BETTER MARKETS

SPECIAL REPORT

Debunking Debanking

By SHAYNA OLESIUK

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All of a sudden "debanking" is a hot topic. Congressional hearings are being held, and the media is breathlessly reporting every claim, no matter how baseless or fact-free. However, this appears to be little more than a sophisticated, coordinated, poll-tested campaign by the crypto industry and its political allies in an attempt to avoid risk-based analysis and risk-reducing regulations that are necessary to protect Americans' savings accounts and Main Street banks. The claim is that crypto is being unfairly discriminated against by regulators who are supposedly telling banks not to do business with crypto firms.

In fact, regulators are engaged in content-neutral risk-based analysis that is aimed at making sure banks properly identify risks and protect their customers by appropriately mitigating those risks. Frankly, regulators don't care where risks come from, be it credit or market risk, cybersecurity threats, money launderers, or crypto predators and lawbreakers. Given crypto's widespread and pervasive illegal and criminal behavior as well as its extreme volatility and boom-bust cycles, it is objectively true that crypto firms are high risk, often dangerous, and too frequently engaged in or connected to criminal activities. The debanking campaign is an attempt to pressure bank regulators to ignore these many known crypto risks and overlook other potential risks crypto poses to banks and the banking system.

Crypto's rap sheet is broad and deep, as has been detailed here, here, and here. FTX and its now imprisoned CEO Sam Bankman-Fried's brazen, multibillion-dollar fraud is only the most high-profile example, but a mere tip of the iceberg of crypto's illegal and criminal behavior. Another glaring example of dangerous non-criminal risk is the so-called "crypto winter" of 2021-2022, which is a misleading euphemism for a breathtaking crypto crash that resulted in the loss of $2 trillion in value in less than one year. That was real money lost by lots of Americans. If the regulators had not aggressively policed and limited banks' riskiest crypto activities during that time, then it's likely that the $2 trillion crypto crash would have spread to the banking system, almost certainly causing trillions of dollars more in losses and leading to bank failures. And don't forget that the bank failures and bailouts during the 2023 banking crisis were connected to and in some part caused by those banks' crypto activities even though they were limited.

That's likely to happen if the regulators do as the crypto cheerleaders are demanding: reducing or eliminating neutral risk-based analysis will almost certainly lead to losses, crashes, and bailouts. These are the kinds of risks the crypto industry and its political allies are demanding regulators ignore, effectively creating a special interest exemption from the risk analysis that applies to every other firm and person doing business with banks. That's what the debanking charade is really all about.

Introduction

Financial innovation is one of the hallmarks of the U.S. financial system. However, it is the pairing of this innovation with appropriately strong rules and guardrails that makes our financial system the envy of the world. Main Street Americans depend on these rules and guardrails to work as intended to keep their money and their financial future safe and secure.

These rules and laws are fundamental protections not just for financial customers, investors, and markets, but for all hardworking Americans whose economic security, opportunity, and prosperity are endangered by financial instability. The leading recent example of this are the jobs, homes, savings, retirements, and dreams of tens of millions of Americans that were lost due to the financial crisis of 2007-2009 ("2008 Crash").[1] These innocent victims of an unregulated financial system highlight the critical importance of having strong regulations combined with effective and assertive supervisory oversight to ensure the largest financial firms are both resilient and safely run. Pre-crisis banking rules for the largest banks were woefully deficient and ineffective. Weak standards allowed large banks to take too much risk, contributing to a crisis that had devastating effects on Main Street families and businesses. At the same time, banking supervision—the day-to-day oversight of these firms that should complement and fill in potential gaps in rules to ensure banks are not dangerously run—failed dramatically, and combined with the weak rules, created a particularly fragile banking system with disastrous consequences.

The explosive growth of digital assets and cryptocurrency in recent years[2] has massively endangered the banking system in ways we have never seen, or even conceived. Banks have become involved with crypto firms, and several—namely Signature Bank ("Signature" or "SBNY"), Silicon Valley Bank ("SVB") and Silvergate Bank ("Silvergate")—have experienced devastating failures[3] that harmed the banking industry and bank customers, imposed significant costs on taxpayers and the public, and threatened financial stability. Clearly, crypto and the risks it brings have the potential to spark a full-scale banking crisis which could, in fact, be much faster moving and more devastating than the 2008 Crash.

Main Street Americans who were misled or defrauded into believing that cryptocurrency is insured by the Federal Deposit Insurance Corporation ("FDIC") have also been seriously harmed. False statements suggesting that crypto is insured by the FDIC are blatantly illegal, but often the harm done by these statements to everyday Americans cannot be undone.[4] The safety and soundness of the financial system is also put at risk because if people question the applicability of FDIC insurance then they will precipitously withdraw their deposits and cause a run on the banking system.

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1 BETTER MARKETS, THE COST OF THE CRISIS (July 2015), https://bettermarkets.org/newsroom/20-trillion-cost-financial-crisis-3.

2 *See, e.g.*, FINANCIAL STABILITY OVERSIGHT COUNCIL, REPORT ON DIGITAL ASSET FINANCIAL STABILITY RISKS AND REGULATION 9 (2022), https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf; Arthur E. Wilmarth, *We Must Protect Investors and Our Banking System from the Crypto Industry,* 101 WASH. U. L. REV. 235 (May 31, 2023), http://dx.doi.org/10.2139/ssrn.4360175.

3 CONGRESSIONAL RESEARCH SERVICE, THE ROLE OF CRYPTOCURRENCY IN THE FAILURES OF SILVERGATE, SILICON VALLEY, AND SIGNATURE BANKS (Apr. 25, 2023), https://crsreports.congress.gov/product/pdf/IN/IN12148.

4 *See, e.g.*, Shayna Olesiuk, *Bank-Fintech Partnerships Hold Promise but Banking Agencies Must Do More to Protect the Public*, Better Markets (Oct. 30, 2024), https://bettermarkets.org/wp-content/uploads/2024/10/Better_Markets_Fact_Sheet_Fintech_Bank_Parternships-10.30.24.pdf; Better Markets Comment Letter, *Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses* (Oct. 30, 2024), https://bettermarkets.org/wp-content/uploads/2024/10/Better-Markets-Comment-Letter-RFI-Bank-Fintech-Arrangements.pdf.

Financial experts and regulators have recognized the risk that cryptocurrencies present to the banking industry and financial stability. For example, the Financial Stability Oversight Council ("FSOC") named digital assets and crypto as a key vulnerability in its 2024 Annual Report because of the threats it presents to the financial system.[5] The Congressional Research Service ("CRS"), Office of the Inspector General ("OIG") of the Federal Reserve Board ("Fed"), and FDIC have studied the role of crypto in the 2023 bank failures and raised questions about the ability of banks to manage the immense risk of crypto.[6] Economists at the Federal Reserve Bank of New York ("New York Fed") detailed the financial stability risks stemming from crypto—specifically its inherent volatility and susceptibility to bank runs.[7] The Federal Bureau of Investigation ("FBI") recently reported that more than 69,000 complaints related to financial frauds involving crypto were received in 2023, with estimated losses totaling $5.6 billion.[8] Even hedge funds, operating outside of the government and regulatory agencies, have recognized and warned of the dangers of speculative investor frenzy in crypto markets.[9]

Access to banking services is an important policy goal that supports the functioning of our economy and benefits all Americans. Access to banking services should be available in all local communities, including rural and underserved communities, and to law-abiding businesses.

The terms "debanking" or "derisking" are sometimes used in a factual sense to refer to banks closing accounts based on the risk profile of a customer. For example, a bank may determine an account appears to be being used for illegal purposes and may then decide to close the account. "Debanking" is sometimes used in a different sense to describe the alleged exercise of regulatory authority to discourage banks from providing services to certain classes of customers, based on ideological or policy goals, separate from a risk-based analysis and determination.

Regulators have two fundamental duties in this area:

- First, regulators have a duty to ensure that banks comply with applicable laws, and;
- Second, regulators must promote safe and sound banking practices, and take corrective action when banks engage in unsafe and unsound practices.

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5 Financial Stability Oversight Council, Annual Report at 8-9 and 45-46 (2024), https://home.treasury.gov/system/files/261/FSOC2024AnnualReport.pdf.

6 *See, e.g.*, Congressional Research Service, *supra* note 3; Board of Governors of the Federal Reserve System, Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank (Apr. 2023), https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf; Office of the Inspector General, Review of the Supervision of Silvergate Bank (Sept. 27, 2023), https://oig.federalreserve.gov/reports/board-review-silvergate-summary-sep2023.pdf; Federal Deposit Insurance Corporation, FDIC's Supervision of Signature Bank (Apr. 28, 2023), https://www.fdic.gov/sites/default/files/2024-03/pr23033a.pdf.

7 Pablo D. Azar, et al., *The Financial Stability Implications of Digital Assets*, 30 Economic Policy Review (Nov. 2024), https://www.newyorkfed.org/medialibrary/media/research/epr/2024/EPR_2024_digital-assets_azar.pdf.

8 Federal Bureau of Investigation, Cryptocurrency Fraud Report 5 (Sept. 9, 2024), https://www.ic3.gov/AnnualReport/Reports/2023_IC3CryptocurrencyReport.pdf.

9 Costas Mourselas, *Hedge fund Elliott warns White House is inflating crypto bubble that 'could wreak havoc'*, Financial Times (Jan. 30, 2025), https://www.ft.com/content/5fe69580-7f01-4215-98bb-b6ec5f7cd833.

In other words, banks must always understand and manage ***any risk*** that they are accepting in their business decisions. Banks cannot evade this responsibility by entering into business partnerships with third parties.[10] Banks can be, and frequently have been, subject to formal regulatory consent orders because of third-party partners' violations of law in connection with activities performed on the bank's behalf.[11] These have included violations of laws intended to protect consumers and, most frequently, violations of the Bank Secrecy Act, which is intended to safeguard the financial system against being used for illicit activity. These enforcement actions are published on agency websites for all to see. Regulators taking these actions are doing the job Congress mandated to protect the public.

Furthermore, regulators must apply corrective actions when banks take on unacceptable levels of risk or engage in activities that endanger the public interest. In some cases, regulators have taken enforcement actions for risks arising from a bank's failure to adequately manage risks arising from its third-party relationships. These actions are consistent with regulators' statutory mandate to ensure a safe and sound banking system.

In short, what's really at stake here is the responsibility of regulators and banks to act in the best interest of the public and Main Street Americans. The facts and evidence show that standing with crypto means standing with those who engage in very high risk if not illegal and criminal activities with a highly volatile product that has no legitimate social use and that could endanger the entire financial system and, ultimately, the economy. These are very real risks that the law mandates regulators require banks to eliminate or mitigate to the greatest extent. Having so recently suffered from the 2008 catastrophic financial crash enabled and fueled by unregulated, novel, and innovative financial products, the American people deserve that protection.

Background

Definition and History

By definition, crypto is a specific type of digital asset that depends on technology to support the security of a financial transaction.[12] While crypto has existed for nearly two decades and offered numerous promises of innovation and other benefits that will improve the financial system, the promises have not materialized.

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10 *See* 12 U.S.C. § 1867(c)(1) which states, "[W]henever a depository institution that is regularly examined by an appropriate Federal banking agency . . . causes to be performed for itself, by contract or otherwise, any services authorized under this chapter, whether on or off its premises . . . such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the depository institution itself on its own premises . . . ."

11 Better Markets Comment Letter, *supra* note 4. Better Markets conducted a best-efforts review of formal agency enforcement actions that were issued between January 1, 2023, and August 31, 2024, and identified 29 actions that included language directing the recipient to take some action related to third-party risk.

12 Financial Stability Oversight Council, Annual Report 98 (2022), https://home.treasury.gov/system/files/261/FSOC2022AnnualReport.pdf.

Since the publication of the Bitcoin whitepaper in 2008,[13] crypto developers have created thousands of cryptocurrencies. Together, these developers and their venture capital backers have spun a narrative that these projects would revolutionize everything in modern life from finance to the internet. Yet, after nearly two decades since the creation of Bitcoin, and billions of dollars in venture capital investment, the promised golden goose has yet to yield any golden eggs.[14] In fact, not only has cryptocurrency come up empty on its promises, but it also is yet to be determined if any cryptocurrency will ever yield any substantive use case in the future. So far, its primary accomplishment has been to inflict excruciating losses on millions of investors who have seen billions of dollars disappear in fraudulent crypto schemes and ensuing bankruptcies.

Crypto proponents argue for the uniqueness of their products, asserting that existing financial regulations do not apply to them. However, this claim is fundamentally flawed. The reality is that many crypto tokens fall squarely within the definitions of securities as established by law. Historical precedents show that industries attempting to sidestep regulation, whether through innovative financial products or technological advancements, have consistently failed to secure exemptions from the very laws designed to protect investors.

The argument against regulatory compliance is often couched in terms of innovation and progress. Yet, this narrative conveniently ignores the implications of a lawless financial landscape. Crypto exchanges find themselves embroiled in legal battles for operating as unregistered broker-dealers, custodians, and exchanges. They do not adhere to the decades-old compliance standards required of traditional financial institutions, undermining the trust that underpins our capital markets and putting investors at risk.

Irrelevance and Distrust

A CNBC poll[15] from late 2022 found that just 8% of Americans had a positive view of cryptocurrencies while a 2024 Harris poll[16] found that 69% of likely voters in swing states held negative views of crypto. The industry likes to claim that 52 million Americans own crypto, but that figure comes from a deceptive poll paid for by the industry.[17] The actual figure, according to data from the Fed, is closer

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13 Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (Oct. 31, 2008), https://bitcoin.org/bitcoin.pdf.

14 Better Markets, *The Golden Goose That Never Laid Golden Eggs: Unfulfilled Promises of Cryptocurrencies* (July 2023), https://bettermarkets.org/wp-content/uploads/2023/07/BetterMarkets_Unfulfilled_Promises_Crypto_July2023.pdf.

15 Steve Liesman, *Just 8% of Americans have a positive view of cryptocurrencies now, CNBC survey finds*, CNBC (Dec. 7, 2023), https://www.cnbc.com/2022/12/07/just-8percent-of-americans-have-a-positive-view-of-cryptocurrencies-now-cnbc-survey-finds.html.

16 HARRIS POLL INSIGHTS, *CRYPTO ATTITUDES IN SWING STATES* 11 (May 7, 2024), https://theblockchainassociation.org/wp-content/uploads/2024/05/DCG_HarrisPoll-Research-Report.pdf.

17 Better Markets, *Proceed with Caution: Deceptive Polling Paid-for by the Cryptocurrency Industry* (July 2023), https://bettermarkets.org/wp-content/uploads/2023/07/BetterMarkets_Deceptive_Polling_Paid-For_ByCrypto_July2023-1.pdf.

to 18 million Americans[18]—and that number is declining. Moreover, of the Americans who own crypto, a mere 1% used it in 2023 to buy something, down from 2% in 2022.[19]

So, nearly two decades after the creation of Bitcoin and billions of dollars in venture capital investment, the crypto industry still has no socially acceptable use. The industry has made claims that it would make our financial system more inclusive, serve as a payment mechanism and/or serve as a hedge against inflation. These claims, and many more, have proven to be baseless.[20]

The least disreputable use for crypto continues to be gambling and wild speculation. It remains a key tool for tax evaders, money launderers, ransomware, organized crime syndicates, foreign terrorist organizations, and state-sponsored actors on behalf of rogue states like North Korea and Iran. It also enables fraud and scams that have stolen hundreds of millions of dollars from the American people.[21]

Valuation and Volatility

The extreme rise and fall in the value of crypto shows its volatility. After modest beginnings, the market capitalization, or total supply of crypto based on the current market price, reached a peak near $3 trillion in 2021 but then quickly lost nearly two-thirds of its value with a fall back to about $1 trillion in 2022 (see Chart 1).[22] Following the 2024 presidential election, the crypto market again soared above $3 trillion.[23]

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18 *See* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2023, at 37 (May 2024), https://www.federalreserve.gov/publications/files/2023-report-economic-well-being-us-households-202405.pdf; Eddie Mitchell, *7% of Americans Hold Cryptocurrencies, Says Fed– Is 40% Claim Just Crypto Industry Wishful Thinking?,* CCN (Aug. 6, 2024), https://www.ccn.com/news/crypto/americans-cryptocurrencies-fed-40-crypto-industry-wishful/.

19 BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *supra* note 18.

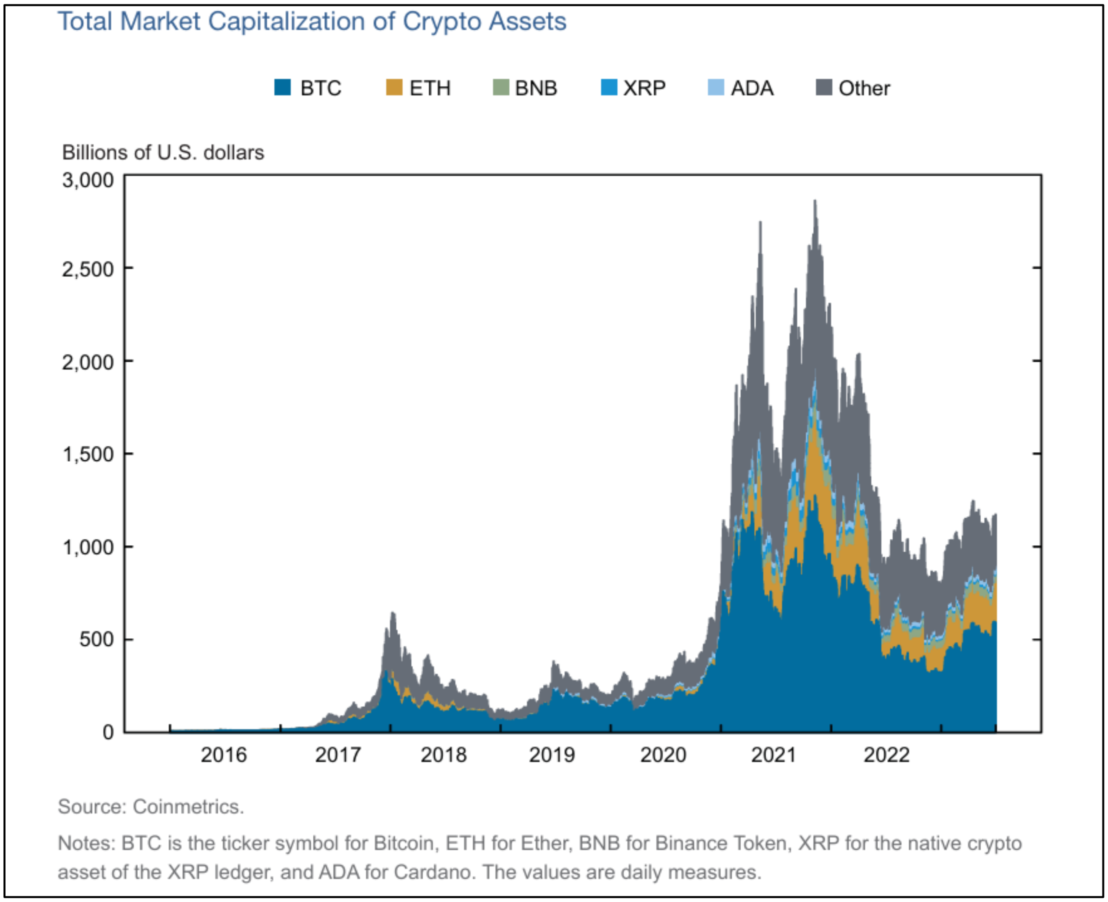
20 Better Markets, *Crypto 101: Bait-and-Switch, False Promises, Influence Peddling and a Growing Threat to our Financial System and Main Street* (Nov. 14, 2024), https://bettermarkets.org/wp-content/uploads/2024/11/Better_Markets_Crypto_Lame_Duck_Fact_Sheet-11.14.24.pdf.

21 *Id*.

22 Azar et al., *supra* note 7, at 11.

23 Will Schmitt, *Value of global crypto market tops $3tn for first time in three years*, FINANCIAL TIMES (Nov. 11, 2024), https://www.ft.com/content/4e304f28-4caf-4fbf-987c-17fc6de4fc4a.

Chart 1



2024 Election Influence

The crypto industry spent almost $200 million on campaign ads during the 2024 election.[24] While crypto spent big on ads attacking skeptical lawmakers, they never actually mentioned crypto.[25] This is the equivalent of Ford or Chevrolet running an ad campaign that never mentions cars or trucks!

This is because the crypto industry has a long record of lawbreaking and enabling outrageous crimes like ransomware and money laundering, which is why American voters are rightfully distrustful of crypto. The industry spent hundreds of millions of dollars to eliminate lawmakers who stand up for consumers and the public interest but never mentioned the real reason they are trying to defeat these candidates. What are they trying to buy with that money? Crypto's top goal is to get its special interest legislation passed to give the industry an aura of legitimacy, despite its long history of deceit and lies.

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[24] Brady Dale, *No crypto talk in the election ads crypto paid for*, AXIOS (Oct. 29, 2024), https://www.axios.com/2024/10/29/crypto-election-ad-spend-fairshake-pac.

[25] Better Markets, *supra* note 20.

Key Dangers of Crypto

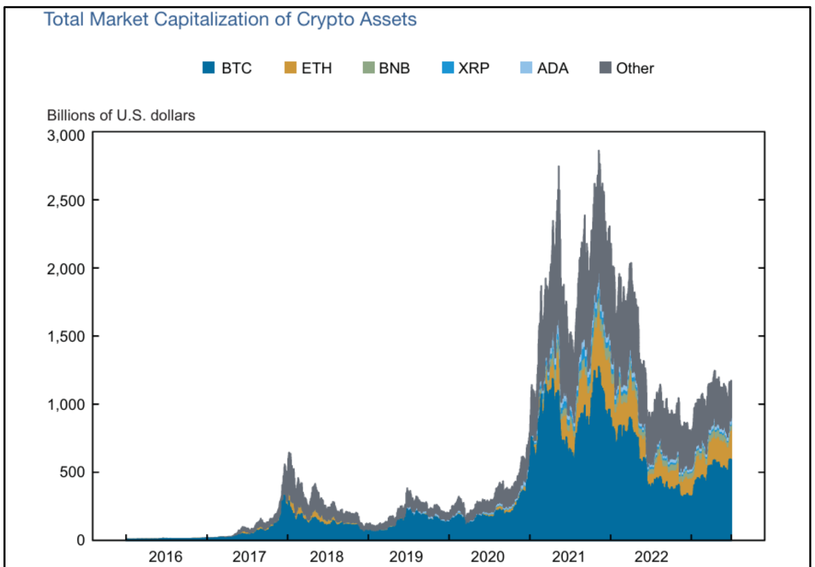
Unlike the benefits of convenience, cost savings, and security that the crypto industry would like the public to see, the truth is that crypto presents a long list of risks that endanger American families, banks, the financial system, the economy, and financial stability, including:

- Valuation volatility,
- Vulnerability to runs,
- Fraud,
- Harm to minorities and underserved communities, and
- False claims of FDIC deposit insurance protection.

Crypto Valuations are Volatile

The total value of crypto in circulation skyrocketed from around $250 billion in 2000 to $3 trillion in 2021 and then subsequently fell back to around $1 trillion in 2022 (see Chart 1).[26]

Chart 1



Source: Coinmetrics.

Notes: BTC is the ticker symbol for Bitcoin, ETH for Ether, BNB for Binance Token, XRP for the native crypto asset of the XRP ledger, and ADA for Cardano. The values are daily measures.

In late 2024, following the presidential election, the crypto market cap again reached $3 trillion driven in part by the perceived support that crypto has in the Trump administration.[27] Not only is

26 Azar et al., *supra* note 7, at 11.

27 Schmitt, *supra* note 23.

crypto incredibly volatile over the course of several years, but it has also been volatile from day to day. For example, Bitcoin's value has dropped 30% in a single day.[28] Industry observers offer many explanations for crypto's volatility:

> [Crypto] isn't intrinsically valuable. There isn't gold or diamonds or anything backing up crypto's value. At no point did the U.S. Treasury say, 'Yes, any time someone wants to bring us Bitcoin, we will give them X number of dollar bills from our reserves.' Not all die-hard crypto fans would agree, but there is an argument that crypto's value really only comes from how much people are willing to trade for it—in goods, other cryptocurrencies, or in dollars.
>
> Let's unpack this.
>
> There are investors who are interested in crypto not to use it as a currency, but to use it as a hedge against inflation, or as an investment vehicle. ***But without anything intrinsically valuable backing up the currency, crypto's market value is based entirely on speculation, which is essentially educated guesswork.***[29]

While some investors undoubtedly have benefited from gains during crypto booms, the frequent and significant crashes that follow leave many if not most investors vulnerable to heavy losses. Crypto's volatility creates opportunities for some traders to gain, but just as many, if not more, traders face significant losses, especially those who borrow money (leveraged trading) to trade.

One might look at the price increases and decreases in crypto over the long term and conclude that they balance each other out. Unfortunately, that is only true for a steadfast buy-and-hold purchaser, not for those who trade in and out of the crypto market at different times (sometimes being forced to do so during price movements that require a leverage crypto owner to add more funds to cover their positions). ***That volatility can and often does lead to significant losses.***

Crypto Causes Bank Runs

It is well-known and has been well-documented that exposure to crypto was a common cause of the failures of Signature, SVB, and Silvergate.[30] For example, a CRS report called the phenomena "***the manifestation of crypto market volatility affecting traditional finance***."[31]

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28 Ryan Browne & Arjun Kharpal, *Bitcoin plunges 30% to $30,000 at one point in wild session, recovers somewhat to $38,000*, CNBC (May 18, 2021), https://www.cnbc.com/2021/05/19/bitcoin-btc-price-plunges-but-bottom-could-be-near-.html.

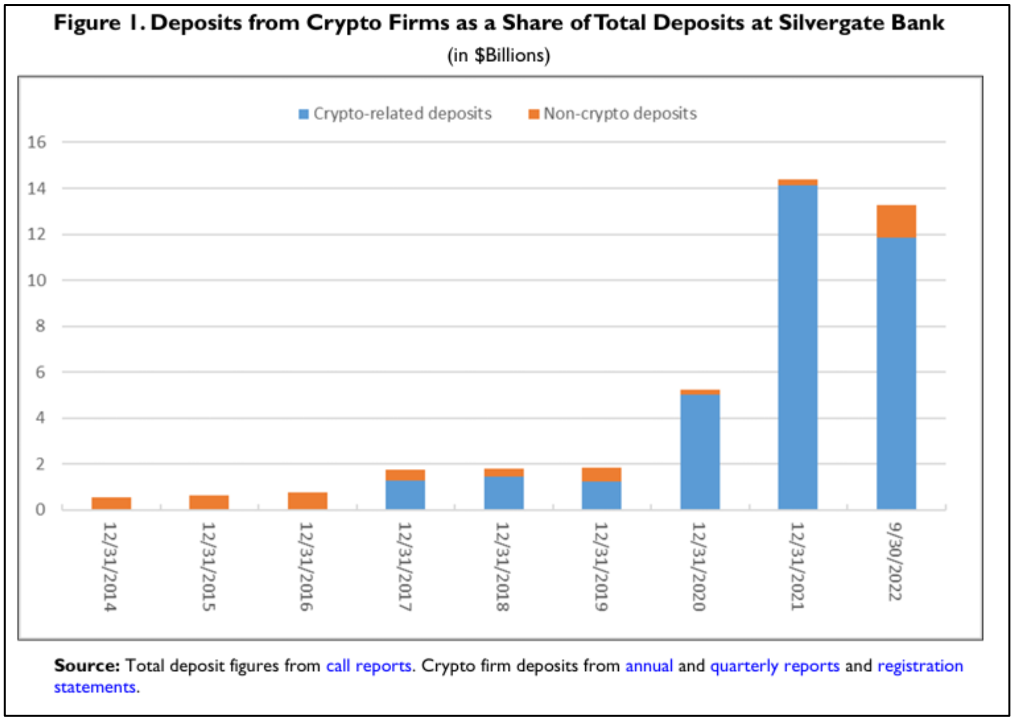
29 Nicole Lapin, *Explaining Crypto's Volatility*, FORBES (Apr. 21, 2022), https://www.forbes.com/sites/nicolelapin/2021/12/23/explaining-cryptos-volatility/.

30 *See, e.g.*, CONGRESSIONAL RESEARCH SERVICE, *supra* note 3.

31 *Id.*

The CRS detailed how all three banks held deposits or made loans to the crypto industry. For example, at one point before its liquidation, 98% of Silvergate's deposits were crypto-related (see Chart 2).[32]

Chart 2



Not only was the failed banks' direct exposure to crypto a catalyst for their failure, but the exposure caused second-order panic among non-crypto customers who recognized the risk and pulled their deposits from the failing banks, only accelerating their demise. For example, the FDIC's post-mortem report of Signature's failure details the toxic combination of reputation risk related to the inherent volatility of crypto, inadequate management, and crypto exposure:

> SBNY's significant client concentration of digital asset companies put it in a precarious position when the "crypto winter" hit in 2022. News articles scrutinized SBNY's involvement in the industry. SBNY experienced depositor run-off from both crypto customers as well as traditional depositors. However, management did not acknowledge that its exposure to the crypto industry might entice other customers to pull or reduce their own deposits. . . .
>
> SBNY management countered a Wall Street Journal article in a January 23, 2023, press release, trying to correct the perception that SBNY was a "crypto lender" or that it invested in, held, or was a custodian of crypto assets. . . .

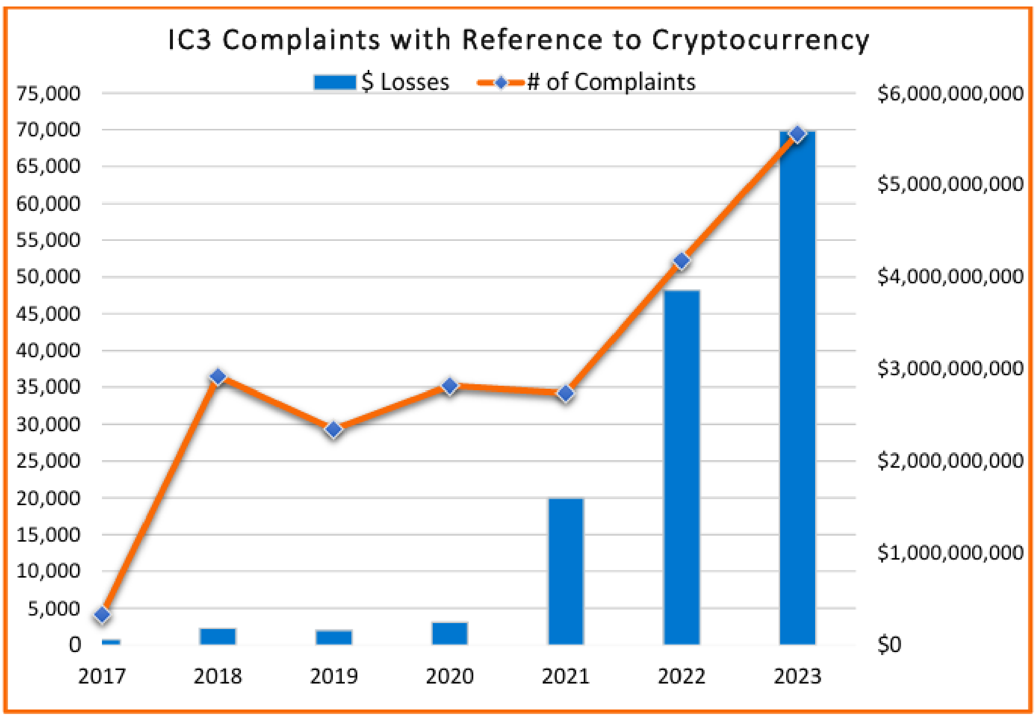
32 *Id*. at 2.

On March 10, 2023, SBNY began to experience deposit withdrawals, with deposit outflows accelerating significantly after the announced closure of SVB. SBNY did not have sufficient cash to fulfill its large volume of deposit withdrawal requests, which equaled 20 percent of total deposits. SBNY was unprepared for and unable to enact contingency plans against the large deposit withdrawal requests.[33]

Crypto Enables Fraud

The latest data show that in 2023, the FBI's Internet Crime Complaint Center ("IC3") received more than 69,000 complaints regarding financial fraud involving crypto. Estimated losses from crypto frauds were $5.6 billion. Perhaps most troubling is that the FBI's report reveals that crypto frauds are becoming more prevalent and costly (see Chart 3). Losses from crypto fraud now account for nearly half of total losses from all types of fraud.[34]

Chart 3



Crypto Harms Minorities and Underserved Communities

Crypto claims that it is an innovative financial product that can be highly beneficial to those who have been shut out of, exploited by, or discriminated against by the traditional banking and financial systems. These claims are targeted at the unbanked, the underbanked, low- and moderate-income

33 Federal Deposit Insurance Corporation, *supra* note 6, at 13-15.

34 Federal Bureau of Investigation, *supra* note 8, at 5.

households, and communities of color, particularly Black Americans (as well as targeted at policymakers and elected officials who care about such people).[35] Financial inclusion and wealth creation are the core of crypto's claims and marketing. Advocates, including some prominent figures,[36] often promote crypto as a tool that could reshape, if not displace, the traditional financial system.

One of the most significant reasons for crypto's appeal to minority communities, especially, is the deep mistrust many have toward traditional financial systems.[37] Historically, minority groups in the U.S.—particularly Black and Latino communities—have been subjected to financial discrimination, exclusion, and exploitation through practices like redlining, loan denials, predatory lending, and "banking while Black" practices.[38] These experiences have rightly generated deep skepticism about the established financial sector, which makes crypto's promise of an inclusive, decentralized alternative more attractive.[39] The appeal rests on the idea that anyone, regardless of background, race, ethnicity, and current income level, can access wealth-building opportunities without gatekeepers or intermediaries. As the crypto industry is well aware, this message can be incredibly enticing in communities that have faced systemic exclusion from wealth and wealth-building opportunities. That's why crypto proponents frequently cite its potential to integrate the underbanked and unbanked into a new financial system without a long disreputable history, providing opportunities that traditional institutions have often denied them.[40]

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35 Dennis Kelleher & Cantrell Dumas, *Crypto's Predatory Targeting of Minority Communities*, Better Markets (Oct. 24, 2024), https://bettermarkets.org/wp-content/uploads/2024/10/Better_Markets_Fact_Sheet_Crypto_Impact_Minorities-10.24.24.pdf.

36 FinTech Global, *From fame to FinTech: ten celebrity-backed financial firms you must know about* (July 7, 2021), https://fintech.global/2021/07/07/from-fame-to-fintech-ten-celebrity-backed-financial-firms-you-must-know-about/.

37 Silvia Foster-Frau, *Locked out of traditional financial industry, more people of color are turning to cryptocurrency*, The Washington Post (Dec. 1, 2021), https://www.washingtonpost.com/national/locked-out-of-traditional-financial-industry-more-people-of-color-are-turning-to-cryptocurrency/2021/12/01/a21df3fa-37fe-11ec-9bc4-86107e7b0ab1_story.html.

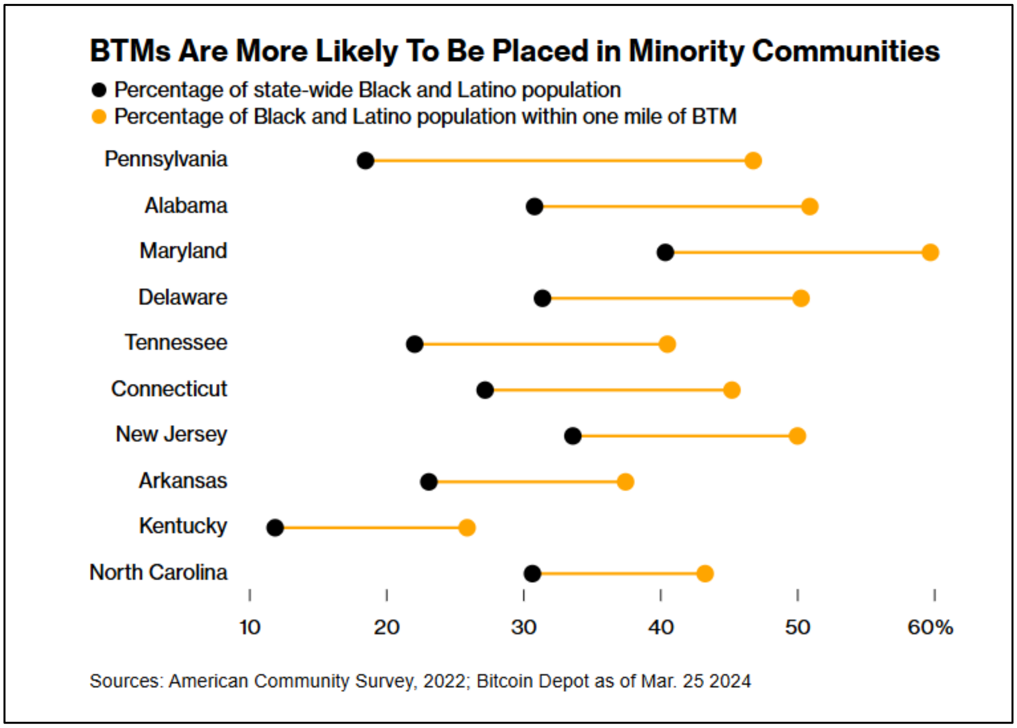
38 *See, e.g.*, Emily Flitter, *The White Wall* (2022); Emily Flitter, *'Banking While Black': How Cashing a Check Can Be a Minefield*, The N.Y. Times (June 18, 2020), https://www.nytimes.com/2020/06/18/business/banks-black-customers-racism.html.

39 PYMNTS, *Will 2024 See Crypto Make Good on Its Financial Inclusion Promise?* (Jan. 4, 2024), https://www.pymnts.com/news/financial-inclusion/2024/will-2024-see-crypto-make-good-on-its-financial-inclusion-promise/.

40 Coinbase, Coinbase Presents: Black Americans & Crypto, https://www.coinbase.com/learn/community/black-americans-and-crypto (last accessed Feb. 4, 2025).

Illustrating all this is the crypto industry's targeting of minorities with Bitcoin ATMs ("BTMs") (see Chart 4).[41] As Bloomberg detailed,[42] BTMs have clustered in Latino, Black, and low-income neighborhoods, much like payday lenders and check cashing services. The placement of Bitcoin ATMs suggests ethnic targeting.

Chart 4



Crypto Is Not Protected by FDIC Deposit Insurance

For nearly a century, FDIC deposit insurance has been trusted by Main Street Americans, who have not lost a penny of insured funds since the FDIC was created. In recent years, though, **crypto firms and other** fintech companies have endangered this trust by claiming that funds customers place with them are also FDIC insured, when in fact they are not.

Since 2022, the FDIC has sent 22 advisory letters to fintech companies, demanding that they cease making false and misleading statements about deposit insurance.[43] Details differ across the letters, but frequently recurring themes include language implying or flatly stating—falsely—that the fintech itself is FDIC insured, that the fintech customer's funds are protected by the FDIC in the event the fintech fails, or that crypto assets or stocks are protected by FDIC insurance. ***One entity went so far as to register the Internet domain name "FDICCrypto.com," where users were redirected to a***

41 Elijah Nicholson-Messmer & Ella Ceron, *Bitcoin ATMs Flood Black, Latino Areas, Charging Fees up to 22%*, BLOOMBERG (Apr. 17, 2024), https://www.bloomberg.com/news/articles/2024-04-17/bitcoin-atms-flood-black-latino-areas-charging-fees-up-to-22.

42 *Id*.

43 Better Markets Comment Letter, *supra* note 4.

crypto trading platform. A few of the FDIC letters were not sent to fintechs but to fintech or crypto trade publications that ran advertisements stating that various fintechs were FDIC-insured. Despite their tough wording, the FDIC letters were not binding orders; instead, the letters were only warnings that if the misconduct did not stop, the FDIC could, at some point, exercise its authority to take formal enforcement actions. Inexplicably, the FDIC has not publicly used its authority to address this misconduct by holding either the fintechs or their partner banks formally accountable.

The bottom line is that these egregious misrepresentations by crypto firms deceive customers and severely harm them financially.

Regulatory Responsibilities

As detailed earlier, banking regulators have clear goals and legal mandates that apply to all business decisions made by banks, whether or not they involve crypto companies. These include promoting access to banking services, ensuring compliance with law, and operating banks in a safe and sound manner.

Existing Risk Management Principles

The banking agencies have made several clear statements that reinforce this approach. For example, in 2015 the regulators said:

> Financial institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law.[44]

In 2023, specifically in response to concerns about crypto companies, the banking regulators issued a joint statement confirming that banks should apply existing and appropriate risk management principles to crypto-related entities, and:

> Banking organizations are neither prohibited nor discouraged from providing banking services to customers of any specific class or type, as permitted by law or regulation.[45]

Regulators go further and describe steps that may be effective for banks when assessing and managing the risk of crypto entities, including:

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44 Federal Deposit Insurance Corporation, *Statement on Providing Banking Services* (Jan. 28, 2015), https://www.fdic.gov/news/financial-institution-letters/2015/fil15005.html.

45 Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, & Office of the Comptroller of the Currency, *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* (Feb. 23, 2023), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230223a1.pdf.

- Understanding the direct and indirect drivers of potential behavior of deposits from crypto-asset-related entities and the extent to which those deposits are susceptible to unpredictable volatility.
- Assessing potential concentration or interconnectedness across deposits from crypto asset-related entities and the associated liquidity risks.
- Incorporating the liquidity risks or funding volatility associated with crypto-asset related deposits into contingency funding planning, including liquidity stress testing and, as appropriate, other asset-liability governance and risk management processes.
- Performing robust due diligence and ongoing monitoring of crypto-asset-related entities that establish deposit accounts, including assessing the representations made by those crypto-asset-related entities to their end customers about such deposit accounts that, if inaccurate, could lead to rapid outflows of such deposits.[46]

Bank Secrecy Act

Banking regulators also apply a series of laws and regulations known as the Bank Secrecy Act ("BSA") to combat money laundering and the financing of terrorism. A representative description of banking agency policies toward BSA enforcement is as follows:

> The FDIC and the other federal banking agencies recognize that as a practical matter, it is not possible for a financial institution to detect and report all potentially illicit transactions that flow through an institution. Isolated or technical violations, which are limited instances of noncompliance with the BSA that occur within an otherwise adequate system of policies, procedures, and processes, generally do not prompt serious regulatory concern or reflect negatively on management's supervision or commitment to BSA compliance.[47]

Concerns about debanking have been expressed in the context of the BSA. For example, a banking industry trade group recently argued that:

> [B]anks are heavily incentivized to file SARs [Suspicious Activity Reports] because even an isolated and inadvertent miss can give examiners a reason to sanction a bank or call its entire risk management system into question," and that in turn, examiners will expect banks to close an account for which there are frequent SARs.[48]

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46 *Id*.

47 Federal Deposit Insurance Corporation, *Statement on Providing Banking Services* (Jan. 28, 2015), https://www.fdic.gov/news/financial-institution-letters/2015/fil15005.html.

48 Bank Policy Institute Staff, *The Truth About Account Closures* (Dec. 13, 2024), https://bpi.com/the-truth-about-account-closures/.

This assertion is misguided and wrong. ***The public record of enforcement actions listed on agency websites is consistent with actions taken to address apparent violations of law and to address unsafe and unsound practices, on a fact-specific and well-supported basis, at specific banks.*** Federal banking agencies' actual enforcement actions related to the BSA cite serious and sustained programmatic shortcomings in BSA compliance.[49] ***Any shortcomings in the banking agencies' enforcement programs, rather, are in the direction of being insufficiently forceful to appropriately protect the public.***

Bank-Fintech Partnerships with Crypto Firms & Related Deposit Insurance Concerns

Banks are increasingly entering into partnering relationships with fintech firms, including some crypto firms, to provide financial services to customers. In these arrangements, the bank remains responsible for ensuring that activities conducted by its partner on its behalf comply with applicable law. Consistent with this principle, the banking agencies have issued several enforcement actions against banks for legal violations attributable to their fintech partners.[50]

In addition to these formal actions, the FDIC has issued numerous warning letters over the last few years in response to false statements made by fintech firms about the applicability of deposit insurance coverage.[51] Frequently recurring claims made by the fintech firms—all false—are that the fintech firm is FDIC-insured, that cryptocurrency is FDIC insured, or that the FDIC will protect fintech customers if the fintech fails.

Better Markets has observed that the FDIC's response to these false claims has consisted solely of letters to the fintech firms warning them that formal penalties could be applied if the conduct does not stop. We have been unable to identify any formal actions penalizing these false statements against culpable fintechs, or their partner banks. The lack of formal penalties for this egregious misconduct, which has deceived and financially harmed tens of thousands of ordinary citizens, is a regulatory failure and a disservice to the public.

Recommendations

In conclusion, Better Markets believes that banks should take a risk-based approach to assessing individual customer relationships. If a bank enters the relationship, any resulting violations of law or unsafe and unsound practices can and should be vigorously addressed by the regulators. While the banking regulators' actions and overall approach to crypto entities have been consistent with their duties to enforce the law and protect the banking system, there are several opportunities to improve the clarity of expectations of banks.

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49 This statement is based on an informal review of the 29 enforcement actions cited in Better Markets' Comment Letter, *supra* note 4, and informal review of high-profile regulatory BSA enforcement actions involving large U.S. banks.

50 Informal review of 29 enforcement actions listed in Better Markets, *supra* note 4.

51 *Id.* at 8.

More Clarity on the Rules and Expectations of Banks

As detailed earlier in this document, the banking regulators have issued multiple statements on expectations for banks that are providing services to crypto entities. These could be further clarified with more detailed direction or as former Consumer Financial Protection Bureau ("CFPB") Director Rohit Chopra described as "objective, quantitative, and individualized" risk assessments.[52] Chopra, who proved that government can work for the American people by returning $6.5 billion to consumers who were ripped off by the financial industry's greed and unlawful actions since 2021, rightly said that more bright-line limits could help to combat inappropriate instances of debanking.

Greater Disclosure Requirements for Banks

Chopra also recommended increased transparency to combat the perception of arbitrary debanking activity. The current banking rules put limits on the amount of information on the reasons for a bank account closure that can be shared publicly. If banks were required to specify the reason for an account closure, however, there would be less chance of misunderstanding or jumping to conclusions about malicious intent or discrimination when an account is closed.

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52 Jon Hill, *CFPB's Chopra Sees Room For Rules To Stem Debanking*, LAW360 (Jan. 27, 2025), https://www.law360.com/articles/2289603/cfpb-s-chopra-sees-room-for-rules-to-stem-debanking.

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Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform, to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

By being a counterweight to Wall Street's biggest financial firms through the policymaking and rulemaking process, Better Markets is supporting pragmatic rules and a strong banking and financial system that enables stability, growth, and broad-based prosperity. Better Markets also fights to refocus finance on the real economy, empower the buyside and protect investors and consumers.

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