quell-fears-crypto-tax-rules-are-overly-broad>.

<sup>5</sup>Michaels, D., & Kiernan, P. (2021, August 19). WSJ news exclusive | Crypto's 'DEFI' projects aren't immune to Regulation, SEC's Gensler says. The Wall Street Journal. <https://www.wsj.com/articles/cryptos-defi-projects-arent-immune-to-regulation-secs-gensler-says>.

<sup>6</sup>Helms, K. (2021, August 5). SEC has no authority over pure commodities like CRYPTO assets, Says CFTC COMMISSIONER – regulation Bitcoin news. Bitcoin News. <https://news.bitcoin.com/sec-no-authority-over-pure-commodities-crypto-assets-cftc-commissioner/>.

<sup>7</sup>Zhao, W. (2021, August 20). Binance enforces mandatory kyc on all users amid regulatory pressure. The Block.

<https://www.theblockcrypto.com/linked/115166/binance-mandatory-kyc-regulatory-pressure>.

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