Where You Lead, I Will Follow: Professional Athletes' Ability to Influence Loyal Fans' Cryptocurrency Investments and the Broader Need for Cryptocurrency Regulation

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WHERE YOU LEAD, I WILL FOLLOW: PROFESSIONAL ATHLETES’ ABILITY TO INFLUENCE LOYAL FANS’ CRYPTOCURRENCY INVESTMENTS AND THE BROADER NEED FOR CRYPTOCURRENCY REGULATION

I. YOUR FAVORITE ATHLETE IS NOW YOUR NEW FINANCIAL ADVISOR: AN INTRODUCTION TO THE COMBINED SPORTS AND CRYPTOCURRENCY ATMOSPHERE

Tom Brady and Steph Curry are recognized as two of the world’s most skilled professional athletes.1 While their talents indisputably attract many dedicated fans, it is these athletes’ high-profile endorsements that grow their fan base even more.2 Cryptocurrency companies recognized that Brady and Curry, along with many other professional athletes, were the key to expanding their investor bases.3 However, just as quickly as professional athletes and sports franchises lent their names and reputations to these investments, 


the cryptocurrency world came crashing down.\textsuperscript{4} Volatility of cryptocurrencies is nothing new, but the November 2022 collapse and bankruptcy of cryptocurrency platform FTX Trading Ltd. (“FTX”), which was endorsed by several reputable athletes, forced a new look into whether athletes should promote speculative investments to loyal fans.\textsuperscript{5}

A. Cryptocurrency 101

Cryptocurrencies are digital assets that rely on secure communication technologies to allow person-to-person transactions.\textsuperscript{6} After decades of theorizing cryptocurrencies in varying ways, the invention of Bitcoin in 2008 established the first official digital currency.\textsuperscript{7} Bitcoin’s popularity skyrocketed in part due to its lack of a centralized authority and private transactions.\textsuperscript{8} Shortly thereafter, alternatives

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\item \textsuperscript{4} See How FTX Built Its Network of Stars, FIN. TIMES (Feb. 8, 2023), https://ig.ft.com/ftx-shareholders/?emailId=b0cc2c0b-8fa5-4c0b-a7c4-109fa56ae886&segmentId=13b7e341-ed02-2b53-e8c0-9cb59be8b3b [https://perma.cc/EE45-XD9S] (observing endorsements from celebrities and professional athletes was driving factor behind FTX’s shot to widespread popularity).
\item \textsuperscript{5} See Kaplan & Shea, supra note 3 (challenging whether athletes’ promotion of such risky asset is worthwhile and responsible).
\item \textsuperscript{6} See Geoffrey R. Peck, Victor S. Liang, & Mara K. Alioto, Security Interests: Bitcoin and Other Cryptocurrency Assets, THOMAS REUTERS PRACTICAL LAW (Feb. 2, 2022), https://assets.contentstack.io/v3/assets/blt5775cc69c999c255/blt9325d27a59ebe136b572/6273eff20cffdf1eb136b572/220202-bitcoin-other-cryptocurrency-assets.pdf [https://perma.cc/HRU6-Y88W] (describing cryptocurrency characteristics that make it more secure than other transactions). Cryptocurrencies operate on blockchain technology which keeps the transactions secure and maintains ledger entries of all exchanges. See id. (adding that blockchain avoids using centralized database by spreading information and transactions across network of computers).
\item \textsuperscript{8} See Tara Mandjee, Bitcoin, Its Legal Classification and Its Regulatory Framework, 15 J. BUS. & SEC. L. 157, 161 (2015) (describing revolutionary nature of Bitcoin which allows anyone to create accounts and transact with others); see also Elizabeth Lopatto, How Bitcoin Grew Up and Became Big Money, VERGE (Jan. 3, 2019, 11:00 AM), https://www.theverge.com/2019/1/3/18166096/bitcoin-blockchain-code-currency-
such as Namecoin and Litecoin emerged to rival Bitcoin, further driving the cryptocurrency enthusiasm. The cryptocurrency landscape evolved with Ethereum and initial coin offerings (“ICOs”), allowing investors to purchase newly issued tokens. Since 2008, cryptocurrencies and cryptocurrency exchanges have developed and funded opportunities for numerous industries. Individual investors have similarly benefited from cryptocurrency in large numbers, but they also face significant risks by investing in an industry that lacks important and necessary structure to help investors withstand the asset’s inherent and significant volatility.

B. Cryptocurrency Promotions and Endorsements

During the 2022 Super Bowl, nicknamed the “Crypto Bowl,” cryptocurrency companies pumped millions into advertising to capture mainstream attention and capitalize on expansive growth in their investor base. The commercials featured prominent


9. See Marr, supra note 7 (recounting that rival cryptocurrencies, compared to Bitcoin, aimed to offer various improvements).

10. See A Short History of Cryptocurrencies, supra note 7 (describing ICOs, which are similar to initial public offerings (“IPOs”) of stock in which investors can purchase newly issued stock of public corporations); see also Karl Montevirgen, Altcoins, Coins, and Tokens: What’s the Difference?, Britannica Money, https://www.britannica.com/money/what-are-altcoins-tokens [https://perma.cc/WK6F-MZCS] (last accessed Aug. 1, 2023) (“A token is a cryptocurrency or crypto asset that runs on another cryptocurrency’s blockchain.”). Ethereum is a decentralized blockchain network that is powered by its own cryptocurrency. See Bitcoin v. Ethereum: Key Differences Between BTC and ETH, CoinTelegraph, https://cointelegraph.com/learn/bitcoin-vs-ethereum-key-differences-between-btc-and-eth [https://perma.cc/C2JG-RPXP] (last visited Aug. 28, 2023) (describing Ethereum’s differences, which include capability to transact and interact with applications built on top of Ethereum network). ICOs, which combine the attributes of crowdfunding and IPOs, have allowed companies to raise capital and fund projects by selling new tokens. See IPOs, ICOs, and STOs – What’s the Difference?, CRYPTOPIA (Mar. 22, 2022), https://www.gemini.com/cryptopedia/security-token-offering-sto-crypto-ico-ipo [https://perma.cc/N9AF-C68Q] (reporting more than $10 billion raised from ICOs between 2017 and 2018 partly because ICOs are simpler to execute than IPOs).

11. See A Short History of Cryptocurrencies, supra note 7 (finding crypto projects supported by blockchain technology in areas such as sports, gambling, and finance).

12. See David Gura, 2022 Was the Year Crypto Came Crashing Down to Earth, NPR (Dec. 29, 2022, 5:00 AM), https://www.npr.org/2022/12/29/1145297807/crypto-crash-ftx-cryptocurrency-bitcoin [https://perma.cc/92AX-N36P] (commenting on severe price drops occurring throughout cryptocurrency industry during 2022, resulting in losses to individual investors and exposing larger problems within industry).

13. See Daniel Arkin, Why Were There So Many Crypto Ads During the Super Bowl?, NBC News (Feb. 14, 2022, 3:14 PM), https://www.nbcnews.com/tech/tech-news/many-crypto-ads-super-bowl-rcna16132 [https://perma.cc/98MK-39F8] (recounting numerous Super Bowl advertisements from cryptocurrency companies such as Coinbase and eToro); see also Tiffany Hsu, All Those Celebrities Pushing Crypto are Not
professional athletes, including Brady, Curry, and LeBron James. Companies aimed to clarify confusion about digital currencies and platforms and to draw in a whole audience of potential investors. 

Fans, particularly those wary of or unfamiliar with cryptocurrency, viewed these promotions as an indication of the investment’s legitimacy. However, the cryptocurrency downfall that occurred later in that year led to a backlash against cryptocurrency advertising, culminating in the 2023 Super Bowl being devoid of almost any cryptocurrency commercials. As the cryptocurrency landscape evolves, there remains a concern about whether athletes should take advantage of fan loyalty by encouraging investments in an unregulated, risky asset.

C. Lack of Cryptocurrency Regulation Puts Fans and Athletes at Risk

Fans who invest in traditional financial products, such as stocks or bonds, are protected by laws enforced by financial regulatory agencies that provide oversight and stability to the economy. On the contrary, cryptocurrency, a non-traditional financial product,


15. See Arkin, supra note 13 (discussing motivation of advertisements as effort by cryptocurrency companies to expand market share and solidify position in global economy).


18. See Pells, supra note 16 (commenting on risks that can arise when athletes promote investments that can lead loyal fans to financial harm).

19. See What Role Do Regulations Play in Investing?, WHARTON ONLINE (Nov. 16, 2021), https://online.wharton.upenn.edu/blog/investment-regulations/ [https://perma.cc/UA6Q-MGFX] (describing financial regulatory groups such as Security and Exchange Commission and Commodity Futures Trading Commission and their responsibility of overseeing things such as stock exchanges and derivatives markets, respectively).
lacks cohesive and clear regulation. Unsettled classification and jurisdiction of enforcement and oversight prevents any sweeping industry regulation, raising a significant concern: cryptocurrency’s regulation is a critical factor in protecting the athletes who promote it and the fans who invest in it.

This Comment addresses the implications of professional athletes endorsing risky, unregulated investments to fans and how regulation can protect both parties. Section II looks at the merits of using professional athletes and sports teams to market cryptocurrency to fans. Section II also looks at the downfall of FTX and the developing legal action due in part to professional athletes’ promotion of the platform. Section II finishes with an evaluation of current regulation of differing investments and securities, and its application to cryptocurrency. Section III analyzes fans’ legal chances of recovering losses from professional athletes who promoted cryptocurrency. This Section also discusses ways fans and professional athletes, who want to bet on cryptocurrency, can protect.

20. See Aditya Narain & Marina Moretti, Regulating Crypto, INT’L MONETARY FUND (Sept. 2022), [https://www.imf.org/en/Publications/fandd/issues/2022/09/Regulating-crypto-Narain-Moretti] (commenting that regulation has failed to keep up with cryptocurrency’s growth); see also Emma Newbery, Do We Need More Crypto Regulation? Two Sides of the Story, ASCENT (Oct. 21, 2021), [https://www.fool.com/the-ascent/cryptocurrency/articles/do-we-need-more-crypto-regulation-two-sides-of-the-story/] (discussing necessity for regulation to protect consumers and allow for greater adoption of assets). For further discussion of classifying cryptocurrency as a security or a commodity, see infra notes 96–139 and accompanying text.

21. See Narain & Moretti, supra note 20 (observing that adopting and applying regulation is difficult due to unprecedented nature of cryptocurrency); see also Josh Einis, Lack of Regulation Holds Back Crypto Adoption, PAYMENTSJOURNAL (Nov. 15, 2022), [https://www.paymentsjournal.com/lack-of-regulation-holds-back-crypto-adoption/#:~:text=Cryptocurrency%20markets%20have%20often%20sold%20governments%20on%20not%20control%20money.] (discussing necessity for regulation to protect consumers and allow for greater adoption of assets). For further discussion of classifying cryptocurrency as a security or a commodity, see infra notes 96–139 and accompanying text.

22. See Emily Stewart, Might I Suggest Not Listening to Famous People About Money?, Vox (June 2, 2022, 8:00 AM), [https://www.vox.com/the-goods/23148474/crypto-celebrities-ftx-kim-kardashian-larry-david] (discussing potential dangers that can result when following professional athletes’ financial advice).

23. For further discussion of the use of professional athletes to promote cryptocurrency, see infra notes 30–44 and accompanying text.

24. For further discussion of FTX downfall and lawsuits, see infra notes 45–92 and accompanying text.

25. For further discussion of current regulatory landscape of cryptocurrency, see infra notes 93–155 and accompanying text.

26. For further discussion of pending legal action against professional athletes who promoted FTX, see infra notes 162–190 and accompanying text.
themselves and comply with current law. In addition, this Section argues a self-regulatory organization under the combined purview of the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”) is an appropriate way to regulate cryptocurrency. This Comment closes with remarks encouraging healthy skepticism amongst fans and professional athletes around cryptocurrency until the regulation fog clears.

II. TESTING FANS’ LOYALTY: A BACKGROUND TO ATHLETE-PROMOTED CRYPTOCURRENCY AND POTENTIAL REGULATORY IMPACTS

A. Fortune Favors the Famous, Not the Fans: Issues Surrounding Cryptocurrency Endorsements by Professional Athletes and Celebrities

In a 2021 television commercial for Crypto.com, actor Matt Damon claimed “fortune favors the brave” when he suggested that investing in the digital currency could help change the world. Crypto.com was one of many cryptocurrency companies to have launched mass-impact advertisements to attract as many investors as possible. Cryptocurrency companies turned to famous athletes to advertise and promote their respective assets. These marketing campaigns initially proved successful, but the cryptocurrency crash in 2022 moved athletes like Aaron Rodgers, Serena Williams, and Lionel Messi – athletes who once enthusiastically endorsed cryptocurrency – to withdraw their support.

27. For further discussion of how fans and professional athletes can protect themselves from cryptocurrency harm, see infra notes 191–224 and accompanying text.
28. For further discussion of how self-regulatory organization can regulate cryptocurrency, see infra notes 225–246 and accompanying text.
29. For further discussion of how to approach the industry’s issues moving forward, see infra notes 248–256 and accompanying text.
31. See id. (listing cryptocurrency platforms, such as FTX and Gemini, as companies that launched advertisements).
Cryptocurrency companies have gone to great lengths to use professional athletes to sell the assets as a solid investment to fans. Advertising to sports fans is viewed as one of the quickest and easiest ways to reach mainstream audiences across all ages and demographics. Not only can cryptocurrency companies reach multitudes through sports, but sports fans are reportedly better versed in cryptocurrency than the average population. Sports fans, naturally more risk-seeking, are a captive audience for cryptocurrency. However, whether cryptocurrency is an appropriate investment for fans and whether it is appropriate for athletes to endorse them, remains up for debate.

Professional athletes make millions of dollars, and while much of that comes from team contracts, a large amount also comes from fans' support. This undying support is a reason why cryptocurrency companies focused more on attention-grabbing gimmicks, rather than important investment details in their advertisements.
However, these quick cryptocurrency advertisements ignore the importance of fans having a comprehensive understanding of the costs and benefits prior to investing.\textsuperscript{41} When fans follow professional athletes’ investment advice in hopes of replicating their wealth, they often forget an important point: What separates professional athletes’ wealth from their own is often not the cryptocurrency investment they are touting.\textsuperscript{42} Professional athletes who continue to promote cryptocurrency, knowing full well the risks involved for fans, take advantage of the undying loyalty that has been built by fans’ investments into athletes’ careers.\textsuperscript{43} These advertisements mislead fans who do not understand that making smart investment decisions is not as easy as blindly following athletes’ investment advice.\textsuperscript{44}

B. FTX Collapse Forces Harsh Look at Cryptocurrency Endorsements

Fans who took the bet on cryptocurrency investments and lost, have decided their next face-off is against the professional athlete promoters in court.\textsuperscript{45} In January 2022, boxer Floyd Mayweather was one of multiple celebrities sued in a class action in the Central District of California over the promotion of cryptocurrency, EthereumMax.\textsuperscript{46} The plaintiffs, investors who purchased EthereumMax cryptocurrency tokens, pointed to the celebrities and athletes

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\item See Wintermeyer, supra note 30 (commenting that requisite understanding of cryptocurrency is contradictory to mainstream advertisement and adoption of asset).
\item See Stewart, supra note 22 (discussing celebrities’ wealth is built with financial advisers who often advise against investments such as cryptocurrency).
\item See Ben McKenzie & Jacob Silverman, Celebrity Crypto Shilling is a Moral Disaster, SLATE (Oct. 7, 2021, 5:45 AM), https://slate.com/technology/2021/10/ben-mckenzie-crypto-celebrities-kardashian-brady-lohan.html [https://perma.cc/T4KJ-F45E] (claiming cryptocurrency promotion by celebrities and athletes is “moral disaster” due to potential impacts it can have on fans who invest).
\item See id. (warning individual investors of greater chance for illusory rewards rather than actual winnings from taking athletes’ cryptocurrency advice).
\item See Sam Skolnik, Crypto Lawsuit Deluge Has Big Firms Scrambling to Keep Up, BL (May 17, 2022, 5:30 AM), https://news.bloomberglaw.com/business-and-practice/crypto-lawsuit-explosion-has-big-law-scrambling-to-keep-up [https://perma.cc/UC4N-VFJ7] (finding cryptocurrency has resulted in hundreds of “class action lawsuits and other private litigation” and referencing class action suit against boxer Floyd Mayweather Jr., for misleading statements about cryptocurrency).
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as a reason why they suffered losses. Although Judge Fitzgerald dismissed the lawsuit, he expressed concern that the combination of rapid digital currency creation and ease of communication between celebrities and fans has “allowed unvetted and highly volatile investment ventures to go viral based solely on the paid-for word of celebrity promoters.” Later that same year, many shared Judge Fitzgerald’s concerns when FTX declared bankruptcy and investors again pointed fingers at the professional athlete promoters of the company.  

1. **FTX’s Rise and Fall**

FTX, founded and run by Sam Bankman-Fried, operated one of the world’s largest cryptocurrency trading platforms. Though the entire organization consisted of numerous entities, subsidiaries, and investment vehicles, it was best known for its cryptocurrency exchange and offering portfolio, which consisted of a wide-range of trading products and interest accounts, access to spot markets, and even its own cryptocurrency token, FTT. Within three years,

47. See id. (describing lawsuit, whereby investors claim celebrities’ conduct is reason for investing losses).

48. See Motion to Dismiss at *1, In Re Ethereummax Investor Litigation, 2022 BL 437873 (C.D. Cal. Dec. 6, 2022) (recognizing “celebrities’ ability to readily persuade millions of undiscerning followers”). The lawsuit was ultimately dismissed due to plaintiffs’ failure to meet heightened pleading standards for fraud. See id. at *18 (finding plaintiffs failed to show that celebrity promoters furthered Ethereum-max’s business).


FTX’s ability to build trust and draw in investors through celebrity endorsements could not save itself from internal issues,
ultimately resulting in its downfall. Unbeknownst to investors, Alameda Research, Bankman-Fried’s other trading firm, created a symbiotic relationship with FTX via FTT; meaning, any issue with FTT could send both entities tumbling down. However, concerns over FTT’s lack of transparency raised questions about the validity of the entire operation. In early November 2022, cryptocurrency exchange Binance announced it would sell its FTT tokens, causing a mass panic amongst traders and resulting in billions lost in only a few days. Falling cryptocurrency prices created a domino effect for Alameda and FTX. Days later, Binance went from agreeing to buy out FTX to revoking its offer due to regulatory and financial concerns discovered in their due diligence process. With the death of the Binance-FTX deal, cryptocurrency markets panicked as the death of FTX seemed inevitable. At the same time, institutional investors who invested billions into the company, such as

57. See Huang, supra note 50 (discussing shock that resulted when FTX filed for bankruptcy).
59. See Matthew Goldstein, Alexandra Stevenson, Maureen Farrell, & David Yaffe-Bellany, FTX’s Sister Firm, Alameda Research, Was Central to Collapse, N.Y. TIMES (Nov. 30, 2022), https://www.nytimes.com/2022/11/30/business/dealbook/ftx-almeda-research-sam-bankman-fried.html?searchResultPosition=1 [https://perma.cc/8H36-MJCL] (finding Alameda traded large amounts of FTT and used it to make speculative bets on other cryptocurrencies); see also Napolitano & Cheung, supra note 52 (commenting that FTT’s lack of transparency and difficulty to track tokens raised concerns, as did Alameda’s financial statements which showed company held large number of FTT).
60. See Huang, supra note 50 (recounting that Binance’s sale created fear amongst traders that FTX would fail, resulting in almost six billion dollars in withdrawals).
61. See Goldstein, supra note 59 (stating that falling crypto prices meant FTX stepped in to pay Alameda loans with FTX customer deposits).
62. See Huang, supra note 50 (discussing Binance announcements, which cited “regulatory investigations and reports of mishandled funds” as rationale for pulling out of deal). Before Binance revoked their offer, Bankman-Fried shared that the deal would benefit customers and the company. See id. (adding Bankman-Fried’s statement aimed to ease concerns over conflict between FTX and Binance).
Sequoia Capital, told investors their investments were worthless. As the SEC and Justice Department opened investigations into the company, FTX met its end when the company filed for bankruptcy on November 11, 2022 and CEO Sam Bankman-Fried resigned.

2. **FTX Lawsuits Turn Fans into Opponents**

The FTX collapse forced sports fans who invested in FTX to view their loyalties to their favorite professional athletes in a new light. Life-long fans who were influenced by commercials and social media posts and who followed this investment advice, found themselves without immediate recourse. Federal charges against Bankman-Fried resulted soon after FTX declared bankruptcy. However, several class action lawsuits from FTX customers followed, naming not only Bankman-Fried, but the celebrity promoters as defendants.

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64. See id. (describing letter sent from Sequoia Capital to its own investors); see also Berber Jin, *Sequoia Capital Apologies to Its Fund Investors for FTX Loss*, Wall St. J. (Nov. 22, 2022, 6:08 PM), https://www.wsj.com/articles/sequoia-capital-apologizes-to-limited-partners-for-ftx-investment-11669144914 [https://perma.cc/2MC3-ZATB] (finding Sequoia Capital disregarded typical internal processes prior to investing in FTX, so as not to miss out on opportunity).


well. In *Garrison v. Bankman-Fried*, the plaintiffs included Tom Brady, Stephen Curry, the Golden State Warriors, Shaquille O’Neal, David Ortiz, William Trevor Lawrence, and Naomi Osaka as parties liable for FTX losses.

In the initial Complaint, filed days after FTX declared bankruptcy, the plaintiffs charged the defendants with four counts that focus on FTX’s offerings and the defendants’ involvement in FTX. In count one, the plaintiffs argued that FTX’s yield-bearing accounts (“YBAs”) were unregistered securities, and therefore the defendants’ promotion of these YBAs violated the Florida Securities Act. According to the plaintiffs, the YBAs were key to funding various FTX entities, giving even more reason for the defendants to push for their sale. In counts two and three, the plaintiffs accused the defendants of violating the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) and of civil conspiracy through deceptive activity by encouraging buying into FTX and doing so with misrepresentations and omissions to bolster confidence in the company. The plaintiffs claimed the defendants’ statements in commercials and social media posts promoting YBAs rendered them liable for losses incurred from purchasing the

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71. See *Initial Complaint*, supra note 69, at *2 (filing class action lawsuits against multiple professional athletes who promoted or endorsed FTX).

72. See id. at *36-39 (discussing four counts filed against FTX and professional athletes).

73. See id. at *36 (alleging liability for sale of unregistered securities); see also id. at *16 (listing activities of FTX to classify YBAs as securities). For further discussion of security classification and determination of a security under the *Howey* test, see *infra* notes 101–113 and accompanying text.


75. See *Initial Complaint*, supra note 69, at *37–38 (claiming statements and actions by defendants led to plaintiffs’ losses).
unregistered YBAs. For the final count, the plaintiffs sought a declaratory judgment. In December 2022, the plaintiffs amended their Complaint to provide greater context for their claims. First, the plaintiffs expanded on their argument that the YBAs are securities, turning to definitive regulatory statements, guidance, and actions from the SEC and other regulatory entities. More specifically, the plaintiffs claimed that the SEC has sole jurisdiction over this issue and that YBAs fit under the federal definition of a security as investment contracts. To strengthen their claim that the defendants aggressively marketed FTX, the plaintiffs cited well-known failures in the cryptocurrency industry as a reason why FTX turned to celebrities and professional athletes to market the company as a safe investment. In addition, the plaintiffs asserted that customers relied on the celebrity endorsers’ statements and, if the defendants had any skepticism about the validity of FTX, they could have easily unearthed the company’s problems.

The professional athletes and celebrity defendants pushed back in a motion to dismiss, claiming they did not cause the plaintiffs’ injuries. The parties added that FTX is solely responsible for losses from the YBAs. They argued that count one fails because they were not in privity with the buyer of the YBA, a requirement for liability.

76. See id. at *5 (citing Wildes v. Bitconnect Int’l PLC, No. 20-11675 (11th Cir. Feb. 18, 2022)) (citing case which held cryptocurrency promoters of unregistered securities can be liable for solicitation through mass communication).
77. See id. at *39 (asking for order that YBAs were securities and defendants were paid to promote defective assets).
78. See Amended Class Action Complaint & Demand for Jury Trial at *40–85, Garrison v. Bankman-Fried, No. 1:22-cv-23753, 2023 WL 2924821 (S.D. Fla. Dec. 16, 2022) [hereinafter First Amended Complaint] (adding further support for claims that YBAs are securities and that defendants deceived plaintiffs via misrepresentations).
79. See id. at *2 (turning to SEC guidance as proof that YBAs were unregistered securities).
80. See id. at *41 (claiming federal courts have affirmed SEC’s role in cryptocurrency issues); see also id. at *51–53 (applying federal securities test to prove FTX offered unregistered securities); see generally, Fla. Stat. § 517.021(23) (2023) (including investment contract within Florida definition of “security”). For further discussion of the Howey test of an “investment contract,” see infra notes 101–102 and accompanying text.
81. See First Amended Complaint, supra note 78, at *69 (arguing intentional use of specific celebrities with positive reputations can induce potentially skeptical consumers).
82. See id. at *72 (believing defendants could have discovered problematic business practices before lending their reputations to companies).
83. See Motion to Dismiss at *1, Garrison v. Bankman-Fried, No. 1:22-cv-23753, 2023 WL 2924821 (S.D. Fla. Apr. 14, 2023) (arguing no causal connection between plaintiffs’ purchases of YBAs and statements made by defendants).
84. See id. at *5 (stating that failing to register YBAs as securities is sole responsibility of FTX).
under the Florida Securities Act. Importantly, the defendants emphasized that none of the promotional statements mentioned, let alone encouraged, investing in YBAs. The defendants similarly argued that the plaintiffs failed to meet the elements of FDUTPA, citing generic advertisements or sponsorships instead of precise statements or misrepresentations. Count three, civil conspiracy, was similarly rejected because the defendants did not see any unlawful agreement with FTX to defraud the plaintiffs or sell YBAs. Lastly, the defendants argued the lack of threat of future harm prevented a basis for declaratory relief.

In May 2023, the plaintiffs filed a second Amended Complaint, adding two additional claims, aiding and abetting fraud and aiding and abetting conversion, further arguing that the defendants misled the plaintiffs and interfered with the plaintiffs’ investments. Shortly thereafter, the plaintiffs in Garrison and Podalsky filed for the centralization of eight class action lawsuits filed amongst two districts. The Judicial Panel on Multidistrict Litigation ruled in favor

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85. See id. at *6–7 (arguing that, even if YBAs are securities, plaintiffs cannot prove defendants participated or aided in sale of YBAs). Privity exists when two or more parties have a substantive legal relationship, typically involving a mutual interest. See Privity, CORNELL L. SCI., https://www.law.cornell.edu/wex/privity [https://perma.cc/STM4-9RFZ] (last visited Aug. 28, 2023) (adding mutual interest can include same loss or same measure of damages); see also Adam J. Gana & Michael Villacres, Blue Skies for America in the Securities Industry...Except for New York: New York’s Martin Act and the Private Right of Action, 19 FORDHAM J. CORP. & FIN. L. 587, 593–94 (2014) (proving privity imposes mere negligence standard under Florida Securities Act).

86. See Motion to Dismiss, supra note 83, at *7–8 (pointing to statements that only promoted FTX exchange, not YBAs specifically). The defendants pushed back against the plaintiffs’ citing of Wildes v. BitConnect Int’l PLC because that concerned a federal securities claim, requiring the purchase of a particular security. See id. at *8 (adding liability under Florida Securities Act is narrower than federal securities law).

87. See id. at *9–14 (arguing plaintiffs fail to state their claim with particularity, which is requirement for fraud claims). The elements of a FDUTPA claim are (1) a knowingly deceptive act or unfair practice; (2) causation; and (3) actual damages. See id. at *10 (clarifying that identifying FDUTPA elements involves identifying content of deceptive statements and how defendant gained from alleged fraud).

88. See id. at *14–15 (stating that court believed no argument has been raised to plausibly show intentional unlawful acts on defendants’ part).

89. See id. at *15–16 (calling for dismissal of this claim because FTX bankruptcy means plaintiffs cannot be harmed by company).

90. See Amended Class Action Complaint & Demand for Jury Trial at *276–78, Garrison v. Bankman-Fried, No. 1:22-cv-23753, 2023 WL 2924821 (S.D. Fla. May 15, 2023) [hereinafter Second Amended Complaint] (discussing Defendant’s allegation that plaintiffs suffered damages from defendants’ involvement in FTX and defendants’ knowledge of FTX included knowledge of conversion of plaintiff’s funds).

of centralizing these class actions in the Southern District of Florida to resolve common issues of fact and efficiently conduct litigation.92

C. Cryptocurrency Needs Referees: Attempts to Regulate Under Existing Laws

Outside of resolved and existing legal actions involving FTX and other cryptocurrency companies, there remains a question on how to protect cryptocurrency investors to avoid a repeat of FTX.93 Many, including cryptocurrency CEOs, agree that the answer lies in regulation.94 While existing regulation can provide a helpful start, there is uncertainty that existing frameworks can provide the sustainable, wide-reaching regulation needed.95

1. Securities or Commodities?

One of the biggest sources of contention standing in the way of regulating cryptocurrency arises from the debate of how to classify it.96 Namely, the issue is whether cryptocurrency classifies as a

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92. See id. at *3 (listing common factual questions amongst class actions and concluding that all actions allege celebrity promoters were complicit in FTX’s fraud); see also Preliminary Report by Defendants at *2, In re: FTX Cryptocurrency Exchange Collapse Litigation, No. 1:23-md-03076-KMM (S.D. Fla. June 18, 2023) (commenting that, as of June 2023, Garrison is only active matter to involve celebrity defendants).


95. See Betsy Vereckey, Experts Debate How to Move Crypto Regulation Forward, MIT MGMT. Sloan Sch. (Mar. 29, 2022), https://mitsloan.mit.edu/ideas-made-to-matter/experts-debate-how-to-move-crypto-regulation-forward [https://perma.cc/2RQK-LZR6] (commenting on necessity of regulation while questioning what exactly that regulation looks like when existing regulation was adopted before many innovative financial assets were even considered).

“security” or a “commodity,” which in turn determines whether the SEC or the CFTC develops and enforces its regulations. However, regulators face an ever-changing atmosphere that includes a wide variety of crypto assets to oversee, making their distinction difficult, yet important.

a. Securities

The Supreme Court has held that federal securities laws were designed to provide flexible, yet necessary regulation. Those who view cryptocurrency as a security find statutory support under the Securities Act of 1933 (“1933 Act”) and the Securities Exchange Act of 1934 (“1934 Act”), holding cryptocurrency as an investment contract within the broad definition of “security.” Securities and Exchange Commission v. W.J. Howey Co. set the governing framework for defining an investment contract under the 1933 Act, which was

97. See Jake Ryan, Crypto Classification: Security vs. Commodity, Medium (Aug. 2, 2018), https://tradecraftjake.medium.com/crypto-classification-security-vs-commodity-40674b54-9f [https://perma.cc/GP5B-VCCB] (noting securities are governed by SEC and commodities are governed by CFTC); see also Security, CORP. FIN. INST., https://corporatefinanceinstitute.com/resources/capital-markets/security/ [https://perma.cc/T4JR-AEB] (last updated Mar. 20, 2023) (explaining that security is financial asset that typically can be traded, including assets such as stocks and bonds); see also Commodities, CORP. FIN. INST., https://corporatefinanceinstitute.com/resources/commodities/commodities/ [https://perma.cc/UZ3-TU6R] (last updated Dec. 21, 2022) (summarizing commodities which are another class of assets and include cotton, oil, and gas).


99. See Sec. and Exch. Comm’n v. Edwards, 540 U.S. 389, 393 (2004) (quoting Reves v. Ernst & Young, 494 U.S. 56, 61 (1990)) (“Congress’ purpose in enacting the securities laws was to regulate investments, in whatever form they are made and by whatever name they are called.”).


then adopted by state courts. To classify an investment contract as a security, and therefore subject it to securities laws, the following elements must exist: (1) an investment of value; (2) in a common enterprise; (3) with the expectation of profit; (4) that is derived from the efforts of others. The Howey test was most recently applied in Securities and Exchange Commission v. Ripple Labs, Inc. Between 2013 and 2020, Ripple sold and distributed its cryptocurrency token, XRP, in various ways, including to certain counterparties (“Institutional Sales”), on digital asset exchanges or through trading algorithms (“Programmatic Sales”), and as a form of payment for services (“Other Distributions”). The company engaged in a number of marketing strategies for XRP by publishing market reports and posting on a number of social media platforms. The SEC commenced action against the company to allege that XRP was sold as an unregistered security in the form of an investment contract.

The court considered the Institutional Sales, the Programmatic Sales, and the Other Distributions separately in its analysis. First, the court found that each Howey factor was met for the Institutional Sales and primarily focused on the fact that the institutional buyers had an understanding that the success of their investment would result from Ripple’s efforts. The court concluded that the Institutional Sales of XRP constituted the sale of unregistered securities.

Conversely, the court found that the Programmatic Sales and Other

102. See id. at 297 (focusing case’s issue on defining “investment contract,” as no definition existed within Securities Act of 1933).

103. See Brad Jacobsen & Hunter Reynolds, 75 Years of Howey, 32 Utah B. J. 16, 16 (2019) (identifying investment contract as security requires it to conform to disclosure and compliance laws).

104. See Sec. and Exch. Comm’n v. Ripple Labs, Inc. at *17–18, 2023 U.S. Dist. LEXIS 129486 (S.D.N.Y. July 13, 2023) (seeking to answer whether XRP was sold as security via Howey test).

105. See id. at *9 (describing Ripple’s transactions sales which ranged from parties such as institutional buyers and hedge funds to programmatic sales where identities of purchasers were unknown).

106. See id. at *11–13 (adding that communications about XRP and Ripple were made with intention to provide transparency over Ripple’s market activities).

107. See id. at *17–18 (noting SEC’s allegations against Ripple); see also id. at *10–11 (noting Ripple never filed registration statements or financial statements for XRP).

108. See id. at *24–25 (listing XRP transactions for which court applied Howey test).

109. See id. at *25–35 (applying Howey elements to Institutional Sales); see also id. at *33–34 (finding use of contracts supported conclusion that parties viewed sale of XRP to mean they could reap profits from Ripple’s entrepreneurial and managerial efforts).

110. See id. at *34 (holding that offering and selling unregistered investment contracts means Ripple violated federal securities laws).
Distributions did not constitute the sale of securities.\textsuperscript{111} The Programmatic Sales, made to public buyers, failed to indicate a reliance on Ripple’s efforts.\textsuperscript{112} The Other Distributions, made to employees as compensation or to third parties for development of new initiatives, were not investments of money because no investors provided capital or risked their own money.\textsuperscript{113}

The Investment Company Act of 1940 (“1940 Act”) and the Investment Advisers Act of 1940 (“IAA”), which regulate the companies and advisers who invest or trade securities, provide further statutory support to regulate cryptocurrency.\textsuperscript{114} In 2020, the SEC finalized a rule under the IAA, adapting to changes in investment advertising and marketing.\textsuperscript{115} The rule specifically covers testimonials and endorsements in advertisements.\textsuperscript{116} Advisers must meet disclosure, oversight, and disqualification requirements, otherwise testimonials and endorsements are prohibited.\textsuperscript{117} In February 2022, the SEC charged and fined BlockFi Lending LLC, a cryptocurrency

\begin{itemize}
\item \textsuperscript{111} See id. at *35–41 (analyzing these sales against Howey and finding they failed to satisfy certain elements).
\item \textsuperscript{112} See id. at *37 (adding that Programmatic Buyers’ lack of knowledge that they were buying XRP from Ripple prevented them from being able to rely on Ripple’s efforts).
\item \textsuperscript{113} See id. at *40 (stating that giving up some tangible consideration for interest in something indicates characteristic of security).
\item \textsuperscript{116} See id. (changing scope of rule to include principles-based provisions to account for impact of technological changes on investment advice).
\item \textsuperscript{117} See id. (requiring such things as (1) disclosure on whether promoter is client and being compensated, (2) whether advertisement complies with marketing rule, and (3) certain individuals refrain from acting as promoters).
\end{itemize}
company, for failure to comply with the 1940 Act. The SEC’s order stemmed from the company’s operations as an unregistered investment company and from offerings of unregistered securities. The SEC’s action showed that it will hold cryptocurrency companies liable under federal securities laws.

The SEC has also imposed fines against celebrities and professional athletes who have endorsed cryptocurrencies that qualify as securities. The SEC charged professional boxer Floyd Mayweather Jr. for promoting ICOs without disclosing his compensation. Similarly, the SEC charged NBA star Paul Pierce for promoting EthereumMax tokens with false and misleading statements on social media and for failing to disclose his payment. In both releases, the SEC stressed that celebrities must disclose payment details and investors must research cryptocurrency investments carefully.

b. Commodities

The regulation puzzle becomes more convoluted when recognizing that cryptocurrency can be classified as a commodity instead. The CFTC will have regulatory oversight if classified as such. The Commodity Exchange Act (“CEA”) regulates commodity exchanges

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118. See BlockFi Agrees to Pay $100 Million, supra note 114 (holding cryptocurrency company accountable for failure to register its retail crypto lending product).
119. See id. (holding interest accounts offered by BlockFi are securities and therefore must be registered). The SEC also held that issuing and holding securities classified the company as an investment company that went unregistered. See id. (adding BlockFi held significant portion of its assets in cryptocurrency).
120. See id. (warning other cryptocurrency companies to view BlockFi order as command to conform to registration and disclosure requirements to keep cryptocurrency investors safe).
122. See id. (noting three ICO issuers paid Mayweather for promotions).
124. See id. (stating that disclosing promotional payment details allows investors to know whether promoters are unbiased in their promotions).
125. See Avery Minor, Cryptocurrency Regulations Wanted: Iterative, Flexible, and Pro-Competitive Preferred, 61 B.C. L. Rev. 1149, 1160 (2020) (claiming cryptocurrency can be commodity if it meets “virtual currency” definition).
and protects investors who participate in the commodities market.\footnote{127} The statute’s broad definition of commodity allows for potential regulation of cryptocurrency alongside traditional commodities such as wheat and cotton.\footnote{128} The CFTC oversees futures, options, and derivative contracts.\footnote{129} The following factors support placing cryptocurrency under the jurisdiction of the CFTC: the nature of cryptocurrency, cryptocurrency’s value derived from demand by investors, a fixed price set by a blockchain, and cryptocurrency acting as a derivative contract.\footnote{130} In In re Coinflip,\footnote{131} the CFTC found that Coinflip, Inc. violated the CEA and other CFTC regulations.\footnote{132} Starting in March 2014, Coinflip operated and advertised Derivabit, a cryptocurrency platform, which connected buyers and sellers of Bitcoin options and futures contracts.\footnote{133} The CFTC held Bitcoin falls within the broad definition of a commodity, subjecting Coinflip to CFTC jurisdiction.\footnote{134} CFTC’s oversight of cryptocurrency was bolstered in CFTC v. McDonnell,\footnote{135} where virtual currencies were again classified as commodities subject to CFTC regulation.\footnote{136} The broad definition of commodities once again provided support to grant the CFTC standing to pursue action for fraud and misappropriation of virtual currencies.\footnote{137} However, the court conceded that the CFTC does not have sole regulatory jurisdiction of cryptocurrency.\footnote{138}

\begin{footnotesize}
\footnote{127. See Commodity Exchange Act, 7 U.S.C. §§ 1-27 (creating enforcement over commodities); see also 73 Am. Jur. 2d Stock and Commodity Exchanges § 4 (2023) (explaining scope and purpose of CEA).}
\footnote{128. See Commodity Exchange Act, 7 U.S.C. § 1(a)(9) (including “all services, rights, and interests . . . in which contract for future delivery are presently or in the future dealt in” within commodity definition).}
\footnote{129. See Casey Bessemer, Cryptocurrency: Legality and Role Within US Financial Institutions, 36 St. John’s J. Sci. & Tech. L. Rep. 3, 11 (2020) (defining derivative contracts, which derive value from underlying asset). These contracts solidify the price once the sale or purchase of the contract is complete. See id. (analogizing derivatives to cryptocurrency because price is locked once cryptocurrency becomes part of blockchain and is verified by cryptocurrency miner).}
\footnote{130. See id. (comparing cryptocurrency qualities to derivative contracts).
\footnote{132. See id. at *1 (briefing reason for CFTC order).
\footnote{133. See id. at *2 (discussing Coinflip conduct leading to CFTC violations).
\footnote{134. See id. at *3 (finding commodity definition encompasses Bitcoin).
\footnote{136. See id. at 228 (holding CFTC can regulate virtual currencies as commodities).
\footnote{137. See id. (applying commodity definition of “all other goods and articles . . . in which contracts for future delivery are presently or in the future dealt in” to virtual currencies).
\footnote{138. See id. at 228–29 (proposing other agencies can oversee virtual currencies when they are not in form of derivative commodities). The SEC and Chicago Mercantile Exchange have both expressed the need to exercise regulatory power over}}}}}}
leaders have the capability to solidify cryptocurrency regulation, but until they do, the professional athletes and fans involved in cryptocurrency remain at risk.  

2. Self-Regulatory Organizations

The financial industry has long relied on self-regulatory organizations ("SROs") to oversee the markets and its participants. SROs exist in varying forms, designed to provide a source of regulation and governance over its members. One of the most relied upon and important SROs in the securities industry is the Financial Industry Regulatory Authority ("FINRA"). Created in July 2007, FINRA has statutory power to enforce securities laws and enact its own rules on member firms. The SRO has the ability to oversee virtual currency. See id. at 229 (citing SEC and CME authorities who share intent to regulate cryptocurrency depending on its classification). 


141. See Self-Regulatory Organization (SRO), CORP. FIN. INST. (Jan. 16, 2023), https://corporatefinanceinstitute.com/resources/wealth-management/self-regulatory-organization-sro/ [https://perma.cc/4WX-XH4C] (describing SROs and listing important characteristics needed of SROs). An SRO should have such traits as legislative authority, effective oversight, and a strong enforcement program. See id. (demonstrating such traits allows SRO to protect its members and work in tandem with government agencies to ensure compliance).

142. See FINRA Regulation and Supervision Toolkit, THOMAS REUTERS PRACTICAL LAW (last visited Aug. 27, 2023) (listing FINRA’s responsibilities, including overseeing brokerage firms and regulating broker-dealer member firms’ conduct).

the industry, due largely in part to the industry experts who know where best to direct regulation efforts.¹⁴⁴

In 2018, the Virtual Commodity Association (“VCA”) was formed to self-regulate the cryptocurrency industry.¹⁴⁵ The VCA created committees to address concerns about industry oversight.¹⁴⁶ The VCA had early momentum, with cryptocurrency companies joining as members and with aspirational goals, including collaborating with the CFTC.¹⁴⁷ However, it lacked important qualities needed to place it on par with successful SROs.¹⁴⁸ As a result, the VCA remains dormant.¹⁴⁹ Nonetheless, cryptocurrency SROs have gained support and a successful track records abroad.¹⁵⁰ Switzerland’s Financial Market Supervisory Authority created Crypto Valley Association, an SRO that develops independent regulation and fosters regulatory debate.¹⁵¹ Cryptocurrency SROs have also been implemented in Japan, Hong Kong, and the United Kingdom.¹⁵² These regulatory

¹⁴⁴. See Rani Shulman, Are Centralized Cryptocurrency Regulations the Answer? Three Countries; Three Different Directions, 45 BROOK. J. INT’L L. 835, 871 (2020) (noting FINRA can help address market changes more quickly than government entities because of industry representatives who work for FINRA board).
¹⁴⁶. See id. (commenting that VCA has two special advisors and leadership board in addition to six committees); see also Yusuf Hussain, VCA Working Towards SRO Designation, Stands Up Six Committees to Help Protect America’s Crypto Investors, GEMINI (July 11, 2019), https://www.gemini.com/blog/vca-working-towards-sro-designation-stands-up-six-committees-to-help-protect-americas-crypto [https://perma.cc/F2BY-WDCY] (listing six committees and respective leadership and adding that intent of committees is to set “standards, sound practices, and oversight”).
¹⁴⁸. See Kathryn A. Daly, Freeing Cryptoassets from Howey: A Defense of Genuine Token Offerings, 16 BROOK. J. CORP. FIN. & COM. L. 219, 238 (2022) (commenting on VCA’s lack of oversight from administrative agency and optional membership as reasons for being less impactful).
¹⁵⁰. See Daly, supra note 148, at 238 (highlighting successful use of cryptocurrency SROs in other countries).
¹⁵¹. See id. (noting success of Crypto Valley Association and overall importance of SROs); see also About Us, CRYPTO VALLEY, https://members.cryptovalley.swiss/page/about-us-page [https://perma.cc/P3XZ-9CEC] (last visited Sept. 4, 2023) (recounting history of Crypto Valley Association, which has developed into “ecosystem” to oversee and encourage development within cryptocurrency industry).
bodies have the capability to affect targeted change in an industry that needs it, and a formalized SRO has received bipartisan Congressional support. A Senate bill introduced in 2022 proposes the CFTC and SEC to be tasked with joint responsibility to develop and oversee a cryptocurrency SRO. Though the bill has not advanced since being introduced, it creates important momentum towards protecting United States professional athletes and fans invested in the industry.

III. DRAWING UP A GAME PLAN: HOW PARTICIPANTS AND AGENCIES CAN CREATE A STRONGER CRYPTOCURRENCY INDUSTRY

Rules and regulations are particularly vital in the investment industry; and even more so when the assets are relatively new like cryptocurrency. Regulation is also key to filling the industry with example, provides commentary on proposed regulation to ensure effective oversight of cryptocurrency in the UK. See Ruholamin Haqshanas, UK Crypto Lobby Group Voices Concerns About FCA’s Incentives Ban Impact – What’s Going On?, Cryptonews (Aug. 11, 2023, 5:46 AM), https://cryptonews.com/news/uk-crypto-lobby-group-voices-concerns-about-fcas-incentives-ban-impact-whats-going-on.htm [https://perma.cc/S8C2-5S6W] (reporting on CryptoUK’s response to proposed cryptocurrency regime in UK, arguing suggested rules require more transparency before implementation).

153. See Daly, supra note 148, at 239 (discussing SRO’s ability to relieve burden on administrative agencies and develop regulatory solutions due to help of industry experts); see also Lummis, Gillibrand Introduce Landmark Legislation to Create Regulatory Framework for Digital Assets, Kirstin Gillibrand (June 7, 2022), https://www.gillibrand.senate.gov/news/press/release/-lummis-gillibrand-introduce-landmark-legislation-to-create-regulatory-framework-for-digital-assets/ [https://perma.cc/8J2V-7UYD] (providing overview of bill which aims to create regulatory framework over industry that bolsters innovations while protecting consumers).


thoughtful, well-informed participants. The remainder of this Comment centers on ways to promote informed investing in cryptocurrency and ways to regulate the industry. While a Garrison ruling remains pending at the time of publication, this Comment will analyze the merits of its claims, focusing primarily on whether YBAs are securities and on whether the celebrity defendants engaged in knowingly deceptive acts. Further, this Comment discusses how fans and professional athletes who wish to involve themselves in cryptocurrency can do so in an informed manner. Lastly, this Comment theorizes that a cryptocurrency SRO could be the path forward to effective regulation over an everchanging industry.

A. Fools No More: A Look at Garrison and How Fans Can Protect Themselves in the Cryptocurrency Market


While plaintiffs in Garrison remain dedicated to holding the celebrity FTX promoters accountable, similar lawsuits indicate they lack home court advantage to prove liability. The case seeks unprecedented resolutions in an industry that lacks consensus on a wide number of issues. Nonetheless, Garrison poses important

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157. See 13 Things Everyone Should Know About Investing, SEC OFF. OF INV. EDUC. & ADVOC., https://www.sec.gov/files/13thingstoknowaboutinvesting.pdf [https://perma.cc/8QNS-YKQX] (listing ways investors can become informed to avoid scams, particularly by recognizing securities must be registered with SEC or qualify for registration exemption, otherwise it is illegal).

158. For further discussion of responsible cryptocurrency investing and potential regulatory solutions, see infra notes 162–246 and accompanying text.

159. For further discussion of Garrison v. Bankman-Fried, see infra notes 162–190 and accompanying text.

160. For further discussion of how fans and professional athletes can get involved in cryptocurrency appropriately, see infra notes 191–224 and accompanying text.

161. For further discussion of why a cryptocurrency SRO would be beneficial, see infra notes 225–246 and accompanying text.

162. See, e.g., In Re Ethereummax Investor Litigation, 2022 BL 437873 (C.D. Cal. Dec. 6, 2022) (dismissing celebrity cryptocurrency lawsuit, in part due to investors’ failure to exercise skepticism over cryptocurrency promotions); see also, e.g., Sec. and Exch. Comm’n v. Ripple Labs, Inc., 2023 U.S. Dist. LEXIS 120486 (S.D.N.Y. July 13, 2023) (holding cryptocurrency as securities only in certain transactions).

questions that can help shape the future of cryptocurrency regulation.  

a. Are YBAs Securities?

The first count in Garrison centers on the claim that the YBAs purchased by the plaintiffs were unregistered securities, and that the defendants, by assisting or participating in the sales, therefore violated the Florida Securities and Investor Protection Act. In doing so, the court will apply the Howey test. First, the court will ask whether there was an investment of value. There is no doubt that the first prong is met as the plaintiffs purchased or invested in FTX via the YBAs or FTT. The second prong, a common enterprise, can be established via horizontal or vertical commonality. Here, the plaintiffs can prove a common enterprise by horizontal commonality because FTX consolidated customer assets and accordingly paid back customers or, more often, lent those assets to other entities including Alameda Research. Satisfying the combined third and fourth elements, the expectation of profit to be derived from the efforts of others, will be the key to determining the success of the plaintiffs' claims. In SEC v. Ripple

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165. See Second Amended Complaint, supra note 90, at *272–73 (citing Florida securities law, which extends liability to agents connected to sale of unregistered securities).

166. See, e.g., id. at *56-57 (finding general term is included in federal definition of security); see also, e.g., Fla. Stat. § 517.021(22) (2023) (including investment contract within definition of security without expanding on its meaning).


168. See Jacobsen, supra note 102, at 16 (naming first element to Howey test).

169. See Second Amended Complaint, supra note 90, at *15–18 (listing plaintiffs, each of whom similarly invested into FTX and subsequently sustained losses).

170. See Paul Andersen, Will the FTX Collapse Finally Force U.S. Policymakers to Wake Up?: Regulatory Solutions for Cryptocurrency Tokens Not Classified as Securities, 18 J. BUS. & TECH. L. 251, 265-66 (2023) (defining horizontal and vertical commonality, whereby horizontal commonality occurs when investments are pooled together and split via pro rata shares and vertical commonality occurs when investors’ profits are connected to those of management and promoters).

171. See Second Amended Complaint, supra note 90, at *68 (describing consolidation of customer assets indicates horizontal commonality to show common enterprise).

Labs, Inc., most of the court’s analysis for each transaction focused on this part of the test.\(^{173}\) The Ripple court believed the institutional buyers would have purchased the token and expected to derive profit from Ripple’s efforts, primarily due to Ripple’s communications, marketing campaign, and the nature of the Institutional Sales.\(^{174}\) However, when the court analyzed the same for the Programmatic Sales, the court found that the programmatic buyers lacked the same understandings and expectations.\(^{175}\)

In comparing Ripple to Garrison, the plaintiffs are most similar to the programmatic buyers.\(^{176}\) A key difference, however, lies in the FTX plaintiffs’ knowledge that FTX was the counterparty in their transactions.\(^{177}\) This factor strengthens the plaintiffs’ potential to meet the third and fourth factors of Howey because they would have a greater expectation of deriving profit from FTX’s efforts.\(^{178}\) Further, though the Ripple court believed the programmatic buyers could not have digested years of marketing and promotional statements, that does not apply to Garrison given the promotions made by the defendants were done so with the intent to induce all consumers to invest.\(^{179}\) If the plaintiffs can prove they had an expectation of profit that would be derived from FTX, there is a plausible chance that the plaintiffs would prove their first claim.\(^{180}\)

\(^{173}\) See Sec. & Exch. Comm’n v. Ripple Labs, Inc. at *25–41, 2023 U.S. Dist. LEXIS 120486 (S.D.N.Y. July 13, 2023) (questioning whether each transaction and corresponding parties had reasonable expectation of profits to be derived from efforts of others).

\(^{174}\) See id. at *29–35 (pointing to institutional buyers’ sophistication as indication they were better equipped to comprehend Ripple’s marketing and promotional materials and understand investment results should derive from Ripple’s efforts).

\(^{175}\) See id. at *35–39 (finding promotional materials were not broadly distributed to general public and questioning less sophisticated buyers’ ability to gain similar understanding as institutional buyers from years of statements).

\(^{176}\) Compare id. at *35 (observing Programmatic Sales occurred between XRP and public buyers), with Second Amended Complaint, supra note 90, at *15–18 (noting all plaintiffs are individuals, not institutional investors).

\(^{177}\) See Second Amended Complaint, supra note 90, at *15–18 (detailing that plaintiffs bought into FTX after exposure to defendant’s promotions of company).

\(^{178}\) See id. at *8 (pointing to plaintiffs’ beliefs, based on defendants’ statements, that FTX investments would generate returns).

\(^{179}\) See id. at *13 (noting use of celebrities and professional athletes in promotional materials was intentional to influence consumers, not just institutional investors).

\(^{180}\) See, e.g., Andersen, supra note 170 (discussing why court may or may not find Howey prongs satisfied, and therefore may or may not declare cryptocurrency as security).
b. Deceptive Acts

The other claim in Garrison that has drawn particular attention is the plaintiffs’ allegations that the defendants engaged in unfair and deceptive practices in promoting FTX. Under FDUTPA, unfair or deceptive acts or practices involving commerce is illegal. The plaintiffs argue that the defendants’ deceptive acts objectively misled consumers acting reasonably in the circumstances. However, proving that the plaintiffs acted reasonably in the circumstances is likely to be the more difficult task.

In the investor litigation over EthereumMax that included professional athletes Paul Pierce and Floyd Mayweather Jr. in the list of defendants, the court recognized the power that celebrity promoters have in encouraging fans’ investments. Nonetheless, the court did not let it go unmentioned that investors play a role in acting reasonably before following the latest investment trend. The “reasonable investor” has been viewed as one who objectively considers a purchase and disregards oral statements of optimism. Applying this definition to the plaintiffs in Garrison, it is difficult to see how they satisfy this requirement. Though the defendants had a duty to lend their credibility in a responsible manner, the plaintiffs have made it clear that the catalyst of their investment in FTX was the defendants’ promotions of the company. While these promotions may have been seemingly trustworthy, it did not exempt the plaintiffs from performing objective due diligence that could have led to different outcomes.

181. See Second Amended Complaint, supra note 90, at *273–75 (claiming plaintiffs’ losses directly resulted from these deceptive practices).
182. See Fla. Stat. § 501.204(1) (2023) (including unfair methods of competition and unconscionable acts or practices as unlawful practices and acts under statute).
183. See Second Amended Complaint, supra note 90, at *274 (adding that these practices were “immoral, unethical, unscrupulous and injurious to consumers”).
184. See, e.g., In Re Ethereummax Investor Litigation, 2022 BL 437873 (C.D. Cal. Dec. 6, 2022) (acknowledging investors’ reasonableness is key in cryptocurrency investments).
185. See Motion to Dismiss at *1, In Re Ethereummax Investor Litigation, 2022 BL 437873 (C.D. Cal. Dec. 6, 2022) (noting legitimate concerns over rapidly changing industry where volatile investments easily go viral).
186. See id. (conceding limits on promoters, but recognizing law expects investors take accountability as well).
188. See, e.g., Second Amended Complaint, supra note 90 (citing defendants’ promotions as significant reason why plaintiffs invested in FTX).
189. See id. at *8 (believing FTX to be safe and protected investment, as stated by defendants, induced many plaintiffs to invest).
190. See, e.g., Second Amended Complaint, supra note 90 (pointing at defendants’ narrative of FTX, rather than plaintiffs’ independent research of merits for investing in FTX).
2. **One-Man Team: Fans Should Not Wait for Perfected Regulation to Invest Responsibly**

The implosion of FTX has put fans in last place, with recovery from various legal actions uncertain at best.\(^{191}\) While courts, regulators, and legislators dedicate efforts to prevent another FTX-like collapse, investors must reflect on the merits of taking investment advice from professional athletes.\(^{192}\) Individual investors have made a reputation for themselves as uninformed and under-diversified, becoming synonymous with “fools” by finance experts.\(^{193}\) The complicated nature of cryptocurrency requires investors to do their homework first.\(^{194}\) Investors should not get caught up solely in price, potential profit, and the lure of copying their favorite athletes, but instead need to utilize resources such as a whitepaper to better understand the underlying details.\(^{195}\) While whitepapers are not perfect and should still be read with caution, they are a good starting point for investors.\(^{196}\) Sophisticated investors can act as helpful guides for novice investors getting involved in new cryptocurrency projects, but it is key not to get swept up in the larger community promoting the cryptocurrency.\(^{197}\) Fans are better off approaching

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\(^{194}\) See Xenia Soares, 7 Key Ways to Evaluate a Cryptocurrency Before Buying It, CoinDesk (May 11, 2023, 2:07 PM), https://www.coindesk.com/learn/7-key-ways-to-evaluate-a-cryptocurrency-before-buying-it/ [https://perma.cc/M5AD-QLJP] (finding fundamental understanding of cryptocurrency can help investors make smarter decisions).

\(^{195}\) See What is a Cryptocurrency Whitepaper?, Binance Acad., https://academy.binance.com/en/articles/what-is-a-cryptocurrency-whitepaper [https://perma.cc/L3L2-3G4E] (last modified June 15, 2023) (describing whitepaper, which are issued by cryptocurrency companies to describe their cryptocurrency and other important information surrounding it, such as governing structure, goals, and overview of data).

\(^{196}\) See id. (recommending investors start their research process with reading whitepaper).

\(^{197}\) See Soares, supra note 194 (discussing potential confusion that can result when large groups or certain people are promoting cryptocurrency).
cryptocurrency in an objective manner, keeping the emotions out of their investments and centered on their favorite team.198

Until specific regulations develop over cryptocurrency, investors must remember that exposure in the market lacks protection provided in conventional investments.199 With this knowledge, fans should view cryptocurrency with healthy skepticism.200 Not only are fans drawn in to increase investor bases, but they are also often, unbeknownst to them, the key to rising prices and promoters’ pay.201 Fans will continue to be taken advantage of if investment decisions are not given appropriate consideration.202

B. Avoiding a Penalty: Strategic Cryptocurrency Involvement that Keeps Professional Athletes Out of the Courtroom

The professional athletes who promoted FTX stay on the hot seat by fans frustrated with their role in encouraging investments in the company.203 Uncertainty over their liability remains, as claims such as those in Garrison are difficult to prove.204 To be clear, the uncertainty


201. See George Sutton, Cryptocurrency – Cryptoscam – Why Regulation, Deposit Insurance, and Stability Matter, 36-Febru B. J. 18, 18 (2023) (comparing some cryptocurrency companies to Ponzi schemes, whereby increasing money from new investors inflates prices and helps pay promoters).

202. See id. at 21 (recounting case by which investors can be taken advantage of due to lack of regulation, poor disclosure, and false claims about potential for cryptocurrency to replace U.S. dollar).


surrounding cryptocurrency regulation and pending legal actions should not mean that, until then, athletes who promoted cryptocurrency will not and should not be held accountable.\textsuperscript{205} Athletes provide credibility to a potentially unsavory investment, whether through endorsing with an advertisement or simply accepting it as payment.\textsuperscript{206} Athletes are not immune to severe losses caused by the volatile nature of cryptocurrency.\textsuperscript{207} Gains and losses can quickly change with the prices of cryptocurrencies, and this volatility can have devastating effects.\textsuperscript{208} Fans who felt they could not miss out on investing in cryptocurrency face an uphill battle trying to hold athletes liable for resulting losses.\textsuperscript{209} Nonetheless, adopting more

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\textsuperscript{205}. See Brian Contreras,\textit{ Have Celebs Learned Their Lesson From the FTX Debacle?}, L.A. TIMES (Jan. 18, 2023), https://www.latimes.com/entertainment-arts/business/story/2023-01-18/has-hollywood-learned-its-lesson-from-the-ftx-debacle (discussing how celebrities will have violated disclosure requirements if \textit{Howey} is implicated, which had been watched by entire cryptocurrency industry). For further analysis of Garrison, see \textit{supra} notes 162–190 and accompanying text.


\textsuperscript{207}. See id. (noting NFL player Odell Beckham Jr. risked losing over $300,000 by accepting his salary in Bitcoin); see also Daniel Chavkin, \textit{Tom Brady Lost Around $30 Million in FTX Stock with Company’s Collapse}, SPORTS ILLUSTRATED (July 7, 2023), https://www.si.com/nfl/2023/07/07/tom-brady-ftx-crypto-currency-collapse-30-million-stock-giselle-bundchen (reporting that Brady, one of first and most prominent celebrity FTX promoters, lost everything he invested in company).

\textsuperscript{208}. See id. (commenting on how changes in cryptocurrency market can easily change athletes’ fortunes); see also Paulina Cachero, \textit{Crypto Collapse Threatens to Leave Black, Hispanic Investors Further Behind}, BL (July 7, 2022), https://www.bloomberg.com/bloomberglawnews/crypto/X2FHDNCG000000?bna_news_filter=crypto#jcite [https://perma.cc/73VP-VC87] (discussing significant impact cryptocurrency losses have for Black and Hispanic investors who tend to have disproportionately lower incomes and savings than White investors).

significant disclosure requirements of cryptocurrency promotion will keep the athlete-fan relationship centered around the next big game, not the next big investment.\footnote{210} As current regulation stands, athletes face potential culpability for cryptocurrency endorsement in certain circumstances.\footnote{211} Under the 1933 Act and the IAA, athletes must disclose the details surrounding their cryptocurrency endorsements.\footnote{212} This applies so long as the cryptocurrency in question is identified as a security.\footnote{213} Athletes must proactively disclose endorsement compensations to ensure compliance with applicable laws.\footnote{214} Similarly, should a cryptocurrency qualify as a commodity, the CFTC will hold individuals liable for fraud and misrepresentation of cryptocurrencies.\footnote{215} These agencies have shown they will continue to keep a watchful eye over wrongdoings in the cryptocurrency industry.\footnote{216}

\footnote{210. See Hsu, supra note 13 (quoting Giovanni Compiani, Assistant Professor of Marketing at University of Chicago) (commenting that cryptocurrency promotion should be accompanied by warnings of potential downsides).}

\footnote{211. See Oberheiden, supra note 38 (finding risk of cryptocurrency endorsements can arise from SEC requirements).}

\footnote{212. See id. (requiring disclosure of “nature, source, and amount of compensation” by athletes who endorse cryptocurrencies).}


\footnote{214. See Joshua McWhorter & Christopher O’Brien, Oops They Did It Again – SEC Brings Crypto Anti Touting Action Against Another Celebrity – This Time Kim Kardashian, JD SUPRA (Nov. 8, 2022), https://www.jdsupra.com/legalnews/oops-they-did-it-again-sec-brings-4806681/ [https://perma.cc/R6C-WNSD] (discussing SEC action against Kardashian, whereby she failed to disclose details of compensation for promoting cryptocurrency and use of “#ad” failed to satisfy SEC’s requirements); see also Scott Mascianica, Jessica B. Magee, Keith P. Carroll, Andrew W. Balthazor, & Landon W. Mignardi, Tout, Tout, Let It All Out: SEC Continues Crackdown On Celebs, Athletes Touting Digital Assets, HOLLAND & KNIGHT (Mar. 2, 2023), https://www.hklaw.com/en/insights/publications/2023/03/tout-tout-let-it-all-out-sec-continues-crackdown-on-celebs [https://perma.cc/CDT9-U4T8] (encouraging early disclosure as any paid promotion could leave professional athletes vulnerable to SEC investigation or lawsuit); see also David Yaffe-Bellany, How Influencers Hype Crypto, Without Disclosing Their Financial Ties, N.Y. TIMES (May 27, 2022), https://www.nytimes.com/2022/05/27/technology/crypto-influencers.html [https://perma.cc/68KN-6WQC] (observing cryptocurrency promotion on social media spread without disclosing payment or conflicts of interest). For further discussion of a professional athlete failing to comply with disclosure requirements, see supra note 123 and accompanying text.}


SEC actions against athletes and celebrities should send a warning signal that all cryptocurrency endorsements will be closely monitored and subject to enforcement where applicable.\textsuperscript{217} Prior to accepting an endorsement deal, professional athletes should determine the legitimacy of the cryptocurrency company, asking if the company has complied with applicable securities or commodities laws.\textsuperscript{218} The fast-paced nature of the industry requires continuing education since asking fans to risk their life’s savings requires heightened care from athletes.\textsuperscript{219} Not only should celebrities educate themselves on cryptocurrency in general, but they should also scrutinize the companies who approach them.\textsuperscript{220} Partnering with cryptocurrency companies to solely provide information about the industry is another option that allows athletes to tap into their connection with fans, while maintaining a healthy distance from outright investment advice.\textsuperscript{221} Instead of working with FTX or EthereumMax, athletes should join forces with companies such as Learn Crypto, a free education platform created to help investors learn about cryptocurrency.\textsuperscript{222} To provide absolute protection to both athletes and fans, the safest practice would be to recommend that athletes turn down all cryptocurrency endorsements.\textsuperscript{223} Professional athletes are


\textsuperscript{220} See Wynn, supra note 218 (explaining athletes can protect themselves by properly inquiring about investments).

\textsuperscript{221} See id. (discussing YouTube videos of actors Ashton Kutcher and Mila Kunis who work with Ethereum co-founder to educate public on cryptocurrency and avoid promotion).

\textsuperscript{222} See, e.g., \textit{About Learn Crypto}, Learn Crypto, https://learncrypto.com/ [https://perma.cc/8N9Q-3DEB] (last visited Aug. 28, 2023) (explaining that Learn Crypto’s mission is to educate investors about cryptocurrency by addressing myths and criticisms about cryptocurrency, as well as incorporating new perspectives on cryptocurrency).

not in the business of providing investment advice for fans, and pretending they have the expertise to do so exploits the dedicated fans who, season after season, invest love and passion into their favorite teams and athletes.224

C. Grab Your Pads and Helmet: Self-Regulatory Organization is Key to Strengthening Cryptocurrency Industry

Setting conforming rules and regulations over cryptocurrency is the challenge facing presidential administrations, regulators, and cryptocurrency leaders; however, there is currently no consensus on a path forward.225 This lack of consensus places bankruptcy courts that oversee cryptocurrency bankruptcies in the uncomfortable position of making regulatory decisions to help grant investors relief from their losses.226 The SEC has flexed its enforcement muscles by expanding its cryptocurrency capabilities.227 It has also proposed a new rule that requires investment advisers to maintain custody of cryptocurrencies.228 Similarly, the CFTC has expanded


225. See Vereckey, supra note 95 (finding points of contentions exist concerning cryptocurrency regulation and classification, with those on both sides of aisle arguing whether regulation will help or hurt cryptocurrency competition and innovation); see also Exec. Order No. 14067, 87 Fed. Reg. 14143 (Mar. 9, 2022) (ordering safeguards be put in place so that digital assets can develop responsibly and safely).

226. See Steven Church, FTX, Celsius Bankruptcies Turn Judges Into De Facto Regulators, BL (Feb. 8, 2023, 8:00 AM), https://www.bloomberg.com/bloomberglawnews/exp/eyJjdHh0IjoiQ1VOVSyIsImh0IjoiMDAwMDAwMDAwODYtMzExZCIxMDI3MjNhYjIzN2NhMDIzOTMyY2EzZTQ1NTc4YzAwMjY2YiIsInZpZCI6IjZ6UHhTd1FHMi1kMjItMjItM2M2NTMzOTQzYjY5MjIzIiwidXVpZCI6IjUxIiwibmFtZCI6IjZ6UHhTd1FHMi1kMjItMjItM2M2NTMzOTQzYjY5MjIzIiwicmVxdWVzdGluZ3MiOiIwIiwic3R5bGUiOiIiLCJidWNrZXQiOiIiLCJjcmVhdGlvbl90aW1lIjoidHJhY2tncm91bmQucmVxdWVzdGluZ3MiLCJidWNrZXRDb250ZXJhdGlvbiI6IiJ9?bwid=00000186-311d-d025-a3b6-3dfd1fb00003&ci=LSCH&emc=bbunw_nl%3A99&et=NEWSLETTER&isAlert=false&item=read-text&qid=7419236&region=digest&source=newsletter&uc=1320029262&udvType=Alert&usertype=External [https://perma.cc/CJ5J-CP8T] (commenting on role of bankruptcy judges facing cryptocurrency bankruptcies, requiring them to provide guidance and answer questions on cryptocurrency classification which will create important precedent on industry unless Congress and regulatory bodies can come to decisions more quickly).


enforcement efforts by asking Congress for more power, recognizing these solutions require a group effort. Congress understands the ongoing, critical need for a secure cryptocurrency industry. Even outside the cryptocurrency market, multi-agency regulation attempts have already proven fruitless. The evolving nature of cryptocurrency combined with siloed efforts from agencies leaves investors at risk. Without organized regulation, novice investors are left turning toward unreliable sources to gather information on cryptocurrency. Lack of consensus around agency jurisdiction and cryptocurrency classification persists, preventing sweeping regulatory change.

229. See Mengqi Sun, CFTC Signals Intent to Increase Enforcement of Crypto-Related Cases, Wall St. J. (May 18, 2022, 5:14 PM), https://www.wsj.com/articles/cftc-signals-intent-to-increase-enforcement-of-crypto-related-cases-11652908480 (discussing CFTC’s enforcement against cryptocurrency companies to cut down on fraud and manipulation, acknowledging that completely doing so can only be done with support from all cryptocurrency participants); see also Luke Huigsloot, CFTC’s Johnson Urges Congress to Expand Commission’s Crypto Oversight Powers, Cointelegraph (Jan. 27, 2023), https://cointelegraph.com/news/cftcs-johnson-urges-congress-for-expanded-powers-in-crypto-oversight (discussing CFTC Commissioner’s interest in expanding Commission’s power, commenting that CFTC currently lacks necessary capabilities to conduct necessary due diligence over cryptocurrency companies).


231. See Joel Seligman, The Rise and Fall of Cryptocurrency: The Three Paths Forward, 19 NYU J. Bus. 95, 125–26 (2022) (commenting on criticism of multi-agency approach received during 2007–2009 financial crisis aftermath, which suffered from poor communication and coordination and critical gaps in regulatory efforts).

232. See Stephen Deane & Olivier Fines, Cryptoassets: Beyond the Hype, CFA INST. (Jan. 2023), https://www.cfainstitute.org/-/media/documents/article/industry-research/cryptobeyond-the-hype.pdf (comparing challenges faced by regulators attempting to apply current laws, finding that innovative financial assets such as derivatives or high-frequency trading did not cause same issues as cryptocurrency whereby very foundation of current regulations is questioned).

233. See Menesh Patel, Fraud on the Crypto Market, 36 HARV. J. OF L. AND TECH. 171, 188–89 (2022) (finding cryptocurrency investors turn to discussion sites or social media sites as sources of information on cryptocurrency, but these tend to be fraught with false or misleading information that can harm investors).

The cryptocurrency industry and its participants would benefit from a joint SRO dedicated solely to cryptocurrency regulation. Combined oversight and enforcement from the SEC and CFTC means the SRO could enact united regulations over the various forms and types of cryptocurrencies. The adopted rules would apply regardless of how the specific asset is classified. A cryptocurrency SRO would be a center for the combined knowledge gained from both agencies. Importantly, an SRO with statutory authority from the SEC and CFTC will have the capability to better enforce laws and discipline non-conforming members. A cryptocurrency SRO could solely dedicate itself to identifying and filling the regulatory gaps. Further, industry experts will have the ability to offer valuable insight that can help create an


238. See Alan R. Bromberg, Lewis D. Lowenfels, & Michael J. Sullivan, § 24:10, Conclusion, 7 Bromberg & Lowenfels on SEC. Fraud § 24:10 (2d ed.) (Dec. 2022) (theorizing transfer of cryptocurrency knowledge from agencies to SRO).


240. See Seligman, supra note 231, at 127 (predicting that single regulator of cryptocurrency could enact comprehensive regulation over all types of cryptocurrency assets and methods of trading).
effective regulatory framework, without fully granting them regulatory power.241

A key result from a cryptocurrency SRO is increased transparency via uniform disclosures.242 Current standard practice means cryptocurrency companies benefit, while investors suffer, from inadequate disclosures.243 The SRO would cover disclosure requirements under the 1933 Act, the 1934 Act, and the CEA.244 These disclosures, and resulting transparency, are vital to helping investors understand which cryptocurrencies are worthy of their hard-earned savings.245 Closing this equally important gap will help bolster the success of self-regulation and thereby protect the investors.246

IV. Conclusion: Final Thoughts on the Cryptocurrency Conundrum

In November 2023, a year after FTX collapsed, Sam Bankman-Fried was convicted of seven counts of fraud and conspiracy in the Southern District of New York.247 Nevertheless, cryptocurrency remains a permanent asset in the financial industry, thanks


244. See id. at 5 (noting securities laws have disclosure requirements); see also 17 U.S.C. § 4.34 (listing disclosure requirements under CEA).

245. See Guseva, supra note 243, at 52 (commenting that standardized disclosures will benefit investors by giving them information to show which cryptocurrencies have succeeded and which have failed).

246. See id. at 53–54 (holding self-regulation is feasible with proper monitoring and adjustments to prior issues).

to its ease of access and celebrity promotion. Its rapidly changing nature can mean exciting things for a wide array of industries. However, it is imperative that the cryptocurrency industry does not outpace regulation any more than it already has. Bankman-Fried’s guilty verdict merely scratches the surface of current lawsuits that remain pending in court, potentially opening the door for more. Unanswered legal and regulatory questions signals the industry and its participants cannot benefit when too much remains uncertain.

To protect fans, professional athletes, and the industry, a joint self-regulatory organization under the SEC and CFTC’s combined oversight is the best path forward for now. This regulatory solution would provide fans with the information needed to be rational investors and professional athletes the information needed to assess promotional deals appropriately. Without immediate solutions, fans await rulings in their favor that might never come. The cryptocurrency industry has the ability to promote change for the better.

248. See Steven Paul Winkelstein, Crypto Isn’t Going Anywhere, MEDIUM (Mar. 21, 2023), https://medium.com/predict/crypto-isnt-going-anywhere-d2a1c246ec6 [https://perma.cc/EY2L-FJER] (highlighting cryptocurrency’s ability to revolutionize industries and its global market as reasons why it is here to stay).

249. See Preethi Cheguri, How Blockchain is Changing the Dynamics of Industries?, ANALYTICS INSIGHT (Feb. 27, 2023), https://www.analyticsinsight.net/how-blockchain-is-changing-the-dynamics-of-industries/ [https://perma.cc/2J9P-UUTD] (looking at how cryptocurrency and blockchain is impacting industries such as finance and healthcare).


251. See Yaffe-Bellany et al., supra note 247 (noting cryptocurrency critics believe Bankman-Fried’s verdict means more legal consequences while cryptocurrency industry “struggles to regain public trust”).

252. See id. (arguing stronger and more immediate regulatory action is needed now since pending litigation that could provide regulatory pathway has uncertain end dates).

253. See Jay Clayton & Timothy Massad, A Path Forward for Regulating Crypto Markets, WALL ST. J. (July 7, 2023, 11:00 AM), https://www.wsj.com/articles/regulating-crypto-markets-1e5cc5c5 [https://perma.cc/HYQ8-L1W7] (arguing that joint SRO based on existing rules is efficient solution that can improve industry issues faster).

254. See id. (suggesting that joint SRO would provide insight into existing laws for all industry participants).

and all industry participants, including regulators, have the power to demand a stronger, safer industry. 256

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256. See Clayton & Massad, supra note 253 (recognizing need for comprehensive, yet common sense regulation that provides answers now).

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