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## Blame It on the Blockchain: Cryptocurrencies Boom Amidst Global Regulations

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BLAME IT ON THE BLOCKCHAIN: CRYPTOCURRENCIES BOOM  
AMIDST GLOBAL REGULATIONS

*Blockchain technologies created the most valuable digital currency in the world; Bitcoin. Bitcoin uses a Blockchain to be decentralized and widely accessible: Blockchains work by recording all transactions into online ledgers that are saved onto many separate blocks across the internet. Coins that use Blockchain technology are inherently difficult to modify, and transactions are permanently recorded because of the redundancy and reliability of the Blockchain system. So, this widely-available means of exchange has gained appeal as an online alternative to traditional currencies and securities. Blockchain coins gain popularity as currencies where there is reason to doubt the existing traditional currencies that are in place. These coins gain popularity as securities in countries where securities are highly regulated because of challenges in applying those regulations to Blockchain technologies. Because of this appeal, Cryptocurrencies have become increasingly popular all around the world, and countries must now respond to the new sizeable Cryptocurrency markets within their economies. However, the process of exerting jurisdiction over Blockchain coins raises several hurdles that countries must address to avoid losing out to decentralization. This note seeks to evaluate regulations and proposed future measures that several countries have taken to control this new technology. The efficacy of these regulations will be measured against the goals of the relevant governing bodies, and their shortcomings will be identified. Ultimately, this note endeavors to provide an overview of effective Cryptocurrency regulation to provide a framework for countries to adapt themselves to the Blockchain.*

*Jorge Galavis*

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## I. INTRODUCTION

Bitcoin is an international Cryptocurrency that pioneered the creation of Blockchain technology. Cryptocurrencies are digital assets that typically rely on Blockchains and can be used for many purposes; including as alternative currencies or securities. Blockchains work by recording transactions into online ledgers that are saved onto separate blocks in different locations, often all over the world. Blockchains are inherently difficult to modify, and recorded transactions are permanent because of the redundancy and reliability of their recording systems.

Although Bitcoin is the oldest and most widely-known cryptocurrency, it was created anonymously in 2009 by a person or a small group.<sup>1</sup> Bitcoin may be the most valuable Cryptocurrency, but the general market for this type of asset has grown to be extremely large. One of the more-prominent uses of Blockchain technology, Initial Coin Offerings,<sup>2</sup> has added new types of coins at a staggering rate. These coins have the potential to be economically harmful on a global level due to their negative impact on many individual investors, who are often not protected by traditional securities regulation.

Although there are several ways to acquire and hold Cryptocurrencies, each method has complications that

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<sup>1</sup> See Reuben Grinberg, *Bitcoin: An Innovative Alternative Digital Currency*, 4 *Hastings Sci. & Tech. L.J.* 159, 160 (2012).

<sup>2</sup> Anna Irrenra, *More than 10 percent of \$3.7 billion raised in ICOs has been stolen: Ernst & Young*, REUTERS (Jan. 22, 2018), <https://www.reuters.com/article/us-ico-ernst-young/more-than-10-percent-of-3-7-billion-raised-in-icos-has-been-stolen-ernst-young-idUSKBN1FB1MZ>.

ultimately impact the coin's worth. Every type of storage method available subjects Cryptocurrency owners to a risk of loss that is uninsurable and not backed by industry protections, which are enjoyed by more-traditional financial institutions like banks or brokers. And, Cryptocurrency holders risk national regulatory backlash from the governments in their home countries.

Initial Coin Offerings (ICOs) in particular have drawn attention from national governments because of the notorious fraud that has become associated with them.<sup>3</sup> Yet they have continued to grow as an often illegitimate source of financing for organizations that endeavor to issue them. This trend towards ICOs can be attributed to the many benefits that are inherent to Blockchain technology, some of which are discussed later in this note. However, these benefits are the same features that have raised challenges for regulatory groups that seek to prevent abusive uses of the new technology. Organizations and groups have already taken advantage of these challenges and secured funding for their ventures without following traditional securities regulation.<sup>4</sup> More so than the benefits of cryptocurrencies themselves, the underregulated market is likely the reason for the booming popularity of ICOs and Cryptocurrencies in general.

This note seeks to analyze the national attention that Blockchain Coins have received in several countries, and those countries' attempts at exerting jurisdiction over

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<sup>3</sup> *Id.*

<sup>4</sup> Tom Simonite, *Regulators Warn Cryptocurrency Startup Fundraisers to Play by the Rules*, WIRED (Jul. 26, 2017), <https://www.wired.com/story/crypto-fundraising-initial-coin-offerings/>.

Cryptocurrencies. Since each country has been challenged with different aspects of this versatile technology, this note seeks to identify particular national concerns while measuring the utility of those nations' responses to those concerns. Ultimately, this note will attempt to identify the successes and failures of regulating bodies that have attempted to control Blockchain technologies.

## II. MUCH ADO ABOUT FOREIGN EXCHANGE

### A. A TALE OF TWO BLOCKCHAIN USES

Many established Cryptocurrencies, including Bitcoin, are traded and valued on exchanges as if they were ordinary currencies. Based on a combination of popularity and uncertainty, Bitcoin traded at nearly twenty-thousand U.S. dollars for a single coin at its peak price during December 2017 and has since spent time at a tenth of that value.<sup>5</sup> The peak trading price for Bitcoin came largely from the Cryptocurrency's decentralization, the perception that the coin was totally free of governmental intervention, and most of all Bitcoin's trending popularity. Governments around the world have seen value in the Blockchain technology that enabled Bitcoin, and have been encouraged to implement regulation over these digital assets by the impact they have had on their national economies.

Cryptocurrency markets also impact international currency exchanges by spurring international demand for

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<sup>5</sup> Isaac Pflaum & Emmeline Hateley, *A Bit Of A Problem: National And Extraterritorial Regulation Of Virtual Currency In The Age Of Financial Disintermediation*, 45 Geo. J. Int'l L. 1169, 117-1183 (2015).

these versatile assets regardless of their origins. Residents of countries with unstable currencies have even favored these decentralized coins to their local currencies. In countries with weakened economies, such as Venezuela, this similarity to 'strong' currencies further emphasizes the disruptive nature of the cryptocurrency market on local exchanges.

A currency can be considered strong or stable if it is used internationally as a store of value.<sup>6</sup> The U.S. Dollar is a good example because other countries have pegged their smaller, and less-stable, currencies to it.<sup>7</sup> Countries with weak or volatile currencies often have residents who stockpile Dollars to combat local inflation, or to compensate for a distrust of their local governments.<sup>8</sup> These residents typically have a well-founded fear that inflation can eat their local currencies into worthlessness. Although Cryptocurrencies typically have too much volatility to be used as a reliable store of value in stronger economies,<sup>9</sup> their accessibility in these countries has given them appeal relative to traditional value assets like gold or the U.S. Dollar.

In countries with more stable currencies, the volatility of Cryptocurrencies has made them seem more like investment vessels than safe places to store value.<sup>10</sup> In these

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<sup>6</sup> See John H. Works, *The European Currency Unit: The Increasing Significance of the European Monetary System's Currency Cocktail*, 41 Bus. Law. 483, 483 (1986).

<sup>7</sup> These currencies trade at a fixed ratio relative to Dollars, allowing them to value themselves relative to the Dollar. *Id.*

<sup>8</sup> See Martin Wolf, *Exchange Rates in a World of Capital Mobility*, 579 Annals Am. Acad. Pol. & Soc. Sci. 38, 39-41 (2002).

<sup>9</sup> See e.g. Theodore W. Reuter, *Pitfalls of Paying Employees in Bitcoin*, 58-JAN Advocate (Idaho) 39, 39-42, (2015).

<sup>10</sup> *Id.*

countries, Cryptocurrency markets are largely treated like pseudo stock exchanges. Investors and gamblers pick among coins on these exchanges hoping for a boom in value and a profit. Indeed, Initial Coin Offerings have a good deal of similarities to initial public offerings for companies looking to raise capital. Cryptocurrencies do not really compete with local currencies as stores of value in these countries, but the growing popularity of ICOs is still disruptive because of its underregulated competition with established securities markets.

#### B. CAN BLOCKCHAIN TECHNOLOGY DISRUPT MODERN CURRENCIES?

Even though they have not typically been any particular country's currency, many Cryptocurrencies can be used as payment for goods and services in locations all over the world. Despite their volatility, homes are being exchanged for Cryptocurrencies, attorneys are being paid with them, even soft drinks at convenience stores can be purchased with them at locations on every continent except Antarctica.<sup>11</sup> Some United States taxes might even become payable using Blockchain-based currencies.<sup>12</sup> The varying coins generally carry their own risks, however, and even the most popular Cryptocurrency is far from being universally accepted. But, the international adoption of Cryptocurrencies as payment may impact one of the critical ways that governments exert

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<sup>11</sup> Melanie Swan, *Blockchain: Blueprint for a New Economy*, 6-9, O'Reilly Media, Inc. (2015).

<sup>12</sup> (A New Hampshire Bill that would require acceptance of Bitcoin, including for payment of State taxes), 2015 Bill Text NH H.B. 552.

jurisdiction over their internal markets: commerce.<sup>13</sup> Although they are initially set up by individuals or groups, Blockchain systems were principally designed to be self-governing, decentralized, and difficult to defraud.<sup>14</sup> This aspect of Blockchain technology, and the fact that most Cryptocurrencies are fungible and easy to exchange, raises challenges for any regulating body that is looking to 'follow the stream of commerce'.<sup>15</sup>

Regardless of the disruptive effect that Cryptocurrencies can have on traditional notions of commerce, retailers and service providers throughout the world have become increasingly willing to accept these coins.<sup>16</sup> Despite this popular use of Blockchain technology, however, it should be noted that Cryptocurrencies have had such volatility in purchasing power that their use as a primary currency is highly unlikely. Accordingly, some companies have been hesitant to accept this type of asset in lieu of local currencies. Ironically, the inconsistencies in acceptance have been some of the larger drivers of volatility among Cryptocurrencies. In several countries, this volatility has berthed the other largest use of Blockchain technology: venture capitalism.

As investors all over the world took notice of the swings in Cryptocurrency prices, many recognized an opportunity for profits. By treating Cryptocurrencies like traditional investments, traders have created a market for

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<sup>13</sup> See e.g. U.S. CONST. A.1 § 8

<sup>14</sup> Swan, *supra* note 11, at 7.

<sup>15</sup> See e.g. *Wickard v. Filburn*, 317 U.S. 111 (1942) (A famous Supreme Court case where regulation was imposed over a farmer based on his impact on the United States stream of commerce).

<sup>16</sup> See e.g. Swan, *supra* note 11.

these coins that is largely similar to a stock exchange. And, groups seeking to fundraise have identified this market as an opportunity to issue cryptocurrencies instead of traditional securities through ICOs.

The inconsistent uses of Cryptocurrencies are the largest hurdles preventing them from having effective regulation. Blockchain technology has created currencies that can only be spent on certain products, and as investment vessels that are wildly inconsistent in quality and legitimacy. New Cryptocurrencies are being created at an alarming rate, and existing coins already fall along a wide spectrum of use and underlying value. Governing bodies have only recently begun to take reactionary steps to adapt existing regulations and enact new ones to address this booming technology. If these governing bodies fail to do so, they face the risk of falling further behind on a potential economic overhaul.<sup>17</sup>

### III. CONTROLLING CRYPTO-CURRENCY

#### A. SECURITY OF THE DOLLAR: THE AMERICAN DEBATE

The United States is caught in debate regarding Cryptocurrencies. Some advocate treating Cryptocurrencies like foreign currencies, while others believe that Cryptocurrencies have more in common with securities. Although each categorization would have its own legal implications, Cryptocurrencies have already become

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<sup>17</sup> Billy Bambrough, *Ethereum Co-Founder Predicts a Radical Overhaul of Society*, FORBES (Nov. 12, 2018), <https://www.forbes.com/sites/billybambrough/2018/11/12/ethereum-co-founder-predicts-a-radical-overhaul-of-society/#2cb58142f60c>.

widespread as both a means of exchange, and a method for groups to raise investment capital within the country.<sup>18</sup> Several Federal Circuits have ruled differently on this discrepancy.<sup>19</sup> The Supreme Court has not yet heard a case on the issue of Cryptocurrency classification. And, Congress has not passed effective legislation targeted directly at Cryptocurrencies or their exchanges.

If Cryptocurrencies were treated like foreign currencies, which could interfere with the United States Dollar, then 'printing' those coins would be in violation of the Stamp Payments Act of 1862.<sup>20</sup> That Act codified Congress' Constitutional authority to regulate coin money, and outlawed the use of other currency that could undermine the Dollar.<sup>21</sup> The Minnesota Supreme Court addresses this act in the 1942 case *United States v. Gellman*, where it held that a game token was not illegal under the Stamp Act because it carried no real worth and did not interfere with United States currencies.<sup>22</sup> But, Cryptocurrencies are usually more valuable than game tokens. As United States retailers continue to accept these coins, a falling Dollar value could potentially incentivize citizens to convert their money to one or various Cryptocurrencies. Or, the ease of access and trade of

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<sup>18</sup> *United States v. 50.44 Bitcoins*, No. ELH-15-3692, 2016 LEXIS 70404 (A case from the 4th Circuit where Bitcoin was considered security property, not currency); *S.E.C. v. Shavers*, No. 4:13-CV-416, 2014 WL 4652121, at 1-2 (where a 5th circuit court held Bitcoin to be a legal currency).

<sup>19</sup> *Id.*

<sup>20</sup> (That act makes any domestically-traded currency illegal if it undermines the United States Dollar.) 18 U.S.C. § 336.

<sup>21</sup> U.S. CONST. ART. 1 § 8.

<sup>22</sup> *United States v. Gellman*, 44 F. Supp. 360, 362 (Minn. 1942).

Cryptocurrencies could also provide this same incentive in online markets or even remote areas where access to a bank is more difficult or costly. The potential perception that a Cryptocurrency is a better tool for commerce than a U.S. Dollar would indeed be harmful to the United States Currency. Accordingly, if this perception of Cryptocurrencies were to grow, then the Congress may step in and defend its powers as defined in the Stamp Act. The volatility of Cryptocurrencies, however, would seem to make this outcome highly unlikely.

If Cryptocurrencies are considered securities, then they would be permissible for trade in the United States. They would also be subject to securities regulations, and corresponding taxation.<sup>23</sup> The test for determining whether or not an investment scheme is a security comes from the Supreme Court decision in *S.E.C. v. W.J. Howey Co.*<sup>24</sup> In *Howey*, a security was outlined as being an investment of money, in a common enterprise, with a reasonable expectation of profits, to be derived from the efforts of others.<sup>25</sup>

Many of these Cryptocurrencies look like securities because purchasers often invest either dollars or other cryptocurrencies to buy them; the companies conducting Initial Coin Offerings (ICOs) often pool the funds from the offerings to support operations; the companies offering Cryptocurrencies in ICOs tend to advertise them as lucrative investment opportunities; and finally profits are dependent

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<sup>23</sup> I.R.S. Notice 2014-21, 2014-16 I.R.B. 938 (Although the I.R.S. has already put forward a notice to make Blockchain coins generally taxable as property rather than as a security).

<sup>24</sup> *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946).

<sup>25</sup> *Id.*

on the efforts of the issuing companies. This behavior seems more like a SEC-governed security than a government-regulated currency. Some of the more-popular coins have even gone through booms and busts depending on predictions in the news cycles, much like securities do on stock exchanges.<sup>26</sup> Some types of cryptocurrencies are even being used by investment fund managers in a comparable way to securities.

In June of 2018, William Hinman, the director of the SEC put forward a list of thirteen questions that investors can ask to determine whether or not specific cryptocurrencies should be considered securities.<sup>27</sup> Those thirteen questions are largely derived from the *Howey* factors. In that statement, the director called for issuing companies to evaluate their ICOs against those questions to determine if they needed to register the offerings. In spite of the SEC's efforts, however, most of the newer cryptocurrencies have not gone through the same level of vetting that is legally required of traditional securities, and have not registered their coin offerings.<sup>28</sup>

Billions of dollars were invested into new Cryptocurrencies in 2018. And, a large portion of these newly-emerged Blockchain coins got started with ICOs.<sup>29</sup> At

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<sup>26</sup> See Grinberg, *supra* note 1, at 160.

<sup>27</sup> See William Hinman, U.S. Securities and Exchange Commission, Director, Division of Corporate Finance, "Digital Asset Transactions: When Howey Met Gary (Plastic)," Remarks at the Yahoo Finance All Markets Summit: Crypto (June 14, 2018), *available at* <https://www.sec.gov/news/speech/speech-hinman-061418>.

<sup>28</sup> David Floyd, *\$6.3 Billion: 2018 ICO Funding Has Passed 2017's Total*, COINDESK (April 19, 2018), <https://www.coindesk.com/6-3-billion-2018-ico-funding-already-outpaced-2017>.

<sup>29</sup> *Id.*

face value, Initial Coin Offerings are largely similar to Initial Public Offerings made by companies attempting to issue securities. Like Initial Public Offerings, ICOs are seen as a way for emerging businesses to raise venture capital by selling interests in the future profitability of the enterprises. However, unlike Initial Public Offerings, many ICOs are totally unregulated. Indeed, the entire Blockchain-based industry can be compared to the Wild West because of rampant fraud and abuse among a plethora of ICO listings. In April of 2018, an ICO advisory company estimated that up to 80% of ICOs are illegitimate scams.<sup>30</sup> Although the SEC has also released guidelines for investors who are looking into ICOs, and has cautioned that these fund-raising practices “contain the hallmarks of a security under U.S. law”<sup>31</sup>, the Commission has struggled to enforce process and disclosure requirements over the sheer volume of fraudulent coins, many of which are small and completely online.

The difficulties in enforcing securities requirements over ICOs comes in part from complex jurisdictional questions raised by the Blockchain, where different aspects of the transaction occur in countries all over the world. This regulatory problem was addressed by a California case called *In re Tezos Securities Litigation*, which identified that “the operative question quickly surfaces: where does an unregistered security, purchased on the internet, and

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<sup>30</sup> Gerald Fenech, *What is Plaguing the Cryptocurrency Market*, FORBES (Jan. 17, 2019), <https://www.forbes.com/sites/geraldfenech/2019/01/17/what-is-plaguing-the-cryptocurrency-market/#521889174edf>.

<sup>31</sup> *Id.*

recorded “on the blockchain,” actually take place?”<sup>32</sup> In *Tezos*, the purchaser participated in an ICO using an interactive website. The ICO in that case was hosted on an Arizona server, run primarily by an individual in California and marketed in the United States. The purchaser in *Tezos* participated in the ICO with a contribution of a different Cryptocurrency, and his participation became irrevocable<sup>33</sup> only after it was validated by a network of global nodes that were clustered more heavily in the United States than in any other country. There, the court held that “[w]hile no single one of these factors [was] dispositive to the analysis, together they support[ed] an inference that [the Purchaser]’s alleged securities purchase occurred inside the United States.”<sup>34</sup> Although the analysis in *Tezos* allowed SEC rules to be applied to a particular ICO, each factor of the multi-pronged test that the court applied leaves an avenue for abuse in future ICO schemes. Ultimately, *Tezos* highlights the particular challenges that courts will face when attempting to reconcile blockchain technologies with traditional securities definitions and rules.

Challenges in exerting jurisdiction over ICOs can also be seen in a recent New York case: *Alibaba Group Holding*

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<sup>32</sup> *In re Tezos Securities Litigation*, No.17-cv-06779-RS, 2018 WL 4293341 (N.D. Cal. Aug. 7, 2018).

<sup>33</sup> See *Stoyas v. Toshiba Corp.*, 2018 WL 3431764, at \*11 (9th Cir. July 17, 2018) (“a plaintiff must plausibly allege “that the purchaser incurred irrevocable liability within the United States to take and pay for a security, or that the seller incurred irrevocable liability within the United States to deliver a security.”) (quoting *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, at 68 (2d Cir. 2012) ).

<sup>34</sup> See generally *In re Tezos*, *supra* note 32.

*Limited v. Alibabacoin Foundation*.<sup>35</sup> In *Alibabacoin*, a New York court declined to exert jurisdiction to enjoin a proposed ICO. There, the court held that mere presence on domestic exchanges, or an intention to sell on such exchanges, was insufficient in and of itself to allow the issuers of the ICO to be haled into court.<sup>36</sup> Indeed, in the securities context, the court held that “the prevailing caselaw affords foreign corporations substantial latitude to list their securities on New York-based stock exchanges and to take the steps necessary to facilitate those listings [. . .] without thereby subjecting themselves to New York jurisdiction.”<sup>37</sup> The court extended this logic to the issuers of ICOs and reasoned that “Alibaba offer[ed] no reason why cryptocurrency exchanges should be treated differently for purposes of jurisdiction [compared to securities exchanges].”<sup>38</sup> In sum, Alibaba did not meet its burden to establish a reasonable probability that

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<sup>35</sup> *Alibaba Group Holding Limited v. Alibabacoin Foundation*, No.18-CV-2897, 2018 WL 2022626 (S.D.N.Y. May 30, 2018).

<sup>36</sup> *Id.* (Quoting *In re Platinum & Palladium Antitrust Litig.*, No.14 Civ. 9391, 2017 WL 1169626, at \*46 (S.D.N.Y. Mar. 28, 2017) (“[A foreign company’s] presence on [the New York Mercantile Exchange], or any other domestic [over-the-counter] market or exchanges, fails to establish that it expressly aimed its conduct at the U.S....”).

<sup>37</sup> *Id.* (quoting *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 97 (2d Cir. 2000)).

<sup>38</sup> *Id. but see SEC v. AriseBank, et al.*, No. 18-CV-186, 2018 WL 623772 (N.D. Tex. filed Jan. 25, 2018). (Where the SEC was able to successfully enjoin an ICO to require the issuers to register it a security offering); *see also SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. Sohrab ("Sam") SHARMA and Robert Farkas, Defendants.*, 2018 WL 1603904 (S.D. N.Y. 2018). (where the SEC successfully applied antifraud requirements to an ICO when false claims were being made about non-existent co-investors).

the Court had personal jurisdiction over Alibabacoin. Although other similar challenges have been successful, Alibabacoin was able to exploit Blockchain technology to avoid being subjected to jurisdiction in this case.

Although there is still haze of uncertainty regarding Cryptocurrency classification in general within the United States, it continues to be the country with the fastest growth of ICOs and Cryptocurrencies.<sup>39</sup> This has caused federal agencies apart from the SEC to begin to adapt to the various coins that have been widely adopted throughout the United States.<sup>40</sup> The Internal Revenue Service, for example, administers tax on Cryptocurrencies irrespective of their legal classification.<sup>41</sup>

In 2014, the IRS had already issued a notice outlining the tax treatment of Bitcoin and other Blockchain Coins in the United States.<sup>42</sup> In that notice, the IRS stated that virtual currencies would be treated as property and taxed in appropriate ordinary transactions.<sup>43</sup> And, where virtual currencies operated like United States tender<sup>44</sup>, taxpayers would be affected as if they had been using Dollars.<sup>45</sup> More recently, as Blockchain use has progressively shifted towards investment and ICO fund-raising, the IRS has leaned into taxing these Cryptocurrencies as capital assets, like

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See I.R.S. Notice 2014-21, 938 *supra* note 23.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> (Such as for the payment of wages) See Reuter, *supra* note 9.

<sup>45</sup> (For IRS definition of Gross Income) See 26 U.S.C. § 61.

securities.<sup>46</sup> And, most of the Cryptocurrency trading platforms that are used in the United States now issue the relevant tax forms for declaring investment gains and losses in Cryptocurrencies.

The recent tax issue was brought to the forefront by the enormous increase in Bitcoin's price during the winter of 2017, which caused many sellers of Cryptocurrencies to recognize sizeable investment gains.<sup>47</sup> People in the United States who realized gains from this price increase were taxed as if they had an excellent stock portfolio that year even if they reinvested and lost everything in the next taxable year due to theft or price crashes.<sup>48</sup> Because Cryptocurrency storage sites are not backed by the FDIC, the personal tax deduction was often the only avenue for relief for U.S. investors whose

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<sup>46</sup> Sarah O'Brien, *While you're tallying your Bitcoin gains, don't forget the taxman*, CNBC (Dec. 7, 2017), <https://www.cnbc.com/2017/12/07/while-youre-tallying-your-bitcoin-gains-dont-forget-the-taxman.html>. (In 2017, capital gains provisions were the primarily applicable way to tax bitcoin in the United States because most holders purchased the cryptocurrency as an investment)

<sup>47</sup> *Id.*

<sup>48</sup> Darla Mercado, *This cryptocurrency tax mistake could cost you \$250,000*, CNBC (April 12, 2018), <https://www.cnbc.com/2018/04/12/cryptocurrency-tax-mistakes-could-cost-you-250000.html>. (This was the case for many investors who sold Bitcoin at its peak price and bought back in shortly after, only to have the price crash even further. These investors were taxed on their gains, but the losses that these investors faced went largely unrecognized in that taxable year).

Cryptocurrencies were hacked and stolen.<sup>49</sup> However, that deduction was removed by the 2018 tax legislation.<sup>50</sup>

Both the SEC, and the IRS' approaches to addressing Cryptocurrencies have been reactive at best, and neither agency has taken initiative to mitigate the possibility that a multi-billion dollar market is up to 80% fraudulent. If steps are not taken to prevent the abuse of this technology, then would-be investors are not being afforded the protections that the SEC claims to provide.

To prevent undue advantage, the SEC could promote the creation of a more-legitimate 'stock exchange' for ICOs, and provide rules for its operation, including disclosure and registration requirements similar to traditional securities. Because of the nature of Blockchain technologies, fraudsters and would-be entrepreneurs might still be able to evade these regulations by promoting ICOs outside of an SEC-guided exchange. Despite this regulatory hurdle, however, the SEC should still promote an organized exchange, where ICOs can be reliably subjected to securities regulation and disclosure requirements as prerequisites for registration. This could highlight illegitimate coins by contrast and satisfy the demand for this new type of asset. Until something is done, however, unwitting U.S. investors will continue to fall victim to the same practices that prompted the creation of the SEC in

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<sup>49</sup> *What's Covered*, FDIC available at

<https://www.fdic.gov/deposit/covered>.

<sup>50</sup> Kristie N. Tierney, *Analyzing the New Personal Casualty Loss Tax Rules*,

JOURNAL OF ACCOUNTANCY (July 1, 2018),

<https://www.journalofaccountancy.com/issues/2018/jul/irs-personal-casualty-loss-tax-rules.html>.

the first place.<sup>51</sup> Similarly, the IRS could issue specific treasury regulations to address common questions concerning Cryptocurrencies. Although the IRS has already raised awareness about these assets, the proposed regulations could proactively address the taxability of more-complicated Blockchain transactions, which would provide better guidance to United States Cryptocurrency holders than a reactionary press release. Ultimately, lawmakers in the United States should endeavor to target Blockchain technology specifically with new and effective regulations rather than rely on maladapted applications of existing rules.

#### B. STOP, DROP, AND ROLL: THE CHINESE CRACKDOWN

China has been one of the biggest players in the Cryptocurrency market; with the second largest amount of the Cryptocurrencies being held within the country by volume. The Chinese government, however, has had a rather hostile stance towards the exchange of this type of asset. A recent example was the government's 2017 suspension of Bitcoin trading, and the corresponding crash of the entire Cryptocurrency market.<sup>52</sup>

In the infancy of Blockchain technology, China appeared to be a safe-haven for Cryptocurrencies; particularly Bitcoin. Initially, the Chinese government allowed these coins to exist free from regulation. In May of

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<sup>51</sup> See *What we do, SEC*, available at <https://www.sec.gov/Article/whatwedo.html>. ("The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation")

<sup>52</sup> Hill, Kashmir, *China bites into Bitcoin*, *Forbes* 193.1, 1, 43-44, (2014).

2013 the government even sponsored a documentary about this type of asset to inform the public on the subject.<sup>53</sup> During this time, the Chinese government was perceived as very friendly towards the Cryptocurrency market in general. Indeed, the Chinese promotion of Bitcoin in particular likely correlated with the 500 percent increase in the Cryptocurrency's value in November of 2013.<sup>54</sup> In the months that followed, China became a hub for 'mining' cryptocurrencies.<sup>55</sup> And, Chinese consumers were beginning to favor the coins for Internet purchases over the Chinese Yuan.

In December of 2013, the Chinese government began to grow concerned that Bitcoin and other coins might undermine the Yuan and consequently undermine its control over the country economy.<sup>56</sup> So, the Peoples' Bank of China released a report prohibiting banks from accepting or endorsing Bitcoin as a legitimate currency. In January of the following year, 'mining' tools were also pulled from the shelves of one of China's largest retailers.<sup>57</sup> These steps temporarily slowed the exchange of these assets.<sup>58</sup> But, the Cryptocurrency market eventually bounced back from the regulation in China due to the sheer availability of the tools necessary to acquire Cryptocurrency: a computer and an internet connection.

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See Pongsak Hoontrakul, *Asia's Digital Economy. In Economic Transformation and Business Opportunities in Asia*, Cham, 1, 269-312 (2018).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

More recently, in 2017, the Chinese Central Bank published a notice that deemed Cryptocurrency trading in general to be an “illegal fundraising practice”.<sup>59</sup> Because of the size of the Chinese market, this regulation dropped the trading value of many coins.<sup>60</sup> But, like in 2013, demand for Cryptocurrencies went on to reach record highs, with Bitcoin alone trading at nearly twenty thousand U.S. Dollars per Bitcoin during December of 2017. Still, China remained the second largest hub for Cryptocurrencies in the world.<sup>61</sup>

China has sought to eliminate its domestic Cryptocurrency trade on several occasions. But, the population of China still holds and trades more of these coins each month.<sup>62</sup> Indeed, Cryptocurrencies are so useable and accessible to the Chinese market that the government has had an easier time tracking and scoring the citizens themselves than stopping them from using Cryptocurrencies<sup>63</sup>.

The tendency for Blockchain traders to circumvent Chinese Government regulations extends to ICOs within the country. Like Cryptocurrency trading at large, the Chinese

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<sup>59</sup> See Saheli R. Choudhury, *China bans Companies from Raising Money through ICOs asks local regulators to inspect 60 major platforms*, CNBC, (Sept. 4, 2017), <https://www.cnbc.com/2017/09/04/chinese-icos-china-bans-fundraising-through-initial-coin-offerings-report-says.html>.

<sup>60</sup> *Id.*

<sup>61</sup> Angela Barnes, *China has a ‘Love-Hate’ Relationship with Blockchain and Crypto: Investor*, CNBC (Nov. 27, 2018), <https://www.cnbc.com/2018/11/27/china-has-a-love-hate-relationship-with-blockchain-and-crypto.html>.

<sup>62</sup> *Id.*

<sup>63</sup> Alexandra Ma, *China has Started Ranking Citizens with a Creepy ‘Social Credit’ System*, BUSINESS INSIDER (Oct. 29, 2018), <https://www.businessinsider.com/china-social-credit-system-punishments-and-rewards-explained-2018-4>

government has outright banned Initial Coin Offerings.<sup>64</sup> On September 4<sup>th</sup>, 2017, the People's Bank of China labeled ICOs "illegal and disruptive to economic and financial stability" in its statement about token sale regulation. This sentiment was echoed by the China Securities Regulatory Commission (CSRC) in February 2018.<sup>65</sup> Despite this total ban, however, thousands of new cryptocurrencies have been issued in China through ICOs since its implementation.<sup>66</sup> And, Chinese citizens have been successful in arguing that their Cryptocurrencies should be protected as personal property with economic value.

In the face of the Chinese government's cryptocurrency bans, the Shenzhen Court of International Arbitration has recognized that Chinese citizens have legitimate economic property interests in the Cryptocurrencies that they hold.<sup>67</sup> In a 2018 decision, the Arbitration Court reasoned that, despite the Bank's ban, there was no law in China that prohibited the possession of Blockchain currencies or transactions between individuals. Further, the Court held that whether Blockchain coins were a legal tender or not, there was no impact on the fact that coin

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<sup>64</sup> See Barnes, *supra* note 61.

<sup>65</sup> Saheli Choudhury, *China bans companies from raising money through ICOs asks Local Regulators to Inspect 60 Major Platforms*, CNBC (Sept. 4, 2017), <https://www.cnbc.com/2017/09/04/chinese-icos-china-bans-fundraising-through-initial-coin-offerings-report-says.html>.

<sup>66</sup> *Id.*

<sup>67</sup> Matthew Unger, *Raising the Bar: New Standards in the Blockchain and Token Industry*, FORBES (Dec. 28, 2018), <https://www.forbes.com/sites/forbestechcouncil/2018/12/28/raising-the-bar-new-standards-in-the-blockchain-and-token-industry/#3d37d49462e7>.

ownership should be protected legally based on China's contract law. Ultimately, the Court stated that "[A Blockchain coin] has the nature of a property, which can be owned and controlled by parties, and is able to provide economic values and benefits".<sup>68</sup>

The failure of the Chinese ICO ban has led the CSRC to consider adopting a set of rules, which mirror securities regulation, to better control their internal economy. Similarly to the SEC, the CSRC will have to establish regulations that protect local investors without being easily avoided by groups issuing ICOs. One of the key characteristics of Blockchain coins is that they are decentralized and relatively easy to issue or exchange. So, gatekeeping regulations can be particularly difficult to enforce over the growing number of ICOs, many of which are small and capable of flying under the radar. This issue could be addressed by tailoring regulations to a national Cryptocurrency securities exchange, and thoroughly vetting the coins that are made available for trade there. The Chinese government could use this tactic to allow its citizens access to a 'walled garden' of cryptocurrencies in an effort to control that type of asset and maintain a more reliable degree of control over the flow of Yuan from their economy.

### C. BETTER THAN A BLACK MARKET: THE VENEZUELAN ADOPTION

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<sup>68</sup> Marie Huillet, *Chinese Arbitrator Reaffirms that Bitcoin can be Held Privately Transferred as Property*, COINTELEGRAPH (Oct. 26, 2018), <https://cointelegraph.com/news/chinese-arbitrator-reaffirms-that-bitcoin-can-be-held-privately-transferred-as-property>.

Cryptocurrencies are quickly becoming an alternative to the failing Venezuelan Currency, the Bolivar.<sup>69</sup> The government exchange for Venezuelan currency is seldom used; Bolivars are more often traded for U.S. Dollars on a black market at rates that do not resemble official exchanges.<sup>70</sup> The currency exchange has reached a point where Bolivars are worth less than some online video game currencies, where supply is limitless.<sup>71</sup> So, keeping Cryptocurrencies may actually be a better for protecting value against inflation than keeping Bolivars.<sup>72</sup>

The Venezuelan currency has been weakening for over a decade.<sup>73</sup> And, many of the residents of this once-prosperous nation have access to devices that can be used to mine or otherwise purchase Cryptocurrencies. As hyper-

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<sup>69</sup> Lorenzo Fioramonti, *Bitcoin is already playing a key role in the unsteady financial systems of some developing markets*, QUARTZ, (Jul. 04, 2017), <https://qz.com/1021155/bitcoin-is-being-taken-up-in-zimbabwe-nigeria-south-africa-and-venezuela-among-developing-countries/>.

<sup>70</sup> See Fred Imbert, *Venezuela announces a new exchange rate – but this one probably won't help, either*, CNBC, (Mar. 28, 2017), <https://www.cnbc.com/2017/03/28/venezuelan-just-announced-a-new-currency-rate--and-nobody-cares.html>.

<sup>71</sup> Chris Morris, *Venezuela's Cash is Now Worth Less Than Currency in 'World of Warcraft'*, Fortune, (Aug. 1, 2017), <http://fortune.com/2017/08/01/venezuela-bolivar-world-of-warcraft-currency/>.

<sup>72</sup> Kenneth Haelsly, *How to Solve a Problem Like Venezuela: An Argument for Virtual Currency*, 22 Law & Bus. Rev. Am. 261, 270 (2016).

<sup>73</sup> In 2008, the Venezuelan government even replaced the country's currency with a new one. This change effectively knocked three zeros off the end of the currency and ironically changed the name to 'Strong Bolivars'.

inflation<sup>74</sup> drives the purchasing power of Bolivars down<sup>75</sup>, the Venezuelan people lose the incentive to pursue their own currency by working in the Venezuelan economy. Instead, many of these people now subsist off of mining to acquire a currency that has enough worth to actually make purchases. The Cryptocurrencies that are earned through mining consist of fees, which are taken by computers that authenticate each transaction in the Blockchain. The degree of redundancy in the Blockchain makes computers earn that fee by performing complex calculations, which validate the transaction. Although mining is far from risk-free,<sup>76</sup> the chance at earning this fee has become a more reliable means of earning revenue than many Venezuelan jobs, which pay in Bolivares.

More recently, and as a reaction to this trend, the Venezuelan government has implemented its own Cryptocurrency called 'Petro', which is supposedly backed by the country's large oil reserves.<sup>77</sup> According to a statement by former Venezuelan President Maduro, the country intended to issue 100 million Petros, backed by 100 million barrels of

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<sup>74</sup> Imbert, *supra* note 70.

<sup>75</sup> The Venezuelan minimum wage is less than \$50.00 (U.S. Dollar equivalent) per month for someone working full time.

<sup>76</sup> Any computer can authenticate every Blockchain transaction when 'mining', but only the first computer to finish receives the fee. So, 'mining' does not guarantee success in the Blockchain gold-rush. Some 'miners' gain an advantage by using faster systems dedicated exclusively to mining, or pooling resources in groups, but upfront costs and the electricity required eat into any revenue produced this way.

<sup>77</sup> Bill Chappell, *Venezuela Will Create New 'Petro' Cryptocurrency, President Maduro Says*, NPR, (Dec. 4, 2017),

<https://www.npr.org/sections/thetwo-way/2017/12/04/568299704/venezuela-will-create-new-petro-cryptocurrency-president-maduro-says>.

Venezuelan oil.<sup>78</sup> At issuance, the Venezuelan government planned to match the price of Petro to that of a barrel of oil. Although it is unclear whether Petro would make use Blockchain technology, or what exactly makes it a Cryptocurrency, this strategy by the Venezuelan government seems to have a good deal in common with the swaths of fraudulent ICOs in countries like the United States.

Like many recent ICOs, which are attempts to raise funds without following traditional regulations, the issuance of Petro has been seen as a desperate move by Maduro to issue a Venezuelan security and raise capital amidst recent United States sanctions against the country.<sup>79</sup> The issuance of the Petro can be seen as the Venezuelan government's attempt to regain some solvency its country's fiscal policy shifts its economy onto the Blockchain, and away from its control. Ultimately, however, it seems that Petro will be about as successful as the ever-weakening Venezuelan Bolivar while certain Cryptocurrencies thrive as more-stable alternatives by comparison within the country.

#### D. WORSE THAN A COMMON MARKET: THE EUROPEAN RESISTANCE

The primary concerns that many European nations have towards Cryptocurrencies are twofold. First, like each of the other nations addressed in this note, the heads of the

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<sup>78</sup> *Id.*

<sup>79</sup> Lesley Wroughton & Girish Gupta, *U.S. warns investors over Venezuela's 'petro' cryptocurrency*, Reuters, (Jan. 16, 2018), <https://www.reuters.com/article/us-venezuela-economy-cryptocurrency/u-s-warns-investors-over-venezuelas-petro-cryptocurrency-idUSKBN1F52AB>.

European Union believe that Cryptocurrencies may interfere with the Euro. Second, there is unease regarding the financial anonymity that Cryptocurrencies can provide to unsavory transactions. Although the European Union has implemented policies to address these concerns,<sup>80</sup> there has still been a spike in troubling Cryptocurrency usage throughout the union.<sup>81</sup>

Like the United States, the European Union disallows local currencies that undermine the Euro.<sup>82</sup> Specifically, the European Central Bank has the sole authority to print and manage money-supply for the union.<sup>83</sup> Furthermore, the regulatory body that governs securities in the European Union is the European Securities and Markets Authority (ESMA).<sup>84</sup> Although ESMA does not have as much regulatory power as its United States counterpart<sup>85</sup>, it has also begun to recognize a need for regulation among Cryptocurrencies that behave like securities.<sup>86</sup>

Generally, the European Central Bank must implement policies to combat against inflation and preserve the integrity of the European Currency. So, with the amount of European

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<sup>80</sup> Seth Litwack, *Bitcoin: Currency Or Fool's Gold?: A Comparative Analysis Of The Legal Classification Of Bitcoin*, 29 Temp. Int'l & Comp. L.J. 309, 309-312.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> See *Who we are - ESMA*, ESMA available at <https://www.esma.europa.eu/about-esma/who-we-are>.

<sup>85</sup> Giovanni Campi & Martina Topercerova, *EU Supervisors Call for EU-Wide Policy Response to Crypto-Assets*, THE NATIONAL LAW REVIEW (Jan. 17, 2019), <https://www.natlawreview.com/article/eu-supervisors-call-eu-wide-policy-response-to-crypto-assets>

<sup>86</sup> *Id.*

money that is being converted into Bitcoin and other Cryptocurrencies,<sup>87</sup> the Bank is strongly considering implementing total bans on trade like those attempted in China.<sup>88</sup>

More specifically, the European Commission is concerned with Cryptocurrency use in fraud, money laundering, and terrorist financing.<sup>89</sup> Fraudulent Initial Coin Offerings in particular are gaining widespread popularity in Europe as they have in the United States.<sup>90</sup> The European Commission seeks to control this by requiring disclosures for Cryptocurrency transactions. However, the ESMA is lagging behind in addressing fraudulent European ICOs.

While ICOs have already had negative impacts on a large number of European investors, the ESMA has only just begun to experiment with regulation proposals at the start of 2019; years after this became an issue.<sup>91</sup> This delayed action

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See *Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC*, European Commission, (May 7, 2016), [http://ec.europa.eu/justice/criminal/document/files/aml-directive\\_en.pdf](http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf).

<sup>90</sup> Ted Knutson, *Crypto Assets Pose Risks to Investor Protection, Market Integrity Warns EU Advisory Group*, FORBES (Jan. 15, 2019), <https://www.forbes.com/sites/tedknutson/2019/01/15/crypto-assets-pose-risks-to-investor-protection-market-integrity-warns-eu-advisory-group/#18b76047402c>.

<sup>91</sup> J.D. Alois, *European Securities and Markets Authority tells European Commission that ICOs and Crypto Assets Need an EU Wide Regulatory Approach*, CROWDFUNDINSIDER (Jan. 9, 2019), <https://www.crowdfundinsider.com/2019/01/143130-european->

by the ESMA was prompted when the regulatory body realized that its previous efforts to protect investors against bad ICOs were largely unsuccessful. Despite recognizing the problem in 2013, the ESMA did nothing more than issue advisory letters in the hopes of educating investors against the dangers of Cryptocurrencies.<sup>92</sup>

Law-makers in the European Union have also attempted to regulate Cryptocurrencies using the existing General Data Protection Regulation (GDPR) of 2018.<sup>93</sup> The aim of the GDPR is generally to harmonize data privacy laws across the union by guaranteeing certain fundamental rights protecting a residents' personal data.<sup>94</sup> These rights are enforced by the imposition of responsibilities over companies that hold or process that sort of data, which often includes sellers of Cryptocurrencies and companies issuing ICOs. Although the GDPR is often applicable to this new technology, it does not address whether the responsible parties would even be able to fulfill their duties under the regulation because of the anonymity and jurisdictional complications enabled by the Blockchain.

Sebastian Ramsey, a law professor at Stockholm University, has reasoned that the protections from the GDPR do indeed apply to many sellers and issuers of Blockchain

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securities-and-markets-authority-tells-european-commission-that-icos-and-crypto-assets-need-an-eu-wide-regulatory-approach/.

<sup>92</sup>Huw Jones, *Regulators say new EU Cryptoasset rules may be Needed*, REUTERS (Jan. 4, 2019), <https://www.reuters.com/article/us-eu-cryptoassets-regulation/regulators-say-new-eu-cryptoasset-rules-may-be-needed-idUSKCN1P316K>.

<sup>93</sup> See generally EU GENERAL DATA PROTECTION REGULATION (2018), available at <https://eugdpr.org/>.

<sup>94</sup> *Id.*

coins.<sup>95</sup> He has explained, however, that this approach to regulation has been rendered largely obsolete as applied to Blockchain because the technology achieves stronger consumer protection while being incompatible with several aspects of GDPR: e.g. control over personal data. Ultimately, he reasoned that:

Even though the blockchain foundationally contradicts certain principles in the GDPR, such as rectification and removal, the blockchain strongly conforms with the technical data protection principles according to the GDPR, as the blockchain has proven to be one of the most secure structures. The biggest conflict between the blockchain and the GDPR is the blockchain's immutability. However, its biggest strengths originate from this immutability and the purposes of having an immutable object are in line with some of the GDPR's purposes, namely integrity, security and transparency, but does result in the data subject losing the retroactive control over their personal data. The GDPR assesses these principles as absolute but does not discuss if alternative usage would provide the most security for the individual. The blockchain provides one of the highest security standards

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<sup>95</sup> Sebastian Ramsay, *The General Data Protection Regulation vs. The Blockchain*, LAW AND INFORMATICS (Spring 2018).

to date regarding the integrity of data, but at the cost of data being non-removable.<sup>96</sup>

Ramsey's analysis shows that Blockchain technology can provide greater transaction security standards than the GDPR while being incompatible with the regulation itself. In doing so, Ramsey highlights the challenges of applying traditional regulations to the Blockchain, and leaves the nefarious uses of Cryptocurrencies largely unaddressed.

Theresa May has vocalized concerns about Cryptocurrency usage in criminal activities.<sup>97</sup> May, the Prime Minister of the United Kingdom, has said that Cryptocurrencies need to be regulated in such a way to make them traceable to the individuals who hold them.<sup>98</sup> If this monitoring is not possible, however, then the country may turn to an outright ban on Cryptocurrencies similar to the ban being considered by the European Central Bank irrespective of the outcome of *Brexit*.<sup>99</sup> Ironically, the market for

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<sup>96</sup> *Id.* at 60.

<sup>97</sup> Aatif Sulleyman, *Theresa May is 'very seriously' considering taking action against Bitcoin*, *The Independent*, (Jan. 26, 2018), <http://www.independent.co.uk/news/bitcoin-latest-updates-uk-regulation-theresa-may-control-ban-digital-currencies-cryptocurrencies-a8177631.html>.

<sup>98</sup> (To prevent criminals from being able to hide their transactions using Blockchains), *Id.*

<sup>99</sup> Selva Ozelli, *How Will the UK Deal With Crypto After Brexit: Expert Take*, COINTELEGRAPH (Aug. 6, 2018), <https://cointelegraph.com/news/how-will-the-uk-deal-with-crypto-after-brexit-expert-take>; Adrian Zmudzinski, *At Least 240 UK Crypto or Blockchain Companies Ceased Operations in 2018, Report Finds*, COINTELEGRAPH (Dec. 24, 2018), <https://cointelegraph.com/news/at-least-340-uk-crypto-or-blockchain-companies-ceased-operations-in-2018-report-finds>.

Cryptocurrencies in the United Kingdom was met with “crazy demand” during the period of volatility surrounding its likely departure from the Union.

Ultimately, European countries seem intent on controlling these internet-based currencies, and recognize the issues that these currencies have caused, but are unclear on the means of regulation. Many proposed controls for Cryptocurrencies have attempted to restrict features that are inherent to the Blockchain technology and difficult to separate, such as accessibility of ICOs or transaction recordings. While other attempts to control the Blockchain have simply applied incompatible or obsolete regulations to it, and failed to achieve any meaningful benefit. Ultimately, until these countries can reconcile this technology with their intended regulations, and come up with better-targeted regulations, they will struggle to address the issues that arose from the Blockchain.

#### E. BLOCKCHAIN BOUNCE BACK: SOUTH KOREAN REGULATIONS

South Korea is of the largest hubs for Cryptocurrencies.<sup>100</sup> However, the country’s justice minister has threatened to shut down all of the country’s Blockchain

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<sup>100</sup> (The most popular Cryptocurrency exchanges in South Korea process hundreds of millions of dollars’ worth of transactions every day. Trades using the Korean won account for around 5 percent of the volume of Bitcoin trades globally”). Su-Hyun Lee & Raymond Zhong, *Why is South Korea Spooking the Global Bitcoin Market?*, NY Times, (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/business/south-korea-bitcoin-ban.html>.

currency exchanges.<sup>101</sup> This threat came from the justice minister's perception that virtual currency exchanges were too similar to speculative gambling schemes.<sup>102</sup> Ironically, the announcement of this potential policy has been linked to a violent swing in Cryptocurrency prices, demonstrating the feared volatility.<sup>103</sup> When the country's Finance Minister confirmed that a total Cryptocurrency shutdown was being considered in January of 2018, the market fell to a six-week low because of the sheer amount of South Korean trades.<sup>104</sup>

In response to looming regulations, the South Korean people filed a petition on the website of the presidential office.<sup>105</sup> That petition, which received over 200,000 signatures, said the following:

Our people have been able to make a happy dream that they have never had in Korea because of virtual money, [ . . . ] People are not stupid. [ . . . ] virtual money is invested because it is judged to be the fourth revolution [ . . . ] I Wish that the economy will not decline due to unjustifiable regulations in the present situation

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> (The proposed regulation, and several permutations, have been associated with a 17% drop in Bitcoin's market price). Evelyn Cheng, *Over 200,000 Sign Petition in South Korea to Stop Bitcoin Regulation*, CNBC, (Jan 16, 2018), <https://www.cnbc.com/2018/01/16/over-200000-sign-petition-in-south-korea-to-stop-bitcoin-regulation.html>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

The Prime Minister seemed to acknowledge the public sentiment surrounding virtual currencies when he said that shutting down the country's Cryptocurrency exchanges would require approval from the National Assembly.<sup>107</sup>

The Prime Minister's threat of a total shutdown has not been South Korea's first bout with Cryptocurrency regulation. Indeed, the South Korean people have overwhelmingly supported the existing restrictions on anonymity in trade.<sup>108</sup> South Korean Cryptocurrency traders must allow their transactions to be traceable, and subjected to a 25 percent tax.<sup>109</sup> So, South Korean investors have an inflated cost when trading in Cryptocurrencies relative to most other countries. However, these investors have seemingly accepted the increased cost, and typically appreciate the increased security that accompany well-tailored regulations.<sup>110</sup> The South Korean Government was able to design these effective regulations by assembling a task force, which was composed of representatives from each governmental department as well as taxation experts and Blockchain experts.<sup>111</sup> By doing so, the South Korean government has been able to create regulations that are actually compatible with Blockchain technology.

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<sup>107</sup> *Id.*

<sup>108</sup> Litwak, *supra* note 80.

<sup>109</sup> Scott Neuman, *Who's Trading Bitcoin? South Korea Wants to Know*, NPR, (Jan. 23, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/23/579880053/whos-trading-bitcoin-south-korea-wants-to-know>.

<sup>110</sup> See generally Shin Nam Lee, *Bitcoin Acceptance in Korea: A Study*, 11 J. OF APPLIED ENGINEERING RESEARCH 13 (2018).

<sup>111</sup> *Id.*

Through its regulatory efforts, the South Korean Government has recognized the advantages of Blockchain technology as a whole, and even took advantage of the technologies' reliability to enable e-voting in a 2018 election; reducing voter fraud and increasing access to elections.<sup>112</sup> This adoption has led the government in South Korea to promote education in Blockchain technologies, calling it the "Fourth Industrial Revolution".<sup>113</sup> Consequently, South Korea continues to be one of the largest Cryptocurrency markets in the world.<sup>114</sup> Ultimately, consistent rules that were designed to be compatible with Blockchain technology boosted South Korean confidence in Cryptocurrencies by providing legitimacy to the market alongside regulation.

This South Korean model shows the difficulties of applying a total-shutdown approach to regulating Cryptocurrencies. More recently, however, the South Korean model for regulating Blockchain coins has proven to be the most well-adapted among the countries analyzed in this note. By putting the onus of the regulations on the Cryptocurrency consumers, and offering them additional protections in exchange, the South Korean Government has achieved a great degree of control over its internal Cryptocurrency market. Indeed, the government has even reaped its own benefits

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<sup>112</sup> Nir Kshetri & Jeffrey Voas, *Blockchain Enabled E-Voting*, IEEE (July 2018).

<sup>113</sup> M. Chung, *The Internet Information and Technology Research Directions based on the Fourth Industrial Revolution*, KSII TRANSACTIONS ON INTERNET & INFO. SYS. (2016).

<sup>114</sup> Devjyot Ghoshal, *South Korea's Crypto Craze has Morphed into a Blockchain Boom*, QUARTZ (Dec. 22, 2018), <https://qz.com/1485034/how-south-koreas-crypto-craze-turned-into-a-blockchain-boom/>.

from Blockchain technology.<sup>115</sup> Lawmakers in other countries should take notice of these recent successes in South Korea, and consider applying similar methods in their own jurisdictions.

## V. CONCLUSION

Despite all of the uncertainty surrounding proposed regulations, Blockchain coins have continued to gain popularity all around the world. Blockchain technology has caused a paradigm shift in the world economy by introducing a technology that is inherently difficult to modify and sufficiently versatile to be able to act as an alternative to both currencies and securities.

If used correctly, Blockchain technology produce more-reliable means of exchange, which are resistant to corruption. But, the mania surrounding this reliable means of exchange has spurred volatility and prevented these coins from taking a place as trustworthy stores of value. Instead, wild price swings in these coins have led to their treatment as investment vessels rather than as a means of exchange. Blockchain coins will never be regulated in a uniform way unless the uses of the technology become more consistent, which they show no signs of doing. Instead, Blockchain will remain a multi-use technology that countries will have to individually evaluate to adequately control within their borders.

Although more-tempered regulations seem to be successful relative to outright bans, there is no catch-all solution for regulating Blockchain coins, and regulating

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<sup>115</sup> See Kshetri & Voas, *supra* note 112.

bodies will have to adapt to each new use of this technology. Regulators should endeavor to fully understand the major uses of Blockchain within their jurisdictions, and take care to not entrench themselves in existing regulations that are often ineffective against this versatile new technology. Whether this is done by appointing a task force, or learned through harmful experiences, a better understanding of the underlying technology is ultimately the most effective tool for regulating the Blockchain.