



# The Need for Comprehensive Cryptoasset Policy

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**B**lockchain and cryptocurrencies are, based on any objective and level-headed analysis, situated to redefine and drive change across industry verticals for years to come. Investment, in the form of financial resources and human capital, continues to accelerate as blockchain adoption increases in the United States and internationally. Even as the blockchain and broader cryptoasset ecosystem continues to develop, however, the lack of comprehensive

public policy and regulation continues to hamstring further development. This is not to say that every facet of the sector needs detailed regulation, but the need for consistent frameworks and guidelines that are both understandable and lay the groundwork for continued innovation is increasingly clear. Breaking down the need for more public policy, there are several areas in which further clarification would assist the continued development and

integration of blockchain for commercial usage.

Policy and policy debates might not always drive an economic sector forward, but in the blockchain and cryptoasset space a comprehensive and level-headed assessment of policy choices seems increasingly required. Level-headed, objective, and reasonable debate and examination around policy frameworks and guidelines is required, will provide much needed clarity to the marketplace, and will encourage further investment, growth, and development. Hearings and Congressional grilling of ideas building on the blockchain, including the scrutiny of projects like Libra, provide only a partial benefit; conversations need to be pro-growth and iterative to have a legitimate chance at fostering continued advancement. The very idea of blockchain was to create a decentralized and distributed alternative to traditional financial and commercial power brokers. A noble goal, but one that is at odds with the clarity and comfort necessary for both individuals and institutions to adopt blockchain iterations at a wholesale level.

### **Cryptoasset clarification**

Cryptoassets, specifically the cryptocurrency Bitcoin, may have been how the mainstream business community was introduced to the blockchain space, but even with the worldwide interest and engagement with the space there remain substantial gaps in how these assets are reported and treated from a financial perspective. The regulatory framework that has developed is fragmented and continuously changing both in the United

States and internationally. While it is logical that different nations will develop alternative regulatory frameworks and guidelines, the current landscape is not only fragmented but also somewhat contradictory even within the same jurisdiction. Focusing on the United States, the current tax treatment of cryptoassets—as property—creates an environment with unnecessary complexity and compliance guidelines. In addition to this non-optimal tax treatment and classification there are also conflicting reporting and regulatory guidelines issued by any number of regulatory organizations including the SEC, CFTC, and others. As if these contradictory requirements were not enough, the Financial Accounting Standards Board—the standard-setting body for U.S. GAAP (Generally Accepted Accounting Principles)—has yet to issue any authoritative reporting guidelines linked to cryptoassets. Such a confusing and fragmented regulatory landscape discourages innovation, stymies commercial adoption, and may lead to the United States falling behind other nations. Guidelines are not, by any extension, a driver of innovation but guardrails and frameworks are indeed required if organizations are to make long-term investments.

### **Blockchain liability and insurance**

Policy and the public policy framework, especially when it comes to new technology, is not usually something that is discussed as prerequisite for the further development and maturation of the ecosystem. The blockchain community and ecosystem, however, does seem to

require at least a preliminary discussion and analysis of how blockchain insurance policies can be developed. Upon initial review, such a thread of discussion might seem unusual, but is actually connected to another burgeoning area of policy and private sector discussion: cybersecurity insurance. With cybersecurity hacks, breaches, and other incidents costing U.S. organizations billions annually, private sector organizations realize the seriousness of this issue. Blockchain might be associated by some to reduce cybersecurity risk, and while that is true from a certain perspective that only represents a partial view of how the technology fits into the broader business landscape. It is true that the tamper-resistant nature of the ledger, alongside the consensus methodologies at the center of blockchain iterations, may reduce some types of risk, the technical complexity of implementing blockchain systems can amplify other risks. With organizations across industry lines adopting blockchain and storing ever-increasing amounts of information on blockchain augmented platforms, the risk of these networks being breached will increase as well. Whenever a blockchain, such as the permissionless Bitcoin or Ethereum blockchains are modified for commercial adoption (such as at JP Morgan), or a distributed ledger developed by a single entity is widely adopted (like the array of IBM Hyperledger options) there is the potential that—by customizing these solutions—some of the very strength of the blockchain will be undermined. Establishing insurance policies and protocols is not only good business sense but is also imperative for

the continued maturation of the ecosystem. Particularly in the healthcare and financial services space, developing a logical and business-friendly insurance protocol for data stored on blockchains seems a rather clear next step to facilitate future adoption.

### **Smart contract enforceability**

Following cryptocurrencies, the next most popular application and use case for blockchain across industry lines is the rise of smart contracts. Despite the continued hype, excitement, and debate around the potential future of the blockchain ecosystem it is important to recognize the fact that—by itself—a blockchain is not able to communicate, interact with, or take actions. A blockchain, no matter what the specific label or iteration, is simply a distributed and decentralized ledger of information. In other words, it is simply a repository where transactional data are stored in the form of blocks; smart contracts represent the proverbial links between blockchains and other technology systems. Although initial opinions and publicly available information have tended to recognize and validate the rights and obligations linked to smart contracts as equivalent and enforceable like traditional contracts, there are a few outstanding items that remain unaddressed. For example, what occurs if a smart contract is coded incorrectly, so that even if the contract operates correctly and as advertised it does not make business sense? Is there to be a role for arbitrators and mediators in an environment where contracts can be increasingly automated? And lastly, what is the exposure of organizations in the legal and other fields attempting to offer

advisory services connected to blockchain and cryptoasset services? Fortunately, there is a substantial amount of legal precedent in existence for traditional contracts but providing some kind of answers to these smart contract specific matters is necessary for broader adoption.

Blockchain continues to develop and grow at an accelerating rate, and the private market innovation has driven this development to date. Proceeding cautiously, to not stymie growth, there is a need for robust policy discussion. Developing and maintaining a leadership position in this fast-moving space, as well as the associated

technologies such as 5G and IoT, requires a common-sense, flexible, and iterative public policy framework to be developed sooner rather than later.

The market, and the individuals and institutions who partake in it, will be better off for it.

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