

From Blockchain to Bankruptcy: Understanding the Legal Landscape of Cryptocurrency Bankruptcies

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I. INTRODUCTION

The financial and corporate world has been impacted by the rise of cryptocurrencies, such as Bitcoin and Ethereum.¹ Known as digital assets, cryptocurrencies originated with Satoshi Nakamoto’s invention of Bitcoin in 2009, creating a decentralized digital currency operating on blockchain technology.² U.S. bankruptcy law is rooted in title 11 of the United States Code and was created with the congressional enactment of the 1978 Bankruptcy Code (the Code).³ When a business entity files for bankruptcy and has significant holdings

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1. Yhlas Sovbetov, *Factors Influencing Cryptocurrency Prices: Evidence from Bitcoin, Ethereum, Dash, Litecoin, and Monero*, 2 J. ECON. & FIN. ANALYSIS 1, 2–3 (2018).

2. *Id.* at 4.

3. Josephine Shawver, *Commodity or Currency: Cryptocurrency Valuation in Bankruptcy and the Trustee’s Recovery Powers*, 62 B.C. L. REV. 2013, 2016–17 (2021).

of cryptocurrency, classifying those cryptocurrencies poses a major challenge.⁴ Cryptocurrencies are not tangible assets, and thus there is disagreement over whether the volatile nature of cryptocurrency exhibits that of a currency, security, commodity, or something else entirely.⁵ Landmark cases such *Mt. Gox* and *In Re Hashfast Technologies LLC*, demonstrate the difficulties related to the classification, valuation, and distribution of cryptocurrencies within bankruptcies.⁶ The Commodity Futures Trading Commission (CFTC), the Internal Revenue Services (IRS) and the Securities and Exchange Commission (SEC) have made their own findings regarding cryptocurrencies, but none have been adopted into the bankruptcy code and the bankruptcy courts have not taken any official position.⁷

Thus, this Note will explore the challenges associated with bankruptcy proceedings where the company has significant holdings in cryptocurrency, and evaluate the specific issues related to classification, valuation, and distribution, while offering recommendations.

II. BACKGROUND

The convergence of cryptocurrency and bankruptcy law presents a complex and dynamic area of the law. To understand the challenges posed in this field, it is crucial to understand the underlying principles related to cryptocurrency and bankruptcy. This Part assembles an overview of the respective fields, examining the concepts themselves, the relevant laws, current trends or developments, and an overview of their intersection.

A. Cryptocurrencies

Cryptocurrencies are the result of a revolutionary technology, known as blockchain technology.⁸ The emergence of cryptocurrency came in 2009 when Bitcoin was created by an unidentified entity that is known as Satoshi Nakamoto.⁹ However, cryptocurrency as a concept traces its origins to 1998 when Wei Dei, on the cypherphunks mailing list, described the idea of a new form of money that utilizes cryptography to control its creation and transactions, as opposed to a central authority.¹⁰ Bitcoin was the first implementation of this idea and became a cryptocurrency that can operate as digital money, relying on an internet based, complicated, highly encrypted decentralized network that enables peer to peer transactions of digital money.¹¹ With Bitcoin's success, thousands of other

4. *Id.* at 2016.

5. *Id.* at 2016–17.

6. *Hashfast Techs. LLC v. Lowe (In re Hashfast Techs. LLC)*, No. 14-30725, slip op. (Bankr. N.D. Cal. 2016); Darryn Pollock, *The Mess That Was Mt. Gox: Four Years On*, COINTELEGRAPH (Mar. 9, 2018), <https://cointelegraph.com/news/the-mess-that-was-mt-gox-four-years-on> [https://perma.cc/DM6Y-MFGX]. Both cases are centered around the difficulty in classifying cryptocurrencies during bankruptcies, which have implications on how to value and eventually how to distribute the value of the cryptocurrency holdings to creditors.

7. Shawver, *supra* note 3, at 2024–26.

8. Sovbetov, *supra* note 1, at 3–4.

9. *Id.* at 4.

10. Amanda Wiese, *Cryptocurrency Is Currency*, 40 AM. BANKR. INST. J. 17, 17 (2021).

11. See Eric C. Chaffee, *The Heavy Burden of Thin Regulation: Lessons Learned from the SEC's Regulation of Cryptocurrencies*, 70 MERCER L. REV. 615, 618–19 (2019).

cryptocurrencies were created, using a similar framework with some distinguishable characteristics.¹²

There are several key characteristics which highlight the uniqueness of cryptocurrency; the first being that cryptocurrency does not have any inherent value, like that of gold or silver.¹³ However, some cryptocurrencies do attach themselves to an asset with inherent value or to a fiat currency, known as “stablecoins”.¹⁴ Bitcoin and similarly designed cryptocurrencies are known as “untethered cryptocurrencies,” meaning the only value they possess comes from supply and demand.¹⁵

Decentralization is another unique feature of cryptocurrencies, and it is accomplished using blockchain technology.¹⁶ Centralization in this context refers to whether a currency is backed by a central authority, such as how the U.S. dollar is backed by the United States government.¹⁷ Centralization would also mean that a legal or governmental authority would monitor, control, or administer the currency; a feature that Bitcoin does not utilize.¹⁸ Bitcoin was introduced by using blockchain technology, which was, in effect, a public ledger that acts as a central authority. But it is a digital program run by and on computers that are not controlled by individuals.¹⁹ The mechanism of blockchain technology removes many risks of fraudulent use that may be expected without governmental regulation.²⁰

Blockchain technology utilizes a public, decentralized digital ledger, which records and tracks the peer-to-peer transactions worldwide via computers.²¹ With cryptocurrencies, there may be a concern with peer-to-peer systems of transacting; users may “double spend,” meaning that the same asset that has already been spent by one person is used again by the same person for another transaction.²² Bitcoin eliminated the risk of the “double spend” through the digital ledger because it tracks and records all transactions.²³ When certain Bitcoin are spent, they are no longer able to be used again because the computer system has recorded the unique Bitcoin payment.²⁴ This system works by recording and organizing series of crypto transactions into a block, time-stamping them, and then, in time-

12. *See id.* at 619.

13. François Velde, *Bitcoin: A Primer*, FED. RSRV. BANK OF CHI. (Dec. 2013), <https://www.chicago-fed.org/publications/chicago-fed-letter/2013/december-317> [<https://perma.cc/4YFF-SMBQ>].

14. Ladislav Kristoufek, *Tethered, or Untethered? On the Interplay Between Stablecoins and Major Cryptoassets*, 43 FIN. RSCH. LETTERS Nov. 2021, at 1.

15. Lana Swartz, *What Was Bitcoin, What Will It Be? The Techno-Economic Imaginaries of a New Money Technology*, 32 CULTURAL STUD. 623, 627 (2018). For the purposes of this Note, all mentions of “cryptocurrencies” will refer to untethered cryptocurrencies.

16. Sovbetov, *supra* note 1, at 2.

17. *Id.* at 3–4.

18. Chelsea Deppert, *Bitcoin and Bankruptcy: Putting the Bits Together*, 32 EMORY BANKR. DEVS. J. 123, 127 (2015).

19. *Id.* (discussing the complex computation process that generates Bitcoin).

20. Due to the unique public recording of the blockchain technology, once a particular transaction occurs using amounts of cryptocurrency, that cryptocurrency will be flagged as spent and will be unable to be spent in future transactions. The public storage of these transactions also allows users, if they wish, to verify this while transacting. *See Shawver, supra* note 3, at 2019–21.

21. *Id.* at 2022.

22. *Id.* at 2021–22.

23. *Id.* at 2022.

24. *Id.* at 2020 (explaining the system of recording, commonly referred to as the ledger).

order, organizing them into a larger chain that contains every block, thereby including all transactions ever enacted.²⁵ These blocks are intricately linked through a “proof of work” protocol, where complex computational processes are employed to solve complicated puzzles to validate the transactions, while also potentially creating more cryptocurrency—a process known as “mining.”²⁶ This complex process ensures security in the network and limits the amount of Bitcoin in existence to no more than 21 million.²⁷

The process of transacting involves digital wallets and “private keys.”²⁸ A private key is a unique code that allows access to the public blockchain ledger and ownership of cryptocurrency.²⁹ Private keys are a randomly generated sequences of letters and numbers created by computer algorithms during a cryptocurrency purchase.³⁰ This key is required to spend or trade cryptocurrency.³¹ When a user wants to access or withdraw their cryptocurrency, they would use their private key to access a service that stores cryptocurrency known as a digital wallet.³² The process of users accessing their digital wallets with private keys resembles individuals accessing their online banking platform using a password they set up.³³ However, with cryptocurrency, and Bitcoin in particular, the private key is the *only* way to access the digital wallet for a specific set of owned Bitcoin.³⁴ If this private key is lost, forgotten, or stolen, the user will never be able to utilize the cryptocurrency stores under that key.³⁵ This can cause problems when large amounts of cryptocurrency are held by a private key, such as in the Mt. Gox case discussed later in this Note.³⁶ Besides individual digital wallets, some users use cryptocurrency exchanges like Coinbase, Kraken, and others to store and trade their cryptocurrencies.³⁷

Anonymity is another significant feature of cryptocurrency. Although each transaction of cryptocurrency is displayed on an online public ledger, the only information associated with a specific transaction is the private key associated with transacted cryptocurrency, and there is no identifying information as to who owns which key.³⁸ This anonymity has attracted users to use cryptocurrencies as their method of obtaining illegal services or products.³⁹ A key example of such criminal enterprise was the Silk Road, an online black

25. SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM 2 (2008), bitcoin.org/bitcoin.pdf [<https://perma.cc/8DZA-DWE4>].

26. *Id.* at 3 (explaining within the “Proof-of-Work” section the method of creating series and blocks); Shawver, *supra* note 3, at 2022 (describing the intricate system designed to ensure that transactions are safely facilitated while limiting the number of Bitcoin allowed to exist at any moment).

27. See Nirupama Devi Bhaskar & David Lee Kuo Chuen, *Bitcoin Mining Technology*, in HANDBOOK OF DIGITAL CURRENCY 53–62 (David Lee Kuo Chuen ed., 2015) (outlining in depth the concept of mining as well as the processes underpinning mining).

28. *Id.* at 51–53.

29. *Id.* at 51.

30. *Id.*

31. *Id.* at 51–52.

32. Deppert, *supra* note 18, at 127.

33. *Id.*

34. *Id.*

35. *Id.*

36. Pollock, *supra* note 6.

37. Shawver, *supra* note 3, at 2023–24.

38. Deppert, *supra* note 18, at 128.

39. *Id.*

market that was enabled by contributions of Bitcoins estimated to be valued at \$2 million dollars.⁴⁰ The Silk Road facilitated the buying and selling of guns, drugs, prostitution, forged documents, and more over the course of one year until the federal government shut it down.⁴¹ Although the Silk Road was shut down, its successor, “Silk Road 2.0,” emerged shortly thereafter, and cryptocurrency is still used for criminal activity, a concern that may warrant strict government intervention.⁴²

Additional features include the price volatility of cryptocurrency, as they are famous for their extremely rapid and significant market fluctuations.⁴³ This feature is largely due to the lack of government regulation as well as the perception of Bitcoin to the public.⁴⁴ In 2013, Bitcoin saw a drop of 61% in a single day and in 2014, a single day drop of 80%.⁴⁵ This volatility is also due to the activity of hackers, since cryptocurrency is largely operated on simple websites; hackers threaten the integrity of such websites.⁴⁶

The global accessibility is another feature permitting users around the world to engage in trade without needing to access an intermediary; some people argue this will allow for virtually the entire population to engage in trade, unlike with traditional currencies that are tied to governments and exhibit more complete regulation.⁴⁷

The regulatory environment for cryptocurrencies is neither uniform nor complete.⁴⁸ Cryptocurrencies do not fit within the regulations of the SEC, as they are not classified as a security; the IRS does cover cryptocurrencies since they classify them as property that can be taxed, and the CFTC has labelled cryptocurrencies as commodities.⁴⁹ However, there has been no official determination by the bankruptcy courts nor the Code on how to treat cryptocurrency within bankruptcy proceedings, thus, there is a need for a new regulatory framework that addresses the challenges with cryptocurrency-related bankruptcies.⁵⁰ The next Parts will explore the field of bankruptcy and the intersection of bankruptcy and cryptocurrency.

40. *Id.*

41. *Id.*

42. *Id.*

43. Shawver, *supra* note 3, at 2030.

44. Deppert, *supra* note 18, at 128.

45. *Id.*

46. *Id.* at 128–29.

47. Sovbetov, *supra* note 1, at 2–3.

48. Shawver, *supra* note 3, at 2015–16.

49. *Commodity Futures Trading Comm’n v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 496–98 (Mass. Dist. Ct. 2018) (holding that the CFTC had sufficiently demonstrated that cryptocurrencies were commodities); Rakesh Sharma, *SEC Chair Says Bitcoin Is Not A Security*, INVESTOPEDIA (June 25, 2019), <https://www.investopedia.com/news/sec-chair-says-bitcoin-not-security/> [<https://perma.cc/8HEK-8HSE>] (reporting the SEC’s determination that cryptocurrencies are not securities); *Digital Assets*, INTERNAL REVENUE SERV. (Apr. 23, 2025), <https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets> [<https://perma.cc/5TZJ-KDGN>] (describing how the IRS classifies digital assets, including cryptocurrency, as taxable property).

50. See The Bankruptcy Code, 11 U.S.C. § 101-1532. No specific guidance is given for bankruptcy proceedings involving cryptocurrency. Bankruptcy courts have released decisions that have held that cryptocurrency is a digital asset of the estate. *In re Celsius Network LLC*, 647 B.R. 631, 660 (Bankr. S.D.N.Y. 2023).

B. Bankruptcy Proceedings

Bankruptcy is a legal procedure that enables individuals and entities that undergo financial hardships or failures to receive relief through liquidation of their assets or a reorganization of their debts.⁵¹ The main purpose is to give a new start for the debtor while maintaining equitable distribution of assets to creditors.⁵² Bankruptcy law in the United States is primarily governed by title 11 of the United States Code (the Code).⁵³ The Code exhibits many chapters, each catering to specific types of debtors and financial situations.⁵⁴ Bankruptcy proceedings are handled in federal bankruptcy courts.⁵⁵

Bankruptcy serves as a mechanism for resolving the debts incurred by entities facing insurmountable financial challenges.⁵⁶ Debtors initiate the bankruptcy process when they find themselves unable to meet their financial obligations promptly or when their liabilities surpass their assets.⁵⁷ Bankruptcy law consistently encompasses three fundamental components.⁵⁸ Firstly, it offers a collective structure for concurrently addressing all debts owed by the insolvent entity, regardless of the due dates.⁵⁹ This comprises the potential utilization of assets to repay debts, subject to rules stipulating which assets must be liquidated for debt settlement and which assets the bankrupt entity may retain, if any.⁶⁰ Future earnings can also be allocated to debt repayment, with bankruptcy law specifying the extent of such allocation, dependent on whether the debtor is a corporation, an individual, or a government.⁶¹

Secondly, bankruptcy law delineates the rules governing the equitable distribution of assets and earnings used to satisfy debts among creditors.⁶² These rules exhibit restrictions on creditors' abilities to seize assets, ensuring they participate in the collective debt resolution procedure.⁶³ Thus, bankruptcy law dictates both the overall amount allocated to creditors, essentially defining the size of their potential claims, and the prioritization of these claims among individual creditors.⁶⁴

Thirdly, bankruptcy law prescribes the penalties imposed on debtors who seek bankruptcy protection.⁶⁵ In the United States, these penalties include public disclosure of filers' names and a 10-year record of the bankruptcy filing on their credit reports.⁶⁶ Such penalties

51. *Process—Bankruptcy Basics*, UNITED STATES CTS. <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics> [<https://perma.cc/HM7N-R7R7>].

52. *Id.*

53. *Id.*

54. *Id.* (“Six basic types of bankruptcy cases are provided for under the Bankruptcy Code.”).

55. *Id.*

56. Michelle J. White, *Corporate and Personal Bankruptcy Law*, 7 ANN. REV. L. & SOC. SCI. 139, 140 (2011).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. White, *supra* note 56, at 140.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. White, *supra* note 56, at 140.

stigmatize bankruptcy filers and impede their financial prospects by making it more challenging to secure loans, rent accommodations, and, in some instances, employment.⁶⁷ Another facet of the punishment revolves around the discharge of debt, where in the United States, debt discharge typically occurs swiftly for both individuals and corporations, where the corporation typically would cease to exist.⁶⁸

Bankruptcy procedures encompass two primary approaches: liquidation and reorganization.⁶⁹ In liquidation, typically utilized in corporate bankruptcies, all of the business entity's assets are sold, and the proceeds are used to repay creditors.⁷⁰ In contrast, reorganization permits the debtor to retain some or all assets, continue operations, and establish a plan to allocate a portion of future earnings for debt repayment.⁷¹ For individuals, bankruptcy always involves a form of reorganization, as they usually retain their most valuable asset, human capital, while potentially using part of their future earnings for debt repayment.⁷²

Chapter 7 of the Code outlines the process for when individual debtors or businesses want to liquidate their non-exempt assets and have the proceeds distributed to their creditors in order to fulfil debt obligations.⁷³ Chapter 11 is the process utilized primarily by businesses to restructure their debts while still being operational.⁷⁴ This process allows debtors to propose a reorganized repayment plan over a longer period of time.⁷⁵ Chapter 13 refers to the process of bankruptcy for individuals that have a steady income and is typically marked by a three to five year repayment plan.⁷⁶

Regardless of the route, the first step is always to file for a bankruptcy petition.⁷⁷ Once filed, an “automatic stay” is imposed, which halts most collection efforts, legal proceedings, foreclosures and other actions by creditors against the debtor or the debtor's property.⁷⁸ The debtor is provided an immediate relief from the pressures of debt collection, and can rely on a system to manage and improve their financial situation.⁷⁹ The automatic stay preserves the debtor's assets, preventing an unequal distribution of assets to creditors, and affords the debtor an opportunity to negotiate a plan or strategy to its creditors.⁸⁰

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. White, *supra* note 56, at 140.

72. *Id.* at 140–41.

73. See Will Kenton, *Chapter 7 Bankruptcy: What It Is, How It Works, Ramifications*, INVESTOPEDIA (Aug. 5, 2024), <https://www.investopedia.com/terms/c/chapter7.asp> [<https://perma.cc/VR4A-YWGY>].

74. See Jessica Gibson, *Chapter 11 Bankruptcy: What's Involved, Pros & Cons of Filing*, INVESTOPEDIA (Mar. 14, 2025), <https://www.investopedia.com/terms/c/chapter11.asp> [<https://perma.cc/G97W-CKN7>].

75. *Id.*

76. Lucas Downey, *Chapter 13 Bankruptcy: How It Works, Eligibility, and Alternatives*, INVESTOPEDIA (Oct. 12, 2024), <https://www.investopedia.com/terms/c/chapter13.asp> [<https://perma.cc/VD9G-MSAZ>].

77. Greg Daugherty, *When to Declare Bankruptcy*, INVESTOPEDIA (Apr. 14, 2024), <https://www.investopedia.com/articles/personal-finance/100714/when-declare-bankruptcy.asp> [<https://perma.cc/UZV2-F8EB>]. There are more options when filing for bankruptcy, but they are outside the scope of this Note.

78. Julia Kagan, *Automatic Stay: What It Is, How It Works, Examples*, INVESTOPEDIA (Mar. 26, 2024), <https://www.investopedia.com/terms/a/automaticstay.asp> [<https://perma.cc/Z6XQ-UJPS>].

79. *Id.*

80. *Id.*

The court appoints a trustee who serves a fiduciary role to effectively manage the bankruptcy estate while ensuring equitable distribution of assets to creditors.⁸¹ This role is comprised of duties including the collection and preservation of the debtor's property, analysis and cooperation with respect to creditor claims, and facilitation of a fair and efficient bankruptcy process, adhering to the tenets of the Code.⁸² The trustee also investigates potential fraudulent or preferential transfers and may seek to recover these assets in a petition for recovery.⁸³

Additionally, in coordination with the trustee, the assets of the debtor are valued, usually through the assessment of the fair market value for physical assets.⁸⁴ Once all the debtor's assets are valued, they are dispersed to the creditors according to the chosen plan, whether it is a complete liquidation or employing a reorganized repayment plan.⁸⁵ For cryptocurrencies however, the valuation is complex, and creates issues with respect to how much money creditors may be entitled to.⁸⁶ Courts have valued cryptocurrencies by using the exchange rate at the time of the bankruptcy filing and considering market trends.⁸⁷

C. The Intersection of Cryptocurrency and Bankruptcy

The intersection of cryptocurrency and bankruptcy law has led to multifaceted challenges and demands a thorough understanding of both subjects. As cryptocurrency has been in existence for less than 15 years, it has sparked debate over how to treat cryptocurrencies in bankruptcies, and there is still no consensus.⁸⁸ The Code encompasses a wide spectrum of assets that can potentially be incorporated into the bankruptcy estate.⁸⁹ Section 541 of the Code explicitly states that "all legal or equitable interests of the debtor in property as of the commencement of the case" are encompassed within the bankruptcy estate, with a few specifically enumerated exceptions.⁹⁰ This comprehensive scope is highlighted by congressional intent to encompass a vast array of property within the estate, thus, there is little debate regarding the inclusion of a debtor's cryptocurrency holdings as part of their bankruptcy estate, rendering them susceptible to creditors' claims.⁹¹

An early case that tested the boundaries of cryptocurrency in bankruptcy was the Mt. Gox case in 2014.⁹² Mt. Gox was a large Tokyo based Bitcoin exchange that banned all withdrawals by its users following a cyberattack that stole over 800,000 Bitcoin from the

81. *About the United States Trustee Program*, U.S. DEP'T. OF JUST. (July 8, 2025), <https://www.justice.gov/ust/about-program> [<https://perma.cc/LU7S-DRJK>].

82. *Id.*

83. *Id.*

84. See Christian Allred, *Bankruptcy Explained: Types and How it Works*, INVESTOPEDIA (Apr. 15, 2025), <https://www.investopedia.com/terms/b/bankruptcy.asp> [<https://perma.cc/D5Q8-9FRN>].

85. *Id.*

86. Shawver, *supra* note 3, at 2016.

87. *Id.* at 2044–47 (discussing methods of resolving valuation difficulties in bankruptcy proceedings).

88. *Id.* at 2015–16.

89. Deppert, *supra* note 18, at 130.

90. *Id.* (citing 11 U.S.C. § 541(a)(1)).

91. *Id.* (citing *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983)).

92. Pollock, *supra* note 6.

exchange, resulting in a loss of nearly \$475 million.⁹³ During the bankruptcy proceedings, the trustee liquidated Bitcoin worth \$400 million and repaid creditors, but Mt. Gox moved to file for insolvency in Japan under a process that allowed for repayment to be made in Bitcoin.⁹⁴ This case highlighted the need for clarity on the classification of cryptocurrencies in bankruptcy, since a currency classification will have different implications than a commodity classification.⁹⁵

In re Hashfast Techs. LLC also challenged bankruptcy courts to deal with cryptocurrency assets during bankruptcy.⁹⁶ The debtor allegedly fraudulently transferred its Bitcoin assets to another party, and the court had to decide whether the transferee had to return the Bitcoins themselves or their cash value to the bankruptcy estate.⁹⁷ If the court found Bitcoin to be currency, then the transferee would have to return the cash value of the Bitcoins.⁹⁸ But if the court found Bitcoin to be a commodity, then the transferee would have to return the Bitcoins themselves.⁹⁹ By keeping the Bitcoin and returning its cash value, there is a chance the transferee retains the profits from any Bitcoin appreciation since the transfer; or alternatively, the transferee may suffer from any depreciation that occurred since the transfer.¹⁰⁰ Crucially, the court did not declare which moment in time should be utilized to calculate the cash value of the Bitcoins.¹⁰¹ The court also did not affirmatively declare one or the other, but instead declared that Bitcoins are legally distinct from the U.S. Dollar.¹⁰² Without clear guidance from the courts nor any laws, debtors and creditors remain uncertain as to how bankruptcy proceedings would take place.

If Bitcoins were categorized as currency, the implications for Bitcoin transfers would extend to favorable protections akin to swap agreements (“swaps”).¹⁰³ This classification would encompass the exchange of Bitcoins for U.S. dollars or other national currencies under the purview of swaps.¹⁰⁴ The statutory definition within the Bankruptcy Code broadly encompasses swaps, such as “cross-currency rate swaps” and various currency-related agreements, such as options, futures, and forward agreements.¹⁰⁵ Courts typically treat transactions falling within this statutory definition as swaps.¹⁰⁶

Under the provisions of §§ 362(b), 546(g), and 560 of the Code, swaps enjoy safeguarding measures against avoidance as constructive fraudulent transfers and the constraints of the automatic stay.¹⁰⁷ Consequently, treating Bitcoins as currency would provide

93. *Id.*

94. *Id.*

95. See generally Shawver, *supra* note 3.

96. See generally *Hashfast Techs. LLC v. Lowe* (*In re Hashfast Techs. LLC*), No. 14-30725, slip op. (Bankr. N.D. Cal. 2016).

97. Shawver, *supra* note 3, at 2036.

98. *Id.* at 2037.

99. *Id.*

100. *Id.*

101. *Id.*

102. Shawver, *supra* note 3, at 2037.

103. Deppert, *supra* note 18, at 146.

104. *Id.*

105. *Id.*

106. *Id.* at 146–47.

107. *Id.* at 147.

Bitcoin traders with substantial protection under the Code, analogous to transactions involving U.S. dollars and euros.¹⁰⁸

Swaps benefit from protection against being classified as constructive fraudulent transfers.¹⁰⁹ Section 548 permits the reversal of transfers made within two years before filing for bankruptcy if they meet specific criteria, such as transferring an interest in property, insolvency at the time of transfer, and an exchange for less than reasonably equivalent value.¹¹⁰

Section 546(g) protects swap deals by stopping the trustee from undoing most payments made before bankruptcy, unless those payments were made to intentionally cheat or stall creditors.¹¹¹ This protection allows participants in swaps to engage in legitimate pre-bankruptcy planning without concerns about these transactions being reversed as constructively fraudulent.¹¹²

Furthermore, as outlined in §§ 560 and 362(b)(17), swaps enjoy broad protection against the automatic stay.¹¹³ Section 560 stipulates that contractual rights of swap participants to liquidate, terminate, or accelerate a swap agreement cannot be curtailed by the automatic stay, the Code, a court, or an administrative agency.¹¹⁴ Consequently, if Bitcoin were classified as currency and exchanges involving Bitcoins-for-Bitcoins or Bitcoins-for-dollars were regarded as swaps, parties involved in such transactions could pursue contractual enforcement and offset debts even during the automatic stay.¹¹⁵ This particularly benefits businesses that often “net out” opposing debts when assessing credit exposure in relation to a swap agreement.¹¹⁶ Thus, classifying cryptocurrencies as currency in the legal definition of bankruptcy proceedings resonates well with the Code’s provisions to ensure greater protection for parties involved in swap agreements that use cryptocurrencies.

Alternatively, if cryptocurrencies were classified as commodities under the Code, transactions involving the transfer of cryptocurrency assets to a creditor would receive similar protections only if the contracts met the Code’s definition of “forward contracts.”¹¹⁷ A forward contract involves the purchase or sale of a commodity or asset with a maturity date two or more days after the contract’s execution.¹¹⁸ However, the Code does not explicitly define “maturity date,” leading to uncertainty regarding whether cryptocurrency transactions meet this requirement, unless they involve cryptocurrency futures trading.¹¹⁹ In contrast, the currency classification imposes no such two-day maturation requirement, offering more protection against the automatic stay and the trustee’s avoidance powers.¹²⁰

108. Deppert, *supra* note 18, at 147.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Deppert, *supra* note 18, at 147–48.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. Deppert, *supra* note 18, at 148.

119. *Id.*

120. *See id.* at 146–47.

While a commodity classification differs in creditor protection, it resolves valuation concerns in fraudulent transfers.¹²¹ Section 550 of the Code allows the trustee to recover either the asset itself or its value from the transferee, with the court making the final decision.¹²² If cryptocurrencies are classified as commodities, bankruptcy courts could treat them similarly to other commodities like natural gas, oil, or gold.¹²³ Scholars argue that in such cases, bankruptcy courts are likely to prefer recovering the cryptocurrency itself, simplifying the process and avoiding valuation challenges.¹²⁴

In the case of *Commodity Futures Trading Commission v. My Big Coin Pay, Inc.*, one U.S. district court concluded that the CFTC successfully demonstrated that Bitcoins are commodities, and thus, would be subject to CTFC regulation.¹²⁵ This categorization was accepted because the CTFC demonstrated that Bitcoin has a futures trading market where individuals can buy and sell futures contracts, a key feature of CFTC labelled commodities.¹²⁶ However, since this was only a single case that went to trial in a U.S. district court, it is not binding precedent.¹²⁷ The bankruptcy courts did not confirm this categorization of Bitcoins, which would have subjected cryptocurrencies (similar to Bitcoin) to CTFC regulation, and there is still no guidance from the Code.¹²⁸

Currently, there is no all-encompassing legal and regulatory framework to address the issues that arise when businesses going through bankruptcy proceedings have cryptocurrency assets.¹²⁹ The issues that are most relevant include: the classification of cryptocurrency either as a security, currency, commodity, or something unique; the valuation of cryptocurrencies during bankruptcy, specifically, which methods should be used to value the cryptocurrency and at what point in time should such valuation be made; and, how to distribute the cryptocurrency assets once bankruptcy occurs. The intersection of cryptocurrency and bankruptcy law is an evolving field which needs to be addressed, and a system must be created which covers all aspects of this intersection. In Part III, this Note will outline a potential approach.

III. ANALYSIS

The impact of cryptocurrency-related bankruptcies extends across various stakeholders and facets of the financial and legal landscape, each facing unique challenges. This Part will explore these implications and will weigh the advantages and disadvantages of the advocated frameworks.

121. *Id.*

122. 11 U.S.C. § 550(a).

123. Deppert, *supra* note 18, at 125 & 125 n.9.

124. Shawver, *supra* note 3, at 2013.

125. *Commodity Futures Trading Comm'n v. My Big Coin Pay, Inc.*, 334 F.Supp.3d 492, 498 (Mass. Dist. Ct. 2018).

126. *Id.*

127. *See generally id.* This is a district court opinion and is not binding on any circuit court.

128. Shawver, *supra* note 3, at 2033–34.

129. *Id.*

A. Creditors

The significance of cryptocurrency's volatility on creditor recoveries is profound. The nature of cryptocurrencies' value as being a digital asset that often experiences rapid price fluctuations creates uncertainty for creditors.¹³⁰ When a debtor holds cryptocurrencies, the potential recovery amounts for creditors may vary significantly during bankruptcy proceedings.¹³¹ This fluctuation can lead to disparities in the recovery amounts, making it challenging for creditors to predict the final outcome of their claims.¹³²

Moreover, the evolving regulatory landscape poses additional challenges for creditors. The absence of a standardized framework for cryptocurrency treatment means that creditors might face prolonged legal disputes and incur additional legal costs in asserting their rights. While the cryptocurrency market continues to evolve, the creditor's ability to recoup their debts depends on the courts' interpretation of the law.

Additionally, creditors may face issues with recovering cryptocurrency assets held by the debtor, since the digital assets can only be accessed using a private key.¹³³ If a debtor refuses to disclose the private key necessary to access the digital assets, the courts may hold the debtor in contempt of court.¹³⁴ Although this mechanism may lead to monetary sanctions, a debtor with great wealth stored in cryptocurrency may risk receiving contempt sanctions in order to avoid potential seizure of their vast cryptocurrency wealth.¹³⁵

An example of such a situation is the case, *Securities and Exchange Commission v. Shavers*, where Trendon Shavers operated a Ponzi scheme disguised as a bank which amassed an enormous amount of wealth through accepting Bitcoin investments for outrageous interest rates.¹³⁶ In 2012, Shavers transferred 200,000 Bitcoin, deleted most of his transaction records and declared his scheme defunct.¹³⁷ During his case against the SEC, the SEC was granted an order compelling Shavers to freeze his assets, retrieve any assets he had transferred away, and give a full accounting of all his assets.¹³⁸ Shavers refused to comply, contending that he lent the 200,000 Bitcoin to an anonymous party which he had never met and could not identify.¹³⁹ The court ordered a judgement of \$40 million dollars, most of which was to compensate victims.¹⁴⁰ Meanwhile, the value of 200,000 Bitcoin at the time was approximately \$2 billion dollars.¹⁴¹ This case exemplifies the difficulties involved when a debtor refuses to cooperate and the ability of Bitcoin to avoid government control.

130. *Id.* at 2016.

131. *Id.*

132. *Id.*

133. Bhaskar & Chuen, *supra* note 27, at 51.

134. Andrew W. Balthazor, *The Challenges of Cryptocurrency Asset Recovery*, 13 FIU L. REV. 1207, 1229–30 (2019).

135. *Id.* at 1230.

136. *Id.* at 1230–31.

137. *Id.* at 1231.

138. *Id.*

139. Balthazor, *supra* note 134, at 1231.

140. *Id.*

141. *Id.*

B. Debtors

For debtors with substantial cryptocurrency holdings, bankruptcy presents an opportunity to address financial difficulties. However, navigating the complexities of cryptocurrency classification, valuation, and distribution can significantly impact the debtor's ability to achieve a fresh start. The lack of well-defined guidelines within bankruptcy law makes it challenging for debtors to fully grasp their rights and obligations concerning cryptocurrencies in bankruptcy proceedings.

Debtors must also grapple with the intricate task of accurately disclosing their cryptocurrency assets, especially if they are held in wallets or exchanges outside the traditional banking system.¹⁴² This lack of clarity and guidance within bankruptcy law complicates the debtor's obligation to disclose comprehensive information about their digital assets, potentially affecting their eligibility for bankruptcy relief.

C. The Legal System

The legal system in this context is primarily represented by bankruptcy courts and legal professionals and faces the difficult task of adapting to a rapidly evolving digital landscape. Cryptocurrencies represent a unique challenge for bankruptcy courts due to their evolving nature and complex technical aspects.¹⁴³

Bankruptcy courts must wrestle with intricate classification and valuation issues, introducing an additional layer of complexity to bankruptcy proceedings. The absence of clear precedents within the field further complicates the decision-making process for judges. This lack of legal precedent requires judges to rely on general bankruptcy principles, which may not effectively address the intricacies of cryptocurrency-related bankruptcies.

As bankruptcy cases involving digital assets continue to grow in number, the legal system is under increasing pressure to establish clear guidelines. The absence of a standardized framework for cryptocurrency treatment in bankruptcy could lead to inconsistent court decisions, contributing to legal uncertainties, particularly surrounding the classification and valuation of cryptocurrencies that are included in the bankruptcy estate.

The treatment of cryptocurrencies in bankruptcy extends beyond individual cases, potentially influencing the broader economic landscape. The lack of a clear regulatory framework within bankruptcy law may create uncertainty and deter investment in digital assets.¹⁴⁴ In turn, this uncertainty could impact the growth and stability of the cryptocurrency

142. See Nic Carter, *Let's Actually Commit to Proofs of Reserve This Time, OK?*, COINDESK (June 14, 2024), <https://www.coindesk.com/opinion/2022/11/14/lets-actually-commit-to-proofs-of-reserve-this-time-ok> (on file with *the Journal of Corporation Law*) (discussing the potential system of "proof of reserves" which is a snapshot that discloses a business's assets. Currently, due to the lack of a standardized system, it is difficult for businesses to disclose their cryptocurrency assets accurately).

143. See *supra* Part II.A (explaining the intricacies of cryptocurrency).

144. See Yesha Yadav & Robert Stark, *When Bankruptcy Regulates Crypto: The Good, the Bad, and the (Really) Ugly*, COINDESK (Oct. 17, 2023), <https://www.nasdaq.com/articles/when-bankruptcy-regulates-crypto:-the-good-the-bad-and-the-really-ugly> [<https://perma.cc/V94B-9MMG>] (discussing how the lack of a regulatory framework has led to bankruptcy courts handling some of the largest cryptocurrency firms' unique bankruptcies on a case-by-case basis, leading to uncertainty to both investors and the firms).

market, affecting its potential to provide financial opportunities and promote financial innovations.¹⁴⁵

D. The Advantages and Disadvantages of a Standardized Regulatory Framework

When evaluating the treatment of cryptocurrencies in bankruptcy, it is important to consider the potential advantages and disadvantages of adopting a formal regulatory framework.

1. Advantages

A regulatory framework would provide a clear set of guidelines for classifying, valuing, and distributing cryptocurrencies in bankruptcy proceedings. Such clarity would offer the much-needed certainty to businesses with cryptocurrency holdings that are considering bankruptcy.

Standardized rules would also ensure that cryptocurrencies are treated uniformly across different bankruptcy cases. This uniformity would enhance the fairness and equity of bankruptcy proceedings for both creditors and debtors, preventing any potential windfall for either party.¹⁴⁶ It could also prevent the misuse of cryptocurrencies to manipulate bankruptcy outcomes, thereby preserving the integrity of the process.

Additionally, a well-defined regulatory framework could boost investor confidence in the cryptocurrency market. Investors may then view cryptocurrencies as more secure assets when they know that their treatment in bankruptcy is regulated and predictable. This trust could lead to increased investments in the cryptocurrency space and promote widespread use. The resulting growth could contribute to the maturation of the cryptocurrency market, making it more resilient to volatility and more integrated with traditional financial systems.

2. Disadvantages

The cryptocurrency market operates in a dynamic and rapidly evolving technological environment. The static nature of a regulatory framework may quickly become obsolete, requiring frequent updates or amendments to remain applicable to any advancements in cryptocurrency technology. The solution lies in creating a flexible regulatory framework that can adapt to the fast-paced changes within the market. Such a framework should be designed with the ability to quickly integrate new insights from technology and finance, ensuring that it remains relevant and effective.

One crucial disadvantage is the potential for overregulation, which could curb innovation within the cryptocurrency space. Businesses might be reluctant to explore new avenues for investments or raising capital if they perceive regulatory measures as overly restrictive or burdensome. Striking a balance between regulation and innovation remains a key challenge in developing an effective regulatory framework. Regulation should be careful not to stifle the very innovation that has made cryptocurrencies a significant addition to

145. *Id.*

146. Recall that without clear regulation on when the crypto assets are to be valued, the creditor or the debtor may experience windfalls in that they must pay or are repaid crypto assets that have declined or increased in value, as compared to the initial value of the crypto when the debtor acquired it. *See supra* notes 96–102.

the financial landscape, but rather to channel that innovation in ways that promote stability and fairness.

The development of a comprehensive regulatory framework for cryptocurrencies within bankruptcy law is a complex undertaking. The framework should address the unique characteristics of digital assets while considering their legal implications, which requires a deep understanding of cryptocurrency technology, market dynamics, and legal considerations to ensure that it accommodates the needs of all stakeholders involved.

In the context of adopting a regulatory framework for cryptocurrencies within bankruptcy proceedings, opposing arguments arise, reflecting the contested nature of this topic. To navigate these complex cases, a major concern is that governments that regulate cryptocurrencies may remove the decentralized aspect of cryptocurrency. The decentralized nature has been considered an alluring feature of cryptocurrency, allowing individuals across the globe to engage in the market without external involvement. This concern can be addressed properly by ensuring that overregulation does not occur, and any regulations that do come into place should strike a balance between maintaining the attractive nature of cryptocurrency while providing legal clarity, much needed by businesses that hold cryptocurrency assets while undergoing bankruptcy. Developing a regulatory framework that accommodates the unique attributes of cryptocurrencies and addresses the complexities of bankruptcy cases is a challenge that requires a well thought out approach. This approach should be one that fosters innovation, protects stakeholders, and integrates cryptocurrencies into the broader economic and legal system with transparency and predictability.

IV. RECOMMENDATION

Given the complex challenges arising from the convergence of cryptocurrencies and bankruptcy law, it is crucial to develop a framework tailored to the distinct nature of crypto assets. This Part offers solutions to the problems outlined in the analysis.

A. Classification

The classification of cryptocurrencies has had profound implications for bankruptcy proceedings. If the CFTC's classification of cryptocurrencies as a commodity is adopted, then the CFTC can exert its jurisdiction over cryptocurrency-related claims which arise out of bankruptcy proceedings. In such instances, the nuanced nature of cryptocurrencies as assets that can be both investment vehicles and exchange mediums must be carefully considered to ensure their classification does not unfairly prejudice either the debtors or creditors. Additionally, the court in *Hashfast* outlined that if cryptocurrency is classified as a commodity, then the debtor would be required to repay the creditor with cryptocurrency.¹⁴⁷ However, if the court were to adopt the view that cryptocurrency should be treated as currency, as this Note advocates for, the implications would be significantly different. The *Hashfast* court also recognized that if cryptocurrency was classified as a currency, then the cash value of the cryptocurrency would need to be paid to the creditors.¹⁴⁸ The SEC has declined to classify cryptocurrency as a security, and as a result the Commission does not

147. Shawver, *supra* note 3, at 2037.

148. *Id.*

regulate it.¹⁴⁹ This Note suggests that cryptocurrency be treated as a currency, acknowledging its increasing use as a medium of exchange and a store of value, much like traditional currencies.

Cryptocurrencies were initially designed as digital substitutes for conventional fiat currencies.¹⁵⁰ They function as a means for direct transactions, allowing individuals to engage in peer-to-peer exchanges without intermediary involvement.¹⁵¹ Cryptocurrency users can purchase products and services, transfer value across geographical boundaries, and perform routine financial transactions.¹⁵² Their integration into mainstream commerce further justifies their classification as currency within bankruptcy proceedings. The major difference is that fiat currencies are tied to a government or another form of regulation.¹⁵³ The decentralized nature of cryptocurrency is an attractive feature which distinguishes cryptocurrency from fiat currencies, and this decentralization poses both opportunities and challenges for the legal system regarding asset classification and regulatory oversight.

Regardless, cryptocurrency closely resembles the functions performed by traditional currencies, suggesting that categorizing cryptocurrencies as currencies in the context of bankruptcy proceedings is reasonable. This Note recommends that cryptocurrency should be classified as a currency with regulations that ensure equity. By treating cryptocurrencies as currency, the issue arises of how and when to value the cryptocurrency's cash value. Such valuation must consider the volatile nature of the market, the potential for rapid value shifts, and the intent of the parties involved in the transactions.

An additional advantage of classifying cryptocurrency as a currency within bankruptcy proceedings pertains to the protections afforded under swap agreements. As discussed earlier in this Note, swap agreements enjoy certain protections in bankruptcy, allowing for the netting of obligations and potentially exempting them from the automatic stay provisions.¹⁵⁴ By recognizing cryptocurrency as a currency, cryptocurrency transactions could be construed as swap agreements, thereby granting them similar protections. This could have profound implications for creditors and debtors involved in cryptocurrency derivatives, which are increasingly common as the market matures.¹⁵⁵ For example, a debtor's obligations under such swap agreements could be netted out, simplifying the bankruptcy estate, and potentially reducing the administrative burden on the courts.

This netting process could lead to a more streamlined treatment of cryptocurrency obligations, offering a clearer pathway for the resolution of these assets and liabilities in bankruptcy. Furthermore, providing such clarity in the classification could encourage the use of cryptocurrency in more complex financial instruments, knowing that they will be

149. *Is Cryptocurrency A Security?*, MINERY (Aug. 23, 2022), <https://web.archive.org/web/20221002101144/https://minery.io/blog/is-cryptocurrency-a-security/> (on file with the *Journal of Corporation Law*) (noting that the SEC Chairman confirmed that, while initial coin offerings are securities, cryptocurrencies are not).

150. *See* Sovbetov, *supra* note 1, at 3–4.

151. *Id.*

152. Deppert, *supra* note 18, at 127–28.

153. *See id.* at 140 n.130.

154. *See* discussion *supra* Part II.C.

155. Laura Shin, *What Are Crypto Derivatives? A Beginner's Guide*, COINDESK (Oct. 2, 2023), <https://www.coindesk.com/learn/what-are-crypto-derivatives-a-beginners-guide/> (on file with the *Journal of Corporation Law*).

treated with a degree of predictability in insolvency scenarios. However, this advantage must be carefully balanced with the need to ensure that such classifications do not inadvertently create loopholes that could be exploited in bankruptcy proceedings, ensuring that the principle of equitable treatment is upheld across the board.

B. Valuation

Valuating cryptocurrencies is another contentious subject due to the volatile nature of cryptocurrency.¹⁵⁶ This Note suggests that bankruptcy courts value cryptocurrency assets at the time of the transfer from the debtor to the creditor.¹⁵⁷ This approach offers the bankruptcy courts a process that is equitable since it reflects the real-world implications of the transfer. At the instant of the transfer, there is an agreed-upon valuation of the cryptocurrency accepted by both parties. By adopting this approach, parties in transactions would have clarity on the valuation of the cryptocurrency should a bankruptcy proceeding initiate in the future.¹⁵⁸

Additionally, valuating cryptocurrencies at the time of the transfer will reflect the assumed risk associated with cryptocurrency price volatility by the debtor and the creditor. The valuation process should be robust enough to account for the inherent risks without exposing either party to unjust enrichment or unwarranted loss. The debtor assumes the risk that, by paying the creditor with cryptocurrency at one time, the creditor may receive a greater value if the cryptocurrency rises in value thereafter.¹⁵⁹ Similarly, the creditor assumes the risk that the cryptocurrency accepted at a certain price and time might significantly decrease in value. Thus, it is equitable to use the moment of the transfer as the valuation point since the parties accepted the possibility of windfall. This approach also acknowledges the speculative nature of cryptocurrencies and allows for a fair assessment that reflects the market value at the time of the transfer, rather than a speculative future value.

Furthermore, this valuation method reinforces the core value of bankruptcy as a process that aims to provide a fresh financial start for the debtor. It also reflects the principle that bankruptcy should not provide a windfall to creditors, which is consistent with the overarching goal of bankruptcy law to provide a just resolution of the debtor's financial affairs.¹⁶⁰ For instance, if the valuation of cryptocurrencies accounts for a large decrease seen after the transfer, the debtor would be responsible for repaying sums that do not reflect the bargain of the initial transfer. This recommendation, if implemented, would ensure accountability, equity, and consistency, by holding parties accountable to their agreed upon

156. See discussion *supra* Part I (discussing the volatile nature of cryptocurrency as a tangible asset).

157. See *supra* text accompanying notes 84–85 (asserting that courts have evaluated cryptocurrencies using the exchange rate).

158. See *supra* text accompanying notes 90–100 (discussing cases that highlight the current lack of consistency for cryptocurrency classification).

159. See discussion *supra* Part III.B (discussing how distribution can significantly impact the debtor's ability to achieve a new start because of the complexities associated with valuation).

160. See *supra* text accompanying note 50 (discussing that the primary purpose of bankruptcy proceedings is to find the balance between providing an equitable distribution of assets and allowing debtors to have a fresh start).

valuation, ensuring there are no windfalls and by providing an approach that parties can rely upon to produce consistent results during bankruptcy proceedings.

A consistent approach to the valuation of cryptocurrency at the time of the transfer is critical. This Note suggests that market experts analyze the market conditions at the time of the transfer to ensure that the value the cryptocurrency was agreed upon and exchanged for during the transfer accurately represents the true value of the total exchanged cryptocurrency. It would also be prudent to establish a panel of experts or a digital assets valuation board that could provide timely and authoritative valuations for bankruptcy cases, which would add an additional layer of expertise to the process and help standardize valuations across different jurisdictions. This would ensure the court utilized accurate valuations in court proceedings and prevent fraudulent transfers.

C. Distribution

Finally, if the suggested approach is adopted, there should be few concerns regarding the fair and equitable distribution of assets to creditors. The distribution process must be transparent and adhere to the principles of equality and fairness to prevent any form of preferential treatment that could undermine the integrity of the bankruptcy process. Full disclosure is necessary to ensure that the estate is properly administered and that all assets are available for distribution to creditors. Additionally, potential instances of fraudulent transfers used to misrepresent the financial circumstances of the debtor should be investigated and resolved so that the cryptocurrency assets themselves or their cash value, based on the suggested approach, is recovered. This will ensure that honest creditors are not at a loss due to fraudulent activity.

The outlined approach could be adopted into the Code, or the bankruptcy court could issue a statement acknowledging it.¹⁶¹ This Note does not suggest any recommendations for regulatory bodies such as the SEC or the CFTC pursuing additional regulations which would allow them to regulate cryptocurrency. However, given the evolving nature of digital currencies, it may be beneficial for these regulatory bodies to consider the development of specialized guidelines for the treatment of cryptocurrencies in bankruptcy. By adopting the approach into the Code, the bankruptcy courts can handle any proceeding involving cryptocurrency. Should instances of fraud be discovered, the involvement of criminal authorities for investigation would not only deter such fraudulent activities but also reinforce the seriousness with which the legal system treats misrepresentations and abuses in bankruptcy. In summation, this Note suggests the outlined approach centered on classifying cryptocurrency as currency and to value them at the time of the relevant transfer. This approach would ensure that the debtor is given a fair new chance as well as providing for the equitable distribution of assets to creditors. This recommendation advocates for a dynamic and equitable approach to the treatment of cryptocurrencies in bankruptcy that can adapt to the changing economic landscape and ensure fair outcomes for all stakeholders involved.

161. See *supra* text accompanying note 48 (discussing how neither the bankruptcy code nor the bankruptcy courts have taken a position).

V. CONCLUSION

As the intersection of cryptocurrency and bankruptcy law continues to develop, the need for a refined and responsive legal framework becomes increasingly evident. The unique nature of digital assets, coupled with the evolution of blockchain technology, presents both opportunities and challenges within the context of bankruptcy proceedings. The recognition of cryptocurrencies as a distinct asset class necessitates a departure from traditional valuation and distribution methodologies, demanding novel approaches that reflect their inherent volatility and the global scope of their markets.

The adoption of a consistent valuation method would bring much-needed clarity and fairness to the bankruptcy process.¹⁶² By valuing cryptocurrencies at the time of transfer, parties are afforded a degree of predictability and equity, mitigating the risk of significant value shifts post-transfer that could unfairly benefit one party over another. However, such a system must be flexible enough to accommodate the market's dynamic nature and the potential for significant fluctuations in value.

Moreover, the importance of fair and equitable distribution cannot be overstated. By ensuring that assets are accurately disclosed and valued, the bankruptcy process upholds its fundamental purpose: to equitably resolve claims and provide a fresh start for the debtor. This is particularly pertinent in the realm of cryptocurrencies, where the potential for hidden assets and fraudulent transfers are heightened due to the anonymity and cross-border nature of these digital assets.

The suggested integration of these approaches into the Code is not an endpoint but the beginning of an ongoing conversation. As cryptocurrencies continue to gain prominence and acceptance, their treatment in bankruptcy must evolve. It is imperative that legal professionals, regulatory bodies, and legislators work in concert to stay ahead of the curve, anticipating changes and readying the legal system for the challenges ahead. This will involve not only domestic coordination but also international collaboration, given the borderless nature of digital currencies.

In conclusion, the future landscape is one of cautious innovation. The legal system must balance the need for stability and predictability against the need for flexibility and adaptability. By fostering an environment that is conducive to both creditor protection and debtor rehabilitation, and by addressing the distinctive aspects of cryptocurrencies, the bankruptcy system can better serve the changing landscape of assets and investments. As this Note has endeavored to show, through careful analysis and proactive policymaking, it is possible to construct a bankruptcy framework that is equitable, practical, and forward-looking, capable of meeting the demands of the digital age.

162. See discussion *supra* Part III.C.1 (discussing various advantages to consistent valuation).