Leave crypto alone: Hester Peirce admonishes fellow regulators

Paul How

September 19, 2018

The lone dissenter in the U.S. Securities and Exchange Commission (SEC) orders rejecting cryptocurrency exchange-traded funds (ETFs) called on the regulator to ease up on cryptocurrency-related products.

Commissioner Hester Peirce began her speech at a Cato Institute event in San Francisco with a disclaimer that her remarks were not to be taken as those of the commission, before launching into a plea for the SEC to be open to innovations in blockchain-based markets.

"We know we will be blamed when something goes wrong, and this fear leads to a default suspicion of risk-taking and a regulatory mindset that too often presumes that innovations designed to provide greater access to risk-taking are threats, both to our reputations and investor safety," Peirce said.

She noted that the SEC decisions to deny ETF applications—currently under review—included a statement that the rejection was not based on an evaluation of the underlying assets, that is, cryptocurrencies. "The order, however, seemed to do almost that," Peirce said. "It focused on the alleged flaws with Bitcoin markets, rather than on whether the exchange proposing to trade shares of the trust had taken steps to ensure the orderly trading of those shares."

Peirce pointed out that much of the flaws of cryptocurrencies and related products were discussed openly. "What authority do we have to require that assets' underlying securities be regulated as if they were securities? Even if we had this authority, private markets can and do regulate themselves. The crypto community includes lots of people who are very willing to speak up, criticize one another, and bring to light technological, corporate governance, and other perceived weaknesses in cryptocurrencies," she said.

According to the SEC commissioner, cryptocurrency investments had to be made with care, just as any other investment. “Kleptocrypto is a new way of stealing from investors, but investors can protect themselves by exercising an old-fashioned dose of skepticism,” she said.

Risk, she noted, was a present factor in all investments, with people having differing appetites for it. “The SEC, as regulator of the capital markets, therefore should appreciate the connection between risk and return and resist the urge to coddle the American investor,” she said.

Rather than simply rejecting new financial products, Peirce said, “The SEC’s statutory mandates are much more modest. We are directed to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets. In my view, this threefold mission requires the Commission to ensure that investors have access to products and services that enable them to construct investment portfolios that meet their needs.”