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Research Paper

AGAINST CRYPTO EXCEPTIONALISM IN FINANCIAL REGULATION

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Against Crypto Exceptionalism in Financial Regulation

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Abstract

Across jurisdictions, regulators either construct a sui generis legal category for crypto-assets, as in the European Union and the United Kingdom, or insert crypto intermediation into legal categories designed for other functions, most notably payment services in Singapore and historically Japan. In each case, however, the substantive obligations imposed—disclosure, custody and segregation of client assets, governance duties, prudential safeguards and market-integrity prohibitions—are not crypto-native. They are transplanted from traditional capital-markets, custody and financial-services law. Through a comparative analysis of the European Union, Singapore, Japan, Hong Kong and the United Kingdom, contrasted with Switzerland and Canada, this article shows that crypto regulation rarely governs a fundamentally new legal object. Rather, it relabels familiar forms of financial intermediation and re-applies established doctrines under a novel regulatory perimeter. The result of this regulatory strategy is duplication, weakened technology neutrality and conceptual instability at the boundary between payments law, securities law and prudential regulation. The article therefore argues against crypto exceptionalism in financial regulation. It defends a functional alternative under which regulation follows the economic activity performed, rather than the crypto label attached to the instrument or service, and it concludes that crypto exceptionalism should be resisted because it fragments financial law without demonstrating corresponding gains in investor protection, consumer protection or financial stability.

Keywords
Financial Regulation, Financial Law, Cryptoassets, digital assets, comparative financial regulation, exceptionalism, functional regulation

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1. INTRODUCTION

The dominant contemporary response to crypto-assets has been categorisation.[1] Legislators and regulators have increasingly attempted to solve the legal challenge posed by crypto-assets by locating them within, or alongside, existing compartments of financial regulation. Some jurisdictions have created a bespoke category of 'crypto-assets' and 'crypto-asset service providers'. Others have placed large parts of the sector within payment services legislation. A third group claims to proceed on a functionally neutral basis but still constructs a special perimeter for 'virtual assets'. The common feature is that law first marks crypto as an autonomous object and only afterwards reintroduces familiar doctrines of disclosure, client-asset protection, market abuse and prudential risk.[2]

This article calls that pattern 'crypto exceptionalism'. Crypto exchanges replicate organised trading venues; custodians perform a safekeeping function analogous to securities or client-money custody; staking, lending and yield products reproduce intermediation and maturity-transformation risks; and so-called payment tokens raise questions already known to payments law and e-money regulation. Yet, rather than asking which body of law should govern which function, many regimes begin by asking how 'crypto' should be regulated as such.[3]

That move matters because legal categorisation is not merely descriptive. It allocates supervisory authority, shapes compliance costs, channels innovation and frames the normative vocabulary with which risks are understood.[4] Once a separate crypto perimeter is created, regulators predictably import into it a growing list of techniques borrowed from other domains. The result is a body of law that is simultaneously novel in form and derivative in substance. This article argues that the contradiction is not incidental but structural. A discrete crypto

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[1] Cambridge Centre for Alternative Finance, Global Cryptoasset Regulatory Landscape Study (University of Cambridge Judge Business School 2019); Cambridge Centre for Alternative Finance, 2nd Global Cryptoasset Regulatory Landscape Study (University of Cambridge Judge Business School 2024).

[2] Dirk A Zetzsche, Filippo Annunziata, Douglas W Arner and Ross P Buckley 'The Markets in Crypto-Assets Regulation (MiCA) and the EU Digital Finance Strategy' (2021) 16 Capital Markets Law Journal 203; Iris H-Y Chiu 'A Rational Regulatory Strategy for Governing Financial Innovation' (2017) 8 European Journal of Risk Regulation 743; Christoph Wronka 'Crypto-asset activities and markets in the European Union: issues, challenges and considerations for regulation, supervision and oversight' (2024) 25 Journal of Banking Regulation 84.

[3] Steven L Schwarcz 'Regulating Financial Change: A Functional Approach' (2016) 100 Minnesota Law Review 1441; Dan Awrey 'Regulating Financial Innovation: A More Principles-Based Proposal?' (2011) 5 Brooklyn Journal of Corporate, Financial and Commercial Law 273; Dan Awrey 'Complexity, Innovation and Modern Financial Markets' (2012) 2 Harvard Business Law Review 235.

[4] Chris Brummer 'Disruptive Technology and Securities Regulation' (2015) 84 Fordham Law Review 977; Kevin Werbach 'Trust, But Verify: Why the Blockchain Needs the Law' (2018) 33 Berkeley Technology Law Journal 487; Schwarcz, 'Regulating Financial Change' (n 3).

category is hard to sustain precisely because the underlying activities remain recognisable forms of financial intermediation.[5]

The European Union, the United Kingdom, Hong Kong, Singapore and Japan are analysed as manifestations of crypto exceptionalism, although they do not all pursue it in the same way. The European Union and, increasingly, the United Kingdom create a bespoke crypto-market perimeter. Singapore, and historically Japan, illustrate payment-services categorisation, in which a payments framework becomes the host for rules that increasingly resemble capital-markets regulation. Hong Kong is best understood as a hybrid case: it invokes functional rhetoric while licensing a distinct virtual-asset ecosystem and attaching to it detailed market-conduct and custody disciplines. Switzerland and Canada, by contrast, provide useful counter-models. Neither is perfectly free from pressure towards exceptionalism, but both are more consistently organised around the proposition that regulation should follow legal and economic function rather than technological label.[6]

Conceptually, the paper argues that 'crypto regulation' is frequently a misdescription. What is often regulated is not a new legal object, but familiar conduct performed through a new technological substrate. Normatively, the paper argues that crypto exceptionalism should be resisted because it duplicates doctrine, weakens technology neutrality and destabilises the boundaries between payments law, securities law and prudential regulation. The paper does not deny operational novelties or the need for tailored reform in hard cases. Its narrower argument is that reform should proceed by reference to function, risk and institutional capacity, rather than by accepting the premise that 'crypto' itself is an analytically distinct regulatory object.[7]

The structure of the argument is divided into the following sections. Section 2 defines crypto exceptionalism and identifies its principal forms. Section 3 places the phenomenon in historical perspective by examining earlier episodes of financial-regulatory exceptionalism, particularly over-the-counter derivatives, shadow banking and money market funds. Section 4 turns from diagnosis to prescription, contrasting exceptionalist models with Switzerland and Canada and

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[5] Iris H-Y Chiu 'An Institutional Account of Responsiveness in Financial Regulation: Examining the Fallacy and Limits of "Same Activity, Same Risks, Same Rules" as the Answer to Financial Innovation and Regulatory Arbitrage' (2023) 51 Computer Law & Security Review 105868; Werbach, 'Trust, But Verify' (n 4); Brummer, 'Disruptive Technology and Securities Regulation' (n 4).

[6] Monetary Authority of Singapore, Consultation Paper on Proposed Measures on Market Integrity in Digital Payment Token Services (3 July 2023); Monetary Authority of Singapore, MAS Publishes Investor Protection Measures for Digital Payment Token Services (3 July 2023); Securities and Futures Commission, Guidelines for Virtual Asset Trading Platform Operators (2023); Canadian Securities Administrators Staff Notice 21-327 Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (16 January 2020); Swiss Federal Council, Legal Framework for Distributed Ledger Technology and Blockchain in Switzerland: An Overview with a Focus on the Financial Sector (7 December 2018).

[7] Schwarcz, 'Regulating Financial Change' (n 3); Werbach, 'Trust, But Verify' (n 4).

setting out a functional framework for digital-asset regulation. Section 5 concludes by arguing that the case against crypto exceptionalism is ultimately a case for preserving the internal coherence of financial law.[8]

2. CRYPTO EXCEPTIONALISM AS A REGULATORY STRATEGY

2.1 What is Crypto Exceptionalism?

2.1.1 Sui Generis Categorisation

The clearest form of crypto exceptionalism is the creation of a legal perimeter defined by the object to which it applies, and MiCAR's treatment of utility tokens makes the point especially sharply.[9] MiCAR defines a utility token as a crypto-asset "only intended to provide access to a good or a service supplied by its issuer".[10] Although Title II exempts offers of utility tokens that merely provide access to goods or services already existing or in operation, that exemption disappears once the offeror signals an intention to seek admission to trading, thereby confining the carve-out to genuinely consumptive tokens and pulling fundraising and tradeable utility tokens back inside the regulatory perimeter.[11] For those tokens, MiCAR requires a notified and published crypto-asset white paper, marketing controls, and, for time-limited offerings, safeguarding arrangements for the assets raised; the notification must explain why the token is not already excluded from MiCAR, including as a financial instrument, and where the promised goods or services do not yet exist the offer may not last more than twelve months. The white paper must warn that the token may lose value, may be illiquid and, specifically, may never be exchangeable for the promised good or service if the project fails, even while stating that it is not a prospectus and that the offer does not concern financial instruments.[12] Once admitted to trading, the token is further subjected to a classic market-integrity regime of inside-information disclosure, insider-dealing prohibitions and anti-manipulation rules, while custodial providers

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[8] Edward F Greene 'Dodd-Frank and the Future of Financial Regulation' (2011) 2 Harvard Business Law Review (Online) 79; Hilary J Allen 'Money Market Fund Reform Viewed Through a Systemic Risk Lens' (2010) 11 Journal of Business & Securities Law 87.

[9] For a more comprehensive view of MiCAR see Dirk A Zetzsche and Jannik Woxholth, *The EU Law on Crypto-Assets: A Guide to European FinTech Regulation* (Cambridge University Press 2025).

[10] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (MiCA) [2023] OJ L 150/40, art 3(1)(9).

[11] MiCA (n 10) art 4(2), read together with art 5(1).

[12] MiCA (n 10) arts 4–6 (white paper preparation, notification and publication), art 7 (marketing communications), art 8(4) (explanation of classification), and art 12(1) (time-limited offers where the crypto-asset does not yet provide access to an existing good or service), read together with art 9 (liability for information in the white paper) and art 10 (modification of the white paper).

must segregate client holdings and are liable for loss.[13] Utility tokens are commonly sold through ICOs to finance platform development, are often marketed in the language of "utility" while purchased for expected appreciation, and present familiar securities-type risks—information asymmetry, fraud and opacity, market abuse, operational vulnerabilities and, in DeFi settings, systemic risk. On that view, MiCAR is not simply filling a gap[14]; in the case of utility tokens, it is building a parallel crypto category around instruments whose risk profile is already legible to securities law[15], which is why the obligations it imposes are better understood as recognisably borrowed from securities regulation than as genuinely crypto-native.[16]

The United Kingdom has moved in a similar direction. Earlier British policy was often described as incremental: anti-money laundering registration for cryptoasset businesses, financial-promotion controls and piecemeal product intervention. More recent reforms, however, point towards a dedicated perimeter for qualifying cryptoassets and related activities. HM Treasury's draft legislation and the Financial Conduct Authority's consultation materials envisage a framework for admissions and disclosures, market abuse, custody, staking and lending, and prudential treatment organised expressly around cryptoassets as a regulated object.[17] The British case is important because it demonstrates that exceptionalism can emerge gradually. It can arrive at a comparable outcome by layering crypto-specific activities and duties onto a pre-existing financial-services framework until a special perimeter effectively exists. This characterisation nonetheless requires qualification, because the British route remains structurally distinct from MiCAR. The United Kingdom is not enacting a single, free-standing crypto code. Instead, HM Treasury proposes to bring cryptoassets within the existing architecture of the Financial Services and Markets Act 2000 by adding new regulated activities—such as dealing, arranging, operating a cryptoasset trading platform, safeguarding

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[13] MiCA (n 10) arts 76–83 (market abuse: inside information, insider dealing, unlawful disclosure and market manipulation), and arts 75(7) and 75(8) (safeguarding and segregation of clients' crypto-assets and liability of custodians for loss).

[14] Aurelio Gurrea-Martínez and Nydia Remolina, 'The Law and Finance of Initial Coin Offerings' in Chris Brummer (ed), *Cryptoassets: Legal, Regulatory, and Monetary Perspectives* (OUP 2019)

[15] Diana C. Nicholls Mutter, 'An Exercise in Utility (Tokens): Global Securities Regulation of Cryptoassets' (2026) *Cambridge Law Journal* 1 (advance online publication) https://doi.org/10.1017/S0008197326101275

[16] As Ferrarini and Giudici argue, MiCA effectively creates an ad hoc prospectus regime for utility tokens and reproduces, in simplified form, the logic of traditional capital-markets regulation rather than a genuinely crypto-native framework. Ferrarini and Giudici provide a market-based critique of MiCA's white paper requirements, arguing that the empirical and theoretical foundations of mandatory disclosure are themselves fragile, and that ICO markets did not exhibit a systemic investor protection failure warranting such intervention. See Guido Ferrarini and Paolo Giudici, 'Digital Offerings and Mandatory Disclosure: A Market-Based Critique of MiCA' (ECGI Law Working Paper No 605/2021).

[17] HM Treasury, Regulatory Regime for Cryptoassets (Regulated Activities): Draft SI and Policy Note (16 December 2025); Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025 (draft); Sherena Sheng Huang 'Crypto Assets Regulation in the UK: An Assessment of the Regulatory Effectiveness and Consistency' (2021) 29 Journal of Financial Regulation and Compliance 336.

and staking—to the Regulated Activities Order. The perimeter is therefore defined, as throughout UK financial regulation, by reference to specified activities rather than by the creation of an autonomous crypto object, and in that respect the UK framework is among the most activity-based of those surveyed. This sits awkwardly with a purely exceptionalist reading: the United Kingdom reaches cryptoassets largely by extending a pre-existing, function-oriented perimeter rather than by displacing it. The exceptionalist tendency, where it exists, therefore lies less in the legal form than in the accretion of bespoke, cryptoasset-specific duties layered onto that activity-based architecture.

Hong Kong offers a third illustration. The Securities and Futures Commission's framework for virtual-asset trading platform operators now combines licensing, custody, token-admission due diligence, segregation of client assets and systems for surveillance against market manipulation and abusive conduct.[18] Again, the substance is familiar. Exchanges must monitor markets, manage conflicts, protect client property and satisfy governance requirements. The notable feature is that these obligations are attached to a discrete 'virtual asset' licensing structure. The result is a specialised sub-system.

If one looks across these regimes, a pattern emerges. Bespoke categorisation does not leave regulators free to invent a genuinely autonomous body of crypto doctrine and regulation. Instead, it compels them to select and adapt fragments from existing bodies of law. MiCAR borrows from securities disclosure, custody regulation, consumer protection and market-abuse law. The emerging British framework borrows from financial promotion, market conduct and prudential oversight. Hong Kong borrows from exchange regulation and client-asset protection. The common form is paradoxical: a new perimeter is created only to be filled with old ideas.

2.1.2 Digital Assets Categorization into Existing Regimes: The Case of Payment Systems

A second and analytically distinct form of exceptionalism places digital assets within a legal category designed for another purpose, most notably payments law. Singapore is the clearest example. The Payment Services Act 2019 introduced in Singapore a licensable category of digital payment token services and, at least initially, seemed to treat much of crypto activity through the lens of payment intermediation and anti-money laundering compliance, in its 2019 version.[19] Over time, however, the content of the regime has expanded. MAS has required

[18] SFC, VATP Guidelines (n 6); Securities and Futures Commission, Circular to Licensed Virtual Asset Trading Platform Operators on Safeguarding of Client Virtual Assets (15 August 2025); Thomas Burgess and Jingru Liu 'A Tale of Two Jurisdictions: Contrasting Cryptocurrency Regulations in Hong Kong and the United Kingdom' (2025) 8 Journal of Economic Criminology 100150.

[19] Payment Services Act 2019; Lin Lin 'Regulating FinTech in Singapore' (2019) 35 Banking and Finance Law Review 94; Robert W Greene and David Lee Kuo Chuen 'Singapore's Open Digital Token Offering Embrace: Context & Consequences' (2019) 2 Journal of the British Blockchain Association 1.

service providers to segregate customers' assets and maintain trust arrangements; it has also consulted on prohibitions aimed at wash trading, deceptive conduct, misuse of non-public information and other forms of market abuse.[20] The point is even clearer in MAS's finalised single-currency stablecoin framework. MAS announced it would amend the PSA to introduce a new "stablecoin issuance service", proposed that systemic stablecoin arrangements be overseen as designated payment systems, and attached to that payments category requirements for 100% reserve backing in very low-risk assets, custody and audit of reserves, monthly independent attestation and annual audit, minimum capital and solvency, and a direct legal claim to redemption at par within five business days.[21] Those are not, in any meaningful sense, payment-law concepts. They are prudential, custody, and capital-markets techniques borrowed into a payments framework. The accumulation of redemption, reserve-management, audit, and solvency obligations makes it difficult to maintain that these instruments are being regulated as payments in any ordinary sense; the better doctrinal home is a combination of securities with supplementation of payments or bank-like standards.[22] Singapore's regime therefore shows how a payments category can become a receptacle for doctrines whose internal logic belongs elsewhere.

Japan historically followed a related path. The Japanese Payment Services Act became the principal statutory home for crypto-asset exchange services after the Mt Gox collapse, and Japanese law developed rules on segregation of users' property, custody, security management and business conduct within that framework.[23] But Japanese policy has increasingly recognised that many of the central issues raised by crypto-assets are not reducible to payment functionality. Recent Financial Services Agency materials indicate movement towards stronger market-conduct disciplines and a greater affinity with concepts more familiar to securities and investment regulation.[24] Japan therefore illustrates not only payment-services categorisation, but its internal instability. Once regulators confront trading, custody failures, conflicts of

[20] MAS, Investor Protection Measures for DPT Services (n 6); MAS, Consultation Paper on Market Integrity in DPT Services (n 6).

[21] Monetary Authority of Singapore, *Response to Public Consultation on Proposed Regulatory Approach for Stablecoin-Related Activities* (15 August 2023).

[22] Ryan Clements, *Defining the Regulatory Perimeter for Stablecoins in Canada*, 66 C.B.L.J. 201 (2022) (about a purely securities-based approach leaving important gaps and needing supplementation by bank-like standards).

[23] Mai Ishikawa 'Designing Virtual Currency Regulation in Japan: Lessons from the Mt Gox Case' (2017) 3 Journal of Financial Regulation 125; Akira Tokutsu 'The "Independence Day" of Payments Law? Fintech's Impact on Financial Regulation in Japan' in Mark Fenwick, Steven Van Uytsel and Bi Ying (eds) Regulating FinTech in Asia (Springer, 2020) p 139; Ren Yatsunami 'Legislative Development on Crypto-Assets in Japan: Revisions to the Payment Services Act, etc' in Mark Fenwick, Steven Van Uytsel and Bi Ying (eds) Regulating FinTech in Asia (Springer, 2020) p 163.

[24] Financial Services Agency, Regulating the Crypto Assets Landscape in Japan (7 December 2022); Financial Services Agency, Examination of the Regulatory Systems Related to Crypto Assets (10 April 2025).

interest and abusive market practices, the payment-services container begins to look ill-suited to the tasks placed within it.

The Singaporean and Japanese experiences are significant because they reveal that categorising digital assets as 'payment instruments' does not avoid exceptionalism and these regimes end up borrowing regulatory tools from other regimes such as securities law, investor protection and market conduct. A payment-services framework is ordinarily concerned with transfer execution, safeguarding of customer funds, operational resilience and related conduct duties. When it is required to address trading-platform surveillance, token-admission standards, segregation of digital assets and misuse of inside information, it begins to perform the work of market regulation without the corresponding conceptual discipline of market law.[25]

2.1.3 Hybrid Forms of Exceptionalism

Not all jurisdictions fit neatly into the dichotomy between sui generis and payment-services categorisation. Some combine functional rhetoric with object-based regulation; others apply existing legal tests selectively while constructing bespoke rules for intermediaries. These hybrid forms of exceptionalism are perhaps the most revealing because they show that the line between functionalism and exceptionalism is not always sharp in practice.[26]

Hong Kong is exemplary. The official rhetoric often resembles a 'same business, same risks, same rules' approach. Security tokens fall within the securities perimeter, and tokenisation as such is not treated as determinative. Yet the licensing architecture for virtual-asset trading platforms, together with the growing cluster of rules around custody, admissions, stablecoins and virtual-asset dealing, still distinguishes a discrete virtual-asset field. The framework is therefore hybrid: it invokes functional continuity while institutionalising regulatory separation.[27] Jurisdictions may insist that no special ontology is being created, but once they define a class of specialised intermediaries and attach to them an internally coherent set of duties because they deal in crypto-assets, a distinct perimeter begins to emerge regardless of the rhetoric employed.

Hybrid exceptionalism also captures a broader trend of convergence. Bespoke crypto regimes borrow from payments law, securities law and prudential supervision. Payment-services regimes borrow from market abuse and exchange regulation. Securities-law approaches begin to add bespoke custody and technology-risk requirements. The legal form differs across

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[25] Lin, 'Regulating FinTech in Singapore' (n 19); Tokutsu, 'The "Independence Day" of Payments Law?' (n 23); Chiu, 'Responsiveness in Financial Regulation' (n 5).

[26] Schwarcz, 'Regulating Financial Change' (n 3).

[27] SFC, VATP Guidelines (n 6); Burgess and Liu, 'A Tale of Two Jurisdictions' (n 18).

jurisdictions, but the substantive pressures are similar. Every regime encounters the same problems: custody risk, governance failures, conflicts of interest, asymmetries of information, operational fragility and manipulative trading. The more those problems are addressed, the more exceptionalist models begin to resemble one another, and the more obvious it becomes that the real work is being done by inherited doctrines rather than by any distinctively crypto logic.[28]

2.2 Why Crypto Exceptionalism Emerges

2.2.1 Regulatory Uncertainty and Classification Anxiety

Why, then, does crypto exceptionalism arise so readily? A first explanation is regulatory uncertainty. Digital assets combine several attributes that cut across traditional legal categories: they can be transferred, traded, used as settlement, pledged as collateral, or wrapped into yield and investment schemes.[29] Regulators facing heterogeneous instruments and fast-evolving business models may find it institutionally easier to create a separate perimeter than to undertake the slower doctrinal exercise of mapping each activity to existing categories.[30] The Singapore experience illustrates both the appeal and the limits of this approach. Rather than creating a fully autonomous crypto-specific regime at the outset, Singapore attempted a classificatory strategy within existing statutes: digital tokens would fall either within the category of capital markets products under the Securities and Futures Act (SFA), or within digital payment tokens regulated under the Payment Services Act (PSA). In principle, this bifurcation promised conceptual clarity by anchoring tokens to functional analogues—investment versus payment.[31] In practice, however, the payments limb of the framework became progressively burdened with regulatory content that does not derive from payments law. As the discussion above has shown, the PSA regime has incorporated requirements relating to custody, segregation of client assets, and even emerging market integrity concerns, all of which are doctrinally rooted in securities regulation. This evolution suggests that the initial classificatory choice did not eliminate the need for securities-law logic; it merely displaced it into a payments-based category. The result is not conceptual simplification, but a form of regulatory combination in which the formal perimeter remains payments-oriented while its substantive obligations increasingly reflect capital markets regulation.

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[28] Werbach, 'Trust, But Verify' (n 4); Wronka, 'Crypto-Asset Activities and Markets in the EU' (n 2); Brummer, 'Disruptive Technology and Securities Regulation' (n 4).

[29] Nydia Remolina 'DeFi and the Metaverse: Legal and Regulatory Challenges of Decentralization of Financial Services' in Hung-Yi Chen, Pawee Jenweeranon and Nafis Alam (eds), *Global Perspectives in the Metaverse* (Palgrave Macmillan 2024) 223.

[30] Awrey, 'Complexity, Innovation and Modern Financial Markets' (n 3); Zetzsche and others, 'MiCA and the EU Digital Finance Strategy' (n 2).

[31] Financial Services and Markets Act 2022 (Singapore) (No 18 of 2022).

Classification anxiety is intensified by the instability of crypto nomenclature itself. Terms such as 'token', 'coin', 'utility token', 'payment token' and 'virtual asset' are not merely descriptive labels used by market participants; they migrate into law and influence regulatory design. Yet these labels often combine technological description with functional suggestion. Calling something a 'payment token' or 'e-money token' subtly invites regulation through payments law even where the instrument is chiefly traded for speculation and has a secondary market. Conversely, calling an arrangement a 'crypto-asset service' may obscure whether it is in substance brokerage, custody, collective investment or credit intermediation.[32] Exceptionalism therefore emerges partly from linguistic slippage: terminology associated with technological novelty becomes a proxy for legal classification.

2.2.2 Institutional Incentives and Perimeter Management

A second explanation lies in institutional incentives. Financial regulators are organised by statutory perimeter. Central banks, payments authorities, securities regulators and prudential supervisors each have mandates and toolkits shaped by historical divisions within finance. Novel products that sit awkwardly across these lines generate contests over jurisdiction. Creating a bespoke crypto perimeter, or placing crypto within one regulator's familiar host category, is a way of managing those jurisdictional tensions.[33] MiCAR can be read partly as an effort to secure single-market harmonisation where national authorities had begun to take divergent approaches. Singapore's use of the Payment Services Act centralised oversight within an existing institutional architecture. Japan's early reliance on the Payment Services Act had a similar appeal after a highly visible exchange failure. The emergence of crypto exceptionalism is thus tied to bureaucratic convenience and the politics of supervisory competence as much as to any principled belief in crypto's uniqueness.

Perimeter management also encourages incremental accretion. Once a regulator acquires a foothold through a host category, new risks create pressure for additional powers. Over time the regime becomes more comprehensive without a corresponding reconsideration of whether the original category still makes sense.[34]

2.2.3 Political Salience and the Symbolism of Novelty

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[32] Valeria Ferrari 'The Regulation of Crypto-Assets in the EU – Investment and Payment Tokens under the Radar' (2020) 27(3) Maastricht Journal of European and Comparative Law 325.

[33] Awrey, 'Regulating Financial Innovation' (n 3); Chiu, 'Responsiveness in Financial Regulation' (n 5).

[34] Lin, 'Regulating FinTech in Singapore' (n 19); Tokutsu, 'The "Independence Day" of Payments Law?' (n 23); Chiu, 'A Rational Regulatory Strategy' (n 2).

A third explanation is political. Digital assets have been surrounded by strong narratives of innovation, disruption, decentralisation and sovereignty.[35] Legislatures often respond to such narratives symbolically. A dedicated statute or a named category signals governmental attention and mastery over a novel field. Following the stablecoin debates, this symbolic dimension was especially marked in the European Union, where policymakers were concerned not only with investor protection but with strategic autonomy, monetary sovereignty and the integrity of the single market.[36] Exceptionalist regulation thus performs a communicative function. It reassures the public that something new has been brought under control.

Yet symbolic novelty can obscure analytical continuity. Financial history is replete with episodes in which innovation was rhetorically framed as transcending ordinary categories while, in economic substance, reproducing familiar risks. The language of disruption can therefore make exceptionalist regulation appear prudent when it is, in fact, only superficially responsive. Indeed, one reason why crypto exceptionalism attracts support is that it seems intuitively proportionate: if the technology is new, the law should be new as well. The weakness of that intuition is that financial law has rarely regulated technology as such.[37]

2.3 Why Crypto Exceptionalism is Conceptually Flawed

2.3.1 Mistaking the Medium for the Function

The first conceptual flaw in crypto exceptionalism is that it mistakes the medium for the function and regulators fail to determine the concrete economic relationships that the token or service generates. This point becomes clearer when one disaggregates the sector. A centralised exchange that matches orders, holds customer assets and lists instruments for trading is functionally closer to a trading venue and custodian than to a novel category of intermediary. A stablecoin issuer promising redemption against reserves resembles an issuer of money-like claims and raises familiar questions about asset backing, redemption, governance and,

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[35] C. Catalini and J. S. Gans, 'Some Simple Economics of the Blockchain' 2020, 63(7) *Communications of the ACM* 80–90; A. Narayanan, J. Bonneau, E. Felten, A. Miller, and S. Goldfeder, *Bitcoin and Cryptocurrency Technologies* (Princeton University Press 2016); A. Zohar, 'Bitcoin: under the hood' (2015) 58(9) *Communications of the ACM* 104; D. Tapscott and A. Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World* (Penguin 2016); J. J. O'Dwyer and D. Malone, 'Bitcoin Mining and Its Energy Footprint' (2014) 2014 *IET/ISSC conference paper* 280.

[36] European Central Bank, 'Stablecoins and monetary sovereignty' (18 October 2025) <https://www.ecb.europa.eu/press/key/date/2025/html/ecb.sp251018~5280b1c98b.en.pdf> accessed 8 April 2026; European Parliament, 'Stablecoins and digital euro: friends or foes of European monetary policy?' (June 2025) <https://www.europarl.europa.eu/cmsdata/296480/MD_SFL%20June%202025_FINAL.pdf> accessed 8 April 2026

[37] Schwarcz, 'Regulating Financial Change' (n 3); Awrey, 'Complexity, Innovation and Modern Financial Markets' (n 3); Werbach, 'Trust, But Verify' (n 4).

potentially, prudential regulation. A lending protocol or platform that pools assets and offers returns reproduces questions associated with credit intermediation, leverage and collective investment. The fact that these arrangements are assembled through cryptographic instruments does not make them analytically homogeneous. On the contrary, it shows why a single crypto category is unstable: the category unites activities that are economically diverse while separating them from functionally similar activities outside the crypto sector.[38]

Once the relevant activity is identified with some care, the key doctrinal problems are already legible within existing financial law: information asymmetry, conflict of interest, safekeeping, operational resilience, redemption risk, leverage, conduct of business and market manipulation. Exceptionalism distracts from that analytical discipline by treating the technological wrapper as the organising principle.[39]

2.3.2 Transplantation and Misaligned Legal Form

A second flaw is that exceptionalism produces doctrinal transplantation without a satisfactory account of fit. The doctrines being imported into crypto regimes do not lose their conceptual histories merely because they are applied in a new setting. Segregation of client assets developed to protect customers against intermediary insolvency and misuse of property. [40] Market-abuse rules developed in response to fairness, confidence and informational integrity in organised markets.[41] Governance and conduct requirements respond to agency problems within regulated firms.[42] These doctrines have institutional logics, case-law histories and supervisory practices. When they are inserted into a bespoke digital assets perimeter or into payments legislation, the result may be workable in practice, but it requires justification that goes beyond novelty.

For instance, in Singapore a prohibition on wash trading or misuse of non-public information, considered in one the latest public consultation to enhance the regulation on digital payment tokens, is understandable if the concern is market integrity. But that is a concern classically addressed within market regulation and not payment services. A payments statute becomes a

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[38] Werbach, 'Trust, But Verify' (n 4); Zetzsche and others, 'MiCA and the EU Digital Finance Strategy' (n 2); Chiu, 'A Rational Regulatory Strategy' (n 2).

[39] Chiu, 'Responsiveness in Financial Regulation' (n 5); Schwarcz, 'Regulating Financial Change' (n 3).

[40] Ilya Kokorin 'The Anatomy of Crypto Failures and Investor Protection under MiCAR' (2023) 18 Capital Markets Law Journal 500; Huang, 'Crypto Assets Regulation in the UK' (n 17); Allen, 'Money Market Fund Reform' (n 8).

[41] Harry McVea, 'Supporting Market Integrity' in Niamh Moloney, Eilis Ferran and others (eds), *The Oxford Handbook of Financial Regulation* (Oxford University Press 2015) pp. 631–658.

[42] John Armour and others, *Principles of Financial Regulation* (Oxford University Press 2016) 456–60.

vessel for capital-markets duties because the special category it contains is too broad and too indeterminate to supply its own normative grammar.[43]

MiCAR displays a similar problem. The European Union openly constructs a bespoke crypto category, but the resulting rulebook is a mosaic of inherited techniques. That may produce a serviceable framework, yet it also reveals that the special category is not conceptually self-sustaining. It depends on continued borrowing from adjacent regimes. The more detailed the regulation becomes, the less plausible it is to claim that a novel legal object has been discovered. What has happened instead is that familiar regulatory concerns have been reorganised under a new heading.[44]

2.3.3 The Regulatory Costs of Exceptionalism

The third flaw is practical. Exceptionalism produces duplication. Similar activities are regulated under different conceptual banners depending on whether they involve crypto-assets. That duplication increases compliance costs and complicates supervision because firms and regulators must navigate overlapping but non-identical standards. It also fragments doctrine. If market-manipulation rules, custody obligations and disclosure disciplines are rewritten for a special crypto perimeter, rather than integrated into ordinary frameworks through functional extension, the coherence of the underlying fields is weakened.[45]

Exceptionalism also weakens technology neutrality. A technology-neutral regime does not ignore technological difference; it refuses to let technology alone determine legal category.[46] By contrast, crypto-specific regulation can reward semantic engineering. Firms may structure products to fall within or outside the special perimeter depending on which classification yields lighter burdens or more congenial supervision. That is a classic form of regulatory arbitrage. It is especially likely where a crypto regime sits alongside securities, payments and prudential frameworks with only partially aligned definitions.[47]

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[43] MAS, Investor Protection Measures for DPT Services (n 6); MAS, Consultation Paper on Market Integrity in DPT Services (n 6); Lin, 'Regulating FinTech in Singapore' (n 19).

[44] Zetzsche and others, 'MiCA and the EU Digital Finance Strategy' (n 2); Wronka, 'Crypto-Asset Activities and Markets in the EU' (n 2); Tom van der Linden and Tina Shirazi 'Markets in Crypto-Assets Regulation: Does It Provide Legal Certainty and Increase Adoption of Crypto-Assets?' (2023) 9 Financial Innovation, Article 22.

[45] Chiu, 'Responsiveness in Financial Regulation' (n 5); Awrey, 'Regulating Financial Innovation' (n 3).

[46] Armour and others (n 42) 83; Brad A Greenberg, 'Rethinking Technology Neutrality' (2016) 100 Minnesota Law Review 1495.

[47] Swiss Federal Council, Legal Framework for Distributed Ledger Technology and Blockchain in Switzerland (n 6); Chiu, 'Responsiveness in Financial Regulation' (n 5).

A further cost is temporal. Exceptionalism often delays rather than avoids the return of ordinary finance law. Singapore's payment-services regime increasingly looks like a host for market-conduct and custody approaches. Japan's historical reliance on payments law is being supplemented by concerns more familiar to capital-markets regulation. The United Kingdom, having long resisted a fully bespoke regime, is now building one in order to address issues already known from ordinary financial regulation. This pattern suggests that exceptionalist regimes are rarely stable endpoints. They are transitional settlements that absorb growing quantities of ordinary doctrine until their original conceptual distinctiveness erodes.[48]

Finally, there is no clear evidence that exceptionalism produces superior outcomes. The mere existence of a bespoke crypto statute or a payment-services host category does not guarantee fewer failures, better custody, cleaner markets or stronger consumer understanding. Some of the most significant collapses in the sector involved entities operating in jurisdictions with increasingly elaborate rulebooks or with extensive references to investor protection. That observation does not prove the inefficacy of any single regime, but it does undercut the assumption that a special category is itself a source of regulatory advantage. What matters is whether concrete functions are regulated effectively, by institutions with appropriate mandates and tools.[49]

3. FINANCIAL REGULATION HAS SEEN EXCEPTIONALISM BEFORE

3.1 OTC derivatives and the pre-Dodd-Frank mistake

Crypto exceptionalism is not historically unique. Financial regulation has repeatedly struggled with products portrayed as too novel, too sophisticated or too technically specialised for ordinary legal treatment. The pre-crisis regulation of over-the-counter derivatives is perhaps the clearest precedent. In the years preceding the global financial crisis, large parts of the OTC derivatives market were insulated from ordinary exchange-trading, transparency and clearing requirements. The Commodity Futures Modernization Act 2000 in the United States reflected a confidence that bespoke treatment, grounded in private ordering among sophisticated counterparties, was preferable to the extension of more ordinary market disciplines.[50]

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[48] Tokutsu, 'The "Independence Day" of Payments Law?' (n 23); Financial Services Agency, Examination of the Regulatory Systems Related to Crypto Assets (n 24); HM Treasury, Regulatory Regime for Cryptoassets (n 17).

[49] Kokorin, 'The Anatomy of Crypto Failures' (n 40).

[50] Greene, 'Dodd-Frank and the Future of Financial Regulation' (n 8); Awrey, 'Complexity, Innovation and Modern Financial Markets' (n 3); Arthur W S Duff and David Zaring 'New Paradigms and Familiar Tools in the New Derivatives Regulation' (2013) 81 George Washington Law Review 677.

The logic of exceptionalism in that setting has obvious affinities with the present crypto debate. OTC derivatives were not wholly unregulated, but they were treated as a special market in which bilateral sophistication, bespoke contracting and dealer risk management were thought to justify departures from more standard market architecture. After 2008, this assumption looked untenable. The crisis exposed the opacity of bilateral exposures, the systemic significance of concentrated dealers and the fragility of a market structure that had relied heavily on private collateral and contractual mechanisms rather than on public rules of transparency, central clearing and market infrastructure.[51]

The response in Dodd-Frank was not to invent an entirely new body of derivatives law ex nihilo. It was to reintroduce, in adapted form, familiar ideas of market infrastructure, transparency, margining, clearing and supervisory oversight. In other words, the post-crisis settlement suggested that the pre-crisis special treatment of OTC derivatives had been, at least in part, a category mistake. The market had been regarded as sufficiently exceptional to justify carve-outs from ordinary discipline, but the resulting vulnerabilities were precisely the sort that organised market regulation and prudential oversight had long sought to manage.[52]

The lesson for crypto regulation is not that every novel financial product should be forced immediately into an old mould. It is that claims of novelty often obscure the continued relevance of ordinary regulatory techniques. Pre-crisis OTC derivatives were treated as if private ordering could substitute for market design and public oversight. Crypto exceptionalism sometimes makes a similar move in reverse: it creates a special perimeter first and then rediscovers, piecemeal, the need for ordinary doctrines such as segregation, governance, market surveillance and prudential control. Both patterns reflect an initial overstatement of difference.[53]

3.2 Shadow banking and the migration of bank-like functions outside bank regulation

The history of shadow banking offers a second analogy. Shadow banking describes a set of institutions and arrangements that perform credit intermediation and liquidity transformation outside the perimeter of ordinary bank regulation.[54] What made shadow banking distinctive was

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[51] Greene, 'Dodd-Frank and the Future of Financial Regulation' (n 8); Awrey, 'Complexity, Innovation and Modern Financial Markets' (n 3); Duff and Zaring, 'New Paradigms and Familiar Tools' (n 50).

[52] Greene, 'Dodd-Frank and the Future of Financial Regulation' (n 8); Schwarcz, 'Regulating Financial Change' (n 3).

[53] Awrey, 'Regulating Financial Innovation' (n 3); Duff and Zaring, 'New Paradigms and Familiar Tools' (n 50).

[54] Financial Stability Board, *Shadow Banking: Strengthening Oversight and Regulation* (27 October 2011); Steven L Schwarcz, 'Regulating Shadow Banking' (2012) 31 Review of Banking & Financial Law 619, 621.

not that it carried out wholly unfamiliar economic functions, but that those functions migrated into new legal forms and organisational settings.[55]

That pattern is highly instructive for crypto. Much of what is described as 'decentralised finance' or 'digital assets' similarly entails the migration of familiar functions into differently labelled structures. Lending, rehypothecation, collateral management, leverage and liquidity transformation do not cease to raise prudential concerns because they are executed through tokens or smart contracts. Indeed, the shadow-banking analogy shows why legal form can be misleading. Activities that appeared to sit outside banking nevertheless generated bank-like vulnerabilities, including runs, maturity mismatch and contagion. The eventual policy response therefore focused on function and interconnectedness.[56]

The analogy can be pushed further. Shadow banking flourished in part because ordinary prudential categories did not map cleanly onto new intermediaries and transactions. That mismatch created room for arbitrage and for a narrative in which innovation was understood as freedom from bank-style constraints. Crypto exceptionalism can play a similar role. By placing token-based lending, prime brokerage, staking or synthetic yield products within a special crypto universe, it risks downplaying the extent to which these activities replicate classical concerns of leverage, liquidity and intermediary fragility. The mere fact that risks are assembled through wallets, smart contracts or token claims should not obscure that they may operate as substitutes for familiar financial arrangements.[57]

The deeper lesson of shadow banking is therefore institutional. When regulation follows form rather than function, finance reorganises itself around the perimeter. Supervisors are then compelled to chase risk through an expanding series of special categories. A functional approach is not costless, but it at least begins from the proposition that economically similar intermediation should be assessed through a common set of prudential and conduct-oriented questions. That insight is directly relevant to crypto. A regime that begins with 'crypto' as the primary category will tend to reproduce the same perimeter-management difficulties that shadow-banking regulation has faced for decades.[58]

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[55] Guillaume Plantin 'Shadow Banking and Bank Capital Regulation' (2015) 28 Review of Financial Studies 146; Zoltan Pozsar, Tobias Adrian, Adam Ashcraft and Hayley Boesky, Shadow Banking, Federal Reserve Bank of New York Staff Report No 458 (2010).

[56] Jeremy C Stein 'Monetary Policy as Financial Stability Regulation' (2012) 127 Quarterly Journal of Economics 57; Plantin, 'Shadow Banking and Bank Capital Regulation' (n 55).

[57] Awrey, 'Complexity, Innovation and Modern Financial Markets' (n 3); Chiu, 'Responsiveness in Financial Regulation' (n 5); Werbach, 'Trust, But Verify' (n 4).

[58] Pozsar and others (n 55); Stein, 'Monetary Policy as Financial Stability Regulation' (n 56); Chiu, 'A Rational Regulatory Strategy' (n 2).

3.3 Money market funds and the illusion of cash-equivalence

Money market funds provide a third example of exceptionalism through misclassification. Although formally regulated as investment funds, they were for extended periods designed and perceived as near-cash instruments, thereby creating deposit-like expectations without the corresponding prudential framework. It encouraged a perception of safety and liquidity inconsistent with the underlying asset structure. The regulatory challenge was not that money market funds were ontologically novel. It was that they occupied a category whose legal treatment did not fully reflect their functional similarity to demand-like claims and their vulnerability to runs.[59]

The relevance to crypto is especially clear in relation to stablecoins and exchange-issued balances, although the present article is not limited to those products. Where users are encouraged to treat a token or platform balance as cash-like while the underlying arrangement depends on reserve management, redemption practices, governance and operational continuity, ordinary distinctions between payment media, deposits, e-money and collective investment become salient. Exceptionalism can obscure that salience by creating a new crypto-specific label that seems to dissolve the older questions. The money-market-fund experience suggests that such relabelling is hazardous.[60]

Money market funds also illustrate a broader methodological point. The difficulty was not solved merely by acknowledging that the product sat between investment and money. What mattered was the identification of concrete risk mechanisms: liquidity mismatch, first-mover advantage, valuation practices and sponsor support. If a product or platform creates a money-like claim, a trading venue, a custodial relationship or a leveraged investment structure, regulation should focus on that mechanism rather than on the fact that the claim or service is presented in tokenised form. The recurring error of exceptionalist regulation is to treat nomenclature as an adequate substitute for functional analysis.[61]

The historical episodes surveyed in this section support a common proposition. Financial innovation repeatedly tempts lawmakers to treat new forms as deserving specially tailored categories insulated from the internal discipline of existing law. Sometimes the result is under-regulation; sometimes it is a proliferation of overlapping bespoke rules. But the underlying mistake is the same. Legal attention shifts to novelty of form before it asks whether the

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[59] Allen, 'Money Market Fund Reform' (n 8); European Securities and Markets Authority, Vulnerabilities in Money Market Funds, Trends, Risks and Vulnerabilities No 1 (2021); Financial Stability Board, Thematic Review on Money Market Fund Reforms (27 February 2024).

[60] Allen, 'Money Market Fund Reform' (n 8); Financial Stability Board, Thematic Review on Money Market Fund Reforms (n 59).

[61] Allen, 'Money Market Fund Reform' (n 8); Plantin, 'Shadow Banking and Bank Capital Regulation' (n 55); Schwarcz, 'Regulating Financial Change' (n 3).

underlying function is genuinely unfamiliar. Crypto exceptionalism belongs to that tradition. It is best understood as the latest iteration of a recurring pattern in financial regulation.[62]

4. COMPARATIVE MANIFESTATIONS AGAINST CRYPTO EXCEPTIONALISM TOWARD A FUNCTIONAL ALTERNATIVE

4.1 Switzerland: technology-neutral integration

Switzerland is one comparative rebuttal to crypto exceptionalism. The Federal Council's 2018 DLT report treated novelty as a question of targeted adjustment within an otherwise stable legal order. It stated that Switzerland should not fundamentally reopen its balanced legal framework; instead, it should pursue a principle-based, technology-neutral approach, treating comparable activities and risks alike and departing from neutrality only where existing law remained tied to analogue or centralised processes. The point of departure is function, not the object category of 'crypto-asset'.[63]

That orientation survived the later reforms. The DLT legislation introduced ledger-based securities, clarified the segregation of crypto-based assets in insolvency, and created the DLT trading facility. But these reforms were framed as selective accommodations, not a comprehensive crypto code. Even the DLT trading facility was justified as a limited derogation from the general technology-neutral approach, required because existing market-infrastructure law could not easily accommodate a venue combining trading, settlement and custody features on distributed ledgers.[64]

Swiss supervisory practice is equally functional. FINMA's ICO guidelines classify tokens by underlying economic function, and its stablecoin guidance routes novel structures back into familiar categories: depending on design, the relevant claim may be treated as a payment token, an asset token, a deposit, or a collective investment scheme. Switzerland is not wholly non-exceptionalist. But its departures are narrow, instrument-specific, and nested within securities, custody, payments, banking and insolvency law rather than an autonomous law of 'crypto' itself.[65]

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[62] Greene, 'Dodd-Frank and the Future of Financial Regulation' (n 8); Awrey, 'Complexity, Innovation and Modern Financial Markets' (n 3); Schwarcz, 'Regulating Financial Change' (n 3).

[63] Swiss Federal Council, Legal Framework for Distributed Ledger Technology and Blockchain in Switzerland (n 6) 7, 12.

[64] Swiss Federal Council, Legal Framework for Distributed Ledger Technology and Blockchain in Switzerland (n 6) 8, 107–08; Federal Council, 'Federal Council brings DLT Act fully into force and issues ordinance' (18 June 2021); Code of Obligations art 973d; Financial Market Infrastructure Act arts 73a–73f.

[65] FINMA, ICO Guidelines (16 February 2018) 2; FINMA, Supplement to the ICO Guidelines (11 September 2019) 1; FINMA, Guidance 06/2024: Stablecoins (26 July 2024) 3-6.

4.2 Canada: regulation by economic function rather than crypto label

Canada provides a second counterexample because its central innovation has been interpretive rather than legislative. Canadian securities regulators did not begin by creating a general statutory category of crypto-assets. Instead, Staff Notice 21-327 asked whether the user acquires the asset itself or only a contractual entitlement mediated by the platform. If the platform retains control and the user does not receive immediate delivery, ownership, possession and control, the relationship may constitute a security or derivative even where the underlying asset is not itself one. Conversely, securities law will generally not apply where the asset is immediately delivered to a wallet controlled solely by the user and the user is not left exposed to the platform's insolvency or performance risk. The analysis turns on custody and residual dependence, not nomenclature.[66]

That method was then extended institutionally. Joint Staff Notice 21-329 states expressly that it does not create new rules specifically for crypto-asset trading platforms. Rather, it maps such platforms onto existing dealer, marketplace and exchange frameworks depending on what they actually do. A platform acting as counterparty, onboarding retail clients and providing custody resembles a dealer. A platform that brings together multiple buyers and sellers using established non-discretionary methods resembles a marketplace and may, in some cases, require exchange recognition. The conceptual burden is therefore carried by ordinary securities-law categories, albeit adapted through tailored terms and exemptive relief.[67]

Canada has, to be sure, imposed crypto-specific constraints, especially after the failures of major international platforms. Staff Notice 21-332 strengthened pre-registration undertakings by requiring segregation and custodial protections, prohibiting rehypothecation and leverage, restricting reliance on proprietary tokens and value-referenced crypto assets, and demanding fuller compliance infrastructure. Yet even these measures do not amount to a free-standing crypto code. They are better understood as a securities-law response to concentrated custodial and intermediary risk within a novel technical environment.[68]

4.2 A functional alternative

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[66] CSA, Staff Notice 21-327 (n 6) 2–5.

[67] CSA and IIROC, Staff Notice 21-329, Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements (29 March 2021) 1, 5-10.

[68] CSA, Staff Notice 21-332, Crypto Asset Trading Platforms: Pre-Registration Undertakings - Changes to Enhance Canadian Investor Protection (22 February 2023) 4-12.

The comparative lesson is not that special rules are never justified. It is that legal analysis should begin with function. The familiar questions remain decisive: what claim does the holder possess; who bears balance-sheet or reserve risk; is there genuine delivery and independent control; does an intermediary perform brokerage, exchange, custody, clearing, settlement or deposit-like functions; and which regulatory objectives-investor protection, market integrity, prudential stability, payments integrity, anti-money laundering, or insolvency protection-are thereby engaged? Regulation should be triggered because a product or institution performs one of those functions or recreates one of those risks, not because it belongs to the rhetorical class of 'crypto'.

This approach is also increasingly consistent with international standards. The FSB's 2023 framework is explicitly based on 'same activity, same risk, same regulation' and insists that crypto-asset activities be regulated according to their economic function and the risks they pose. IOSCO's 2023 recommendations are likewise activities-based and focused on the economic substance and substitutability of the services provided, while warning that many crypto intermediaries combine exchange, brokerage, custody, clearing, lending and proprietary trading under one roof. The functional alternative therefore disciplines both under-regulation and over-specialisation. It avoids assuming that digital form negates familiar financial concerns, while also avoiding the opposite error of forcing every innovation into inherited categories without asking whether targeted adaptation is needed.[69]

In adopting a functional orientation, it is important to note that economic function is not necessarily objective, self-evident, or stable. The maxim that like activities posing like risks should attract like regulation does not, by itself, decide cases. Identifying the relevant activity, specifying which risks count, and selecting the comparator against which substitutability is judged are interpretive choices, and they are mediated by regulators' mandates, institutional structures and supervisory toolkits.[70] The same arrangement can often be characterised, with equal plausibility, as a payment service, a deposit, a collective investment or a form of credit intermediation, depending on the features that are foregrounded; reasonable regulators may reach different conclusions, and the boundaries between payments, securities and prudential regulation are themselves contested. The functional approach defended here does not deny this indeterminacy. However, even an imperfect functional analysis, openly argued by reference to identifiable economic relationships and stated regulatory objectives, exposes the operative

[69] FSB, Global Regulatory Framework for Crypto-Asset Activities: Final Report (17 July 2023) 3-4; IOSCO, Policy Recommendations for Crypto and Digital Asset Markets: Final Report (FR11/23, November 2023) 5, 20-21; IOSCO, Umbrella Note (OR02/2023, December 2023) 4.

[70] Chiu, 'Responsiveness in Financial Regulation' (n 5), arguing that 'same activity, same risk, same regulation' does not operate as a self-applying rule because the identification of the relevant activity and risks, and the choice of regulatory response, depend on regulators' institutional structures; see also Awrey, 'Regulating Financial Innovation' (n 3).

choices to scrutiny in a way that a crypto label does not. Acknowledging the contestability of function therefore strengthens, rather than weakens, the case against exceptionalism, because it locates the difficulty where it belongs—in reasoned argument about activity, risk and institutional competence—rather than allowing the rhetorical novelty of the technological wrapper to substitute for that argument.

5. CONCLUSION

This article has argued that contemporary crypto regulation is a form of exceptionalism in financial law. Across jurisdictions, lawmakers either create a sui generis crypto perimeter or stretch existing host categories, especially payments law, to absorb token-based intermediation. Yet the content of these regimes repeatedly reveals that the underlying concerns are not crypto-native. Disclosure, governance, segregation of client assets, custody obligations, prudential safeguards and market-integrity rules are inherited from established bodies of financial law. The novelty of the category therefore sits uneasily with the familiarity of the doctrine.[71]

MiCAR and the emerging UK framework exemplify bespoke categorisation, although the UK does so by extending the regulated-activities perimeter of the Financial Services and Markets Act 2000 rather than by enacting a free-standing code on the MiCAR model. Singapore and historically Japan show how a payments label can become a vehicle for market-law and custody-law transplantation. Hong Kong demonstrates that even jurisdictions invoking functional rhetoric can institutionalise a distinct virtual-asset perimeter. Switzerland and Canada, by contrast, suggest that a more coherent path remains available: adapt existing law where necessary, but let function rather than label determine the primary classification.[72]

The historical analogies deepen the point. OTC derivatives, shadow banking and money market funds all illustrate the dangers of allowing innovation or legal form to obscure functional continuity. Financial regulation has repeatedly discovered that special categories constructed around apparent novelty are unstable. They either under-regulate familiar risks or reimport ordinary doctrine after costly delay. Crypto regulation is now reproducing that pattern.[73]

Against crypto exceptionalism, this article therefore defends a straightforward proposition: digital-asset regulation should follow the economic activity performed. Trading should be

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[71] Zetzsche and others, 'MiCA and the EU Digital Finance Strategy' (n 2); Lin, 'Regulating FinTech in Singapore' (n 19); Burgess and Liu, 'A Tale of Two Jurisdictions' (n 18).

[72] Swiss Federal Council, Legal Framework for Distributed Ledger Technology and Blockchain in Switzerland (n 6); CSA, Staff Notice 21-327 (n 6).

[73] Greene, 'Dodd-Frank and the Future of Financial Regulation' (n 8); Plantin, 'Shadow Banking and Bank Capital Regulation' (n 55); Allen, 'Money Market Fund Reform' (n 8).

regulated as trading, custody as custody, payments as payments, and money-like or leveraged intermediation as the prudential problem it is. Bespoke amendment should be justified by operational necessity, not by the assumption that crypto is an autonomous legal domain. To resist crypto exceptionalism is not to deny technological change. It is to insist that financial law should remain organised around the functions, institutions and risks that actually matter. Only on that basis can regulation preserve both conceptual coherence and practical effectiveness in the face of continuing financial innovation.