

Optimism abounds on cryptocurrency ETFs despite lack of action

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The financial technology industry is predicting that regulators will allow investments in virtual currencies through exchange-traded funds, or ETFs, despite rejections of past efforts and with no indication by officials that a reversal is imminent.

The Securities and Exchange Commission has rebuffed at least eight proposals, the last one in February, for bitcoin exchange-traded funds. The rejections cite the possibility of manipulation in the [cryptocurrency market](#), notably reports that bitcoin's price can be influenced for a profit.

Experts contacted by CQ Roll Call, even those wary of [cryptocurrency](#) in general, say growing interest in the idea by financial companies will eventually lead to success for these funds.

A cryptocurrency fund trading on a stock exchange would allow people to invest in digital coins without dealing with the hassle of buying them directly, such as the encryption that requires the owner of a bitcoin to memorize and keep hidden a

34-character key or trust someone else to keep it safe.

Lee Reiners, a professor at the Duke University School of Law, says he does not support such a fund because it would be speculative in nature and lack an economic purpose. He does, however, expect the idea to achieve approval.

Reiners said in an interview that the profit incentive for [stock exchanges](#), sponsors of the funds and companies putting together investment indexes will drive regulators to approve them, as there are too many supporters and too few opponents. Large institutional investors want to invest in crypto funds because they do not want the risk of investing in the cryptocurrencies themselves, he said.

Looking past Clayton

He said approval seems unlikely, however, while SEC Chairman Jay Clayton is in charge, as there has been little movement during Clayton's tenure.

Clayton hasn't said much on the subject. "How can we be sure that those prices aren't subject to significant manipulation?" he asked during an appearance on CNBC last year. The SEC declined to make Clayton available to CQ Roll Call for an interview on the subject.

Most bitcoins are traded on unregulated exchanges, meaning there is little official oversight of what takes place on them. Hacking has been one concern.

Fintech website Coindesk reported in May that the total number of bitcoins held in cryptocurrency exchange wallets dropped to an 18-month low, an indication that some people might be wary of keeping their currency with these exchanges.

The SEC is "between a rock and a hard place" on the issue, said James Angel, a professor at

Georgetown University's McDonough School of Business who supports the idea of crypto ETFs. He said the agency is rejecting funds even if their disclosure is adequate (what Angel calls "merit regulation") in the name of investor protection. Like Reiners, Angel said he thinks Clayton is not willing to approve them.

For one thing, there are other methods for small investors to access cryptocurrencies, he told CQ Roll Call, such as smartphone apps to buy and sell cryptocurrency. And there are methods for large investors to do so as well, such as futures contracts on bitcoin and the "ether" cryptocurrency that trade on established exchanges.

Cryptocurrency ETFs may not be sound, according to Angel. Most economists have little optimism about their value to investors over time, and they are not a stable store of value, he said.

Those concerns will one day be alleviated, cryptocurrency advocates say.

"It's our view that a bitcoin ETF is inevitable and that it would provide a well-regulated opportunity for a wider swath of investors to invest in cryptocurrencies," said Kristin Smith, executive director of the Blockchain Association. "As institutional interest grows, policymakers will have a harder time justifying their positions against a bitcoin ETF. Providing transparent, publicly available cryptocurrency investments is in the interest of the everyday investor, and it's our view that key regulators will accede to that view sooner rather than later."

More transparency

Some in the industry are seeking to add transparency to the bitcoin market, similar to that of the stock market, as a way to address the SEC's concerns about market manipulation. The Virtual Commodity Association is working to establish a self-regulatory organization for digital currency. These organizations are well-established for [stock trades](#) and overseen by the SEC.

The association supports an extensive record-keeping system to track cryptocurrency trading, the

president of its board, Yusuf Hussain, told CQ Roll Call. The plan is modeled after the Consolidated Audit Trail, a massive project underway to track all stock exchange trading.

An audit trail is needed because bitcoins and other types of cryptocurrency can trade on different platforms, the same way a stock listed on the New York Stock Exchange can trade on the Nasdaq.

A crypto self-regulator would need the go-ahead from the Commodity Futures Trading Commission, and possibly Congress, although this point is unclear, Hussain said.

There is no shortage of supporters for fintech around Washington, which could add pressure on regulators.

One of them is the top regulator of national banks, acting Comptroller of the Currency Brian Brooks. He was chief legal officer at crypto exchange Coinbase Global Inc. before heading to the OCC.

Likewise, Sen. Kelly Loeffler, R-Ga., has years of experience at cryptocurrency trading firm Bakkt Holding Inc. The company is owned by the same parent as the New York Stock Exchange, Intercontinental Exchange Inc., whose CEO is Jeffrey Sprecher, Loeffler's husband.

A subsidiary of the NYSE, known as Arca, is one of the exchanges that sought approval for a bitcoin ETF.

And one of the biggest supporters is the SEC's own "crypto-mom," as Commissioner Hester Peirce has been described. She was reappointed for another term on the SEC this month. She has forcefully dissented from several of the SEC's rejections of crypto funds but was in the minority.

Peirce said in an interview that the agency is adding more hurdles by requesting ever-greater changes and information from those proposing the funds. "The goalpost is moving," she said.

She applauded industry efforts to police itself, under the idea that government is not the only source of regulation, welcoming ideas coming from

the industry.

As for a time frame, she said she can't speculate on when and if a crypto fund will gain SEC approval.

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