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Author

Park, James

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CRYPTO ASSOCIATIONS

BY

JAMES J. PARK

PROFESSOR OF LAW

Crypto Associations

James J. Park



ABSTRACT

Crypto associations operate the digital ledgers known as blockchains. They generally do not choose to organize as traditional legal entities governed by well-established fiduciary duties. Instead, they claim to have no central manager and rely on economic incentive to spur decentralized governance. In litigation, crypto associations have contended that they owe no contractual or other legal obligation to their investors. Many courts have disagreed and found that crypto associations are partnerships or essentially limited partnerships that owe legal duties to purchasers of crypto assets. In doing so, they have rejected a strong version of contractualism that would permit investors to enter an arrangement where they have no rights. Crypto associations highlight an additional reason for legal entities. Not only do entities lock in capital for long-term investment, as noted by corporate law scholars, they also lock in capital to help ensure that enterprises comply with their social obligations. As a substitute for an entity, crypto regulation should require crypto associations that sell crypto assets to the public to designate a party as a Controller that is accountable to crypto investors.

AUTHOR

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INTRODUCTION

Investors are now willing to pay significant amounts for ownership of entries recorded on digital ledgers known as blockchains.¹ These entries are often referred to as *crypto* because blockchains are structured using cryptography to ensure their integrity.² Such entries can become *assets* if enough individuals believe that a blockchain will be widely used to record transactions and its entries represent a valuable currency. Enthusiasm for *crypto assets* has fluctuated over the decade since they emerged, and for now it appears that there will be renewed efforts to enact law that facilitates their sale to the public.³ Proponents of crypto have argued that it does not fit within existing regulatory frameworks such as securities regulation, which would require disclosure if a crypto asset is a security and is distributed to the public.

Standing behind every crypto asset is a *crypto association*.⁴ Blockchains are typically not formally organized as traditional legal entities such as a corporation,

1. A blockchain is a digital list that can be used to record transactions. The right to control a blockchain entry can be assigned to an individual and is transferable. A blockchain can be updated to reflect a transfer of rights after going through a verification process. This Article is concerned with public blockchains. Such “[p]ublic, permissionless networks allow anyone to participate in the network’s operation” *Statement on Certain Proof-of-Work Mining Activities*, U.S. SEC. & EXCH. COMM’N (Mar. 20, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025> [<https://perma.cc/G8VD-GLTU>]; see also Georgios Dimitropoulos, *The Law of Blockchain*, 95 WASH. L. REV. 1117, 1130 (2020) (describing the difference between public and private blockchains). In a public blockchain, members of the public can obtain the rights to the blockchain’s entries and participate in verifying transactions.
2. See, e.g., Shaanan Cohnen, David Hoffman, Jeremy Sklaroff & David Wishnick, *Coin-Operated Capitalism*, 119 COLUM. L. REV. 591, 602 (2019) (“[A] cryptoasset is nothing more than an entry in a ledger that specifies that a particular user, identified by a certain ‘private key’ (essentially, a fancy password) is the sole party able to exercise a discrete set of powers associated with the ledger entry.”). For a short history of cryptography, see PRIMAVERA DE FILIPPI & AARON WRIGHT, *BLOCKCHAIN AND THE LAW: THE RULE OF CODE 14–16* (2018).
3. See, e.g., Krystal Hur, *Crypto Has an Ally in the White House. What’s Ahead for Digital Currencies in 2025*, WALL ST. J. (Dec. 30, 2024, at 10:00 ET), <https://www.wsj.com/finance/currencies/crypto-bitcoin-policy-2025-c9fae2c2> [<https://perma.cc/WN7F-S8NN>]. In 2025, legislation regulating stablecoins was signed into law. See Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act), Pub. L. No. 119-27, 139 Stat. 419. Stablecoins are crypto assets that are backed by other assets and attempt to maintain a stable value. See, e.g., Gary B. Gorton & Jeffery Y. Zhang, *Taming Wildcat Stablecoins*, 90 U. CHI. L. REV. 909, 917–29 (2023) (discussing regulatory issues raised by stablecoins). The House also passed the Digital Asset Market Clarity Act of 2025 (CLARITY Act of 2025), H.R. 3633, 119th Cong. (2025), a bill that would regulate the offer and sale of crypto assets. The Senate is now considering the CLARITY Act.
4. Long before the emergence of crypto assets, many states recognized the existence of associations that may not necessarily be legal entities. Under New York law, “[a]n

partnership, or limited liability company (LLC).⁵ Instead, they operate through a decentralized network of associates who are bound together by economic incentive to collectively run the blockchain.⁶ A *Developer* typically starts the blockchain by writing the computer code that creates a digital ledger and sets the rules that govern it. The Developer recruits *Validators* who will verify that changes to the blockchain reflecting transactions are valid in return for compensation in the form of crypto assets. *Purchasers* of the crypto asset are also necessary to initially fund the creation of the blockchain and provide a liquid secondary market that enables Developers and Validators to realize a return on their investment by selling the crypto assets they earn for their work.⁷

Many crypto associations maintain that they do not operate as legal entities that owe duties to their investors. They do not have a central decisionmaker such

unincorporated association is an organization composed of a body of persons united without a charter for the prosecution of some common enterprise. It is not a legal entity separate from the persons who compose it.” *Meinhart v. Contresta*, 194 N.Y.S. 593, 594 (Sup. Ct. 1922). California defines associations broadly as “an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.” CAL. CORP. CODE § 18035(a); *see also* *Commodity Futures Trading Comm’n v. Ooki DAO*, No. 3:22-cv-05416, 2022 WL 17822445, at *6 (N.D. Cal. Dec. 20, 2022) (concluding that blockchain was an unincorporated association under California law that could be served). In California, unincorporated associations can: “(1) sue or be sued, (2) own and transfer an interest in real or personal property, (3) take property under a will, (4) register a trademark, (5) seek an injunction against a public nuisance or unfair competition, or (6) engage in commerce.” *See Vosburg v. County of Fresno*, 268 Cal. Rptr. 3d 591, 604 (Ct. App. 2020). In Delaware, “[a]n unincorporated association of persons . . . using a common name may sue and be sued in such common name and a judgment recovered therein . . . may be executed upon by levy, seizure and sale of the personal and real estate of such association, and also that of the persons composing such association in the same manner with respect to them as if they had been made parties defendant by their individual names.” DEL. CODE ANN. tit. 10, § 3904 (2026).

5. Several scholars have discussed possible forms of organization for blockchains. *See, e.g.*, Shawn Bayern, *Of Bitcoins, Independently Wealthy Software, and the Zero-Member LLC*, 108 NW. U. L. REV. 1485 (2014) (proposing that blockchains organize as LLCs); Chris Brummer & Rodrigo Seira, *Legal Wrappers and DAOs* (May 30, 2022) (unpublished manuscript), <https://ssrn.com/abstract=4123737> (discussing various entities for autonomous blockchains); Carla L. Reyes, *If Rockefeller Were a Coder*, 87 GEO. WASH. L. REV. 373 (2019) (proposing that blockchains organize as trusts); Usha R. Rodrigues, *Law and the Blockchain*, 104 IOWA L. REV. 679 (2019) (concluding that blockchains by default are partnerships).
6. *See, e.g.*, SEC v. Kik Interactive Inc., 492 F. Supp. 3d 169, 173 (S.D.N.Y. 2020) (“Blockchains are decentralized because they rely on the combined computing power of different networks of computers to process and verify transactions.”).
7. Not every crypto asset has this exact structure. Foundational blockchains that are often referred to as Layer 1 blockchains are most likely to have a full structure of Developers, Validators, and Purchasers. *See, e.g.*, Emily Ekshian, *What Are Layer 3s and Why Are They Important?*, CRYPTO COUNCIL FOR INNOVATION (Aug. 19, 2024), <https://cryptoforinnovation.org/what-are-layer-3s-and-why-are-they-important> [<https://perma.cc/LJK5-R7WF>]. Additional applications may be built on top of Layer 1 blockchains and rely on the Validators of the Layer 1 blockchain to verify transactions. *See id.*

as a board of directors or partnership management committee. Crypto defendants have crystallized this argument in litigation, taking the startling position that crypto associations owe no contractual or other legal obligation to Purchasers of crypto assets.⁸ If investor funds are diverted by Developers for their own enrichment, or crypto assets become worthless because Developers do not follow up on their promise to build a working blockchain network, the Purchasers have no legal remedy.

Courts thus far have not found this argument persuasive.⁹ They have often concluded that crypto associations are no different than traditional entities such as general and limited partnerships. There is ample common law holding that a written agreement is not necessary for a court to conclude that an association is a partnership. Some crypto associations resemble general partnerships, where owners of crypto assets invest collectively and have the right to vote on partnership decisions. Others resemble limited partnerships, where passive investors rely on the efforts of a general partner who makes decisions for the entity. Partners owe legal duties to each other, and general partners owe legal duties to limited partners. In their decisions concluding that crypto associations are entities, courts have understandably shown a preference for standard legal arrangements that provide mandatory protection for investors.

In arguing that they owe no duties to investors, crypto associations are essentially advancing a strong form of contractualism.¹⁰ A contractualist believes that enterprises are the product of negotiations between investors and managers rather than state creations defined through mandatory government rules.¹¹ If Purchasers are willing to buy crypto assets without any legal obligation from

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8. See, e.g., *SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20, 41 (D.D.C. 2024); *SEC v. Coinbase, Inc.*, 726 F. Supp. 3d 260, 282 (S.D.N.Y. 2024); *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170, 193 (S.D.N.Y. 2023); *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 322 (S.D.N.Y. 2023).
 9. See, e.g., *Binance Holdings Ltd.*, 738 F. Supp. 3d at 42; *Coinbase, Inc.*, 726 F. Supp. 3d at 294–96; *Terraform Labs*, 684 F. Supp. 3d at 193–99; *Ripple Labs*, 682 F. Supp. 3d at 322–23. The decisions so far have all been issued by district courts. Because the Securities and Exchange Commission (SEC) has withdrawn or settled most of its crypto enforcement actions, it will take some time for federal appellate courts to begin weighing in on the issue. See, e.g., Julia Shapero, *SEC Dismisses Case Against Crypto Exchange Binance*, HILL (May 30, 2025, at 14:53 ET), <https://thehill.com/policy/technology/5326171-sec-drops-case-against-binance> [<https://perma.cc/TY33-JPD9>] (listing crypto cases dismissed by the SEC).
 10. Contractualists contend that legal entities play a minimal role in the governance of corporations and partnerships. They argue that contracts between investors and founders set the meaningful governance rules for an entity. See FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* 1–39 (1991).
 11. See, e.g., Robert C. Clark, *Contracts, Elites, and Traditions in the Making of Corporate Law*, 89 COLUM. L. REV. 1703, 1707 (1989) (“To sum up the strong form of the contractual theory in a motto: Everything is negotiable.”).

Developers or any other party, a contractualist would contend that they do so out of preference and should be able to agree to that contract without governmental interference.

A standard criticism of contractualism in the corporate law literature, that investors may not consent to midstream governance changes,¹² is particularly relevant to crypto associations. Even if investors can pay less to initially invest in an enterprise with an unfair governance arrangement, it is difficult for them to price the impact of subsequent changes to governance that reduce an enterprise's value. Once they are invested, they are vulnerable to managerial abuses that reduce the value of their investment. Because they are not structured by a written contract, crypto associations have a unique tendency to shape-shift. They can change from dictatorships to democracies and back again. Crypto asset investors may find that their initial investment, which was priced based on one governance structure, can be adversely affected by such changes. There is thus a case for the law to intervene to protect investors from the risks associated with shape-shifting in crypto associations.

The efforts by crypto associations to escape legal obligations highlight a broader point about the purpose of legal entities. Corporate law theorists such as Henry Hansmann, Reinier Kraakman, Richard Squire, and Margaret Blair have argued that entities are essential because they help lock in capital that can be invested in long-term projects.¹³ Legal entities are necessary because they prevent capital from being removed from an enterprise to satisfy the debts of individual investors in a way that is difficult to achieve by contract alone. This Article argues that the problems raised by crypto associations highlight an additional reason for entities. In addition to facilitating long-term investment, entities are useful because they segregate capital to ensure it is available to comply with legal and social obligations. Because they are not necessarily organized as entities, it is difficult to prevent and remedy social harm caused by a crypto association.¹⁴

The Article concludes by arguing that crypto regulation must find a substitute for the entity for crypto associations to be viable in a society that

12. See, e.g., Lucian Arye Bebchuk, *Limiting Contractual Freedom in Corporate Law: The Desirable Constraints on Charter Amendments*, 102 HARV. L. REV. 1820 (1989) (arguing that midstream governance changes are often problematic for investors).

13. See, e.g., Henry Hansmann, Reinier Kraakman & Richard Squire, *Law and the Rise of the Firm*, 119 HARV. L. REV. 1335 (2006); Margaret M. Blair, *Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century*, 51 UCLA L. REV. 387 (2003).

14. Some crypto associations rely on entities to lock in capital. For example, the crypto associations that manage stablecoins typically control accounts that contain noncrypto assets that back the stablecoin. See, e.g., Gorton & Zhang, *supra* note 3, at 915–16 (describing stablecoin backing). Such an account could be in the name of an entity that represents the crypto association.

demands accountability of business enterprises. It proposes that federal regulation require crypto associations to designate a Controller when they raise substantial funds by selling crypto assets to the public. Such a Controller would be obligated to set aside capital to comply with disclosure obligations and cover the crypto association's legal liabilities. The identity of the Controller could change over time as the crypto association evolves.

Part I of the Article describes the basic structure of crypto associations. Part II examines the argument that crypto associations have no contractual or other legal obligations to their investors. It discusses how courts have generally rejected this argument and found that crypto associations are general partnerships or are essentially limited partnerships. Part III details how crypto associations advance a robust contractualism in contending that investors willingly enter an arrangement where they have no rights. It contends that a major criticism of contractualism, that it is difficult to conclude that investors consent to midstream changes in governance arrangements, is particularly applicable to shape-shifting crypto associations. Part IV shows that the efforts of crypto associations to escape obligations to investors highlight an essential role for entities: they help ensure that capital is locked in for social purposes. The Article concludes with a suggestion that in certain circumstances crypto regulation should require that a crypto association designate a Controller that is accountable for compliance and the association's liabilities.

I. THE STRUCTURE OF CRYPTO ASSOCIATIONS

Crypto associations aspire to support a wide array of applications for blockchains such as digital currencies and smart contracts.¹⁵ Even with this diversity, there is a basic structure that is shared by crypto associations. For a crypto asset to have value, there must be a Developer who starts the project, Validators who verify transactions, and Purchasers willing to create a secondary market for the crypto asset.¹⁶ These three parties acting together can support a

15. The most prominent example of a digital currency is Bitcoin. *See generally* NATHANIEL POPPER, *DIGITAL GOLD: BITCOIN AND THE INSIDE STORY OF THE MISFITS AND MILLIONAIRES TRYING TO REINVENT MONEY* (2015) (describing the development of Bitcoin). The most prominent example of a blockchain that supports smart contracts is Ethereum. For histories of the development of Ethereum, see LAURA SHIN, *THE CRYPTOPIANS: IDEALISM, GREED, LIES, AND THE MAKING OF THE FIRST BIG CRYPTOCURRENCY CRAZE* (2022), and CAMILA RUSSO, *THE INFINITE MACHINE: HOW AN ARMY OF CRYPTO-HACKERS IS BUILDING THE NEXT INTERNET WITH ETHEREUM* (2020).

16. These categories are overlapping, with individuals "play[ing] more than one role at once." Andrew Verstein, *Crypto Assets and Insider Trading Law's Domain*, 105 IOWA L. REV. 1, 11 (2019).

structure of incentives that permits the crypto association to operate a blockchain without centralized management.¹⁷ Without a functioning crypto association, an entry on a digital blockchain ledger will be worth little.¹⁸

A. Developers

Crypto associations typically begin with a Developer.¹⁹ The Developer will write a computer program that creates the blockchain as well as various applications associated with the blockchain. The program will also often specify rules relating to the crypto association's governance.²⁰ The blockchain can be distributed widely and downloaded by numerous individuals so that it exists in many places at once.²¹

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17. These parties essentially form a community that agrees to use the crypto assets as a currency. See J.S. Nelson, *Cryptocommunity Currencies*, 105 CORNELL L. REV. 909, 911–12, 919–20 (2020) (describing digital assets as currencies issued by nonsovereign communities). As one commentator has noted, the “incentive structures and agency costs” of the “various formal and informal associations of individuals, developers, foundations, and others that launch crypto asset projects, update the underlying code, or have a right to participate in project governance” are “underexplored compared with those of corporate executives” Yuliya Guseva, *Decentralized Markets and Self-Regulation*, 92 GEO. WASH. L. REV. 1281, 1297 (2024).
 18. *Kik Interactive*, 492 F. Supp. 3d at 180 (noting that efforts by Developers are “crucial because without the promised digital ecosystem” a crypto token “would be worthless”). This is why the SEC has noted that crypto assets are themselves not securities. See, e.g., *Coinbase*, 726 F. Supp. 3d 260, 281 (S.D.N.Y. 2024) (“[T]he SEC does not appear to contest that tokens, in and of themselves, are not securities.”); Order Denying Motion to Dismiss and Setting Case Management Conference at 19, *SEC v. Payward, Inc.*, No. 23-cv-06003-WHO (N.D. Cal. Aug. 23, 2024) (observing that the SEC is not “alleging that the individual cryptocurrency tokens in which Kraken enables transactions are themselves securities”).
 19. See, e.g., *Coinbase, Inc.*, 726 F. Supp. 3d at 271 (“Crypto-assets are created and maintained by developers . . . often as sources of funding for the developer’s underlying venture.”); Chris Brummer, *A Developer Theory of Disclosure*, 9 STAN. J. BLOCKCHAIN L. & POL’Y 2 (2026), <https://stanford-jblp.pubpub.org/pub/developer-theory-disclosure/release/3> [<https://perma.cc/68LZ-KTJR>] (noting the “central role” of Developers). The Developer itself may be a group of individuals. In addition to the group that initiates the blockchain, some significant early investors could also be considered part of a development team.
 20. See, e.g., *Statement on Certain Proof-of-Work Mining Activities*, *supra* note 1 (noting that a blockchain network “is governed by an underlying software protocol, consisting of computer code, that programmatically enforces certain network rules, technical requirements, and rewards distributions”).
 21. See, e.g., *SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20, 32 (D.D.C. 2024) (“Crypto assets are transferred and secured using technology known as a ‘blockchain’ or distributed ledger: a database spread across hundreds and even thousands of computer servers that records transactions in digitally recorded data packages called ‘blocks.’”). Blockchains are thus arguably more secure than a digital ledger maintained by a single person.

Computer code by itself is insufficient to create a crypto association.²² The Developer needs to recruit additional participants for a decentralized ledger to function. There must be individuals who assist in operating the blockchain as well as individuals who use it. Successful recruitment often depends on whether the Developer can convince numerous parties that the blockchain will be widely utilized. In some cases, the Developer will need to sell crypto assets to Purchasers to finance the development of the blockchain.²³ To attract such investors, it is common for Developers to act as promoters who tout the potential value of the crypto association.²⁴

Most Developers need an incentive to create and promote a crypto association. In a start-up corporation, the founder initially owns all or most of the company's shares, which rise in value if the corporation generates profits.²⁵ In contrast, crypto associations typically do not have equity that entitles the holder to vote on corporate matters or receive a share of corporate profits.²⁶ Because blockchains are usually not formally organized as entities, they do not retain revenue.

But even without equity, there are ways that Developers can capture part of the value created by a crypto association. Since they initially control the computer code that creates the digital ledger, Developers can allocate as many entries of the

22. Blockchain is a descendant of free software projects that have emerged over the years without corporate development. As Yochai Benkler explained, these open-source collaborations offer advantages over a firm with centralized management. See Yochai Benkler, *Coase's Penguin, or, Linux and The Nature of the Firm*, 112 YALE L.J. 369 (2002). Thousands of individuals can be enlisted to contribute their diverse talents to a project. In certain circumstances, when projects can be broken into modular parts that can independently contribute to a project, there will be sufficient incentive for individuals to participate. Blockchain is successful in part because the basic process of validating transactions is modular, permitting a wide range of individuals with computers to participate in maintaining the ledger. One difference between a blockchain and an open-source software project is that blockchain typically drives participation through monetary incentive. Administering such incentives requires additional managerial efforts.

23. See, e.g., *Coinbase, Inc.*, 726 F. Supp. 3d at 271–72 (“[O]nce a crypto-asset is created, it is typically first offered and sold by its developer to institutional investors in capital-raising events, including so-called ‘initial coin offerings’ or ‘ICOs.’”).

24. See, e.g., Order Denying Motion to Dismiss, *supra* note 18, at 26 (finding that “promoters for the various crypto assets identified by the SEC worked to create the networks or ‘ecosystems’ that would support the value of the digital assets they distributed”).

25. See, e.g., Matthew Wansley, *Beach Money Exits*, 45 J. CORP. L. 151, 160–61 (2019) (describing the incentive of founders to increase the value of a start-up's equity).

26. Some crypto associations issue crypto assets that entitle the investor to a share of the crypto association's profits. For an example of such a crypto association, see *SEC Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Release No. 81207, 2017 WL 7184670 (July 25, 2017) [hereinafter *DAO Report*].

ledger as they wish to themselves.²⁷ If others are willing to assign a value to those blockchain entries, such entries will become crypto assets and can later be sold by the Developer at a profit.

Another difference between a crypto association and a corporation is that unlike a founder of a corporation with a substantial equity stake, a Developer may have no legal mechanism to control the governance of a decentralized blockchain.²⁸ In a corporation, a founder that retains significant stock will have voting power enabling it to control the board that manages the corporation.²⁹ Some crypto assets come with voting rights on governance issues,³⁰ which would permit a Developer with a substantial stake to maintain control, but many do not.

Even if a Developer does not have direct legal control over a crypto association's governance, it is likely that it will be able to exercise substantial influence over the operation of the association.³¹ The Developer will be familiar with the underlying computer code of the digital ledger. To the extent that updates are necessary, the Developer is the natural party to take the lead in writing new versions of the blockchain's program.³² If there is a security breach, the Developer can address that breach. It can persuade other participants in the crypto association to adopt solutions to governance issues. The ownership of a substantial amount of crypto assets could also translate into greater influence over the crypto association.³³ Other participants might defer to the Developer because

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27. See Peter Sie, *Regulating Cryptocurrency Airdrops*, 23 NW. J. TECH. & INTELL. PROP. 1, 63 (2025) (observing that founders typically allocate 15–25 percent of digital asset supply to themselves); see also *Ripple Labs*, 682 F. Supp. 3d at 317 (noting that twenty billion out of one hundred billion in crypto assets created were retained by Developers). Some Developers retain an even higher percentage of a blockchain's crypto assets. See, e.g., *Audet v. Fraser*, 605 F. Supp. 3d 372, 385 (D. Conn. 2022) (describing testimony that promoter held 96 percent of digital assets associated with a blockchain).
 28. See, e.g., PRIMAVERA DE FILIPPI, SOFIA COSSAR, MORSHED MANNAN, KELSIE NABBEN, TARA MERK & JAMILYA KAMALOVA, REPORT ON BLOCKCHAIN GOVERNANCE DYNAMICS 2 (2024) (noting that, for a Developer or founder, “a significant minority stake . . . through token ownership . . . does not grant them unilateral control over the networks”).
 29. See, e.g., Wansley, *supra* note 25, at 154.
 30. For an example of a crypto asset that came with voting rights, see *DAO Report*, *supra* note 26.
 31. See, e.g., PRIMAVERA DE FILIPPI, MORSHED MANNAN, SOFIA COSSAR, TARA MERK & JAMILYA KAMALOVA, BLOCKCHAIN TECHNOLOGY AND POLYCENTRIC GOVERNANCE 18 (2024) (noting that the founder of Ethereum blockchain retained “a considerable influence over the direction and outcome of the discussions” to make updates to the blockchain).
 32. See, e.g., *Samuels v. Lido DAO*, 757 F. Supp. 3d 951, 957–58 (N.D. Cal. 2024) (noting the role of a founder in writing code and coordinating efforts to decentralize blockchain); Primavera De Filippi, Morshed Mannan & Wessel Reijers, *Blockchain Technology and the Rule of Code: Regulation via Governance*, 92 GEO. WASH. L. REV. 1229, 1248 (2024) (noting that developers can have power to craft new rules).
 33. The extent of such control, though, is much less certain than with respect to a corporation. See Khalil Bryant & Yesha Yadav, *The Challenges Facing Venture Capital in Digital Asset Markets*,

they recognize it has the greatest incentive to ensure the viability of the blockchain.³⁴

Developers generally do not organize crypto associations as legal entities where they have managerial control because they often aspire to eventually have a minimal role in their operation.³⁵ They may hope that the blockchain that they create and promote begins to run itself without their involvement. Unlike a corporation that needs competent managers to maintain its value, a successful crypto association may be able to operate without much central management. The Developer may wish to eventually step away from the crypto association to focus on other projects.³⁶

While crypto associations are often not organized as legal entities, it is notable that many Developers are sophisticated enough to organize themselves as entities. The Developer may need to take on debt to finance the creation of a blockchain. There is also a risk that the Developer will face litigation from parties that could result in personal liability. Developers thus may organize as a corporation or LLC to gain the benefits of limited liability.³⁷ Some Developers organize as nonprofits to make it clear that they are not part of a for-profit association.³⁸ By doing so, they may hope to insulate themselves from various types of regulation aimed at profit-generating activities.

B. Validators

For a crypto association to operate without centralized management, the Developer must attract Validators to actively participate in operating the blockchain. Validators verify through consensus any change to the digital ledger

in THE RESEARCH HANDBOOK ON THE STRUCTURE OF PRIVATE EQUITY AND VENTURE CAPITAL 175 (Brian Broughman & Elisabeth de Fontenay eds., 2026).

34. Governance in crypto associations often relies on achieving a rough consensus among influential participants. See DE FILIPPI ET AL., *supra* note 28, at 49 (describing rough consensus governance).
35. Kara Bruce, Christopher K. Odinet & Andrea Tosato, *Bankrupt Crypto Organizations*, 104 N.C. L. REV. 657, 675–76 (2026) (noting that founders of crypto associations typically do not organize as entities).
36. Bitcoin is the primary example of a blockchain where the Developer stepped away. See M. Todd Henderson & Max Raskin, *A Regulatory Classification of Digital Assets: Toward an Operational Howey Test for Cryptocurrencies, ICOs, and Other Digital Assets*, 2019 COLUM. BUS. L. REV. 443, 470–71 (discussing Bitcoin as example of blockchain that continued to operate without founder). Another reason that the Developer may want to step away is to avoid liability for the crypto association's legal obligations. See De Filippi et al., *supra* note 32, at 1275–76.
37. See, e.g., Complaint at 14, SEC v. Armand, No. 24-cv-12586 (D. Mass. Oct. 9, 2024).
38. See, e.g., Order Denying Motion to Dismiss, *supra* note 18, at 4–6 (describing use of private foundation to develop blockchain).

that reflects a transaction such as the sale of a crypto asset from one party to another.³⁹ Without Validators, a blockchain would be static and its entries would not have much value because they could not be easily traded and used by a wide number of participants. In addition to verifying transactions, Validators can play a significant role in the governance of a crypto association. The Validators may weigh in on broader decisions that impact a crypto association such as changes to the underlying code of the blockchain. If enough Validators are unhappy with a proposed change, they can oppose the change and threaten to exit the crypto association.

Unlike a typical business association, which may hire employees to operate a business, crypto associations and their Developers do not have a contractual relationship with the Validators that compensates them for their efforts. The crypto association must provide some other incentive for Validators to participate.⁴⁰ Validating transactions on a blockchain can be costly in terms of time and computing power.⁴¹ Developers thus typically specify in the computer code creating the blockchain that Validators will automatically receive a payment if they successfully validate a transaction.⁴² Such payment typically comes in the

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39. See Pablo D. Azar et al., *The Financial Stability Implications of Digital Assets*, 30 ECON. POL'Y REV. 1, 5 (2024) ("To maintain a database using distributed ledger technology, these networks use a consensus algorithm to reach agreement on which transactions are valid. The participants in the consensus algorithm are usually called validators."). Validators come to consensus using either a proof-of-work or proof-of-stake system. In a proof-of-work system, Validators (sometimes referred to as miners) solve a complicated math problem to add an additional block to a blockchain. Alternatively, in a proof-of-stake system, Validators need to invest in sufficient digital assets to show that they have a sufficient stake in the blockchain to validate a transaction. See U.S. DEP'T OF THE TREASURY, CRYPTO-ASSETS: IMPLICATIONS FOR CONSUMERS, INVESTORS, AND BUSINESSES 1–12 (2022) (describing consensus systems); *Friel v. Dapper Labs, Inc.*, 657 F. Supp. 3d 422, 427–28 (S.D.N.Y. 2023) (describing "proof of work" and "proof of stake" validation systems).
 40. See, e.g., DE FILIPPI & WRIGHT, *supra* note 2, at 41 (noting the concern that Validators will no longer have an incentive to validate bitcoin transactions after the protocol no longer permits additional bitcoins to be produced); GAVIN WOOD, ETHEREUM: A SECURE DECENTRALIZED GENERALISED TRANSACTION LEDGER EIP-150 REVISION 2 (2014) (describing "incentives for nodes to mine").
 41. See Daniel Ferreira, Jin Li & Radoslaw Nikolowa, *Corporate Capture of Blockchain Governance* 9 (Eur. Corp. Governance Inst., Working Paper No. 593/2019, 2022), <https://ssrn.com/abstract=3320437> (describing costs of validating transactions); Rainer Böhme, Nicolas Christin, Benjamin Edelman & Tyler Moore, *Bitcoin: Economics, Technology, and Governance*, 29 J. ECON. PERSPS. 213, 218 (2015) (noting in 2015 that cost of electricity expended in validating bitcoin transactions was \$178 million per year).
 42. See *Friel*, 657 F. Supp. 3d at 427 ("To encourage validation of the transactions on a blockchain, validators . . . are provided incentives often in the form of cryptocurrency or cryptographic tokens . . ."); SATOSHI NAKAMOTO, BITCOIN: A PEER-TO-PEER ELECTRONIC CASH SYSTEM 4 (2008), <https://bitcoin.org/bitcoin.pdf> [<https://perma.cc/3XXJ-XUTL>] (noting that payment of a "new coin . . . adds an incentive for nodes to support the network"); see also *Statement on*

form of crypto assets. Because such assets are just entries on the digital ledger, the transfer in crypto assets to the Validator can be directly recorded on the blockchain. There is no need to write a check and mail it. This compensation system has the effect of making Validators investors in the blockchain's crypto assets.

A challenge with creating a decentralized crypto association is that the value of crypto assets is uncertain, especially when the blockchain is first launched and it is unclear whether it will attract sufficient participants. Rational Validators will verify transactions only if the compensation they receive is greater than their verification costs. For a blockchain to function, there must be sufficient certainty that a crypto asset will have enough value for the prospect of earning such crypto assets to incentivize Validators to perform their job.⁴³

There is thus a structural incentive for Developers, who must attract Validators to run the blockchain, to see the value of the associated crypto assets increase. If no one is willing to pay to own the digital entries on a blockchain, few if any Validators will continue to expend funds to maintain the ledger.⁴⁴ Without active participation of independent Validators, the crypto association will not be able to achieve decentralized verification of transactions.

In addition, Validators who have participated in a crypto association for some time will have an incentive to help ensure that the value of their crypto assets increases or is at least maintained. A longtime Validator will have earned substantial amounts in the underlying crypto asset as compensation for validating transactions. If the price of a blockchain's crypto assets falls precipitously, the

Certain Protocol Staking Activities, U.S. SEC. & EXCH. COMM'N (May 29, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925> [https://perma.cc/JKT3-LWYT] (describing rewards in proof-of-stake system to Validators). Validators may also be paid fees by transacting parties. See Böhme et al., *supra* note 41, at 218.

43. See, e.g., WOOD, *supra* note 40, at 2 ("In order to incentivise computation within the network, there needs to be an agreed method for transmitting value."). Reliable valuation is particularly difficult with respect to entrepreneurial ventures. See James J. Park, *Investor Protection in an Age of Entrepreneurship*, 12 HARV. BUS. L. REV. 107 (2022).

44. For example, when the value of Bitcoin declines below the marginal cost of mining, Validators will stop verifying transactions. See James Van Straten, *Miners Are Being Squeezed as Bitcoin's \$70,000 Price Fails to Cover \$87,000 Production Costs*, COINDESK: MARKETS (Feb. 5, 2026, at 03:01 PT), <https://www.coindesk.com/markets/2026/02/05/bitcoin-trades-20-below-its-production-cost-as-miner-stress-intensifies> [https://perma.cc/Z2A3-4P2T]. As Validators withdraw from the market, the cost of production may adjust because fewer Validators are competing to validate transactions. See Aziz Bin Zainuddin, *Will a Crash in Bitcoin's Price Lead to Its Demise?*, MASTERTHECRYPTO, <https://masterthecrypto.com/crash-in-bitcoins-prices-lead-to-its-demise> [https://perma.cc/56GE-VUZ8]. A new equilibrium can help ensure that the crypto association continues to function. However, with fewer Validators, the governance of the crypto association will become less decentralized. See *id.*

value of the Validator's crypto asset holdings will also fall. If they are unable to sell these assets at a sufficient price, they will not be able to cover their investment in the crypto association. At some point, the incentives of Validators to take measures to increase the value of a crypto asset will be like those of Developers. They might then become more actively involved in the governance of the crypto association.

C. Purchasers

Purchasers of digital assets play a critical role in the functioning of any crypto association. If individuals are uninterested in purchasing the rights to a blockchain's entries, it will not run on its own. Purchasers can create a vibrant secondary market where a crypto asset is sold,⁴⁵ permitting Developers and Validators to easily monetize their investments.⁴⁶ If a crypto association cannot attract Purchasers, it will not be able to achieve decentralization.

There are two major reasons why Purchasers buy crypto assets. The first is consumption. Crypto assets can serve as currencies or provide access to a valuable service. A *Purchaser-User* will pay for the crypto asset because they want to use the blockchain.⁴⁷ The price they are willing to pay will reflect the value of the currency or service. The second is for investment. A *Purchaser-Investor* hopes that the value of a crypto asset will increase as a crypto association proves that it has value. If a crypto association provides access to a vibrant platform for smart contracts or a currency that is widely used, other Purchasers will be willing to pay more for the associated crypto asset. The Purchaser-Investor can then sell the crypto asset at a profit.

For a crypto association to achieve decentralization, Developers will need to attract Purchasers, both users and investors. They may create a blockchain that supports applications that Purchasers will want to use. They may highlight the potential that a crypto asset will rise in value. In doing so, they may make promises about managing the supply of crypto assets and representations about the experience and qualifications of the Developer. Their goal is to attract enough

45. The creation of such a market can be facilitated by a crypto exchange. See, e.g., *Coinbase*, 726 F. Supp. 3d at 271–74.

46. See Jonathan Rohr & Aaron Wright, *Blockchain-Based Token Sales, Initial Coin Offerings, and the Democratization of Public Capital Markets*, 70 HASTINGS L.J. 463, 471 (2019) (“Miners . . . can transfer . . . tokens to other parties or sell them on the open market.”).

47. The crypto industry has thus far struggled to develop applications that have been widely adopted by the public. Even larger blockchain projects have struggled to achieve widespread adoption. See, e.g., *Terraform Labs*, 684 F. Supp. 3d at 183–84 (describing fraud by crypto promoter who fabricated data to show public use of blockchain to process transactions).

Purchasers to create a vibrant market for the digital asset that will provide the funds necessary for the crypto association to function and eventually operate without a central manager.⁴⁸

As noted earlier, the promotional efforts of the Developer often happen before a blockchain ledger is functional. The code that provides the product or service may not be fully written. The sale of crypto assets can directly fund the hiring of programmers who write the code. In such situations, it can be especially difficult to distinguish between Purchaser-Users and Purchaser-Investors. Some Purchasers may be essentially prepaying for the currency or service that will be created. Other Purchasers are speculating that the creation of a successful currency or service will support the value of the crypto asset. Many Purchasers will have mixed motives, with some consumptive intent and some investment intent.⁴⁹

Blockchains are not organized as legal entities, but they rely on crypto associations to function. Developers, Validators, and Purchasers are all essential to creating crypto assets. The question is whether such associations should be treated as entities, given that they undeniably bring groups of individuals together to associate in a venture for profit.

II. ASSOCIATIONS WITHOUT CONTRACTS

Crypto associations aspire to operate without written contracts, such as partnership agreements, that define the rights and obligations of their participants. Developers, Validators, and Purchasers independently decide to join the association. They have incentives to create, operate, and purchase entries on a blockchain. The association is not organized as a formal entity such as a corporation or partnership that clearly confers power on certain individuals to manage the enterprise. Crypto associations have thus argued that they should not be regulated as typical business entities.

48. Several studies have documented that secondary markets for crypto assets are quite vibrant and react to changes in government policy and other world events. See, e.g., Yuliya Guseva & Irena Hutton, *Regulatory Fragmentation: Investor Reaction to SEC and CFTC Enforcement in Crypto Markets*, 64 B.C. L. REV. 1555, 1585–86 (2023) (finding crypto market reaction to SEC enforcement to be particularly negative); see also Menesh S. Patel, *Fraud on the Crypto Market*, 36 HARV. J.L. & TECH. 171, 209–13 (2022) (arguing that the fraud-on-the-market presumption should be available for secondary market traders in crypto). But see Brian D. Feinstein & Kevin Werbach, *The Impact of Cryptocurrency Regulation on Trading Markets*, 7 J. FIN. REG. 48, 48 (2021) (finding that crypto regulation did not spur moves in crypto trading).

49. For a framework on mixed motives and the law, see Andrew Verstein, *The Jurisprudence of Mixed Motives*, 127 YALE L.J. 1106, 1143–61 (2018).

Courts have often rejected this argument. They have concluded that some crypto associations have legal obligations to crypto Purchasers. Applying partnership law, a few courts have held that some crypto associations may be general partnerships.⁵⁰ Applying federal securities law, many courts have found that some crypto associations are essentially limited partnerships that are selling securities to investors.⁵¹

This Part examines how crypto associations operate without written contracts. It discusses the circumstances in which courts have concluded that even without a formal contract, crypto associations are in fact legal entities with obligations to crypto Purchasers.

A. Crypto and Contracts

In seeking to regulate some crypto assets, the Securities and Exchange Commission (SEC) has argued that crypto Developers have sold securities to crypto Purchasers.⁵² Crypto assets can be securities if they are investment contracts.⁵³ Under the Supreme Court's well-known *Howey* test, an investment contract involves an investment (1) of money, (2) in a common enterprise, (3) with an expectation of profits (4) that come from the managerial efforts of others.⁵⁴

Various defendants in SEC enforcement matters have sought to add an additional element to the *Howey* test. They contend that an investment contract necessarily requires a written contract with an investor.⁵⁵ Indeed, in *Howey* itself,

50. See *Sarcuni v. bZx DAO*, 664 F. Supp. 3d 1100, 1114 (S.D. Cal. 2023); *Samuels v. Lido DAO*, 757 F. Supp. 3d 951, 961–65 (N.D. Cal. 2024).

51. See *SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20, 42 (D.D.C. 2024); *Coinbase*, 726 F. Supp. 3d at 294–96; *Terraform Labs*, 684 F. Supp. 3d at 193–95; *Ripple Labs*, 682 F. Supp. 3d at 322–23.

52. For an overview of the SEC's enforcement strategy, see James J. Park & Howard H. Park, *Regulation by Selective Enforcement: The SEC and Initial Coin Offerings*, 61 WASH. U. J.L. & POL'Y 99, 101–03 (2020).

53. See, e.g., JAMES J. PARK, WHEN ARE TOKENS SECURITIES?: SOME QUESTIONS FROM THE PERPLEXED 1–4 (2018) (discussing early application of *Howey* to crypto assets). The federal securities laws are not limited in application to stocks and bonds. See Securities Act of 1933 § 2(a)(1), 15 U.S.C. § 77b(a)(1); Securities Exchange Act of 1934 § 3(a)(10), 15 U.S.C. § 78c(a)(10).

54. See *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99 (1946). According to the Court, the “touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.” *United Hous. Found., Inc. v. Forman*, 421 U.S. 837, 852 (1975).

55. See, e.g., Memorandum of Law in Support of Defendant Richard Heart's Motion to Dismiss at 40, *SEC v. Schueler*, No. 23-cv-05749 (E.D.N.Y. Apr. 8, 2024) (arguing that “[t]he Complaint fails to allege the existence of any contract, underlying agreement, or promise of future actions between *any* parties, much less between [defendant] and any person who chose to engage with the software programs he allegedly published”).

the promoter offered investors a set of contracts that encompassed both the sale of orange groves and the servicing of those groves.⁵⁶ It was thus clear that the promoter would have contractual obligations to convey and maintain the groves to those investors who became parties to both contracts. There is also some evidence that the authors of the federal securities laws had a specific type of investment involving a contract in mind when they defined securities to include investment contracts.⁵⁷

Crypto defendants have thus taken the position that crypto associations owe no legal obligations to the Purchasers of crypto assets.⁵⁸ Years before this argument was asserted in litigation, an early article observed that “relationships between ICO [initial coin offering] promoters and token buyers are quite nebulous” and that “token investors lack[] established legal means to enforce any promises.”⁵⁹ The SEC has essentially conceded, in responding to the blockchain industry’s litigation filings, that there is no written contract between Developers and Purchasers.⁶⁰

In contrast, legal entities are often governed by written agreements that define the rights of investors.⁶¹ In a corporation, there is a corporate charter and bylaws that specify many of the rights of shareholders.⁶² When a corporation sells bonds, it negotiates a bond indenture that describes in detail the rights of

56. See *Howey*, 328 U.S. at 295–96.

57. See Edward Lee, *The Original Public Meaning of Investment Contract*, 58 U.C. DAVIS L. REV. 667, 707–50 (2024).

58. See, e.g., SEC v. Coinbase, Inc., 761 F. Supp. 3d 702, 710 (S.D.N.Y. 2025) (“Coinbase argued that the transactions in question were not ‘investment contracts’ because ‘an issuer [of a crypto-asset] owes no contractual obligation to a retail buyer’ of the crypto-asset on Coinbase’s platform.” (alteration in original)); Order Denying Motion to Dismiss, *supra* note 18, at 11 (describing argument that “the SEC cannot show an ongoing link between the issuer of a crypto asset and a Kraken customer”); Complaint for Declaratory and Injunctive Relief at 14 ¶ 83, *Foris Dax Inc. v. SEC*, No. 24-cv-00373 (E.D. Tex. Oct. 8, 2024) (“[E]very transaction involving the Targeted Network Tokens that occurs on the Platform is merely the sale of a digital product and is not coupled with additional commitments, promises, or expectations from the issuers or promoters of the Targeted Network Tokens.”). This argument would not apply to stablecoins where there is a clear commitment by an actor to back the value of the stablecoin. See Yesha Yadav & Brendan Malone, *Stablecoins and the US Treasury Market* 13 (Vanderbilt L. Rsch. Paper No. 5286924, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5286924.

59. Cohn et al., *supra* note 2, at 594.

60. See, e.g., *Coinbase*, 726 F. Supp. 3d at 282.

61. See Frank H. Easterbrook & Daniel R. Fischel, *The Corporate Contract*, 89 COLUM. L. REV. 1416, 1421 (1989) (“Entrepreneurs make promises in the articles of incorporation and the securities they issue when they go public. The debt investors receive exceptionally detailed promises in indentures.”).

62. See *id.* at 1429–34.

bondholders.⁶³ In a partnership, the partners often write a contract that outlines the way in which the partnership will be governed.⁶⁴

The crypto industry contends that such governance agreements are unnecessary in a crypto association. A blockchain operates without management and can run based on the incentives specified by the underlying computer code.⁶⁵ Purchasers of crypto assets do not invest in a bundle of rights conferring them any authority over the blockchain's governance. Many such Purchasers are Purchaser-Users who intend to use the crypto asset as a currency or to access a service. Unlike shareholders who expect to vote for corporate directors, they are buying a product rather than equity in an organization.

The courts have thus far rejected the attempts of crypto defendants to add a new element to the *Howey* test. They have done so primarily on the doctrinal ground that the Supreme Court has made it clear that federal courts should interpret *Howey* "flexibly" to further the goal of investor protection. *Howey* itself defined investment contracts to encompass not only "contracts" but "schemes" and "transaction[s]."⁶⁶ All of the district courts that have heard the issue thus far have cited this flexibility principle in generally rejecting the argument that an investment contract requires a contract that explicitly establishes investor rights.⁶⁷ In addition, at least one court has cited a Supreme Court decision applying *Howey* to a fact pattern where there was no formal contract with investors.⁶⁸ In denying the crypto exchange Binance's motion to dismiss,⁶⁹ a federal district court cited *SEC v. C. M. Joiner Leasing Corp.*,⁷⁰ where the Supreme Court found that representations by promoters that oil leases sold to investors were part of an enterprise to find oil were sufficient to create an investment contract.⁷¹ The Court

63. See *id.* at 1421; James J. Park, *Bondholders and Securities Class Actions*, 99 MINN. L. REV. 585, 588 (2014).

64. See, e.g., UNIF. P'SHIP ACT § 105 (1997).

65. See, e.g., *Samuels v. Lido DAO*, 757 F. Supp. 3d 951, 960 (N.D. Cal. 2024) (citing a party's argument that blockchain is "just autonomous software that runs without human management").

66. See *Howey*, 328 U.S. at 298–99 (referring to "investment contract" as "a contract, transaction or scheme"); see also *SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20, 40–42 (D.D.C. 2024) (citing *Howey*); *Terraform Labs*, 684 F. Supp. 3d at 193 (citing *Howey*).

67. See, e.g., *Binance Holdings*, 738 F. Supp. 3d at 42; *Coinbase*, 726 F. Supp. 3d at 293–96; *Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d at 193; *Ripple Labs*, 682 F. Supp. 3d at 322.

68. See *Binance Holdings*, 738 F. Supp. 3d at 40.

69. See *id.* at 31–32.

70. 320 U.S. 344 (1943).

71. *Id.* at 352–53.

did so without finding that the statements in question were sufficient to create an enforceable contract to drill for oil on the leased land.⁷²

Even without explicitly holding that crypto associations enter contracts with Purchasers, the courts have been able to conclude that the efforts of Developers create legal obligations to Purchasers. As noted earlier, Developers typically must recruit a substantial number of participants for a crypto association to succeed.⁷³ In order to do so, they often make representations to Purchasers that they will make efforts to increase the value of crypto assets.⁷⁴ They may highlight their credentials as Developers to persuade Validators and Purchasers that they will successfully create a valuable service.⁷⁵ The SEC has pointed to such statements in arguing that Purchasers understand that they will rely on the managerial efforts of the Developers to increase the value of the purchased crypto assets. Such reliance satisfies the critical fourth element of the *Howey* test, reliance on the managerial efforts of others to create profits.⁷⁶

One problem with focusing on Developer representations is that not all Purchasers will rely on such representations when purchasing a crypto asset. Even if Developers represent that they will promote a crypto association initially, over time many hope to recede into the background. While Purchasers who buy crypto assets directly from the Developer are likely to base their decision on the Developer's representations,⁷⁷ Purchasers who buy crypto in secondary markets from other Purchasers may not be aware of the Developer's representations. It is thus more difficult to argue that they are relying on the managerial efforts of the Developer as required by *Howey*. Two district courts have thus concluded that

72. *Id.* at 349. According to the Court, it was unclear as to whether the investor “acquired a legal right to compel the drilling” of a “test well.” *Id.*

73. See Michael Segal, *Cryptocurrency Regulation Under U.S. Securities Laws and Proposed Amendments*, 26 PIABA BAR J. 97, 112 (2019) (noting the importance of digital asset marketing).

74. See, e.g., *Kik Interactive*, 492 F. Supp. 3d at 179; Order Instituting Cease-and-Desist Proceedings, *Munchee, Inc.*, Securities Act Release No. 10445, 2017 WL 10605969 ¶¶ 15–17 (Dec. 11, 2017). In at least one case, this promise was memorialized in an actual contract with institutional investors. *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170, 183 (S.D.N.Y. 2023).

75. See, e.g., *Kik Interactive*, 492 F. Supp. 3d at 180; Order Instituting Cease-and-Desist Proceedings, *Stoner Cats 2, LLC*, Securities Act Release No. 11233, 2023 WL 5956272 ¶ 19 (Sep. 13, 2023); Order Instituting Cease-and-Desist Proceedings, *Loci, Inc.*, Securities Act Release No. 10950, 2021 WL 2554441 ¶ 14 (June 22, 2021); Order Instituting Cease-and-Desist Proceedings, *CarrierEQ, Inc.*, Securities Act Release No. 10575, 2018 WL 6017664 (Nov. 16, 2018).

76. See *Howey*, 328 U.S. at 299.

77. See Yuliya Guseva, *A Conceptual Framework for Digital-Asset Securities: Tokens and Coins as Debt and Equity*, 80 MD. L. REV. 166 (2021) (distinguishing between initial and secondary sales of crypto assets).

crypto assets that are purchased in secondary markets are not investment contracts.

One of those cases involved Ripple Labs, Inc. (Ripple), a Developer that created a blockchain with a digital asset called XRP.⁷⁸ The SEC argued that XRP was a security under the *Howey* test and sued Ripple in the Southern District of New York for failing to comply with securities law registration requirements before selling XRP to the public.⁷⁹ In deciding a summary judgment motion, the judge concluded that the primary sale of XRP to institutional investors, which involved direct interactions between the investors and promoters, had the hallmarks of an investment contract.⁸⁰ There were numerous statements in promotional documents distributed to institutional investors that created a reasonable expectation that Ripple, the Developer of the XRP blockchain, would act to increase its value.⁸¹ On the other hand, the court concluded that secondary market Purchasers did not purchase an investment contract.⁸² Their funds did not go to Ripple. The court also believed that retail investors did not necessarily understand and rely on the various statements made by Ripple to institutional investors that it would make efforts to increase its value.⁸³ Some of the investors may have been “entirely unaware of Ripple’s existence.”⁸⁴

In an opinion issued soon after the *Ripple* decision, a different judge in the Southern District of New York disagreed and concluded that a similar crypto asset was an investment contract when traded in a secondary market. In *SEC v. Terraform Labs*,⁸⁵ Judge Jed Rakoff, a well-known expert on securities regulation, considered whether various tokens that a Developer fraudulently promoted were securities. Judge Rakoff concluded that the *Howey* test does not make distinctions between primary and secondary market investors. Whether “a purchaser bought the coins directly from the defendants or, instead, in a secondary resale transaction has no impact on whether a reasonable individual would objectively view the defendants’ actions and statements as evincing a promise of profits based on their efforts.”⁸⁶ The SEC’s complaint alleged that the various marketing efforts by the

78. See *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308 (S.D.N.Y. 2023).

79. *Id.* at 320.

80. *Id.* at 324–28.

81. *Id.* at 326–28.

82. *Id.* at 329.

83. *Id.* at 330; *SEC v. Ripple Labs, Inc.*, 697 F. Supp. 3d 126, 136 (S.D.N.Y. 2023) (noting that representations “were only distributed to Institutional Buyers, and not more broadly to Programmatic Buyers”).

84. *Ripple Labs*, 682 F. Supp. 3d at 329.

85. 684 F. Supp. 3d at 197.

86. *Id.* at 197.

defendants were directed at both retail and institutional investors.⁸⁷ The typical retail investor exposed to such promises would have an expectation that the defendants would make efforts to increase the value of the tokens.⁸⁸ Finally, the court noted that the initial sales to institutional investors were made with the expectation that a secondary market would develop.⁸⁹ The institutional sales were made at substantial discounts that would help ensure the investments would be profitable if a secondary market developed.⁹⁰

Subsequent decisions by district courts have split with respect to whether they consider secondary sales of crypto assets to be sales of securities. The court in *SEC v. Coinbase* came to a similar conclusion as Judge Rakoff in concluding that promotional statements promising to increase the value of crypto would affect the decisions of both institutional and retail investors.⁹¹ Moreover, in private litigation against Ripple, a federal district court concluded that the crypto assets at issue were investment contracts during secondary trading.⁹² It disagreed with the *Ripple* court's finding of insufficient evidence to establish that various representations made by promoters were widely circulated to retail investors. It explained that "the evidentiary record also contains numerous promotional materials that were distributed to the general public via widely-viewed Internet posts and videos."⁹³ In contrast, the court in *SEC v. Binance* agreed with the *Ripple* court that crypto may not be an investment contract in secondary transactions.⁹⁴ The court was skeptical that the representations made by Developers about crypto assets were sufficient so that they continued to be investment contracts when trading.⁹⁵ It was not

87. *See id.*

88. *Id.* at 198. For an argument that secondary market transactions meet the *Howey* test "so long as traders reasonably expected the crypto asset's value to have been significantly determined by the entrepreneurial or managerial efforts of others, such as the sponsor," see Menesh S. Patel, *Secondary Trading Crypto Fraud and the Propriety of Securities Class Actions*, 96 S. CAL. L. REV. 1571, 1609 (2024).

89. *See SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170, 198 (S.D.N.Y. 2023).

90. Amended Complaint ¶ 54, *Terraform Labs*, 684 F. Supp. 3d 170 (S.D.N.Y. 2023) (No. 23-cv-1346).

91. *See Coinbase*, 726 F. Supp. 3d at 293 ("[P]romoters and issuers publicly encouraged both institutional investors and investors trading in the secondary market to buy their tokens.").

92. *See Order Granting in Part and Denying in Part Motion for Summary Judgment, In re Ripple Labs, Inc. Litig.*, No. 18-cv-06753, 2024 WL 3074379, at *7 (N.D. Cal. June 20, 2024).

93. *Id.* at *9; *see also* Order Denying Motion to Dismiss, *supra* note 18, at 18 ("[I]f a reasonable investor would understand representations made during the primary market transactions to carry forward into the secondary market, then those representations may be considered.").

94. *See SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20, 53–57 (D.D.C. 2024) ("Whether a secondary market sale constitutes an offer or sale of an investment contract would depend on the totality of circumstances and the economic reality of that specific contract, transaction, or scheme." (quoting *SEC v. Ripple Labs*, 682 F. Supp. 3d 308, 329 n.16 (S.D.N.Y. 2023))).

95. *See id.* at 53.

convinced that a crypto asset would necessarily continue to be a security as the context changed.⁹⁶

To summarize, because blockchains are associations without written contracts, the SEC and the courts have focused on promotional statements by Developers in assessing whether crypto assets can be securities. Even without a formal contract, such statements create some expectation that the Developer will work on behalf of the Purchasers of crypto assets. The problem with this approach, as some courts have held, is that it is not always clear that such representations will continue to affect purchasing decisions. There is thus some uncertainty about whether crypto assets are securities when traded by crypto investors in secondary markets.⁹⁷

B. Crypto Associations as Entities

In addition to ruling that representations create obligations between Developers and Purchasers, courts have held that some crypto associations are entities. A few courts have concluded that certain crypto associations are general partnerships. Moreover, in determining that some crypto assets are securities, courts are effectively concluding that some crypto associations are essentially limited partnerships.

1. Crypto Associations as General Partnerships

Unlike a corporation with a central manager, crypto associations can rely more heavily on input from numerous stakeholders to operate and make decisions. The basic act of confirming a change in a blockchain requires consensus that the change is valid.⁹⁸ If there is a change to the crypto association's governance, the Validators will have to agree to adopt the change.⁹⁹ Some crypto

96. See *id.* at 54–55.

97. In addition, the *Howey* test has not often been applied to secondary market trading. At the time the Supreme Court decided *Howey*, there was less concern about whether investors received fair prices when trading securities in secondary markets. Stocks that traded on established stock exchanges were subject to disclosure requirements, but stocks that were not listed on national exchanges were not. The types of investment schemes covered by the *Howey* test would not trade on an organized marketplace. See Patel, *supra* note 88, at 1575 (“[E]arlier occurring investment contract cases arising in connection with primary transactions did not involve instruments that readily lent themselves to secondary trading, so courts have not had much occasion to consider the operation of *Howey* in the secondary transaction context.”).

98. See Azar et al., *supra* note 39.

99. The security of a blockchain ledger stems in part from its existence on multiple computers. Even if one copy of the ledger is destroyed, there will be identical copies on other computers that will still exist. Each computer that downloads the list is called a node, and the person who

associations, known as Decentralized Autonomous Organizations (DAOs), also envision that Purchasers will directly participate in making decisions through voting.¹⁰⁰

A general partnership is a form of entity that permits such collective governance by multiple participants. A partnership exists whenever two or more individuals associate as co-owners in a for-profit business, even if they do not “intend to form a partnership.”¹⁰¹ The partnership need not be memorialized in a written agreement.¹⁰² Courts apply a wide range of factors in determining whether a partnership has been formed. In determining whether individuals are partners, judges assess whether such individuals share in profits, share losses, and have rights to manage the business.¹⁰³

If an association is a partnership, it is likely that the Developer will have sufficient control and ownership in the enterprise to be a partner. If that is the case, it will be difficult for the Developer to argue that it has no obligation to the other participants in the crypto association. Even without a written partnership agreement, the Developer will be in a partnership with some of the other crypto participants and owe them fiduciary duties.¹⁰⁴ The partnership could be sued if it

operates the computer is called a node operator. Such node operators can play a critical role in the governance of a blockchain. See Carla L. Reyes, *(Un)Corporate Crypto-Governance*, 88 *FORDHAM L. REV.* 1875, 1901–03 (2020) (describing managerial powers of node holders). If there are changes to the code and not enough node operators agree to the change by downloading software with the change, the change will not take effect. Node operators can have significant influence over the governance of a blockchain, but they do not necessarily operate nodes for profit. Some node operators may also validate transactions, but others may not. Because they do not share in the profits generated by a blockchain, node operators are even less likely to be partners than Validators.

100. See, e.g., Ian Appel & Jillian Grennan, *DAO Governance: Decentralized but Not So Disorganized*, in *THE BLOCKCHAIN SCHOLARS BOOK* 151, 151 (Daniel Liebau & Simon Trimborn eds., 2025) (“DAOs offer a radically different model: direct participation by token holders in governance via blockchain-based voting mechanisms.”).

101. See UNIF. P’SHIP ACT §§ 102(11), 202(a) (1997); see also DEL. CODE ANN. tit. 6, § 15-202(a) (2026).

102. See *Czernicki v. Lawniczack*, 904 N.Y.S.2d 127, 131 (App. Div. 2010) (“When there is no written partnership agreement between the parties, the court must determine whether a partnership in fact existed from the conduct, intention, and relationship between the parties.”); see also UNIF. P’SHIP ACT § 102(11) (1997) (observing that “Partnership agreement” can be “oral” or “implied”).

103. See, e.g., *Czernicki*, 904 N.Y.S.2d at 131 (listing factors that include: “(1) sharing of profits, (2) sharing of losses, (3) ownership of partnership assets, (4) joint management and control, (5) joint liability to creditors, (6) intention of the parties, (7) compensation, (8) contribution of capital, and (9) loans to the organization”); *Sarcuni v. bZx DAO*, 664 F. Supp. 3d 1100, 1115 (S.D. Cal. 2023) (discussing characteristics of partnerships).

104. See UNIF. P’SHIP ACT § 409 (1997) (describing fiduciary duties owed by partners).

commits wrongdoing such as fraud. Every partner, including the Developer, would be personally responsible for the partnership's liabilities.¹⁰⁵

DAOs are a type of crypto association with characteristics that are particularly consistent with a general partnership.¹⁰⁶ The idea behind a DAO is that it uses blockchain technology to enable collective decision-making. For example, a DAO can facilitate collective ownership of assets without a central manager. Such a DAO would give the Purchasers of its crypto assets the right to vote on major decisions such as selling the DAO's assets.¹⁰⁷ Rather than centralize investment choices in a professional manager, a majority vote will determine the investment decisions made by a DAO.

A federal district court in California has ruled that an investment DAO can be a general partnership.¹⁰⁸ A DAO that was involved in trading and lending assets, the bZx DAO, lost \$55 million after a cyber breach.¹⁰⁹ Purchasers of crypto assets associated with the bZx DAO brought state law claims against the Developer and major holders of the bZx DAO's crypto assets. They alleged that the bZx DAO was a general partnership and the defendants were partners who were jointly and severally liable for the alleged negligence that resulted in their losses.¹¹⁰ The bZx DAO did not have a formal partnership agreement,¹¹¹ but the court found that the bZx DAO defendants had significant rights to jointly operate the business.

105. See, e.g., *Youmans v. Simons*, 791 F.2d 341, 346 (5th Cir. 1986) (noting that general partners "are personally liable for all liabilities of the partnership"); see also UNIF. P'SHIP ACT § 306(a) (1997) ("[A]ll partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership.").

106. DAOs can be built as applications on top of the infrastructure of other blockchains. See Edmund Schuster & Kelvin F.K. Low, *What Do DAOs Really Contribute?* (LSE L., Soc. & Econ., Working Paper No. 15/2025, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5327229; Shubham Gupta, *Are Layer 3 Protocols Really Important for Blockchain?*, SWITCH (May 10, 2024), <https://coinswitch.co/switch/crypto/are-layer-3-protocols-really-important> [<https://perma.cc/Q4R6-B4Y2>]. The crypto associations that run a DAO may not have Validators because they will rely on the Validators of another blockchain to validate transactions.

107. See VITALIK BUTERIN, *ETHEREUM: A NEXT GENERATION SMART CONTRACT AND DECENTRALIZED APPLICATION PLATFORM* 23 (2014), https://ethereum.org/content/whitepaper/whitepaper-pdf/Ethereum_Whitepaper_-_Buterin_2014.pdf [<https://perma.cc/E9FM-N5RZ>] (describing DAO as "a virtual entity that has a certain set of members or shareholders which, perhaps with a 67% majority, have the right to spend the entity's funds and modify its code"); Jungsuk Han, Jongsub Lee & Tao Li, *DAO Governance* 13 (Eur. Corp. Governance Inst., Working Paper No. 1119/2025, 2026), <https://ssrn.com/abstract=4346581> ("In a DAO, decisions are made through direct token-holder democracy, where token holders have a vote proportionate to their token ownership.").

108. *Sarcuni*, 664 F. Supp. 3d at 1100.

109. See *id.* at 1108.

110. See *id.* at 1114.

111. See *id.* at 1117.

Purchasers of crypto assets in the bZx DAO had the ability to “suggest and vote on governance proposals.”¹¹² Notably, the Purchasers could also share in the profits of the DAO by “voting to distribute treasury assets among themselves”¹¹³ The court thus concluded that the defendants were “co-owners” of the bZx DAO, an association meant to produce profits.¹¹⁴

The explicit right to distribute profits was an important factor in the court’s decision to find that the bZx DAO could be a partnership, but such an agreement may not be a prerequisite to finding that a DAO is a partnership. A California state court found that a DAO was a partnership even without an explicit agreement to share profits.¹¹⁵ The Lido DAO invested in crypto assets that it could stake as a Validator in a blockchain and earn additional crypto assets for validating transactions.¹¹⁶ The court rejected the claim that the Lido DAO was “not a legal entity” and was “just autonomous software that runs without human management.”¹¹⁷ At the pleading stage, it was sufficient to allege that the DAO was an “association with the intent to carry on a business for profit.”¹¹⁸ Unlike the bZx DAO, there was no pooling of profits in the Lido DAO, but there was a common effort to create a liquid market that would enable the DAO’s partners to generate profits from the venture.¹¹⁹ The court held that at the pleading stage, the plaintiff did not need to identify precisely who was in the partnership.¹²⁰ It was enough to allege that significant Purchasers of the DAO crypto assets had the right to make governance decisions for the DAO.

Many crypto associations are unlike DAOs in that they do not provide Purchasers explicit governance rights such as the right to vote on projects. However, even without voting rights, there is often a group of parties associated with a crypto association that has the power to make governance decisions. The extent of such power will often depend on the amount such party has invested in the blockchain. For example, because validation of blockchain transactions is costly,¹²¹ Validators must invest substantial sums to have the chance to earn profits. Such investments are arguably like the investment a partner would make

112. *Id.* at 1116.

113. *Id.* at 1117.

114. *Id.* at 1116. The opinion can be read even more broadly to reach “all persons holding BZRX tokens.” *Id.* at 1114.

115. See *Samuels v. Lido DAO*, 757 F. Supp. 3d 951, 964 (N.D. Cal. 2024).

116. *Id.* at 957.

117. *Id.* at 960.

118. *Id.* at 964 (quoting *Holmes v. Lerner*, 74 Cal. App. 4th 442, 454 (1999)).

119. *Id.* at 969.

120. *Id.* at 962.

121. See *Ferreira et al.*, *supra* note 41.

in a partnership.¹²² Validators also have substantial managerial power over the blockchain.¹²³ As some blockchains move toward a proof-of-stake system, where parties that are willing to stake their investment in crypto assets can earn crypto assets by validating transactions, the analogy to a partnership will grow stronger.

On the other hand, the lack of clear agreement between participants in a crypto association makes it difficult to conclude that crypto associations are always partnerships. In many cases, parties will have different reasons for participating in a blockchain.¹²⁴ Some participants may believe they are jointly operating a business. Others may view themselves as autonomous operators who are independently responding to incentives set by a computer program.¹²⁵ Others may simply be speculating in a volatile investment opportunity. It may be difficult for courts to identify which parties are partners in a crypto partnership.¹²⁶ If that is the case, it could be problematic to conclude that a partnership has been formed.

To summarize, some courts have held that particular crypto associations are general partnerships, but the issue is controversial.¹²⁷ It is likely that plaintiffs will continue to call on courts to find that some combination of Developers, Validators, and Purchasers agreed to form a partnership. Courts will likely differ in their holdings based on the facts.

122. On the other hand, Validators might argue they are more like independent contractors who receive payment from the program to validate transactions. Such payments would not qualify as the types of profits that result in a presumption that a partnership has been formed. See UNIF. P'SHIP ACT § 202(c)(3)(B) (1997).

123. See *Framework for "Investment Contract" Analysis of Digital Assets*, U.S. SEC. & EXCH. COMM'N (Apr. 3, 2019), <https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets> [<https://perma.cc/QYP4-224H>] (noting that "[p]laying a leading role in the validation or confirmation of transactions on the network" is a type of "continuing managerial role" in a blockchain), *superseded by* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13,714 (Mar. 17, 2026).

124. See, e.g., Reyes, *supra* note 5, at 393 (noting that not all participants in a blockchain understand that they are partners).

125. For a case involving a fact pattern where a court found that independent business operators did not form a partnership, see *Westside Wrecker Serv., Inc. v. Skafi*, 361 S.W.3d 153 (Tex. App. 2011).

126. Indeed, this was evidenced in *Samuels*. 757 F. Supp. 3d 951, 962 (N.D. Cal. 2024). The court was able to defer on the issue of identifying partners at the motion to dismiss stage, but at some point, it would likely need to make determinations as to which parties are partners.

127. Scholars have divided on the issue. Compare Rodrigues, *supra* note 5, at 684 (describing partnership as a default form of entity that can be applied to blockchains), with Reyes, *supra* note 5, at 393 (concluding that blockchains are generally not partnerships).

2. Crypto Associations as Limited Partnerships

An issue with treating a crypto association as a general partnership is that not all participants will have significant governance rights. Partnership law envisions that the typical partnership will be composed of partners of relatively equal status.¹²⁸ Crypto associations are more likely to resemble limited partnerships, where a general partner manages the business and limited partners provide capital and passively share in the returns. The Developers and Validators who manage the blockchain could be viewed as general partners while the Purchasers who own interests in the blockchain are essentially limited partners. While no court has yet explicitly found that a crypto association is a limited partnership, the SEC's position that crypto assets can be securities implicitly assumes that a blockchain is governed as a limited partnership.

The question of whether crypto associations are limited partnerships is important because if all crypto associations were general partnerships, crypto assets would not be securities. Courts have uniformly held under *Howey* that economic interests in a general partnership are not securities.¹²⁹ They have concluded that when a partner invests money in a partnership interest, the partner is not "relying on" the "managerial efforts" of others, a requisite of the *Howey* test. Partners typically have substantial say in the partnership's management and are expected to contribute to the partnership's efforts to generate profits.¹³⁰ Because of their involvement and rights with respect to the partnership, federal courts have presumed that partners can protect themselves. As one court explained, "[t]he reason general partners are usually held not covered under the securities laws is that they are entrepreneurs, not investors, and have the ability to take care of their own interests because of the inherent powers available to them."¹³¹

128. The default rule is that each partner receives an equal share of the profits and has an equal vote on matters. See UNIF. P'SHIP ACT § 401 (1997).

129. See, e.g., *United States v. Leonard*, 529 F.3d 83, 89 (2d Cir. 2008) ("[A] general partnership interest is not considered a security." (quoting *Odom v. Slavik*, 703 F.2d 212, 215 (6th Cir. 1983))); *Williamson v. Tucker*, 645 F.2d 404, 421 (5th Cir. May 1981) ("[T]he courts that have ruled on the issue have held that a general partnership or joint venture interest generally cannot be an investment contract under the federal securities acts."); *Hirsch v. Du Pont*, 396 F. Supp. 1214, 1220 (S.D.N.Y. 1975) (noting "bright-line rule" that general partnership interests are not securities).

130. The default rule is that partners have equal rights to profits and equal management rights. See UNIF. P'SHIP ACT §§ 401(a), (h) (1997).

131. *Youmans v. Simons*, 791 F.2d 341, 346 (5th Cir. 1986); see also Jonathan M. Sobel, *A Rose May Not Always Be a Rose: Some General Partnership Interests Should Be Deemed Securities Under the Federal Securities Act*, 15 CARDOZO L. REV. 1313, 1314 (1994) ("[G]eneral partners can usually protect their investment by exercising their partnership powers.").

Unlike general partnership interests, limited partnership interests usually qualify as securities under the *Howey* test.¹³² The limited partners rely on the managerial efforts of the general partner to generate profits because they have “little or no authority to take an active part in the management of the partnership.”¹³³ The limited partners do not participate in the day-to-day operations of the business and are thus vulnerable to self-dealing and poor management by the general partner. The mandatory disclosure required by federal securities law permits the limited partners to monitor the general partner’s performance and helps ensure that the general partner does not divert opportunities for itself.¹³⁴

The fact that a crypto association does not have a written limited partnership agreement should not in itself preclude the finding that it operates as a limited partnership. Courts, in applying *Howey*, have often found that an association operates as a limited partnership, even when a contract explicitly says it is a general partnership. Because securities law obligations for partnership interests depend on whether a partnership is general or limited, groups that want to avoid federal registration will attempt to organize as general partnerships rather than limited partnerships. They will draft contracts that create the appearance that their investors have the managerial rights of general partners rather than limited partners. Such contracts may not reflect the economic reality of an arrangement when the investors are unable to effectively exercise governance rights.

Courts thus do not defer to these contracts but instead holistically evaluate the substance of the relationship. In the seminal case *Williamson v. Tucker*,¹³⁵ the U.S. Court of Appeals for the Fifth Circuit instructed that “[a] general partnership . . . interest can be designated a security” if the arrangement “leaves so little power in the hands of the partner . . . that the arrangement in fact distributes power as would a limited partnership . . .” If investors do not have the expertise to exercise rights conferred by the partnership agreement, courts have found that

132. See, e.g., *Williamson*, 645 F.2d at 423 (explaining that “a limited partnership” has “long been held to be an investment contract”).

133. *Youmans*, 791 F.2d at 346.

134. See Paul G. Mahoney, *Mandatory Disclosure as a Solution to Agency Problems*, 62 U. CHI. L. REV. 1047 (1995).

135. 645 F.2d at 424; see also *Mayer v. Oil Field Sys. Corp.*, 721 F.2d 59, 65 (2d Cir. 1983) (“Where the investing limited partners exercised no managerial role in the partnership’s affairs, courts have held that limited partnership interests are securities, at least when, as here, there were a considerable number of limited partners.”). Other cases have found that limited partnership interests are not securities when the limited partners had significant managerial authority. See, e.g., *Frazier v. Manson*, 651 F.2d 1078, 1081 (5th Cir. Unit A July 1981).

they are essentially limited partners and that they rely on the efforts of the general partners.¹³⁶

If a general partnership can be a limited partnership despite contracts explicitly describing it as a general partnership, it follows that an association can be treated as if it were a limited partnership in the absence of any written contract.¹³⁷ What matters more than the “language” in any “organizational document” is the “reasonable expectation” of investors.¹³⁸ Crypto associations managed by a partnership of Developers and perhaps Validators that sell crypto assets to Purchasers to fund their operations are effectively issuing limited partnership interests. To the extent that crypto Purchasers have a reasonable expectation that the managers of a crypto association will act to increase the value of crypto assets,

136. For example, in *Leonard*, 529 F.3d 83, the U.S. Court of Appeals for the Second Circuit, in an opinion by Judge Robert Katzmann, applied this test. *Leonard* involved sales of units to investors in an LLC organized as a general partnership. The promoters did not disclose to investors that they took a 45 percent commission from the proceeds raised from selling the units. *Id.* at 86. They were criminally prosecuted for committing federal securities fraud. The promoters argued that they did not sell securities because they sold general partnership interests to investors. They pointed to organizational documents requiring the purchasers of the units to “participate in the management of the Company” by voting on any “important decision” and serving on committees. *Id.* at 89. The operating agreement also specified that anyone owning the units would “have the right to act for and bind the Company in the ordinary course of its business.” *Id.* This arrangement was meant to avoid classification of the units as securities by falling within the “gray areas of the securities law.” *Id.* They argued based “on the face of the documents” that there was “too much investor control to allow the jury to conclude that the units were securities.” *Id.* Rather than deferring to the contracts that defined the rights and obligations of the investors, the Second Circuit closely examined the substance of the arrangement to conclude that the investors were not general partners. The court reasoned that notwithstanding the organizational documents, the “members played an extremely passive role in the management and operation of the companies.” *Id.* Only a small number of members served on committees. They generally “had no particular experience in film or entertainment and therefore would have had difficulty exercising their formal right to take over management of the companies after they were fully organized.” *Id.* at 90. There were hundreds of investors from different parts of the country, making them “particularly dependent on centralized management.” *Id.* They were essentially limited rather than general partners, meaning that they relied on the managerial efforts of others to generate profits.

137. States do not require a written agreement for a limited partnership to be formed. See DEL. CODE ANN. tit. 6, § 17-101(14) (2026) (defining limited partnership agreement as “any agreement, written, oral or implied, of the partners as to the affairs of a limited partnership and the conduct of its business”). While limited partnerships typically require the filing of a document with a state government, this filing requirement mainly serves to put parties on notice that the limited partner is not personally liable for the organization’s debts. The limited partnership exists prior to the “filing of a certificate of limited partnership.” *Id.* § 17-201(d) (2026). Any obligations created between the parties to a limited partnership are binding regardless of whether they “comply with the organizational formalities.” CHRISTINE HURT, D. GORDON SMITH, ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON PARTNERSHIP § 9.04[b] (3d ed. 2026-1).

138. *Leonard*, 529 F.3d at 90.

such crypto assets are likely securities issued by limited partnerships under the *Howey* test.

In its first major public application of *Howey* to crypto, the SEC essentially argued that a crypto association that was purportedly managed as a general partnership was in fact managed as a limited partnership. In 2017, the SEC issued a report of investigation relating to the sale of tokens by “The DAO, an unincorporated organization.”¹³⁹ The DAO described itself as an investment fund that would be governed by Purchasers of its tokens.¹⁴⁰ Holders of tokens issued by The DAO would vote on investment proposals and decisions to distribute profits.¹⁴¹ The DAO investors would effectively be general partners who would be responsible for the profitability of the organization.

The SEC described facts indicating that the Purchasers of tokens in The DAO were more like limited partners rather than general partners. What appeared to involve a governance structure that gave the investors significant managerial power in reality would not operate in a way that gave the Purchasers control over The DAO.¹⁴² The investment proposals were initially vetted by a group of Curators who would decide whether the proposal would be submitted for a vote.¹⁴³ The DAO investors had the power to remove any Curator, but any proposal to remove a Curator would have to be approved by the Curators.¹⁴⁴ The SEC also pointed to the dispersion of the token-holders and their pseudonymity as factors making it difficult for them to organize to exercise meaningful control.¹⁴⁵ The SEC cited *Williamson*, the Fifth Circuit decision that did not defer to the characterization of a partnership as general rather than limited, in contending that Purchasers of tokens in The DAO were essentially limited partners who relied on the managerial efforts of a centralized group.¹⁴⁶

One complication in classifying Purchasers of crypto assets as limited partners in crypto associations is that in noninvestment DAOs, it is more likely that Purchasers will buy crypto for consumption. The Purchasers may believe that they are purchasing a currency that will hold its value, or they may primarily purchase a digital asset because it will permit them to access some service that they

139. *DAO Report*, *supra* note 26, at 1. For a discussion of SEC reports of investigation, see James J. Park, *Karmel's Dissent: The SEC's Use and Occasional Misuse of Section 21(a) Reports of Investigation*, 16 *BROOK. J. CORP. FIN. & COM. L.* 9 (2021).

140. *DAO Report*, *supra* note 26, at 1.

141. *Id.* at 4.

142. *Id.* at 13–15.

143. *Id.* at 7–8.

144. *Id.* at 13.

145. *Id.* at 14; *see also* Complaint ¶¶ 55–66, *SEC v. Eisenberg*, No. 1:23-cv-00503 (S.D.N.Y. Jan. 20, 2023) (alleging that token governance rights were illusory).

146. *Williamson v. Tucker*, 645 F.2d 404, 424 (5th Cir. May 1981).

value. They may have no knowledge or expectation that any central party will seek to increase the value of the crypto asset.

But the fact that some crypto holders are consumers should not preclude a court from concluding that a crypto association with a limited partnership structure sells securities. A limited partnership could conceivably have both limited partners and additional stakeholders who do not expect to earn profits that depend on the managerial efforts of others (as required for security status under *Howey*). Indeed, in *Howey* itself, only some of the investors bought a security—a minority of the investors did not enter a service contract and only purchased a real estate interest in the orange groves.¹⁴⁷ The fact that some of the investors limited their investment to a real estate asset that was not a security did not preclude the court from holding that other investors purchased securities in an orange-selling venture.¹⁴⁸ Some of the crypto assets sold by the limited partnership would be securities while others would not.¹⁴⁹

Viewing certain crypto associations as limited partnerships would provide a firmer basis for regulating the crypto assets issued by such associations when they are traded on secondary markets. As noted earlier, the SEC and the courts have concluded that digital assets are investment contracts by pointing to statements by promoters suggesting that the value of such assets will depend on their managerial efforts.¹⁵⁰ A few courts have been skeptical that such statements are a sufficient basis for a digital asset to maintain its status as an investment contract in secondary markets because some investors may not rely on such statements.¹⁵¹ However, if the crypto association is essentially a limited partnership, and its crypto assets are limited partnership interests (which are securities), it would be difficult to argue that the essence of those crypto assets changes simply because they are traded in secondary markets. Limited partnerships routinely issue interests that are traded on exchanges,¹⁵² and those interests continue to be regulated as securities in secondary markets.

147. SEC v. W.J. Howey Co., 328 U.S. 293, 300–01 (1946).

148. It is worth noting that the investors did not receive direct access to the orange trees and so the trees might not have had consumptive value to them. *See id.* at 296–97.

149. *See, e.g.*, Guseva, *supra* note 77, at 172 (noting that initial distribution of digital assets may involve both securities and nonsecurities).

150. *See* SEC v. Ripple Labs, 682 F. Supp. 3d 308, 326–28 (S.D.N.Y. 2023); SEC v. Terraform Labs Pte. Ltd., 684 F. Supp. 3d 170, 197 (S.D.N.Y. 2023).

151. *See, e.g.*, SEC v. Binance Holdings Ltd., 738 F. Supp. 3d 20, 53–57 (D.D.C. 2024); *Ripple Labs*, 682 F. Supp. 3d at 329.

152. *See, e.g.*, Christine Hurt, *The Private Ordering of Publicly Traded Partnerships*, in *CAN DELAWARE BE DETHRONED?: EVALUATING DELAWARE'S DOMINANCE OF CORPORATE LAW* 201, 210–13 (Stephen M. Bainbridge, Iman Anabtawi, Sung Hui Kim & James Park eds., 2018).

There is some support in the case law for an approach that emphasizes the organizational structure of a crypto association in evaluating whether a crypto asset is a security. In deciding whether LBC, a crypto asset associated with the LBRY blockchain, was a security, a district court observed that even if the promoters “never said a word about” whether they would increase the value of LBC, it could be part of an investment contract.¹⁵³ The fact that the promoters retained “hundreds of millions” of the crypto assets for themselves was sufficient to conclude that the association was structured in a way so that LBRY “was motivated to work tirelessly to improve the value of its blockchain for itself and any LBC purchasers.”¹⁵⁴ Put another way, the structure of the crypto association was in itself a type of ongoing representation by the Developer to the Purchasers. The fact that a crypto association is essentially structured as a limited partnership should be sufficient representation to investors that the profits from their investment depend on the efforts of the managers.

One final point on the claim of crypto defendants that crypto assets cannot be investment contracts. If federal appellate courts or the Supreme Court were to accept the argument that investment contracts require written contracts under *Howey*, they would need to distinguish or overrule the long line of cases where federal courts do not defer to written general partnership contracts in applying *Howey* to partnership interests. In minimizing the importance of such contracts, the district courts have emphasized that the substance of the arrangement matters more than the text of a contract. Departing from this approach could disrupt well-settled law that governs whether a partnership interest is a security.

In claiming that they are not governed by contracts, crypto associations disclaim the obligations that follow from entity status. Many courts have rejected these arguments to conclude that crypto associations are entities.

III. GOVERNANCE AND CRYPTO ASSOCIATIONS

In their insistence that they owe no obligations to Purchasers, crypto associations challenge basic assumptions about business organizations, which typically are governed by legal duties that are viewed as necessary to protect investors. The crypto industry’s position is a variant of a well-known argument in the corporate law literature—that entities are no more than a nexus for contracting. Crypto associations aspire to replace standard legal entities with

153. SEC v. LBRY, Inc., 639 F. Supp. 3d 211, 220 (D.N.H. 2022).

154. *Id.*

computer code that contains all the necessary rules to govern the blockchain.¹⁵⁵ Rather than impose law that would protect investors, the crypto industry is arguing for a robust contractualism that permits Purchasers to completely bargain away such legal protections.

This Part situates the claim that crypto associations owe no obligations to investors in the scholarship on corporate contractualism. It discusses an argument against contractualism advanced in the literature to highlight a danger to investors in crypto associations: the shape-shifting nature of crypto associations makes investors vulnerable to midstream changes to the governance of such associations.

A. Contractualism and Crypto Associations

Contractualism characterizes the corporation as a nexus of contracts. For a contractualist, entities serve little purpose other than to serve as a legal party that can enter into agreements.¹⁵⁶ The fiduciary duties that have long governed entities are no more than contracts that can be altered through consent. Crypto associations take the argument a step further and contend that associations can operate without contractual obligations to any parties.¹⁵⁷ There is thus no need for a legal entity. So long as the rules of the blockchain are clear, parties can decide voluntarily whether they would like to participate without any written contractual protections. According to crypto enthusiasts, technology has made the transaction costs of governing an association low enough to create a Coasean world where law is unnecessary.¹⁵⁸

Contractualism is a theory with both descriptive and normative elements. The descriptive element observes that investors and entities essentially negotiate the terms on which investors will invest.¹⁵⁹ Written agreements reflecting such

155. See Cohnen et al., *supra* note 2, at 611 (noting that the crypto “community tries to make concrete the ideological project of using code to replace the rules of entity governance that law currently creates”).

156. See Easterbrook & Fischel, *supra* note 61, at 1426 (“The arrangements among the actors constituting the corporation usually depend on contracts and on positive law, not on corporate law or the status of the corporation as an entity.”).

157. See *supra* Subpart II.A.

158. The economist Ronald Coase highlighted how in situations where transaction costs are low, legal entitlements are unimportant because parties can assign such entitlements optimally through contracting. See Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960); see also Edoardo D. Martino & W. Georg Ringe, *The Social Cost of Blockchain: Externalities, Allocation of Property Rights, and the Role of the Law*, EUR. J. RISK REG. (2025) (discussing Coasean implications of blockchain).

159. The foundation for viewing the firm as a nexus of contracts was set forth by Coase, who viewed the firm as a way of reducing the transaction costs of contracting. See Ronald H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 390–91 (1937).

negotiation are pervasive in business enterprises.¹⁶⁰ In theory, investors will pay more or less to invest in an entity depending on its governance.¹⁶¹ Entities thus have an incentive to choose governance measures that are responsive to investor concerns. The normative element of contractualism is that such free negotiation should not be disturbed through mandatory legal rules that protect investors from wrongdoing by managers.¹⁶² Investors should be permitted to opt out of legal protections if they choose.

A criticism of contractualism in the context of corporations is that shareholders do not typically negotiate the terms of a corporate charter.¹⁶³ The founders of the corporation usually draft the charter without input from shareholders, who also generally do not have the ability to formally initiate revisions to the charter.¹⁶⁴ Without such negotiation, it is more difficult to contend that there is agreement on each and every provision.

A response to this argument is that by agreeing to purchase stock governed by a particular charter, shareholders effectively agree to the charter's terms.¹⁶⁵ Just as consumers are bound by a form contract they do not negotiate, shareholders are bound by a corporate charter they do not negotiate. An investor has the option of investing in a stock with more favorable governance provisions rather than consent to an unfavorable charter.¹⁶⁶ As stock markets have become more efficient in valuing companies, they price governance provisions.¹⁶⁷ Even if a stock purchaser is unhappy with an unfavorable provision, the purchaser may have

160. See *supra* Subpart II.A.

161. See Easterbrook & Fischel, *supra* note 61, at 1430–34.

162. See Bebchuk, *supra* note 12, at 1821 (describing the view that parties forming a corporation “should be generally free to shape their contractual arrangements”); John C. Coffee, Jr., *The Mandatory/Enabling Balance in Corporate Law: An Essay on the Judicial Role*, 89 COLUM. L. REV. 1618, 1619 (1989) (observing that the nexus of contracts approach “implies for both sides that the law should permit shareholders to write or amend the corporate contract in virtually any way they see fit”).

163. See Ann M. Lipton, *Manufactured Consent: The Problem of Arbitration Clauses in Corporate Charters and Bylaws*, 104 GEO. L.J. 583, 603–05 (2016) (arguing that corporate contracts are not based on shareholder assent).

164. See DEL. CODE ANN. tit. 8, § 242 (2026) (requiring the board to initiate amendment to the charter).

165. *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 939–40 (Del. Ch. 2013).

166. Another way of describing this argument is that they have a right to sell. See James J. Park, *The Limits of the Right to Sell and the Rise of Federal Corporate Law*, 70 OKLA. L. REV. 159 (2017).

167. There is substantial evidence that questions this hypothesis. See Michael Klausner, *Fact and Fiction in Corporate Law and Governance*, 65 STAN. L. REV. 1325 (2013).

received a discount on the stock that compensates them for the negative impact of that provision.¹⁶⁸

Crypto associations go beyond traditional contractualism in arguing that parties can form a business association undefined by written contracts.¹⁶⁹ As noted earlier, the crypto industry has taken the position that a crypto association has no contractual obligations to crypto Purchasers.¹⁷⁰ Instead of legal agreements, crypto associations aspire to use technology to create a system “without relying on trust,” with its various parts working “all at once with little coordination.”¹⁷¹ Rather than using “traditional mechanisms of corporate governance,” crypto associations are governed by rules that are “formalized, automated and enforced using software.”¹⁷²

Even though they are not protected by contract, crypto Purchasers arguably invest in crypto assets knowing that a blockchain is governed exclusively by the rules set forth in computer code. A committed contractualist would argue that any Purchaser agrees to these terms and needs no further protection from the law. There is an implicit agreement between the crypto association and Purchaser that the crypto association owes no legal obligations whatsoever to the Purchaser.

Crypto associations thus reject the well-established fiduciary duties that govern entities. Fiduciary duties obligate a corporate board to act in the interests of shareholders, and they obligate partners to act in the interests of one another. A corporate board and partnerships must make decisions with care and in good faith.¹⁷³ They owe a duty of loyalty to shareholders and other partners preventing them from diverting the entity’s resources for their personal gain.¹⁷⁴ Contractualists describe fiduciary duties, which are imposed by law rather than contract, as no more than standard-form contracts that any shareholder would

168. See Bebhuk, *supra* note 12, at 1826 (describing the contractarian argument that informed buyers will price governance provisions when purchasing shares at the IPO stage).

169. See Memorandum of Law, *supra* note 55.

170. See *supra* Subpart II.A.

171. See NAKAMOTO, *supra* note 42, at 8; see also Henderson & Raskin, *supra* note 36, at 461 (discussing the possibility that a blockchain could still operate even if the promoters leave for the Bahamas).

172. DAO Report, *supra* note 26, at 3 (quoting CHRISTOPH JENTZSCH, DECENTRALIZED AUTONOMOUS ORGANIZATION TO AUTOMATE GOVERNANCE (2016)); see also BUTERIN, *supra* note 107, at 1 (describing “smart contracts that contain the assets and encode the bylaws of an entire organization”).

173. See *Stone ex rel. AmSouth Bancorporation v. Ritter*, 911 A.2d 362, 370 (Del. 2006) (discussing fiduciary duties).

174. See *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 361–62 (Del. 1993) (describing duty of loyalty).

require before investing in an entity.¹⁷⁵ Entity law essentially provides off-the-rack provisions that govern in the absence of a more specific agreement.¹⁷⁶

Crypto associations argue that fiduciary duties are not a good fit for associations that do not rely on central managers. Corporations and partnerships centralize management decisions in the board or in the partners themselves. Because of that power, those decisionmakers have a unique potential to self-deal and make decisions that could harm the entity.¹⁷⁷ In contrast, as noted earlier, crypto associations contend that there is no single party that is legally responsible for a blockchain. They assert that a crypto association's governance can become decentralized and depend on a shifting array of parties without a clear legal relationship with the association. The value of a crypto association will not hinge on the effectiveness of a central manager. Instead, it will mainly be determined by whether it succeeds in creating sufficient incentive for numerous Validators to continually maintain the blockchain.

A contractualist could argue that just as entity law permits corporations and partnerships to opt out of many fiduciary duties,¹⁷⁸ crypto associations should be able to completely opt out of the entity law that creates such fiduciary duties. States have been willing to create organizational forms such as the LLC, which are meant to maximize freedom of contract.¹⁷⁹ If entities can move away from fiduciary duties, perhaps nonentities without such duties should be permitted.

On the other hand, the numerous efforts of the courts to classify crypto associations as entities reflect the desire to protect Purchasers with fiduciary duties and other legal provisions such as federal securities law.¹⁸⁰ If a crypto association is a partnership or limited partnership, its general partners are obliged to cover the

175. EASTERBROOK & FISCHEL, *supra* note 10, at 92 (“Socially optimal fiduciary rules approximate the bargain that investors and managers would have reached if they could have bargained (and enforced their agreements) at no cost.”); Jeffrey N. Gordon, *The Mandatory Structure of Corporate Law*, 89 COLUM. L. REV. 1549, 1551 (1989) (describing the application of the argument that “corporate law should function as a sort of standard form contract” to fiduciary duties).

176. See Easterbrook & Fischel, *supra* note 61, at 1444.

177. The problem of unjust enrichment is a significant concern in public companies. See generally James J. Park, *Rule 10b-5 and the Rise of the Unjust Enrichment Principle*, 60 DUKE L.J. 345 (2010) (documenting unjust enrichment concerns across multiple securities law contexts).

178. See, e.g., DEL. CODE ANN. tit. 8, § 102(b)(7) (2026) (permitting a corporation to opt out of personal liability of directors and officers for breaches of the duty of care); *id.* tit. 8, § 144 (2026) (permitting the approval of interested transactions).

179. The LLC, which combines desirable features of corporations and partnerships, became prevalent during the 1990s and reflected a contractual approach to organizational law. The Delaware LLC statute declares that its policy is “to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.” *Id.* tit. 6, § 18-1101(b) (2026).

180. See *supra* Subpart II.B.

debts of the partnership.¹⁸¹ Purchasers can attempt to recover their losses by pursuing the assets of individual partners. A contractualist might object to this approach as interfering with freedom of contract. But the fact that Purchasers have frequently brought such suits against Developers may indicate that Purchasers want such protection.¹⁸² It is not far-fetched to argue that many Purchasers do not understand that they consented to an arrangement without any legal protections.

B. Shape-Shifting Associations

Crypto associations are especially difficult to govern because their structure is fluid. A blockchain's governance can change over time, going from centralized to decentralized and then back again. Such changes can be favorable or unfavorable for Purchasers. Even if they initially consent to a particular governance arrangement, they may not consent to midstream changes that affect the value of their investment. There is thus a case that Purchasers need disclosure that alerts them to fundamental changes in the governance of a crypto association.

Because of the lack of explicit contractual obligations in a blockchain, its governance structure can easily shift over time. In corporations and partnerships, governance provisions are usually fixed in writing. Such agreements can be changed, but only through a clearly specified process. In contrast, the governance of a crypto association will largely depend on the independent decisions of various parties. These decisions may not be transparent to outsiders. Moreover, some of those parties may attempt to exploit the lack of transparency in a crypto association to manipulate its governance to benefit themselves.

Crypto associations necessarily go through substantial evolution. Initially, a blockchain requires centralized managerial efforts to create its code and attract Validators to maintain it and Purchasers to use it. Developers may sell crypto assets to Purchasers to raise funds to start the blockchain. At this early stage, it is natural to identify the crypto association with the Developer who controls it. Over time, if successful, the blockchain will achieve decentralization and operate without the management of the Developer. Governance of the crypto association will be through consensus of its participants, and the Developer will no longer have complete control. At this stage, the crypto association may be controlled by a diffuse group of Validators and Purchasers, who make decisions through consensus. It would be more difficult to equate the crypto association with any

181. See UNIF. P'SHIP ACT § 306 (1997).

182. Just as participation in a blockchain may be motivated by incentive, private plaintiffs and their attorneys have incentive to enforce legal provisions. See James J. Park, *Rules, Principles, and the Competition to Enforce the Securities Laws*, 100 CALIF. L. REV. 115, 159–62 (2012).

central manager. There would be less of a need to protect Purchasers from exploitation by insiders because there effectively would be no insiders who control the association.

Even if it eventually operates without a central manager, there is a risk that a decentralized crypto association evolves in such a way that its governance becomes centralized again.¹⁸³ A crypto association at one point in time may have a robust number of independent Validators. Over time, Validators may exit the crypto association. They may lose interest in participating, or if the value of the crypto assets they receive for validating transactions declines far enough, they will no longer have sufficient incentive to verify transactions. Validators may consolidate to increase economies of scale and increase the chance that they will successfully earn compensation.¹⁸⁴ Even if there are numerous Validators, some Validators may be rationally apathetic and permit a small group to gain disproportionate input on decision-making.¹⁸⁵

If a blockchain has only a few Validators, the argument that it has a central controller becomes stronger. Those Validators will dominate the governance of the blockchain. In extreme cases, there may be a single Validator that can control every decision made with respect to the blockchain.¹⁸⁶ When there is such centralized control, the crypto association will be subject to the whims of that controller.

There is concern that even for established blockchains such as Bitcoin and Ethereum, which are viewed as decentralized because they arguably operate

183. For a discussion of this possibility, see BUTERIN, *supra* note 107, at 33 (noting that a problem with “a large blockchain size is centralization risk” where “only a very small number of large businesses would run full nodes”); see also Daniel Ferreira & Jin Li, *Governance and Management of Autonomous Organizations 2* (Eur. Corp. Governance Inst., Working Paper No. 968/2024, 2025), <https://ssrn.com/abstract=4746904> (“[R]eal-world DAOs have been plagued by issues such as centralization (and often abuse) of power, lack of contractual enforcement, and poor performance.”).

184. See Ferreira et al., *supra* note 41.

185. See JEFF STRNAD, *ECONOMIC DAO GOVERNANCE: A CONTESTABLE CONTROL APPROACH 1* (2024), <https://ssrn.com/abstract=4771750> (noting the problem of passive token holders in DAOs); Dimitropoulos, *supra* note 1, at 1178 (observing that off-chain governance where decisions are made to update and amend blockchain code is “relatively centralized and excludes many users that lack the technical knowledge or financial power to effect network decisions”); see also Complaint, *supra* note 145, ¶ 63 (“[D]espite thousands of wallet addresses holding [voting] tokens, on average, approximately five-to-ten addresses voted on any given proposal, and a few repeat wallet addresses . . . dominated the votes.”).

186. This is known as the 51 percent problem where a Validator with a majority of tokens can completely control a blockchain. See JENTZSCH, *supra* note 172, at 2 (“A problem every DAO has to mitigate is the ability for the majority to rob the minority by changing governance and ownership rules after DAO formation.”).

without any controller,¹⁸⁷ governance has become centralized. Validators have consolidated as it has become more expensive to verify transactions. There are reports that only a small number of active Validators participate in governance decisions.¹⁸⁸ Rather than a decentralized system where anyone with a computer can participate, power in these blockchains is controlled by those who have invested a substantial amount in them. Like a for-profit entity, those individuals who have invested the most will necessarily have more governance power than those with minimal investments.

The claim that such controllers have no obligation to the other Purchasers in a blockchain is troubling. If the most influential Validators dump substantial amounts of their crypto asset holdings on unsuspecting retail Purchasers and abandon the project, public investors would be left with substantial losses. Such conduct would be like abuse by corporate insiders who sell their shares in a company before leaving the company because of its poor economic prospects.¹⁸⁹

The volatility of crypto association governance recalls a standard objection to corporate contractualism. For stock investors, it can be difficult to price the risk of midstream changes to corporate governance implemented after the corporation initially sells securities.¹⁹⁰ An investor who purchases stock can adjust for the negative impact of a suboptimal governance provision by paying a lower price for the stock. However, once the investor becomes an owner of stock, the investor is vulnerable to midstream changes in governance that could reduce the value of the stock. The investor may not meaningfully consent to changes in corporate

187. The SEC has acknowledged the decentralized governance of Bitcoin and Ethereum. See William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, U.S. SEC. & EXCH. COMM'N (June 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418> [<https://perma.cc/V6HC-U69K>].

188. See, e.g., CESARE FRACASSI, MOAZZAM KHOJA & FABIAN SCHÄR, DECENTRALIZED CRYPTO GOVERNANCE? TRANSPARENCY AND CONCENTRATION IN ETHEREUM DECISION-MAKING 2 (2024), <https://ssrn.com/abstract=4691000> (“[M]any of the changes to the Ethereum protocol are proposed only by a handful of contributors.”).

189. One possibility would be to evaluate blockchains based on intent. Darian Ibrahim argues that courts should attempt to identify those promoters who do not intend to form a truly decentralized system but instead seek to keep control. See Darian Ibrahim, *Angels and Devils: The Early Crypto Entrepreneurs* (William & Mary L. Sch., Rsch. Paper No. 09-460, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4277787.

190. See Lucian Arye Bebchuk, *Foreword: The Debate on Contractual Freedom in Corporate Law*, 89 COLUM. L. REV. 1395, 1402 (1989) (noting the general recognition “that the midstream stage is different from the initial charter stage and presents the biggest problem for the freedom-to-opt-out view”). But see Henry N. Butler & Larry E. Ribstein, *Opting Out of Fiduciary Duties: A Response to the Anti-Contractarians*, 65 WASH. L. REV. 1 (1990) (arguing that informed shareholders will scrutinize governance changes).

governance and thus it is difficult to argue that the arrangement reflects rational choice.¹⁹¹

The problem of midstream changes is especially acute for crypto associations, which do not have a fixed governance structure. A Purchaser may initially invest in a democracy and unexpectedly find itself in a dictatorship. The value of the Purchaser's crypto assets may decline because of the change. A Purchaser might also invest with the mistaken understanding that a crypto association that is run as a dictatorship has a high probability of evolving into a democracy. When this promise is unfulfilled, the Purchaser may suffer a loss. While there is an argument that the Purchaser takes on the risk that the governance of a crypto association will change over time, it is difficult for Purchasers to evaluate such risk.

In some crypto associations, Purchasers will have less ability to influence midstream governance changes than if they were shareholders in a corporation. Shareholders can vote on proposed changes to corporate charters and other governance matters. In contrast, many crypto assets do not provide Purchasers with voting rights that would permit them to approve or disapprove of midstream changes.

The unstable governance structure of crypto associations points to the need for disclosure relating to crypto assets. Such disclosure could help inform Purchasers when a crypto association's governance materially changes. Without such information, Purchasers will be unable to make informed decisions to invest or remain invested in a crypto asset. Absent that disclosure, it is difficult to argue that Purchasers meaningfully consent to a particular governance structure when investing in a crypto association.

IV. ENTITIES AND ACCOUNTABILITY

As noted earlier, many courts have rejected the argument that crypto associations owe no obligations to Purchasers.¹⁹² They have likened crypto associations to entities in finding them potentially liable for Purchaser losses. As corporate law theorists have noted, entities serve an important purpose in segregating capital that can be used for long-term investment. The efforts to regulate crypto associations highlight another function of entities—they lock in capital for social purposes. To prosper in the long run, crypto associations must find a substitute for legal entities. This Part concludes the Article by proposing that

191. See Bebachuk, *supra* note 12, at 1837 (contending that investors have less incentive to become informed about midstream charter amendments).

192. See *supra* Subpart II.B.

crypto associations must designate a Controller responsible for the crypto association's liabilities if they raise substantial funds by selling crypto assets to the public.

A. Entities and Capital Lock-In

The rise of contractualism has sparked extensive debate by corporate law academics. Scholars have challenged the nexus of contracts argument by pointing out attributes of firms that are difficult to achieve through contracting. In doing so, they attempt to show that entities are not trivial fictions with little purpose other than to enter contracts. By permitting the formation of entities, the law provides a foundation for business that could not be achieved through contracting alone.

Perhaps the most interesting role of legal entities is that they permit capital to be separated and "locked-in" for a particular purpose. Henry Hansmann, Reinier Kraakman, and Richard Squire have extensively argued that an essential function of the firm is to shield business assets from claims that may be made by creditors against its individual investors.¹⁹³ Without an entity, the creditors of investors might try to attach funds provided by the investor to the business. With an entity such as a corporation or partnership, a separate legal entity owns the funds, which are unavailable to satisfy the personal debts of its investors. Entities thus help ensure that assets will be used for business purposes. In addition to protecting business assets from creditors, a legal entity shields those assets from the whims of investors who are focused on short-term gain. Margaret Blair argues that a function of the corporation is that it locks in capital that can be invested in long-term projects.¹⁹⁴ Without such lock-in, investors could withdraw capital at will and it would be more difficult to organize the teams that work over many years to create economic value.

Without entities, it would be difficult for organizations to grow over time. If enterprises were continually fighting off investors who want to withdraw their capital for their personal needs, they would be constantly dissolving and dispersing their assets. Legal entities are important because they permit some permanence and stability for an enterprise. Without them, it would be difficult to pool capital for significant investments in important but risky projects in sectors such as infrastructure and technology.

The argument that entities are necessary to lock in capital implicitly rebuts the normative argument of contractualism: that private ordering, rather than law,

193. Hansmann, Kraakman & Squire, *supra* note 13, at 1336; Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000).

194. Blair, *supra* note 13, at 393.

is the driver of economic activity and should be accorded substantial deference. The state must provide a legal foundation for facilitating organization by private actors. Taisu Zhang and John Morley thus contend that corporations became viable only with the rise of fairly strong governments with the resources to support adjudication relating to legal entities.¹⁹⁵ Without enforceable rules that specify the fundamentals of how organizations operate, it would be difficult for parties to rely solely on contract to create a large-scale enterprise.¹⁹⁶

Substantial enterprises can form without the use of a legal entity but will have difficulty doing so without accountability mechanisms. Andrew Verstein has drawn attention to the reciprocal exchange, where insurance contracts are issued without a formal entity.¹⁹⁷ Instead, customers insure each other through a network of contracts with the assistance of an agent.¹⁹⁸ Part of the reason why the reciprocal exchange works is that insurance law provides some degree of protection for policyholders.¹⁹⁹

Crypto associations have to some extent challenged the view that long-term investment requires capital lock-in. Some crypto associations have succeeded in creating lasting economic value without organizing as legal entities. Rather than segregating the funds that are invested in the blockchain, crypto associations rely on incentives to induce individuals to participate. For example, Validators invest significant amounts in high-powered computers that are essential to operating the blockchain.²⁰⁰ These resources are vulnerable to attachment by the individual creditors of the Validators because they are not owned by an entity associated with the blockchain. However, so long as there is sufficient incentive for a significant number of Validators to validate transactions, withdrawal of the capital of one Validator will not affect the ability of the blockchain to function.

Crypto associations sometimes lock in capital with the help of a legal entity. As noted earlier, DAOs often hold assets that are controlled by the Purchasers of their crypto assets. To hold assets in their name, DAOs must act as entities. For example, the DAO that was the subject of the SEC's DAO Report controlled "an

195. See Taisu Zhang & John D. Morley, *The Modern State and the Rise of the Business Corporation*, 132 YALE L.J. 1970 (2023).

196. See Coffee, *supra* note 162, at 1621 (arguing that judicial oversight is critical to the contractualist view of corporate law).

197. See Andrew Verstein, *Enterprise Without Entities*, 116 MICH. L. REV. 247 (2017).

198. *Id.* at 263–66.

199. *Id.* at 282–83, 285–89, 296–97.

200. This property is not conveyed to any entity as might be the case in a partnership. See Morgan Ricks, *Organizational Law as Commitment Device*, 70 VAND. L. REV. 1303, 1306 (2017) (discussing the importance of property relinquishment to organizational law).

Ethereum Blockchain ‘address.’”²⁰¹ This DAO was not incorporated but was described by its founder as an entity.²⁰² DAOs can also hold nondigital assets by forming a separate entity.²⁰³ For example, a DAO that organized to purchase a first-edition copy of the Constitution would have relied on a separate nonprofit to own the document if it had succeeded in the purchase.²⁰⁴

The fact that crypto associations have largely chosen not to organize as legal entities is telling. Some states such as Wyoming have provided what Chris Brummer and Rodrigo Seira call “entity wrappers” that can be used to organize crypto associations, but they do not appear to be widely used.²⁰⁵ Perhaps crypto associations are confident enough that under the right circumstances, they do not need an entity to operate a blockchain.²⁰⁶ It is not necessary for an association to lock capital into an entity if the right incentives are in place. Some projects such as Bitcoin and Ethereum, which have created substantial value, have powerfully illustrated that long-term investment is possible without legal capital lock-in.

Even with the early success of some crypto associations, the standard account of capital lock-in gives reason to be wary about the ability of blockchains to maintain their value. The success of a handful of crypto associations over a decade is insufficient to conclude that crypto projects generally will be successful. Nevertheless, the rise of blockchain has shown that incentives and computer code can lock in capital for a time.

B. A Social Reason for Entities

The attempts by courts, regulators, and investor plaintiffs to characterize crypto associations as legal entities such as partnerships and limited partnerships illustrate how capital lock-in is essential for encouraging the accountability of associations. When capital is dispersed, it is unavailable to satisfy the claims of harmed investors. Without capital that is earmarked for an entity, there is no

201. *DAO Report*, *supra* note 26, at 4. The account associated with a DAO is often controlled by smart contracts that provide for allocating the funds sent to the account. See MICHAEL SCHILLIG, DAOs AND THE HISTORY OF CORPORATE LAW 5 (2024), <https://ssrn.com/abstract=5099553>.

202. *DAO Report*, *supra* note 26, at 4.

203. Schillig, *supra* note 201, at 13.

204. See Ella Feldman, *A Group of Crypto Investors Is Trying to Buy the Constitution—Again*, SMITHSONIAN MAG. (Dec. 9, 2022), <https://www.smithsonianmag.com/smart-news/crypto-investors-buy-the-constitution-dao-180981264> [<https://perma.cc/9EHB-WXU4>].

205. See, e.g., Brummer & Seira, *supra* note 5 (discussing the limited appeal of LLCs for DAOs). On the other hand, there are several prominent DAOs that have organized as entities. See Bruce et al., *supra* note 35, at 675–76.

206. Another possibility is that they are deliberately avoiding entities that would create fiduciary duties to investors.

obvious source of funds that can be used for legal compliance. Courts have thus generally rejected the argument by crypto associations that they are composed of independent participants who have no obligation to use their capital to remedy the harms caused by the association.²⁰⁷

In addition to permitting long-term economic investment, as emphasized by Hansmann, Kraakman, Squire, and Blair, locked-in capital can also be used to fulfill an entity's social obligations. Business enterprises often act in ways that harm society.²⁰⁸ They can commit torts and breach contracts. Society needs a way of compensating victims of such wrongdoing and deterring enterprises from such wrongful conduct. The courts often require corporate and partnership entities to pay fines and legal judgments to right wrongs and provide incentives to avoid misconduct. Entity liability, which became established over the twentieth century,²⁰⁹ reflects in part the efficiency of directing regulation at legal entities, which have access to substantial amounts of locked-in capital, rather than individual managers, who often do not have the assets to satisfy a substantial judgment.²¹⁰ The law can prod entities to develop policies that reduce the likelihood of wrongdoing.²¹¹ Norms of corporate compliance have developed that put the burden on entities to self-regulate without government intervention.²¹²

Even if a crypto association successfully locks in sufficient capital for economic investment without an entity, such capital may not be available to satisfy legal obligations. Developers, Validators, and significant Purchasers have incentive to continue investing in a blockchain because if it does not continue to operate, the crypto assets they were paid in exchange for validating transactions will decline in value. However, it is unclear that these parties will have an incentive

207. See *supra* Subpart II.B.

208. For a discussion of the externalities of blockchain, see Martino & Ringe, *supra* note 158.

209. See Reinier H. Kraakman, *Corporate Liability Strategies and the Costs of Legal Controls*, 93 YALE L.J. 857, 858–62 (1984) (noting the shift to enterprise liability).

210. There is an argument that liability would be better directed at individual managers rather than entities. See JOHN C. COFFEE, JR., *CORPORATE CRIME AND PUNISHMENT: THE CRISIS OF UNDERENFORCEMENT* (2020) (arguing that enforcers should focus more on wrongdoing by individual managers). But see James J. Park, *Shareholder Wealth Maximization and Securities Fraud*, 72 DEPAUL L. REV. 395 (2023) (arguing that securities fraud often is motivated by corporate interest). Moreover, most contractualists would not view the ability to meet social obligations as a positive feature of the corporation. See, e.g., LARRY E. RIBSTEIN, *THE RISE OF THE UNINCORPORATION* 86 (2010) (asserting that the corporate form “is best explained, not as enabling large firms, but as a way to regulate them”).

211. John Witt argues that organizational science prompted corporate reform such as worker insurance and created the foundation for enterprise liability, which presumes that corporate managers can improve safety within the workforce. See John Fabian Witt, *Speedy Fred Taylor and the Ironies of Enterprise Liability*, 103 COLUM. L. REV. 1 (2003).

212. See Miriam Hechler Baer, *Governing Corporate Compliance*, 50 B.C.L. REV. 949, 958–72 (2009) (describing the emergence of corporate compliance).

to devote capital to cover the costs of harm to Purchasers or other social harms. Indeed, Developers have argued for a regime where they have no responsibility to Purchasers.²¹³ If a crypto association fails to implement adequate cybersecurity, and a breach siphons millions of dollars from Purchasers, Developers might claim that they have no obligation to make the Purchasers whole.

In contrast, when a corporation sells securities to raise funds from public investors, that capital is then held by the corporation. Those funds are controlled by the corporation's managers, who have the power to allocate them. If the corporation defrauds its investors, the investors can sue the corporation and ask the court to either rescind their investment or award money damages.²¹⁴ The investors' funds are more likely to be available to help make the investors whole because they are locked into the entity.

It is more difficult to trace the funds raised by the crypto association from Purchasers of crypto assets. They may go to a Developer who could be organized as an entity but without contractual obligations to the crypto association. If that is the case, investors may still be able to sue the Developer if they allege that they were misled by statements that can be traced to the Developer.²¹⁵ However, in some cases, it may be difficult to find the Developer or the Developer may be judgment-proof.²¹⁶ Indeed, in one case, the SEC filed a case directly against a blockchain in addition to the Developer, raising questions about whether it could sue a digital ledger.²¹⁷ If a court finds that a crypto association operates as a partnership, the plaintiffs could pursue parties other than the Developer. However, the crypto

213. See Memorandum of Law, *supra* note 55.

214. For a history of securities fraud litigation, see JAMES J. PARK, *THE VALUATION TREADMILL: HOW SECURITIES FRAUD THREATENS THE INTEGRITY OF PUBLIC COMPANIES* (2022).

215. See, e.g., SEC v. Murphy, 626 F.2d 633, 644 (9th Cir. 1980) (“[W]hen a person organizes or sponsors the organization of limited partnerships and is primarily responsible for the success or failure of the venture for which the partnership is formed, he will be considered an issuer for purposes of determining the availability of the private offering exemption.”); see also SEC v. Holschuh, 694 F.2d 130 (7th Cir. 1982) (noting investor protection as a reason to find organizer of limited partnerships liable).

216. One of the issues with suing individuals is that they are often judgment-proof. See Jennifer Arlen & Reinier Kraakman, *Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes*, 72 N.Y.U. L. REV. 687, 692 (1997) (“[C]orporate liability is generally needed because, for example, individual agents are judgment-proof or government sanctioning of agents is too costly.”).

217. See, e.g., Matthew Bultman, *Crypto Case Tests SEC's Ability to Police Blockchain Technology*, BLOOMBERG L. (May 17, 2024, at 02:00 PT), <https://news.bloomberglaw.com/securities-law/crypto-case-tests-secs-ability-to-police-blockchain-technology> [<https://perma.cc/STR7-TAGR>]. It is not unprecedented for the law to assign legal personhood to a thing. See Robert Anderson, *The Sea Corporation*, 108 CORNELL L. REV. 1569 (2023) (tracing the history of maritime law that treated ships as legal persons).

partnership itself may not directly own assets available to satisfy its social obligations and it can be difficult to win recoveries against individual partners.²¹⁸

Crypto associations could choose to use capital raised from various participants to fulfill legal obligations. For example, one DAO voted to form a “DeFi Education Fund” that allocated funds to “defend[] against enforcement actions by regulatory bodies such as the SEC”²¹⁹ Such funds presumably could have also been used to pay SEC penalties. There will be cases where participants in a crypto association calculate that it is in their interest to meet social obligations. However, absent some degree of centralized governance, there is no guarantee that the participants of a crypto association will allocate funds that they individually control to fulfill social obligations.²²⁰

Capital is not only necessary to address wrongdoing but should be invested in measures such as disclosure to prevent harm. Ideally, a crypto association would provide disclosure to Purchasers to ensure that they make an informed investment. As noted earlier, crypto associations tend to shape-shift. Purchasers have an interest in understanding the status of a crypto association’s governance. Purchasers will be concerned that Developers and other parties may extract personal benefits from the blockchain for themselves. Disclosure can help address the problem of agency costs by alerting Purchasers to questionable practices.²²¹ Without disclosure, it is difficult to adequately determine the value of a crypto asset.²²²

One of the puzzles of crypto associations is why they do not voluntarily disclose more information to Purchasers. Many Developers provide some initial disclosure to Purchasers, but crypto associations generally do not continue to provide periodic disclosure.²²³ In the corporate setting, contractualists have

218. As Richard Squire notes, there are problems with requiring capital lock-in for “unintended partnerships.” See Richard Squire, *Why the Corporation Locks in Financial Capital but the Partnership Does Not*, 74 VAND. L. REV. 1787, 1821–22 (2021). Generally, the partnership does not lock in capital as strongly as the corporation. See Steven A. Bank, *A Capital Lock-In Theory of the Corporate Income Tax*, 94 GEO. L.J. 889, 909 (2006) (examining the relationship between capital lock-in and the corporate tax).

219. *Risley v. Universal Navigation Inc.*, 690 F. Supp. 3d 195, 210 (S.D.N.Y. 2023), *aff’d in part, vacated in part, remanded*, 2025 WL 615185 (2d Cir. 2025).

220. See De Filippi et al., *supra* note 32, at 1253 (noting the difficulty of recovering assets associated with the blockchain without the consent of crypto association participants).

221. See Mahoney, *supra* note 134.

222. See John C. Coffee, Jr., *Market Failure and the Economic Case for a Mandatory Disclosure System*, 70 VA. L. REV. 717 (1984).

223. See William Mougayar, *Public Companies Obey Strict Disclosure Rules—It’s Time for Crypto Projects to Do the Same*, FORTUNE (May 12, 2023, at 06:01 ET), <https://fortune.com/crypto/2023/05/12/public-companies-obey-strict-disclosure-rules-its-time-for-crypto-to->

pointed out that corporations have an incentive to voluntarily disclose information to investors.²²⁴ If investors can trust managers to accurately report their performance, they will be more willing to invest. Similar incentives should also be present in crypto associations. If Purchasers have information confirming that crypto assets have value, they will be willing to pay more for them. Even with this incentive, because crypto associations generally are not formally organized as entities, it has been difficult for extensive voluntary disclosure to emerge.²²⁵

In an entity, it is well established that the managers are responsible for compiling disclosure. Managers can order lower-level employees to collect and report information.²²⁶ They have an incentive to document strong performance that will justify additional investment. And they can draw on the entity's capital to hire auditors and lawyers who can assure investors that their disclosure is accurate. The managers and the entity can be accountable if the disclosure that is issued is materially misleading.

In a crypto association, there is arguably no central manager that is clearly responsible for disclosure.²²⁷ There may not be any funds dedicated to covering the costs of disclosure.²²⁸ Because the typical blockchain relies on independent actors that are not bound by contract, assembling essential information about the state of the blockchain is more difficult. Some parties may not be willing to provide

projects-to-do-the-same [<https://perma.cc/2957-AQXU>] (describing lack of disclosure by crypto projects).

224. EASTERBROOK & FISCHER, *supra* note 10, at 280–83; *see also* James J. Park, *Do the Securities Laws Promote Short-Termism?*, 10 U.C. IRVINE L. REV. 991, 998–1000 (2020) (describing the voluntary disclosure of quarterly reports).
225. *See* Coinbase, Inc. v. SEC, 126 F.4th 175, 185 (3d Cir. 2025) (noting the argument that “Blockchain networks are decentralized, so there is often no one who can register digital assets or make required disclosures”). The existence of a regulable entity is arguably an essential premise of securities regulation. *See* Anita K. Krug, *Escaping Entity-Centrism in Financial Services Regulation*, 113 COLUM. L. REV. 2039, 2092 (2013) (noting that “securities regulation . . . is all about the entity” and that “without the entity, there is no securities regulation”); *see also* Bruce et al., *supra* note 35, at 696–97 (noting the difficulty that decentralized organizations would have in accessing bankruptcy protection).
226. *See, e.g.,* OLIVER E. WILLIAMSON, *MARKETS AND HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS* (1975) (describing the ability to manage by fiat in large corporations).
227. *See* Philipp Hacker & Chris Thomale, *Crypto-Securities Regulation: ICOs, Token Sales and Cryptocurrencies Under EU Financial Law*, 15 EUR. CO. & FIN. L. REV. 645, 691 (2018) (observing that “it is unclear whether the company, or group of core developers, initiating the token sale should be considered the issuer, or rather the blockchain-based organization itself”).
228. Disclosure requires the development of reporting systems to gather information. Internal controls are necessary to ensure that disclosure is accurate. Attorneys and accountants must collect the information and draft disclosure documents. *See* James J. Park, *From Managers to Markets: Valuation and Shareholder Wealth Maximization*, 42 J. CORP. L. 435, 442–45 (2022) (describing the basics of reporting systems).

relevant information and there is no party with the power to compel them to comply with disclosure requests.²²⁹

A contractualist might be undeterred in insisting that Purchasers willingly consent to an investment where it is unclear whether capital is available to cover their losses and they receive no periodic disclosure. There is an argument that there should be room for very high-risk investments.²³⁰ On the other hand, there is an undeniable social expectation that business associations act responsibly. Without an entity, it is unclear that crypto associations can meet that norm.

C. Controllers and Crypto Associations

For crypto associations to fulfill their social obligations, there must be a way to ensure that they lock in capital. In this Subpart, I propose that any crypto association that raises substantial funds by selling crypto assets to the public must designate a Controller. The Controller of a crypto association would be responsible for the association's liabilities and fulfilling compliance obligations such as disclosure. The Controller's funds would be locked in for the purpose of meeting the legal obligations and debts of the crypto association.

When a crypto association does not organize as an entity, regulators should develop standards that identify those parties that control the crypto association. Just as corporations can have controlling shareholders, the governance of a crypto association may be dominated by a single individual or a group. Federal securities law makes controlling shareholders jointly and severally liable for violations by the issuer.²³¹ The law should similarly impose obligations on Controllers of crypto associations.

229. There is an argument that much of the information relevant to evaluating a blockchain's value is reflected in publicly available code. Even if that is the case, the information contained in the code and ledger is not a substitute for disclosure. Many retail investors will not have the technical skills to read code or understand the ledger entries. See Fracassi et al., *supra* note 188, at 13 (noting that code "can be challenging for those without a technical background"); see also Lisa M. Fairfax, *The Securities Law Implications of Financial Illiteracy*, 104 VA. L. REV. 1065, 1086–94 (2018) (describing the need for accessible disclosure for retail investors). Disclosure is essential in providing understandable summaries of information that can be used by all investors. Without disclosure, more informed investors would be able to exploit their informational advantage. Moreover, not all information will be reflected in the code and ledger. For example, the incentives of Validators may be evident from the code, but the costs expended by Validators to verify may not be.

230. Defenders of crowdfunding, for example, contend that investors should be permitted to take on more risk. See, e.g., ANDREW A. SCHWARTZ, *INVESTMENT CROWDFUNDING* (2023).

231. See, e.g., Securities Act of 1933 § 15(a), 15 U.S.C. § 77o(a); Securities Exchange Act of 1934 § 20(a), 15 U.S.C. § 78t(a).

The concept of control in public corporations is often broadly defined. There is no bright-line requirement of majority share ownership.²³² Under Delaware law, until recently, courts routinely weighed a variety of factors in assessing whether an individual is a controller.²³³ Even a shareholder with less than a majority of the corporation's voting power can be a controlling shareholder if they are still able to "exercise[] control over the business affairs of the corporation."²³⁴ Moreover, with dual-class shares, it is common for founders with a minority economic stake in a corporation to control the majority of its voting power.²³⁵

In the context of a crypto association, it can be more difficult to identify a Controller. As noted earlier, owning a substantial percentage or even a majority of a blockchain's crypto assets does not guarantee that the owner controls the operations of the blockchain. However, there are often individuals or groups with a combination of economic and governance power that enables them to effectively dominate a crypto association.

Especially in its initial phases, the Developer is the most likely party that would be the Controller of a crypto association.²³⁶ The Developer writes the code that creates the blockchain and controls the initial allocation of crypto assets. It will promote the crypto association and often provide disclosure in the form of white papers to generate interest from Validators and Purchasers.²³⁷ Even if the Developer eventually steps away from the crypto association, it may continue to

232. The Securities Act of 1933 notes that control can be exercised through "stock ownership, agency, or otherwise" and does not specify a particular threshold of stock ownership. 15 U.S.C. § 770(a).

233. See, e.g., *Tornetta v. Musk*, 310 A.3d 430, 500 (Del. Ch. 2024) (weighing ownership, "right to designate directors," rights in governance documents, and "the ability to exercise outside influence in the board room"), *rev'd sub nom. In re Tesla, Inc. Derivative Litig.*, 351 A.3d 1005 (Del. 2025). Delaware now uses stricter rules that require a minimum ownership of shares for a party to be considered a controlling shareholder. See S.S. 1 for S.B. 21, 153d Gen. Assemb. (Del. 2025).

234. *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1344 (Del. 1987).

235. See, e.g., Dhruv Aggarwal, Ofer Eldar, Yael V. Hochberg & Lubomir P. Litov, *The Rise of Dual-Class Stock IPOs*, 144 J. FIN. ECON. 122, 125 (2022).

236. See *Friel v. Dapper Labs, Inc.*, 657 F. Supp. 3d 422, 450 (S.D.N.Y. 2023) (observing that "Dapper Labs maintains private control over the Flow Blockchain").

237. The white paper will often describe in general terms what the blockchain project seeks to achieve. The quality of the papers is not uniform, but they do provide some initial basis on which an investor can decide to invest. One study found that publication of a white paper is associated with lower failure rates for a blockchain project. See Sabrina T. Howell, Marina Niessner & David Yermack, *Initial Coin Offerings: Financing Growth with Cryptocurrency Token Sales*, 33 REV. FIN. STUD. 3925, 3928 (2020). Another found that more readable white papers were "positively associated with the likelihood of successfully raising funds and with the amount raised" Qing L. Burke, Ben Li, Chi Wan & Yakun Wang, *Disclosure Readability in Unregulated Financial Markets: Evidence from Initial Coin Offerings*, 41 J. ACCT., AUDITING & FIN. 547, 548 (2026).

own a substantial amount of crypto assets. The Developer would have an incentive to continue its involvement with the crypto association to ensure that the value of its stake does not decline.

The case that the Developer is a Controller is particularly strong when the Developer raises funds by selling substantial crypto assets to Purchasers. Because the Developer has control over this capital, it will initially control the governance of the crypto association. Such control is likely to continue if the Developer allocates to itself a significant stake of the crypto asset. Even if the Developer aspires to eventually cede control to other parties, in most cases the Developer that raises funds should be the Controller.

A federal regulatory scheme might condition the sale of crypto assets by a party such as the Developer on its agreement to take on Controller status. As with the sale of securities, there could be exemptions for sales that raise only small amounts.²³⁸ There might also be an exemption for the sale of crypto assets to sophisticated investors, but because the purpose of the rule is to identify the Controller rather than protect investors, there is a case that even nonpublic sales by a party could trigger Controller status.

Such regulation should require that the Controller be responsible for issuing an initial set of disclosures when selling crypto assets. The expectation would be that a portion of the funds raised by the Controller will be allocated to such basic compliance. Moreover, disclosure should not be limited to the initial phases of a crypto association, as envisioned by some regulatory models,²³⁹ but must continue periodically.²⁴⁰ As noted earlier, one of the difficulties of valuing crypto associations is that they tend to shape-shift. An initial disclosure that accurately describes a crypto association's governance may no longer be valid as the association evolves. Because secondary trading markets play an important role in providing a return for Developers and Validators, the Purchasers who participate in such markets are entitled to periodic disclosure to ensure that they can evaluate the price of crypto assets.

238. One draft bill proposes a threshold of \$75,000,000. See H.R. 4763, 118th Cong. § 301(a)(1)(A) (2024). Such a threshold may be too high but provides a starting point for discussion.

239. See, e.g., N.Y. Legis. B. Drafting Comm'n 10985-06-3 (2023) (proposing initial disclosure requirements for crypto issuer); see also 2023 O.J. (L 2023/1114) (requiring initial disclosure). The CLARITY Act would require semiannual disclosure but would permit such periodic obligation to terminate with the filing of a certification that the blockchain is mature. H.R. 3633, 119th Cong. § 202 (2025).

240. In addition, regulation should implement measures to ensure that such a periodic disclosure system has integrity and that managers do not enrich themselves through insider trading. See James J. Park, *Insider Trading and the Integrity of Mandatory Disclosure*, 2018 WIS. L. REV. 1133, 1168.

In rare circumstances, a crypto association may eventually be able to establish that it is completely decentralized and has no Controller. If that is the case, some other means of locking in capital such as the creation of a fund to cover legal obligations may be appropriate rather than designation of a Controller. However, there should be a strong presumption that a crypto association has a Controller. Some current proposals envision a system where the filing of a certification creates a presumption that a blockchain has no Controller.²⁴¹ Given the importance of ensuring that a crypto association meets its social obligations, the burden of proof should be reversed and the party initially designated as the Controller must definitively prove that a crypto association has no Controller. Moreover, even if a crypto association establishes it has no Controller, given the tendency for crypto associations to shape-shift, there should be a process where a certification that a crypto association has no Controller can be revoked.

As noted earlier, it is telling that Developers are often organized as entities. They may anticipate the need for limited liability given their initial role in launching a blockchain. The cost of building a blockchain can be high, and it is necessary to lock in capital to cover those costs. The individuals associated with the Developer would thus not be personally liable for the debts or other liabilities that might be incurred. They could raise funds that would enable them to develop initial and continuing public disclosure relating to a crypto association. If the blockchain is successful, the value of the crypto assets retained by the Developer should be substantial and could cover legal liability or insurance policies that would manage the risk of such liability.

When control of a crypto association changes, the designated Controller should also change. The Developer may have less of a role if it is successful in recruiting Validators and Purchasers who create a vibrant secondary market for the crypto assets. The Developer may sell its stake of crypto assets and then have little incentive to be involved with the governance of the blockchain. In such a situation, the Validators collectively could be viewed as the Controller of the crypto association. The Validators would essentially manage the blockchain by validating transactions and approving changes to the code.

If they take control from a Developer as a group, the Validators could be a general partnership. At some point, it might be in their interest to enter into a written partnership or LLC agreement that specifies their rights and obligations.²⁴² They could pool their funds to purchase insurance and put away funds for

241. See, e.g., H.R. 3633, 119th Cong. § 205 (2025) (permitting disclosure obligations to terminate after certification that a blockchain system is mature).

242. See Reyes, *supra* note 99, at 1910 (proposing that Validators commit to fiduciary duties to Purchasers).

compliance and to cover potential legal liabilities. They could coordinate disclosure and other compliance obligations.

It is possible that in some circumstances, a Purchaser or group of Purchasers could ultimately be the Controller of a crypto association. If a Purchaser holds a substantial percentage of a blockchain's crypto assets, it might effectively control the association's decision-making. If the crypto association is a DAO, a majority holder would control enough votes to unilaterally make governance decisions. By taking on such a significant stake, the Purchaser would essentially supplant the Developer and Validators in their management role.

One of the challenges of centering liability on crypto association members is that participation is often pseudonymous.²⁴³ Even if they wield significant influence, the identities of potential Controllers may not be known. One possible way to address this challenge is for regulation to specify that the obligation to serve as the Controller of a crypto association cannot end until it is passed on to another identifiable Controller. Developers that are initially designated as a Controller would have an incentive to discover the identities of major Validators and Purchasers so that they can pass on the mantle of Controller status.

Rather than acting as partnerships, groups of Validators or Purchasers that become Controllers could organize as a corporation or another entity with limited liability. Such a corporate entity would need to be sufficiently capitalized so that it could fulfill its disclosure obligations as well as cover the potential for liability from material misstatements in such disclosure. Such funds could come from the sale of crypto assets.

A system that focuses on the Controllers of a crypto association would provide more certainty than a system where courts may occasionally find that crypto associations are entities. Rather than risk the imposition of broad fiduciary duties on all the participants, fiduciary duties would be limited to a single Controller. Federal law that imposes a Controller requirement on crypto associations could preempt state court determinations that a crypto association is a general partnership.²⁴⁴

243. See De Filippi et al., *supra* note 32, at 1250–53 (describing the regulatory challenges of pseudonymity).

244. Another benefit of identifying a Controller for a crypto association is that it would mean that the crypto association could choose the law that governs its internal affairs. The state where the Controller is formed would be the natural place to govern the association. In the current regime, it can be unclear what law would apply when governance disputes arise. Controllers could choose states that develop the optimal law on crypto associations. Such a regime could result in a race to the top where crypto associations tend to gravitate to the state with the optimal regulatory regime. See ROBERTA ROMANO, *THE GENIUS OF AMERICAN CORPORATE LAW* (1993). Alternatively, federal law could simply provide a uniform set of rules.

Centering disclosure obligations on Controllers is preferable to other possibilities. For example, one proposal suggests that disclosure could come from “third party providers of commercial market research, in a similar fashion to markets for natural commodity derivatives.”²⁴⁵ The problem with this approach is that digital assets are not uniform commodities. Their value will depend on the unique characteristics of the blockchain they are associated with. It is unlikely that third-party providers will have adequate access to information to generate sufficient disclosure for investors. A Controller will most likely be in a better position to gather information on the crypto association.

Another possibility is that crypto exchanges could be responsible for disclosure and legal liabilities.²⁴⁶ Exchanges have emerged that facilitate the creation of secondary markets necessary to permit Developers and Validators to earn a return.²⁴⁷ Exchanges have leverage over crypto associations and could make listing on the exchange contingent on providing disclosure and complying with other regulation that protects investors. Alternatively, the exchanges could take on the burden of compiling and providing disclosure to investors on listed crypto assets. Because some exchanges are organized as entities, they could be focal points for government regulation. By regulating an exchange, a government entity could indirectly regulate hundreds of crypto associations.

The exchanges may object that they serve only to facilitate transactions and should not be required to take on extensive regulatory obligations. They are unable to make crypto associations generate disclosure and would not be well equipped to compile such disclosure themselves. Their business model would be unviable if they were essentially monitors for numerous decentralized entities. If they were to mandate stringent regulation, exchanges with more lenient requirements would emerge and take their listings.

Regulators should acknowledge the difficulty of collecting reliable information on crypto associations.²⁴⁸ Financial statements may not be appropriate for crypto associations, which may not own assets and do not generate profits captured by an entity. However, Controllers could collect and compile

245. HAL S. SCOTT, JOHN GULLIVER & CONNOR R. KORTJE, IMPLEMENTING AN EFFECTIVE CRYPTOASSET REGULATORY FRAMEWORK IN THE UNITED STATES 47 (2024).

246. For an analysis of the possibility that crypto exchanges could self-regulate, see Guseva, *supra* note 17, at 1322–29.

247. See, e.g., Yesha Yadav & Robert J. Stark, *The Bankruptcy Court as Crypto Market Regulator*, 96 S. CAL. L. REV. 1479, 1495–1500 (2024) (noting the importance of exchanges in intermediating investment in crypto).

248. On some of the challenges of adapting disclosure requirements to blockchain projects, see Chris Brummer, Trevor I. Kiviat & Jai Massari, *What Should Be Disclosed in an Initial Coin Offering?*, in CRYPTOASSETS: LEGAL, REGULATORY, AND MONETARY PERSPECTIVES (Chris Brummer ed., 2019).

basic information about the functionality of the service that the blockchain seeks to provide that would enable investors to value the crypto assets associated with the blockchain.²⁴⁹ Qualitative information relating to the crypto association's governance and maintenance should also be disclosed.

There is an argument that the SEC should administer this regulatory scheme. The SEC is the federal agency with the most institutional expertise in regulating investments that are traded across interstate lines. The agency administers a well-established body of federal law that protects investors and ensures the integrity of markets. Its staff reviews disclosure regularly and has a strong understanding of how business associations operate. A sophisticated enforcement division regularly conducts complex investigations and brings challenging cases.²⁵⁰ And it has successfully brought numerous cases that highlight the potential for fraud with respect to crypto assets.²⁵¹

On the other hand, a federal statute that conditions the sale of crypto assets on the substantive requirement that a crypto association designate a Controller may go too far beyond the SEC's traditional focus on disclosure requirements.²⁵² If that is the case, it might be better to create a new agency to regulate crypto associations.

CONCLUSION

Crypto associations have shown that a decentralized group of actors can create economic value for a significant time. Even without a nexus of contracts or capital lock-in, a combination of incentives and technology can create an association with a valuation on par with the largest public corporations.

249. There is some precedent for tailoring SEC disclosure rules to entities that do not generate typical financial statements. For example, Regulation AB, which governs disclosure for asset-backed securities, does not require financial statements to be published for such securities. Asset-Backed Securities, 70 Fed. Reg. 1506, 1509 (Jan. 7, 2005). The securities governed by Regulation AB are backed by the cash flows generated by established assets such as real estate so "there is generally no business or management to describe." *Id.* at 1508. The main disclosure relevant to such securities relates to "the transaction structure and the characteristics and quality of the asset pool and servicing" *Id.*

250. See James J. Park, *The SEC as an Entrepreneurial Enforcer*, 119 NW. U. L. REV. 689 (2024).

251. See, e.g., Park & Park, *supra* note 52. There is an argument that rather than proceed through enforcement, the SEC should proceed through administrative rulemaking. See, e.g., Chris Brummer, Yesha Yadav & David Zaring, *Regulation by Enforcement*, 96 S. CAL. L. REV. 1297, 1310 (2024) (describing issues left unresolved through enforcement).

252. It is worth noting that federal securities regulation has not been limited to disclosure. See James J. Park, *Reassessing the Distinction Between Corporate and Securities Law*, 64 UCLA L. REV. 116, 134–37 (2017) (describing examples where securities law does more than require disclosure).

The main challenge of regulating crypto associations is ensuring that they are accountable for the harm they may cause. To protect investors, courts and regulators have understandably found that particular crypto associations are legal entities. Without an entity, it is difficult to ensure that resources are available to comply with regulatory obligations. Regulation should ensure that the Controller of a crypto association fulfills such duties.