

More Warnings From US Regulators Regarding Cryptocurrency

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In a Wall Street Journal article *[subscription required]* Jay Clayton, the chair of the Securities and Exchange Commission, and J. Christopher Giancarlo, the chair of the Commodity Futures Trading Commission, remind participants in the burgeoning cryptocurrency market that their agencies are being vigilant in the pursuit of their regulatory mandates to enforce the law and to "set and enforce rules that foster innovation while promoting market integrity and confidence."

They are not sitting idly watching technological innovation and entrepreneurial attempts to shift the paradigm to render them obsolete. Rather, they warn against attempts to evade or ignore US securities laws. However labelled, they note that cryptocurrencies may have characteristics that make them securities, and if so, offering, selling and trading such cryptocurrencies must be carried out in compliance with securities law. These regulators are disturbed by the many examples they have seen of attempts by promoters to avoid compliance by focussing on form rather than economic and legal substance. It is the substance that matters. The SEC is devoting resources to monitoring ICOs and is also monitoring cryptocurrency-related activities of market participants it regulates, including broker-dealers, investment advisers and trading platforms.

All that being said, they recognize that they may need to adapt their old regulatory models to the new world of cryptocurrencies. Whether a more active regulatory approach from US will result in Canadian regulators being less worried about a stricter approach stifling innovation (as a comparative regulatory disadvantage) and attempt to bring the Canadian cryptocurrency industry "in from the cold" by way of enforcement remains to be seen.

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