

Crypto
Council for
Innovation

July 25, 2023

Patrick McHenry
Chair
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

French Hill
Chair
Subcommittee on Digital Assets, Financial
Technology, and Inclusion
1533 Longworth House Office Building
Washington, DC 20515

Glenn “GT” Thompson
Chair
House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

Dusty Johnson
Chair
Subcommittee on Commodity Markets
Digital Assets, and Rural Development
1301 Longworth House Office Building
Washington, DC 20515

Dear Chair McHenry, Chair Thompson, Chair Hill, and Chair Johnson:

The Crypto Council for Innovation (CCI) is pleased to write in support of H.R.4763, the *Financial Innovation and Technology for the 21st Century Act*. CCI commends the efforts of the House Agriculture and Financial Services Committees to develop legislation that creates a clear regulatory framework to address the unique structure of U.S. digital asset markets while preserving innovation and providing robust investor protections. We are also encouraged to see the two primary committees of jurisdiction work in such close coordination on this critical legislation.

CCI is a global alliance of industry leaders with a mission to communicate the benefits of crypto/Web3 and demonstrate its transformational promise. CCI members include some of the leading global companies and investors operating in the industry. They span the crypto ecosystem and share the goal of encouraging the responsible global regulation of crypto to unlock economic potential, improve lives, foster financial inclusion, protect national security, and disrupt illicit activity. CCI and its members have appreciated the opportunity to work with the House Agriculture and Financial Services Committees and their members to support efforts to establish a clearly defined regulatory regime to govern digital asset markets here in the United States.

Now more than ever, it is critically important that cryptocurrency investors, blockchain developers,

crypto exchanges, and other intermediaries be provided clarity as to how existing market regulations apply to digital assets. Over the past year digital asset markets have experienced periods of volatility and declining prices, as well as a number of high profile failures among market participants. However, since the start of this year, the total combined global value of cryptocurrencies has risen by 50 percent since reaching a low of \$793 billion at the end of 2022.¹ A Pew Research Center survey also found that nearly 70 percent of Americans who have ever purchased cryptocurrency continue to hold crypto, despite the market turbulence of last year.² And yet, while U.S. investor interest in digital assets remains strong, the U.S. has fallen behind in proactively developing a regulatory framework to provide clear rules of the road as to how market participants can operate here safely and legally. Unlike the U.S., many major foreign jurisdictions, including the European Union, United Kingdom, Singapore, Japan, Hong Kong, and Australia, have all taken significant steps towards establishing regulatory frameworks tailored to address the unique characteristics of digital assets and the markets in which they operate.

This should be an area of paramount importance for policymakers because, not only does legal uncertainty stifle responsible innovation, it also threatens to create an environment in which American investors must turn to off-shore crypto exchanges and intermediaries to participate in digital asset markets.³ The collapse of a number of foreign firms last year, including Singapore-based Terraform Labs and its affiliated algorithmic stablecoin, terraUSD, and Bahamas-based FTX.com, provide stark examples of the very real consequences American investors will face if digital asset market activity increasingly takes place outside of the United States. These risks were recently acknowledged by the Securities and Exchange Commission (SEC) Chair Gary Gensler who stated while testifying before the House Financial Services Committee, “U.S. investors are accessing the crypto markets, both onshore companies and offshore.” Chair Gensler went on to highlight the challenges associated with taking enforcement actions against foreign firms stating “[i]t takes longer sometimes in cooperation with offshore enforcement authorities to pursue that and it is, frankly, more challenging to actually get subpoenas complied with, and so it takes longer in time.”

There are a number of areas of legal and regulatory uncertainty which have presented significant challenges for digital asset market participants in determining when and even how existing Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) rules apply to this market. A key area of uncertainty is the specific criteria by which the SEC, and to a lesser extent the CFTC, deem a digital asset to meet the legal definition of a security or commodity respectively. There are currently over 22,000 unique digital assets being traded among users here and abroad with a total combined market value of nearly \$1.2 trillion.⁴ While Bitcoin (BTC) is widely recognized as a

¹ <https://coinmarketcap.com/charts/>

²

<https://www.pewresearch.org/short-reads/2023/04/10/majority-of-americans-arent-confident-in-the-safety-and-reliability-of-cryptocurrency/>

³

<https://cointelegraph.com/news/the-crypto-industry-has-already-started-moving-outside-of-the-us-says-ripple-ceo>

⁴ Most US-based trading platforms offer a tiny fraction of this number, usually a few hundred tokens.

commodity, including by Chair Gensler, and not subject to SEC regulation, it is not clear which other digital assets meet the legal definition of a “security,” as determined by the *Howey* test.

Chair Gensler has repeatedly asserted that the law is clear and the SEC has all of the authority that it needs to regulate digital assets. Judge Torres’ (S.D.N.Y.) recent decision in the SEC v. Ripple matter highlighted that this is *not* the case. He has claimed that digital asset market participants, including crypto developers and trading venues, can simply “come in and register” with the SEC. Unfortunately, registration for digital assets companies is not that simple. By and large, existing U.S. securities laws were originally designed nearly 100 years ago and thus did not contemplate the technological advances available today, including the ability for transactions to move at the speed of the internet. Today, securities transactions still settle in an analog world, typically two days later, because existing rules require a chain of intermediaries to perform a variety of functions, including custody, brokerage, order matching, clearing, and settlement. All of these steps and intermediaries, which were designed to reduce risk, come at a steep cost to consumers. Blockchain technology has the ability to reduce many risks without the use of so many intermediaries, which provides a cost and time savings to investors. Insisting on the involvement of certain intermediaries that add costs for customers and have been rendered obsolete by this technology is the equivalent of mandating horses be hitched to the front of cars in order to pull them, when the car itself is designed to replace the horse.

Additionally, despite multiple petitions for formal rulemaking, the SEC has failed to provide clarity on how a digital exchange could comply with current requirements while listing both securities and non-securities (e.g., Bitcoin). Since 2013, the SEC has brought over 127 enforcement actions against individuals and firms related to cryptocurrencies, but the SEC has not carried out a single rulemaking targeted at addressing ambiguity in regulations around their application to digital assets. This regulation by enforcement approach fails to 1) protect consumers and investors, 2) prevent bad actors from taking advantage of the interest in this market, and 3) provide any clarity to startups and existing companies who want to operate responsibly, develop innovative products, and serve users here in the United States.

The U.S. can and should regulate the trading of digital assets, but without clear rules of the road, innovators cannot operate here in the United States, and Americans cannot effectively use the technology. Inaction creates the risk of offshoring the development of the tech, leading to geopolitical, national security, and economic security risks. As was succinctly stated in a recent decision by Judge Michael Wiles, of the New York Southern District Bankruptcy Court, “[r]egulators themselves cannot seem to agree as to whether cryptocurrencies are commodities that may be subject to regulation by the CFTC, or whether they are securities that are subject to securities laws, or neither, or even on what criteria should be applied in making the decision … [t]his uncertainty has persisted despite the fact that cryptocurrency exchanges have been around for a number of years.”

CCI is greatly encouraged by the *Financial Innovation and Technology for the 21st Century Act*’s clear intent to address the critical questions of which digital assets constitute a security versus a commodity.

Furthermore, we are pleased to see the effort to establish thresholds around the point at which a digital asset is sufficiently decentralized so as to not be considered a security. CCI is also very supportive of the decision by the authors to include requirements that a study be conducted regarding the nature of DeFi. A wide range of ongoing projects in this area indicate that DeFi presents tremendous opportunities in its ability to revolutionize so many of our legacy systems and further disintermediate the financial system; therefore, it is critically important that future regulations recognize and are tailored to DeFi's unique attributes.

While there are some elements of the legislation about which CCI has outstanding questions, we appreciate the complexity of the legislative process, and hope that we can continue to work with you and your colleagues to further refine the *FIT for the 21st Century Act* as it advances. Notably, we believe, among other things, the definition of "digital asset trading system" should be narrowed and the new exclusion category to the definition of "digital asset" included in Section 101 and the restrictions on mixed digital asset transactions further clarified.

The Crypto Council would again like to take this opportunity to express our strong support for these encouraging steps towards advancing much needed legislation and our willingness to continue to engage to ensure that the legislation both supports innovation and protects consumers. CCI appreciates that this is an area of public policy which presents uniquely complex technical and legal challenges. We are therefore very grateful for the members of the Financial Services and Agriculture Committees willingness to engage on these critical issues. CCI looks forward to continuing to support these efforts to establish a clear regulatory framework for digital asset markets that fosters innovation, provides critical protections for consumers, investors, and our financial system, and preserves the technological cutting edge and leadership of the United States.

Sincerely,



Sheila Warren
Chief Executive Officer
Crypto Council for Innovation

CC:
Chair Patrick McHenry
Ranking Member Maxine Waters
Ranking Member David Scott

Ranking Member Stephen Lynch