



FedFin Client Report

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Brown Backs Away from Crypto Legislation, Presses Again for New Rules

Client Report: CRYPTO36

Executive Summary

Senate Banking Committee Chairman Brown (D-OH) today backed away from prior statements about crypto legislation, focusing instead on the prospect of additional investigations into failing crypto firms and ongoing work with Secretary Yellen on a government-wide regulatory framework. Today's hearing still centered on legislative action, with Sen. Warren (D-MA) along with Sen. Marshall (R-KS) releasing new legislation to subject crypto firms to AML rules comparable to those applied to banks along with banning crypto mixers. Sen. Lummis (R-WY) announced that she will reintroduce her stablecoin bill next year with Sen. Gillibrand (D-NY) ([see FSM Report CRYPTO28](#)), revising it in light of recent crypto debacles. Sen. Haggerty (R-TN) flagged Binance's newfound monopoly power and ties to China as a major concern, an issue echoed by Sen. Warner (D-VA) and, in conjunction with Chairman Brown's investigative agenda, may well subject the world's largest crypto exchange to U.S. legislative scrutiny if its current liquidity challenges do not preoccupy attention next year.

Analysis

Opening Statements

Chairman Brown heavily criticized the crypto industry for its role in facilitating illicit finance, arguing for a like-kind regulatory framework that relies upon existing banking and securities laws. Without referencing specific legislation, he also called for a comprehensive framework that recognizes cryptoassets in terms of their true functions, noting that work is ongoing with Treasury secretary Yellen to lead a government-wide regulatory effort.

Ranking Member Toomey (R-PA) defended cryptocurrencies, arguing strongly against suggestions of a crypto ban or freeze and pitting blame of the FTX collapse on legislative and regulatory failures by Congress and the SEC. He thus called on Congress to act, noting that a bipartisan stablecoin framework along the lines proposed in his bill ([see FSM Report CRYPTO27](#)) as well as that of Sens. Lummis and Gillibrand would be a good starting point.

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Testimony

Professor Hilary Allen of the American University College of Law sharply attacked the utility of both cryptocurrencies and blockchain technology, arguing that cryptoassets should not be regulated like banking products and be allowed to integrate with the larger financial system, thereby becoming too-big-to-fail. She also argued that Congress should clarify that cryptoassets are securities and not allow the CFTC to regulate them.

Kevin O'Leary, Chairman of O'Shares, pointed to what he called crypto's astronomical potential, echoing Ranking Member Toomey's claims that crypto is fundamentally software and that Congress should pass legislation on stablecoins as an initial matter within a cryptoasset framework. Jennifer Schulp of the CATO Institute favored crypto and DeFi, calling for a rational regulatory framework that requires centralized markets to register with the CFTC for crypto commodities and SEC for crypto securities. Ben Schenkkan, an actor and crypto commentator, called the crypto industry a Ponzi scheme and argued that cryptocurrencies should be treated as securities.

Q&A

- **Compliance:** Based on the bill she introduced today, Sen. Warren argued that the same AML, KYC, and anti-terrorism rules that apply to banks should also apply to crypto firms, asking Ms. Allen if the public nature of blockchain makes it more difficult for criminals to launder money with crypto; Ms. Allen said that crypto facilitates money-laundering and that crypto as a financial instrument is only more efficient if it avoids KYC rules. Sen. Smith (D-MN) also raised KYC concerns and asked Ms. Allen if crypto firms have the same oversight and protections preventing money-laundering and terrorist financing as traditional financial institutions; Ms. Allen said no, also arguing that venture capitalists should be held to account for their role.
- **Firewalls:** Chairman Brown asked if there should be strong rules addressing related party transactions and creating firewalls between related entities; Ms. Allen and Mr. Schenkkan said yes. Sen. Cortez-Masto (D-NV) asked if crypto activities should be isolated from the banking system; Mr. Schenkkan said yes, while Mr. O'Leary and Ms. Schulp strongly disagreed. Sen. Smith, referencing her July letter to Fidelity on Bitcoin, also raised concern over the corporation's cryptoasset policy regarding retirement accounts.
- **Crypto Market Risks:** Fueling preoccupation with potential investigations of other crypto firms, Chairman Brown asked each witness if he or she believed levels of carelessness similar to that of FTX exists at other crypto companies. All said yes. Chairman Brown also asked Ms. Allen if it is possible to determine crypto industry leverage, and Mr. Schenkkan if parallels exist between crypto and gambling. Ms. Allen said determining leverage is difficult and that this is problematic; Mr. Schenkkan said yes, describing crypto as a zero-sum game and pointing to executive overlap between the gambling and crypto industries. Sen. Warner asked if the FTX collapse is the tip of the iceberg for crypto-industry fraud; Ms. Allen agreed.

- **Like-Kind Regulation:** Chairman Brown asked Ms. Allen if she believes crypto firms can comply with actual regulations; Ms. Allen said they cannot, and that crypto firms seek bespoke regulation because of this limitation. Sen. Menendez (D-NJ) asked if the same regulatory principles applied to traditional financial sector, especially regarding use of customer funds, should apply to digital assets; Ms. Allen said yes, arguing that crypto is not actually decentralized.
- **Stablecoins:** Sen. Toomey praised the utility of stablecoins used in conjunction with smart contracts, equating this with programmable money and asking Ms. Schulp if she saw a future in it; Ms. Schulp said yes. He then asked if his stablecoin framework requirement on 100 percent cash and equivalents and oversight by the OCC – and not the Fed – constitutes the right approach. Ms. Schulp said the legislation would help ensure stablecoins remain “stable,” supported its OCC disclosure-based framework, and agreed that the Fed should not regulate stablecoins.
- **Disclosure Requirements:** Sen. Sinema (I-AZ) argued that risk-pricing is critical to healthy market functioning and asked what disclosures or registration requirements would aid price discovery; Ms. Allen argued that disclosures cannot protect crypto investors because they are not backed by real assets and that the SEC needs more resources to pursue enforcement actions.
- **Private Markets Transparency and Accountability Act:** Sen. Reed (D-RI) brought up his bill (S. 4857) stating that it would require the country’s biggest private companies to disclose basic information about their financial condition and comply with corporate governance requirements. Suggesting his bill is a good place to initiate legislation, he asked Ms. Allen if she believed the bill would have illuminated ongoing issues at FTX before its collapse. Ms. Allen agreed in part, noting that attestations and proofs of reserves are not rigorous enough for crypto firms and arguing that policymakers should be wary of FASB’s moves to implement fair value accounting for crypto assets.
- **SEC Jurisdiction:** Sen. Toomey argued that Bitcoin is sufficiently decentralized to fail to meet the Howie Test’s common enterprise criteria, agreeing that a regulatory regime should be in place for issuer disclosure requirements and secondary market trading, but that it should be sector-specific. In later questioning with Sen. Van Hollen (D-MA), Ms. Allen argued that cryptoassets should not need to pass the Howie Test to be considered a security.
- **Binance:** Sen. Haggerty raised concern over Binance monopoly power, arguing that its implosion would be catastrophic for the industry and for consumers. He asked Ms. Schulp how U.S. regulators can work with international counterparts to bring transparency to Binance’s activities and understand its reserves; Ms. Schulp said a rational domestic crypto framework would help bring the industry home. Sen. Haggerty also raised concerns that Binance is a state-backed network tied to the Chinese Communist Party and asked what the national security and dollar-status ramifications would be if the U.S. either

banned crypto or allowed existing regulatory uncertainty to continue; Ms. Schulp agreed American dominance in the crypto industry would be compromised and that the U.S. dollar would be put at risk.