resources for retirement.

Nov. 23, 2022

By Michael Hiltzik, Los Angeles Times (TNS)

The federal government has some advice for workers contemplating adding bitcoin or another cryptocurrency to their retirement holdings: Don't.

The advice is not exactly new. The Department of Labor, which oversees employer-sponsored retirement offerings such as 401(k) plans, first warned plan sponsors in March to "exercise extreme care" before opening those plans to cryptocurrency investments.

“These investments present significant risks and challenges to participants’

investment gains.

FTX filed for bankruptcy protection on Nov. 11, amid allegations of financial wrongdoing and evidence of spectacularly careless and chaotic internal operations. It was the second major player to file for bankruptcy in four months, following that of Celsius Networks, which also had been seen as a high-flying and secure player in the field.

Celsius filed for bankruptcy on July 13, an abrupt collapse that has left an untold number of its 1.7 million customers financially devastated.

It isn’t clear whether these debacles will cool the efforts of investment promoters to entice average working men and women into the crypto wild west.

Among the firms leading the charge has been Fidelity Investments, which administers retirement plans for about 35 million enrollees holding about $1.4 trillion in assets. Fidelity announced earlier this year that it would start allowing plan sponsors to offer their employees the option of investing in bitcoin.

Is that a wise policy? Democratic Sens. Elizabeth Warren of Massachusetts, Dick Durbin of Illinois and Tina Smith of Minnesota don’t think so. In a Nov. 21 letter, they asked Fidelity to reconsider.

The imposition of FTX “made it abundantly clear the digital asset industry has serious problems,” they wrote. “The industry is full of charismatic wunderkinds, opportunistic fraudsters, and self-proclaimed investment advisors promoting financial products with little to no transparency.”

The lawmakers’ letter was a follow-up to one they sent on July 26, in which they termed Fidelity’s decision “immensely troubling.”

While the ultimate decision whether to allow workers to invest in bitcoin through

of standards and safeguards," a Fidelity spokesman told me by email. "As a firm that has been serving customers in financial markets for over 75 years, Fidelity has always prioritized operational excellence and customer protection across all of its businesses."

Still, crypto is a uniquely perilous investment for families struggling to husband their resources for retirement.

Defined contribution plans such as 401(k) plans have become the principal retirement offerings of most employers in recent decades, supplanting traditional defined benefit plans. The latter provide retirement stipends based on employees' earnings and length of service at a company.

The retirement payments generated by defined contribution plans are dependent on the amounts that workers set aside as investments, plus whatever investment gains their funds produce over time.

There are virtues and drawbacks to both systems. Defined benefit plans are best for employees who stay with one employer for the long term. The risk of investment market downturns is borne by the employer, but typically they aren't transferable to new employers.

Defined contribution plans are portable—they can follow workers as they move from company to company. But the workers carry the risks of market downturns.

Owners of 401(k) plans have seen these risks materialize in real time. The average balance in those plans fell in the third quarter of this year by 23% compared to a year earlier, according to Fidelity. An analysis by Vanguard, which runs neck and neck with Fidelity as a manager of defined contribution plans, showed that the average plan held about $129,000 at the end of 2021.

That’s misleading, however, because the average figure is pumped up by

part because that would have required a lengthy period of analysis and public comment before it could be issued. Instead, the regulators issued a less formal advisory to plan fiduciaries—the corporate managers in charge of employee retirement options.

Under federal law, the Labor Department said, “fiduciaries must act solely in the financial interests of plan participants and adhere to an exacting standard of professional care .... Fiduciaries who breach those duties are personally liable for any losses to the plan resulting from that breach.”

The regulators identified five potential pitfalls in crypto investments that would weigh on whether offering the option was prudent. Crypto is “highly speculative” and its prices are exceptionally volatile, in part because of “the amount of fictitious trading reported, widely published incidents of theft and fraud, and other factors.” The market is complex and over-promoted as one with “unique potential for outsized profits.”

Recordkeeping was often sloppy and account security spotty, the regulators noted, and published valuations of cryptocurrencies unreliable. Finally, regulations and enforcement are still evolving, so it’s as yet unclear whether some crypto offerings are even legal.

All these issues have arisen in relation to FTX.

In effect, the Department of Labor put employers on notice that their decisions to allow workers to invest in crypto would be very carefully scrutinized.

At least through the end of October—prior to the FTX meltdown—crypto promoters pushed back energetically against the Department of Labor’s warning.

The most direct attack has come from ForUsAll, a Silicon Valley-based administrator

The agency, said ForUsAll Chief Executive Jeff Schulte in announcing the lawsuit, plays several important roles that serve American workers—but "armchair financial adviser shouldn't be one of them." He accused the department of trying to "pick winners and losers" among asset classes.

The government asked the court to dismiss the lawsuit in October, arguing that the guidance didn't fall into the category of rulemaking subject to the administrative requirements. ForUsAll subsequently offered to drop the case if the government agreed never to block cryptocurrency investment in retirement plans by considering it to be a violation of fiduciary standards, among other conditions. The government has rejected the firm's conditions.

Also objecting to the Department of Labor's advisory is the Crypto Council for Innovation, an alliance of cryptocurrency promoters including venture investors, crypto exchanges and Fidelity.

In a letter to the department dated June 14, the council complained that the advisory "in effect categorically precludes 401(k) administrators from including crypto investment options in their plans, based on a factually and legally flawed analysis."

The council asserted that the advisory "narrowly considers only the risks of cryptocurrencies while disregarding their potential benefits, including growth and portfolio diversification."

At least until the FTX collapse, crypto promoters were still assuming that public interest in the asset category was building, making it a promising area for business growth. There have been plenty of naysayers, to be sure. Among them is Jamie Dimon, CEO of the giant bank JP Morgan Chase & Co., who has consistently scoffed at bitcoin and other digital currencies. "They are decentralized Ponzi schemes," Dimon said in congressional testimony on Sept. 21. "And the notion that it's good for

Lakers and Clippers play.)

Or it's possible that the prospect of quick riches will outweigh the dangers of putting one's precious retirement nest egg with investment firms that play by their own rules, or no rules. Nothing can keep ordinary Americans from investing in any product, no matter how much evidence emerges of its sketchiness. But no one can say they haven't been warned.

Michael Hiltzik is a columnist for the Los Angeles Times.

Benefits • Digital Currency • Payroll