

Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
December 14, 2022 at 10:00 AM

Mr. Chairman, thank you.

We're here today to discuss the fallout after the collapse of FTX. Some Americans likely suffered significant losses from the bankruptcy of FTX and Sam Bankman-Fried's misconduct.

On Monday, we saw the arrest of Mr. Bankman-Fried. This came as a surprise to no one, save for maybe Mr. Bankman-Fried. We owe it to each customer to get to the bottom of the FTX implosion, and any violations of the law should be aggressively prosecuted. The Department of Justice and other enforcement agencies should expeditiously investigate the unseemly relationship between a company that was effectively a hedge fund, and an exchange entrusted with customer funds.

While all the facts have not yet come to light, we've clearly witnessed wrongdoing that is almost certainly illegal. There was unauthorized lending of customer assets to an affiliated entity, and there were fraudulent promises to investors and customers about FTX's operations. These are outrageous and completely unacceptable. The SEC also believes FTX committed fraud against equity investors. They're going to pursue this, as they should.

But I want to underscore a bigger issue here: The wrongful behavior that occurred here is not specific to the underlying asset. What appears to have happened here is a complete breakdown in the handling of those assets.

In our discussion of FTX today, I hope we are able to separate potentially illegal actions from perfectly lawful and innovative cryptocurrencies.

Now it's important to define this space. Cryptocurrencies are analogized to tokens, but they are actually software. The software foundational to the crypto ecosystem are like operating systems. Applications then run on top of these operating systems. Currently there are many competing operating systems, and apps running on them. There is nothing intrinsically good or evil about software; it's about what people do with it.

With this analogy in mind, what we should all understand here is one simple thing: The code committed no crime. FTX and cryptocurrencies are not the same thing. FTX was opaque, centralized, and dishonest. Cryptocurrencies are open-source, decentralized, and transparent.

To those who think that this episode justifies banning crypto, I'd ask you to think about several examples. The 2008 financial crisis involved misuse of products related to mortgages. Did we decide to ban mortgages? Of course not. A commodity brokerage firm run by former New Jersey Senator John Corzine collapsed after customer funds – including U.S. dollars – were misappropriated to fill a shortfall from the firm's trading losses. Nobody suggested that the problem was the U.S. dollar, and that we should ban it. With FTX, the problem is not the instruments that were used. The problem was the misuse of customer funds, gross mismanagement, and likely illegal behavior.

Let's talk about what comes next. Some of my colleagues have suggested pausing cryptocurrencies before we can address it. This is profoundly misguided, not to mention impossible. Short of enacting draconian, authoritarian policies, cryptocurrency cannot be stopped. If we tried, the technology would simply migrate offshore; cryptocurrency does not need brick and mortar facilities to operate. And typing computer code should clearly be seen as a form of protected speech.

Are we going to decide to pause our Constitution to stop crypto? This is exactly the kind of mindset that has driven this activity to the dark and less regulated parts of the world.

Now, if Congress had passed legislation to create a well-defined regulatory regime with sensible guardrails, we'd have multiple U.S. exchanges competing here under the full force of those laws. It's not clear that FTX would have existed, at least at its scale, if we had domestic guidelines for American companies. The complete indifference to an appropriate regulatory regime by both Congress and the SEC has probably contributed to the rise of operations like FTX.

Others have suggested we refrain from addressing cryptocurrency at all, so as to not legitimize its use. This is not only misguided, it's irresponsible. Congress can and should offer a sensible approach for the domestic regulation of these activities.

We could start with stablecoins. This is an activity that my colleagues can analogize to existing, traditional finance products. There's clear bipartisan agreement that stablecoins need additional consumer protections. There are virtually none now. I've proposed a framework to do that. As have Senators Lummis and Gillibrand.

Congress also needs to determine the criteria by which the issuance of digital assets will be regulated. And we should acknowledge the possibility that certain token issuances, like Bitcoin, don't need any further regulation. We should also clearly delineate regulations for secondary market trading of these assets, including at exchanges like FTX US. Some of my colleagues have begun this important work.

We can provide sensible consumer protections for which there would be very broad agreement, while still allowing for the development of applications that are going to run on operating systems that we can't even imagine today. Just as we never imagined applications like Uber operating on iOS today.

Let me conclude with this. It's absolutely essential to investigate any fraud and violations of existing law, and prosecute those who are committing those crimes. Congress owes it to the American people to do so here. But this is fundamentally not about the kind of assets that were held by FTX. It's about what individuals did with those assets.

Individuals can also be tremendously empowered when they use cryptocurrencies. They can protect against inflation when governments irresponsibly manage their own currencies. They can provide useful services without the need for a company or middleman. And they can let individuals preserve the freedom to transact privately.

Mr. Bankman-Fried may have well committed multiple crimes. The SEC and DOJ will determine that. But let's remember to distinguish between human failure and the instrument with which the failure occurred. In this case the instrument is software. And the code committed no crime. And while Sam Bankman-Fried very well may have, it is very important we do not convict the code of anything but preserving and protecting individual autonomy.