

Cryptocurrencies and Securities Fraud: In Need of Legal Guidance

Ellen S. Podgor*

I.	INTRODUCTION.....	130
II.	IS CRYPTOCURRENCY A SECURITY?	132
III.	WILL CRYPTOCURRENCY BE A SECURITY?.....	136
IV.	CONCLUSION	137

I. INTRODUCTION

Do We Need a “Beanie Baby” Fraud Statute,¹ is an Essay that I authored 20 years ago that examined whether Congress needed to pass specific legislation to criminalize Beanie Baby fraud.² My conclusion was that although specific legislation was not necessary for improper sales of Beanie Babies, it was important to have a balanced approach between the different branches of government when combatting fraudulent conduct.³ We did not need the specificity in statutes to curtail criminality in the Beanie Baby or Pokémon world, the hot frauds of that time,⁴ but we also needed to recognize that a mail fraud statute with little guidance in areas like intangible rights, placed undue discretion in the hands of the prosecutor.⁵

* Gary R. Trombley Family White Collar Research Professor and Professor of Law, Stetson University College of Law. The author thanks Professors Carla L. Reyes and Wanita Scroggs.

1. See generally Ellen S. Podgor, *Do We Need a “Beanie Baby” Fraud Statute?*, 49 AM. U. L. REV. 1031 (2000) (examining the differences between generic and specific statutes in deterring fraudulent conduct).

2. At the time of this Essay, law enforcement was investigating activities involving the selling of counterfeit Beanie Babies, as well theft of Beanie Babies and other fraudulent conduct related to this commodity. See *id.* at 1035–36. The pervasiveness of Beanie Baby fraud was in large part a result of the high price associated with many of these objects as well as the difficulty in ascertaining the differences between highly valued Beanie Babies and those with little monetary value. *Id.* at 1035–39. In some instances, prosecutors used the mail, wire, or computer fraud statutes to proceed against individuals involved in this illegal activity. *Id.* at 1036 nn.39–40 & 42.

3. *Id.* at 1046.

4. *Id.* at 1035–39 (detailing instances of criminal conduct related to Beanie Babies).

5. *Id.* at 1042–44. In *McNally v. United States*, 483 U.S. 350, 355–56 (1987), the Supreme Court rejected mail fraud cases premised on “intangible rights.” The Court held that a 1909

Cryptocurrencies provide us with a similar dilemma in that just about anything can be used fraudulently,⁶ and like all fraudulent acts, the government needs to take steps to curtail and punish the criminal activity. But the issue here is more complex, as it turns on definitions of terms within existing statutes and whether fraudulent use of cryptocurrencies is covered by that language.⁷ It also includes a regulatory aspect that may not be seen in garden variety fraud cases.⁸ Like many new and developing frauds in the criminal world, there is often limited guidance beyond traditional statutory interpretation to decide what is included and what is excluded. To some extent, Chief Justice Burger allowed mail fraud prosecutions to grow when he stated that the statute was the “stopgap” provision until particularized legislation could be passed by Congress to deal with the new fraudulent activity.⁹ But this expansion also left individuals uncertain of whether they were committing criminal conduct in business activities. Cryptocurrency in the securities fraud area amplifies this problem.

This Essay examines cryptocurrency fraud prosecution, looking at the issue of whether cryptocurrency is included in securities fraud statutes. It also looks at proposed legislation that would have omitted cryptocurrency as a security but called for enhanced regulation and tax relief. This Essay advocates for additional clarification on the scope of securities fraud, particularly whether cryptocurrency fraud could be prosecuted under current securities fraud statutes. It questions the location of definitions within agency regulations. It concludes by noting that although we did not need a Beanie Baby fraud statute or even clarification in the existing fraud statutes for Beanie Baby fraud prosecutions,¹⁰ when it comes to cryptocurrencies *Congress*, and not the *Courts*, needs to provide more direction.

amendment to the mail fraud statute required a deprivation of “money or property” for a conviction. *Id.* at 356–57. Congress responded the following year with a new statute that provided a new definition statute that authorized mail and other frauds premised on the deprivation of intangible rights. *See* 18 U.S.C. § 1346 (1988). But this statute was argued as vague and the Supreme Court eventually defined what was encompassed in the term “intangible rights” in *Skilling v. United States*, 561 U.S. 358, 368 (2010), limiting the definition to “bribery and kickback” activities. Currently, prosecutors can bring mail and other frauds under the generic statutes when they can show a deprivation of “money or property” or alternatively as “intangible rights” but only when the activities include “bribery or kickbacks.” *See id.* at 368, 399–400.

6. The growth of illegal practices in the area of bitcoins has been a continual issue. *See* Matt Robinson & Tom Schoenberg, *U.S. Launches Criminal Probe into Bitcoin Price Manipulation*, BLOOMBERG (May 24, 2018, 3:41 AM), <https://www.bloomberg.com/news/articles/2018-05-24/bitcoin-manipulation-is-said-to-be-focus-of-u-s-criminal-probe> [<https://perma.cc/H9GP-DQ8Q>].

7. It is also more than a tangible item with a fluctuating monetary value.

8. “[A] lack of regulations like the ones that govern stocks and other assets[]” is viewed as a rationale for increased fraud. *Id.*

9. *See* *United States v. Maze*, 414 U.S. 395, 405–06 (1974) (Burger, C.J., dissenting) (“When a ‘new’ fraud develops . . . the mail fraud statute becomes a stopgap device to deal on a temporary basis . . .”).

10. The two key statutes used for prosecution of fraud are mail fraud, 18 U.S.C. § 1341 (2018), and wire fraud, 18 U.S.C. § 1343 (2018). In some instances, especially those involving use of computers, one might see computer fraud, 18 U.S.C. § 1030 (2018). Conspiracy, 18 U.S.C.

II. IS CRYPTOCURRENCY A SECURITY?

Although cryptocurrency fraud is prevalent,¹¹ few Department of Justice (DOJ) cases have looked at the terminology in prosecuting such cases under the rubric of securities fraud. In contrast, the Securities Exchange Commission (SEC) has not been shy in proceeding with enforcement actions in the cryptocurrency arena. The SEC credits itself with a *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934*,¹² actively enforcing securities laws in the Initial Coin Offering (ICO) area, in addition to a list of specific enforcement actions related to ICOs.¹³ It is also apparent that the SEC and the Commodity Futures Trading Commission (CFTC) are working together when it comes to virtual currency enforcement actions.¹⁴ But less enforcement activity is apparent when one examines the criminal prosecutions.

One illustration of a criminal prosecution is seen in the case of the government's prosecution of Maksim Zaslavskiy. Zaslavskiy was charged in the Eastern District of New York in a three-count Indictment with one count of Conspiracy to Commit Securities Fraud, and two counts of Securities Fraud.¹⁵ He was accused of fraudulent conduct with investors in two initial coin offerings, ReCoin and Diamond.¹⁶ Journalist Jack Newsham of Law 360 noted that "[t]he decision is one of the first to consider the applicability of federal

§ 371 (2018), is also a generic statute used to prosecute fraudulent activity. This statute permits conspiracy with a specific federal statute (e.g., conspiracy to commit mail fraud) or conspiracy to defraud the government. *Id.* See generally ELLEN S. PODGOR, PETER J. HENNING, JEROLD H. ISRAEL & NANCY J. KING, WHITE COLLAR CRIME 49-104 (2d ed. 2018) (describing conspiracy statute and mail, wire, bank and other fraud statutes).

11. 24 WILLIAM M. PRIFTI, JOY M. BRYAN & PAUL RICHTER, SECURITIES: PUBLIC AND PRIVATE OFFERINGS § 1:14 (2d ed. 2018); MARK W. RASMUSSEN, EVAN P. SINGER & MELISSA SALDANA, JONES DAY, TEXAS ENFORCEMENT SWEEP FINDS WIDESPREAD FRAUD IN CRYPTOCURRENCY OFFERINGS 1 (2018), https://www.jonesday.com/files/Publication/d71ad58e-3382-43cc-bcof-d92a6afb5956/Preview/PublicationAttachment/f1e0e80a-c43d-4c1fa284-d92a6c925468/Texas_Enforcement_Sweep_Finds_Fraud_r3.pdf [<https://perma.cc/7GTL-ZUHY>]; see also Sophia Ankel & Prabhjote Gill, *Top Cryptocurrency Scams of 2019 – and How Most Hackers Got Away with It*, BUS. INSIDER (Dec. 27, 2019, 5:40 AM), <https://www.businessinsider.com/the-biggest-cryptocurrency-scams-and-arrests-of-2019-so-far-2019-8> [<https://perma.cc/W4BE-358X>] (detailing the major cryptocurrency scams and arrests of 2019).

12. Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81,207, 2017 WL 7184670 (July 25, 2017).

13. Brief of Securities and Exchange Commission in Support of the United States in Opposition to Defendant's Motion to Dismiss Indictment at 4-6, United States v. Zaslavskiy, No. 17-CR-647, 2018 WL 4346339 (E.D.N.Y. Sept. 11, 2018), 2018 WL 2016191.

14. See PRIFTI ET AL., *supra* note 11, § 1:14 (discussing the joint statement by SEC and CFTC enforcement directors regarding virtual currency enforcement actions).

15. Indictment at 9-12, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647), 2017 WL 7798079.

16. *Id.*

securities laws in a criminal case involving digital tokens or cryptocurrency.”¹⁷ The Indictment included a forfeiture action.¹⁸

The Indictment alleged that the accused “engaged in a fraudulent scheme to defraud investors and potential investors in R[eC]oin and Diamond by inducing them to purchase purported tokens or coins associated with the R[eC]oin ICO and the Diamond IMO through material misrepresentations and omissions.”¹⁹ It was claimed that Zaslavskiy “falsely advertised” the “Re[C]oin ICO on the internet[,] in press releases[,] and on Re[C]oin’s website.”²⁰ The advertisements claimed that “R[eC]oin [was] a ‘new blockchain’ cryptocurrency ‘backed by real estate investments in developed economies such as the United States, U.K., Switzerland, Australia, Canada and Japan.’”²¹ “Approximately 1,000 individuals invested in Re[C]oin [when it was] launch[ed],” and investors soon began to realize that this was a fraudulent scheme.²² The defendant eventually admitted to the SEC that some of the promises made to investors would not happen, such as “that the value of the Re[C]oin token was not going to increase through real estate investments, and that no team of experienced brokers, lawyers or developers had been hired by the defendant or Re[C]oin.”²³ Somewhat similar conduct was involved with Diamond. Defendant’s response was “that while he ‘exaggerated and made false statements’ about Re[C]oin and Diamond, it was all in an effort to get investors to invest in his venture, not to steal or cheat investors.”²⁴

Zaslavskiy filed a *Motion to Dismiss the Indictment* arguing that ReCoin and Diamond did not involve securities and that the securities laws were vague as applied to this case.²⁵ The defendant’s *Memorandum in Support of its Motion to Dismiss* emphasized how “currency” was excluded in the definition of a “security” and that unlike stocks, bonds, and other types of securities, the defendant’s digital currencies did not fit within this definition.²⁶ He noted that the SEC had failed to adopt rules regarding the regulation of digital assets, despite an acknowledgement of the need for regulation of digital assets.²⁷ The Defendant’s *Memorandum* also considered whether the digital

17. Jack Newsham, *Digital Token Seller Can't Slip Securities Fraud Charges*, LAW360 (Sept. 11, 2018, 2:59 PM), <https://www.law360.com/articles/1081677/digital-token-seller-can-t-slip-securities-fraud-charges> [<https://perma.cc/QN7M-GQQK>].

18. Indictment, *supra* note 15, at 12.

19. *Id.* at 4.

20. Criminal Sentencing Memoranda at 1, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647), 2019 WL 2912313.

21. *Id.*

22. *Id.* at 3.

23. *Id.*

24. *Id.* at 9.

25. See generally *Zaslavskiy*, 2018 WL 4346339 (ruling on defendant’s motion to dismiss).

26. Memorandum of Law Supporting Maksim Zaslavskiy’s Motion to Dismiss Indictment at 11–14, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647), 2018 WL 2016192.

27. *Id.* at 6–7.

assets met the *Howey* test²⁸ as an investment contract, but argued that this “test . . . provide[d] limited guidance” in this area.²⁹

The Government and the SEC filed briefs opposing the defendant’s position. The government emphasized that the defendant had offered an “investment opportunity,” although he later changed his tune calling it “a sale of a currency backed by a commodity.”³⁰ The government reminded the court that a dismissal was an “extraordinary remedy” and that ReCoin and Diamond ICOs were securities because they were “investment contracts.”³¹ The SEC, which had a parallel proceeding, argued that the defendant was “simply engaged in old-fashioned fraud dressed in a new-fashioned label.”³² The SEC noted that it was “the substance of the transaction—not the terminology used—that determines the character of the offering.”³³ The defendant’s reply brief³⁴ reemphasized that cryptocurrencies were not securities within the terms of the statute and that the Supreme Court in *Marine Bank v. Weaver*³⁵ had stated that “Congress, in enacting the securities laws, did not intend to provide a broad federal remedy for all fraud.”³⁶

The court denied the motion to dismiss.³⁷ The court initially examined the indictment under Federal Rule of Criminal Procedure, Rule 7(c)(1), finding that the “extraordinary remedy” of dismissing an indictment was not met here, as the indictment was constitutionally sound and satisfied Rule

28. SEC v. W. J. Howey Co., 328 U.S. 293, 298–99 (1946). The *Howey* test, emanating from this Supreme Court decision, provides a four-part test for ascertaining whether an investment contract constitutes a security. See *id.* The “four elements [are] (1) an investment of money; (2) this investment being made in a ‘common enterprise’; (3) an expectation of profits from the investment; and (4) this expectation being based upon the efforts of a third party.” David J. Gilberg, *Regulation of New Financial Instruments Under the Federal Securities and Commodities Laws*, 39 VAND. L. REV. 1599, 1623 (1986) (discussing new financial instruments and the applicability of SEC and CFTC jurisdictions to these instruments).

29. Memorandum of Law Supporting Maksim Zaslavskiy’s Motion to Dismiss Indictment, *supra* note 26, at 7, 14–20. The defendant argued that “[t]he [s]ales of the [d]igital [c]urrencies [d]id [n]ot [i]nvolve an [i]nvestment of [m]oney,” that “[t]here [w]as [n]o [h]orizontal [c]ommonality,” that “[t]here [w]as [n]o [s]trict [v]ertical [c]ommonality,” and that “[t]he [p]urchasers of the [d]igital [c]urrencies [w]ere [n]ot [d]ependent on the [e]fforts of [o]thers.” *Id.* at 15–18.

30. The Government’s Memorandum of Law in Opposition to the Defendant’s Motion to Dismiss the Indictment at 1, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647), 2018 WL 2016190.

31. *Id.* at 9–12.

32. Brief of Securities and Exchange Commission in Support of the United States in Opposition to Defendant’s Motion to Dismiss Indictment, *supra* note 13, at 1.

33. *Id.* The SEC noted that *Howey* “embodies a ‘flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.’” *Id.* (quoting *Howey*, 328 U.S. at 299).

34. Defendant’s Reply Brief in Support of His Motion to Dismiss, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647), 2018 WL 3216422.

35. *Marine Bank v. Weaver*, 455 U.S. 551 (1982).

36. Defendant’s Reply Brief in Support of His Motion to Dismiss, *supra* note 34, at 1–2 (quoting *Weaver*, 455 U.S. at 556).

37. *Zaslavskiy*, 2018 WL 4346339, at *1.

7(c).³⁸ The district court *Memorandum & Order* stated that “[t]he subsidiary question of whether the conspirators *in fact* offered a security, currency, or another financial instrument altogether, is best left to the finder of fact—unless the Court is able to answer it as a matter of law after the close of evidence at trial.”³⁹ The court did note that it “ha[d] been treated to a volley of cases decided in the civil arena, which may well be instructive at the appropriate time but do not inform [the court] as to whether the Indictment itself is fatally flawed.”⁴⁰ Finding the parties debate to be premature,⁴¹ the court did say that “[a] [r]easonable [j]ury [c]ould [c]onclude [t]hat [t]he [f]acts [a]lleged in the Indictment [s]atisfy the *Howey* Test.”⁴² But in the end the court determined that the ultimate question is a factual one for the jury to determine at trial.⁴³ The court did hold that “the law under which Zaslavskiy [was] charged is [not] unconstitutionally vague as applied to his conduct, as it is described in the Indictment.”⁴⁴

What is not mentioned in the court’s *Memorandum* decision is the *Rule of Lenity*, a rule specific to criminal cases that calls for strictly construing a statute in favor of the defendant when there are two possible constitutional meanings.⁴⁵ The premise behind this rule is to assure fair warning of the illegal conduct.⁴⁶ The defendant’s failure to raise this issue in his briefs may be a function of the extensiveness of the alleged fraud. It is difficult to claim fair warning when there is alleged blatant misconduct.

Issues of statutory vagueness and ambiguity often arise in cases with bad facts, leaving the court to balance strict statutory interpretation against egregious fraudulent conduct.⁴⁷ In the *Zaslavskiy* case, the court’s job was easier in that the issues were presented in an early pre-trial stage using the vehicle of a motion to dismiss, leaving the defense with a high bar to jump to

38. *Id.* at *3–4. Federal Rule of Criminal Procedure, Rule 7(c)(1) states in pertinent part: “The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion.” FED. R. CRIM. P. 7(c)(1).

39. *Zaslavskiy*, 2018 WL 4346339, at *4.

40. *Id.*

41. *Id.*

42. *Id.* The court noted that the *Howey* Test “defines an investment contract as a ‘contract, transaction, or scheme whereby a person [1] invests his money [2] in a common enterprise and [3] is led to expect profits solely from the efforts of the promoter or third party.’” *Id.* (alterations in original) (quoting SEC v. W. J. Howey Co., 328 U.S. 293, 298–99 (1946)).

43. *Id.* at *7.

44. *Id.* at *8.

45. See, e.g., *United States v. Bass*, 404 U.S. 336, 347 (1971); *Rewis v. United States*, 401 U.S. 808, 812 (1971).

46. See *United States v. Lanier*, 520 U.S. 259, 266 (1997) (“[T]he canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered.”).

47. See, e.g., *Skilling v. United States*, 561 U.S. 358, 402–13 (2010) (examining whether mail fraud’s intangible rights statute, 18 U.S.C. § 1346, was vague with facts involving the former CEO of Enron).

be successful. The judge's decision that this is an issue for the jury to decide is a measured approach that left the issue somewhat open should the case have proceeded to trial. But as is often the case when there are significant legal issues, the defendant in this case accepted a plea that terminated the issue for trial, and possible later appeal if he had been convicted at trial.⁴⁸ Thus, the resolution by the fact-finder and appellate review of the legal issue was bypassed in this case.

III. WILL CRYPTOCURRENCY BE A SECURITY?

Congress, however, has been attuned to this issue. First with the Token Taxonomy Act of 2018 proposed on December 20, 2018,⁴⁹ and later with the proposed Token Taxonomy Act of 2019 introduced on April 9, 2019.⁵⁰ These bills proposed “[t]o amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to exclude digital tokens from the definition of a security.”⁵¹ Thus, the proposed amendment would have the effect of exempting cryptocurrencies from securities law. The bills also include a proposal that the SEC “enact certain regulatory changes regarding digital units secured through public key cryptography” and offer tax related changes for those doing transactions with cryptocurrency.⁵² For example, the bills include “adjust[ing] taxation of virtual currencies held in individual retirement accounts” and “creat[ing] a tax exemption for exchanges of one virtual currency for another, to create a de minimis exemption from taxation for gains realized from the sale or exchange of virtual currency for other than cash, and for other purposes.”⁵³ Congressman Soto noted that this legislation and other legislation offered (the Digital Taxonomy Act of 2019), would “provide jurisdiction and regulatory certainty for businesses, entrepreneurs, and regulators in the United States’ blockchain economy.”⁵⁴ While this legislation has been offered, currently nothing has been adopted.

In addition, the CFTC sought “public comment and feedback in order to better inform the Commission’s understanding of the technology, mechanics,

48. See Docket, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647); see also Judgment at 1–3, *Zaslavskiy*, 2018 WL 4346339 (No. 17-CR-647) (sentencing the defendant to 18 months imprisonment and three years of supervised release on his plea of Guilty to Conspiracy to Commit Securities Fraud, with the sentence to commence on January 13, 2020).

49. See Token Taxonomy Act, H.R. 7356, 115th Cong. (2018).

50. See Token Taxonomy Act of 2019, H.R. 2144, 116th Cong. (2019).

51. H.R. 7356; H.R. 2144; see also Stan Higgins, *US Lawmakers File Bill to Exempt Cryptocurrencies from Securities Laws*, COINDESK (Dec. 20, 2018, 8:41 PM), <https://www.coindesk.com/us-lawmakers-file-bill-to-exempt-cryptocurrencies-from-securities-laws> [<https://perma.cc/G2Q8-6GKA>] (discussing the Token Taxonomy Act).

52. H.R. 7356; H.R. 2144.

53. H.R. 7356; H.R. 2144.

54. See Press Release, Rep. Darren Soto, Rep. Soto Statement on Facebook’s New Cryptocurrency: “Potential Opportunity for Financial Inclusion” (Jun. 18, 2019), <https://soto.house.gov/media/press-releases/rep-soto-statement-facebook-s-new-cryptocurrency-potential-opportunity> [<https://perma.cc/JQ24-34SM>].

and markets for virtual currencies beyond Bitcoin, namely Ether and its use on the Ethereum Network.”⁵⁵ Feedback has been forthcoming in the *Request for Input on Crypto-Asset Mechanics and Markets*.⁵⁶

IV. CONCLUSION

Although the issue has been on the radar of Congress, the SEC, and the CFTC, it remains uncertain if cryptocurrency will be designated as a security. In November 2018, SEC Chair Jay Clayton reportedly stated when discussing issuing initial coin offerings, “[c]hances are, it’s subject to SEC laws.”⁵⁷ CNBC reported that, “[i]n June, Clayton made it clear that the agency won’t bend the rules for cryptocurrency when it comes to defining what is or what isn’t a security.”⁵⁸ Additionally, CNBC reported that “[w]hether an asset is a security right now follows the ‘Howey Test.’”⁵⁹ The Article reporting this exchange noted that “[t]he SEC has said explicitly that [B]itcoin and [E]ther are treated as commodities and therefore aren’t subject to that test. But all other cryptocurrencies are still seen by the SEC as securities and need to register with the agency.”⁶⁰

This all may be fine for civil enforcement actions, but this lack of clarity and lack of specific legislation is a denial of basic due process in our criminal justice system. Further, the answer is not to send this issue to agency regulation when prison time is a possible punishment. Clear legislation is needed to resolve the issue presented in the *Zaslavskiy* case and other possible cases. Further legislation that precludes cryptocurrency as securities may not be well received by agencies and may not provide sufficient oversight of our markets. Most importantly, the DOJ and SEC should be pushing for legislation to clarify this question, as absent specificity, they may lose prosecutions premised on the *Rule of Lenity*. Unlike Beanie Babies, cryptocurrency is not a passing fad that can be encompassed within existing statutes. Rather, it requires legislation that clarifies the current questions.

55. Press Release, Commodity Futures Trading Comm’n, CFTC Seeks Public Comments on Crypto-Asset Mechanics and Markets (Dec. 11, 2018), <https://www.cftc.gov/PressRoom/PressReleases/7855-18> [<https://perma.cc/58NY-M8R8>].

56. See *Comments for Orders and Other Announcements 83 FR 64563: Request for Input on Crypto-Asset Mechanics and Markets*, COMMODITY FUTURES TRADING COMM’N, <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2941> [<https://perma.cc/PVL9-PCZY>].

57. Kate Rooney, *SEC’s Clayton Needs to See Key Upgrades in Cryptocurrency Markets Before Approving a Bitcoin ETF*, CNBC (Jan. 7, 2019, 9:41 AM), <https://www.cnbc.com/2018/11/27/sec-wants-key-upgrades-in-crypto-markets-before-approving-bitcoin-etf.html> [<https://perma.cc/3WFA-RR2N>].

58. *Id.*

59. *Id.*

60. *Id.*