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THE CFPB'S AUTHORITY TO REGULATE CRYPTOCURRENCY PRODUCTS AND SERVICES

In this article the author provides an overview of the potential avenues the CFPB might have to regulate cryptocurrency products. He begins with the rise of cryptocurrency products and services, and the CFPB's prior public statements of its concerns about them. He then turns to CFPB's potential avenues for jurisdiction over crypto products and services under the Dodd-Frank Act, and under enumerated consumer laws. He closes with a discussion of the CFPB's rulemaking, and its supervisory and examination authority that could be used to regulate the market for digital asset products.

By Eric Goldberg *

The Consumer Financial Protection Bureau (“CFPB”) regulates markets for consumer financial services and has a broad jurisdiction over everything from mortgages and credit cards to consumer finance data and payment processing. To date, however, the CFPB has not taken a formal step towards regulation of digital asset products or services, including cryptocurrencies and technologies that use them. Nor has the CFPB taken public steps to enforce existing laws in connection with digital assets. The CFPB was established after the 2008 financial crisis and has largely focused on implementing its authority to prevent consumer harm in connection with traditional financial products. However, the CFPB’s mission is broad; in addition to protecting consumers, it is also tasked with ensuring “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”¹

¹ 12 U.S.C. § 5511(b)(5).

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Cryptocurrencies, if anything, are a harbinger of innovation. Given their increasing use in a variety of products and services, the CFPB has increased its scrutiny of these new products.² This article provides an overview of the potential avenues the CFPB might have to regulate cryptocurrency products and services.

Recently, calls for the CFPB to regulate cryptocurrency products have increased. In late 2021, Senator Elizabeth Warren stated that, “With their intense focus on consumers, the CFPB has a role to play as a

² See, e.g., K. Johnson & M. Price, Reuters, *U.S. consumer watchdog to scrutinize crypto payments, Big Tech moves into finance -director*, (July 26, 2022) at <https://www.reuters.com/business/finance/us-consumer-watchdog-scrutinize-crypto-payments-big-tech-moves-into-finance-2022-07-27/>.

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