



Insights

Benjamin Sauter and David McGill: Crypto Traders Should Challenge the CFTC's Enforcement Authority

January 12, 2022

Publication: *Forkast News*

Even as the U.S. Commodity Futures Trading Commission (CFTC) has relentlessly (and successfully) pursued enforcement actions in cryptocurrency markets, its jurisdictional authority is actually on shaky grounds. Kobre & Kim's Benjamin Sauter and David McGill explain in an article for *Forkast News*.

The explosive rise of digital currency markets – and the corresponding rise in misconduct – calls for a role for regulators to play. But multiple U.S. regulatory agencies have rushed to the forefront to become the “primary cop on the beat,” likely to position themselves as most deserving of an increased budget. The relatively small CFTC stands to benefit greatly and has focused on driving public and congressional perception that it is best suited for the task.

Ostensibly confined by statute to futures markets, the CFTC contends that its authority extends not only to goods and products subject to future trading today, but also any good or product that might someday be subject to futures trading. It has used pro se litigation, consent orders and public announcements to further this perception, and many investigation targets have chosen to acquiesce rather than challenge the agency in costly litigation, Bitmex being a recent example.

However, the CFTC's overreach comes with significant drawbacks, including leading investors to operate with a false sense of security in markets outside the agency's traditional purview. The lack of clear statutory authority also adds confusion to an already-opaque regulatory environment plaguing digital currency markets. Cryptocurrency exchanges and traders should not be so quick to concede that the CFTC has the necessary jurisdictional authority to act absent congressional authorization.

[Click here to read the full article.](#)