

Regulating Crypto after FTC

How are cryptocurrencies treated by the U.S. government? Former Chairman of the CFTC and a pioneer of crypto regulation, Christopher Giancarlo breaks down the crypto-regulatory landscape. Giancarlo explains why some crypto is treated as a commodity, others as a security, while others may not be regulated at all (yet). In a time of extreme volatility in the crypto markets, Giancarlo explores FTX, Bitcoin, stablecoins, DAO's, enforcement actions by the CFTC, the SEC under Chairman Gary Gensler, and the future of crypto regulation. Finally, Giancarlo looks at the "digital dollar" and discusses with Joel how issues such as privacy and the 4th Amendment would apply to U.S. fiat cryptocurrency.

Related Resources

- [When is cryptocurrency a commodity?](#) – a 4 min legal explainer with former CFTC Chairman Christopher Giancarlo.
- [Digital Dollar Privacy & Power](#) – a 10 min explainer of the legal risks and powers of central bank digital currencies and a digital dollar.

Select Cryptocurrency Terms Discussed

- Bitcoin as a Commodity – Bitcoin (BTC) was deemed by the CFTC to be a commodity for regulatory purposes. [CFTC's Bitcoin basics](#).
- Ethereum – Ethereum (ETH) is a decentralized global software platform powered by blockchain technology. Recent CFTC leaders have referred to Ethereum as a commodity while the SEC has indicated that they view it as a possible security.
- Bitcoin Future – A Bitcoin futures contract is a standardized agreement to buy or sell a specific quantity of Bitcoin at a specified price on a particular date in the future. In the United States, Bitcoin is a commodity, and commodity futures trading is required to take place on futures exchanges regulated and supervised by the CFTC.
- Digital Commodities Consumer Protection Act of 2022 – Introduced in Senate (08/2022). The proposed law would amend the Commodity Exchange Act to (amongst other purposes) provide the Commodity Futures Trading Commission jurisdiction to oversee the spot digital commodity market.
- DAO – A decentralized autonomous organization or DAO is an emerging form of legal structure that has no central governing body and which can be operated by a smart contract. Popularized through cryptocurrency enthusiasts and blockchain technology, DAOs are used to make decisions in a bottoms-up management approach.
- [Digital Dollar Project](#) – The Digital Dollar Project is a partnership between Accenture (NYSE: ACN) and the Digital Dollar Foundation to advance the exploration of a United States Central Bank Digital Currency (CBDC).
- e-CNY – The digital Yuan (also referred to as the digital renminbi or e-CNY) is a digital currency issued by China's central bank. It is the first digital currency issued by a major economy.
- FTX – A prominent cryptocurrency exchange that filed for bankruptcy as of November 2022.
- Stablecoins – Cryptocurrencies that attempt to peg their market value to some external reference such a currency like the U.S. dollar or to the price of a commodity such as

gold.

Select People Discussed

- Gary Gensler- Chairperson, U.S. Securities and Exchange Commission since 2021.
- Timothy G. Massad- Former Chairman of the CFTC who testified before Congress that Bitcoin is a commodity in 2014.
- Michael Lewis- Michael Monroe Lewis is an American author and financial journalist.
- Samuel Bankman-Fried-Also known by his initials SBF, is an American entrepreneur, investor and founder and former CEO of the cryptocurrency exchange FTX, FTX.US and quantitative cryptocurrency trading firm Alameda Research.

Select Cases Discussed

- [Coinflip, Inc D/B/A Deravabit, et al. 2015](#) – The CFTC Order held in part that Bitcoin could properly be designated as a commodity.
- [Ooki DAO Case](#) – In the Matter of: bZeroX, LLC; Tom Bean; and Kyle Kistner (2022) CVTC civil enforcement action which amongst other things charged Ooki DAO, a decentralized autonomous organization, with violating the Commodity Exchange Act.
- My Big Coin Enforcement – The CFTC led a successful enforcement action with a [decision](#) in 2018 against My Big Coin for a fraudulent digital currency scheme in violation of the Commodity Exchange Act.

The Honorable J. Christopher Giancarlo served as 13th Chairman of the United States Commodity Futures Trading Commission. Giancarlo also served as a member of the US Financial Stability Oversight Committee, the President's Working Group on Financial Markets, and the Executive Board of the International Organization of Securities Commissions. Giancarlo is Senior Counsel to the international law firm, Willkie Farr & Gallagher. He is also the co-founder of the [Digital Dollar Project](#), a not-for-profit initiative to advance exploration of a US Central Bank Digital Currency. Giancarlo is the author of the book [Crypto Dad, The Fight for the Future of Money](#).