

## Celebrities, the Super Bowl, and Cryptocurrency

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In February, millions worldwide gathered for, what seems like a yearly holiday, the Super Bowl. Many more also tuned in to see Eminem, Dr. Dre, Snoop Dogg and more perform during the halftime show. However, viewers likely could not have expected cryptocurrency to steal the television advertisement spotlight.<sup>1</sup>

Celebrities such as Larry David and LeBron James gave their pitches for cryptocurrency. Countless other athletes and celebrities such as Tom Brady<sup>2</sup> and Matt Damon have done the same. Super Bowl viewers watched a floating QR code that would take anyone with a camera pointed at the screen to Coinbase.com, a popular cryptocurrency marketplace.<sup>3</sup> The advertisement was so successful in driving traffic to the site that it caused the website to subsequently crash.<sup>4</sup> These cryptocurrency platforms spent up to \$7 million per 30-second Super Bowl advertisement and drove countless avid football fans to a market they, likely, know little about.<sup>5</sup>

Cryptocurrency has been a hot button issue due to the meteoric rise of Bitcoin and other digital currencies. Digital currencies run on what are known as “blockchains,” which allow “miners” to record and verify transactions through a decentralized ledger.<sup>6</sup> These miners are computers attached to the Bitcoin network that use the Bitcoin software and run what are known as “hash functions” until they find a solution.<sup>7</sup> The solution adds a link to the chain, which other

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<sup>1</sup> <https://www.nbcnews.com/tech/tech-news/many-crypto-ads-super-bowl-rcna16132>

<sup>2</sup> <https://twitter.com/TomBrady/status/1409948751934984195?s=20&t=jetWXUF6rqGIF4J4ZbQuQQ>

<sup>3</sup> <https://www.nbcnews.com/tech/tech-news/many-crypto-ads-super-bowl-rcna16132>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> <https://www.bitcoin.com/get-started/what-is-bitcoin/>

<sup>7</sup> *Id.*

miners can easily verify.<sup>8</sup> The decentralized verification process produces the digital currency and gives it value. However, the decentralized nature of cryptocurrency is also what gives regulators trouble.

Section 2(a)(1) of the Securities Act<sup>9</sup> and 3(a)(10) of the Exchange Act<sup>10</sup> outline the definition of a security. Obviously, cryptocurrency is not within the list of schemes that explicitly would be a security. Some have posited that Bitcoin and other cryptocurrency could fall under the catch-all term “investment contract.” To meet the qualifications of an investment contract, the scheme must meet all four of the “Howey” factors from SEC v. W.J. Howey Co.: (1) the scheme involves a person who invests his money, which includes labor; (2) in a common enterprise; (3) and is led to expect profits; (4) solely from the efforts of the promoter or a third party.<sup>11</sup> While cryptocurrency likely meets the first three factors, the decentralized blockchain that is publicly held means that Bitcoin investors do not rely on the efforts of a manager or promoter. The SEC has indicated that Bitcoin likely is not a security and that it will not bend the rules to fit cryptocurrency.<sup>12</sup>

With Bitcoin and much of cryptocurrency outside the purview of federal securities law and SEC oversight, an issue arises.<sup>13</sup> The market is largely unregulated and can be volatile, and 13 percent of Americans invested in cryptocurrency in 2021 alone.<sup>14</sup> For example, Bitcoin’s

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<sup>8</sup> *Id.*

<sup>9</sup> [https://1.next.westlaw.com/Document/N0C8E3FF09DEB11E19846CA58CD3F0359/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/N0C8E3FF09DEB11E19846CA58CD3F0359/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

<sup>10</sup> [https://1.next.westlaw.com/Document/N21AA5BC0C56F11E1A12D945D54603EC9/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/N21AA5BC0C56F11E1A12D945D54603EC9/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

<sup>11</sup> [https://1.next.westlaw.com/Document/I22292b4f9bf011d993e6d35cc61aab4a/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/I22292b4f9bf011d993e6d35cc61aab4a/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default))

<sup>12</sup> <https://www.cnbc.com/amp/2018/06/06/sec-chairman-clayton-says-agency-wont-change-definition-of-a-security.html>

<sup>13</sup> <https://www.forbes.com/sites/cryptoconfidential/2020/03/15/bitcoins-coronavirus-crash-blockchain-in-a-pandemic/?sh=581367072a5b>

<sup>14</sup> <https://www.cnbc.com/2021/07/23/13percent-of-americans-traded-crypto-in-the-past-year-survey-finds.html>

price hovered around \$10,000 per coin in February, 2020 and shot up at the peak of the pandemic to an all-time high of \$69,000 per coin in November, 2021. Since that time, the value of Bitcoin, as well as other digital tokens, has fallen to about \$35,000 per coin.<sup>15</sup> Regardless, a Super Bowl advertisement or testimonial from your favorite athlete or actor could only fuel the speculative nature of cryptocurrency's value if more and more potential investors do not understand what they are investing in, and the risks involved.

This market volatility and lack of regulation has sparked some states to try to regulate digital tokens.<sup>16</sup> The Biden administration announced in January, 2022 that it would release new regulations and a government-wide strategy for digital currency oversight.<sup>17</sup> The administration also will consider issuing a government-backed digital currency, and the Federal Reserve is considering this issue.<sup>18</sup> While it is not clear which direction the administration will take, cryptocurrency may soon have new rules to the game.

This post discusses the risk inherent in the cryptocurrency market that is largely unregulated. The publicization of cryptocurrency in the Super Bowl and by various celebrities could pose more issues for investors, and the federal government is exploring strategies to oversee cryptocurrency.

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<sup>15</sup> <https://www.bostonherald.com/2022/01/23/white-house-is-set-to-put-itself-at-center-of-us-crypto-policy/>

<sup>16</sup> <https://business-forex.ru/new-hampshire-governor-issues-executive-order-establishing-commission-to-study-crypto/>

<sup>17</sup> <https://www.bostonherald.com/2022/01/23/white-house-is-set-to-put-itself-at-center-of-us-crypto-policy/>

<sup>18</sup> *Id.*

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