United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

September 14, 2023

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

The Honorable Rostin Behnam
Chair
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Dear Secretary Yellen, Chair Gensler, and Chair Behnam:

I write to express my concern about the troubling lack of customer-facing disclosure in crypto markets. Incomplete and inconsistent disclosures about digital asset tokens and related services deny Americans critical information. As they examine crypto tokens, consumers and investors need to be able to assess risks, avoid fraud, and understand conflicts of interest. The vacuum of accurate, investment-useful information, however, has led to the proliferation of outright scams, platforms vulnerable to manipulation by informed insiders, and hacks that drain customer accounts. The damage is staggering: just last year, nearly $10 billion was lost to crypto scams or stolen in hacks.[1]

We must do more to protect crypto users from this misconduct and begin to improve available data and documentation so that Americans can evaluate tokens based upon reliable information. Comprehensive and regular disclosures must be a cornerstone of any approach to digital assets.

[1] The value of crypto scams totaled $5.9 billion in 2022, while $3.8 billion was stolen in hacks on digital asset firms that year. *See* CHAINALYSIS, THE 2023 CRYPTO CRIME REPORT 56, 86 (2023), https://go.chainalysis.com/rs/503-FAP-074/images/Crypto_Crime_Report_2023.pdf.

Inadequate disclosures remain a persistent problem even though crypto assets emerged more than a decade ago. Yet even as the crypto industry purports to "mature," and following recent catastrophic failures like FTX and Celsius, crypto firms have taken no meaningful steps to improve their transparency, leaving customers vulnerable. We cannot settle for a status quo in which Americans lack the basic, comprehensive transparency they would receive in any other market in which they choose to invest.

Full and fair disclosure has been the foundation of our markets for generations. When the largest well-known companies or innovative entrepreneurs offer investment opportunities to the public, we insist on wide-ranging disclosures, from audited financial statements to detailed discussions of a company's business plans. Though these requirements are rigorous, transparency allows investors to channel capital to the most promising firms in our economy, while inhibiting fraud, scams, and abuses that benefit insiders at Americans' expense. In fact, these requirements are why our capital markets are the envy of the world.

But crypto companies flout the rules that would build transparency about their products. So token issuers and trading platforms routinely provide minimal information about even the most established assets or services they offer to the public—even as they often conduct in-depth analysis of assets and crypto markets privately for their own businesses.

Too often, the available information focuses on day-to-day market gyrations or basic token parameters, such as trading volume or supply. Such disclosures reveal little, if anything, about the underlying crypto project or any related "use case" or application that could drive its value. The result is an investing environment too often focused on hype and hoopla, not fundamentals.

Disclosures fall short even though the holders of crypto tokens want greater transparency. According to industry research, more than half of all digital asset holders believe information about a token's risk, security, and financial details are among the most important kinds of data to analyze once they have acquired an asset.[2] Though comparable data is a mainstay of securities disclosures, it is at best infrequently available for crypto assets. Indeed, the disclosures users need and want are precisely the disclosures that are most rarely available.

Americans also have little reason to trust the disclosures that crypto promoters and companies publish. Research has documented how materials made available for token offerings are often inadequate,[3] are misleading about returns or guarantees, or refer to fabricated management teams.[4] At the same time, disclosures frequently are erroneous or fail to align with the software code behind a token.[5]

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[2] BROADRIDGE, CRYPTO ASSET DISCLOSURE STUDY 10-11 (2023), https://www.broadridge.com/_assets/pdf/broadridge-crypto-asset-disclosure-study-report.pdf.

[3] *See* Dirk A. Zetzsche, Ross P. Buckley, Douglas W. Arner & Linus Föhr, *The ICO Gold Rush: It's a Scam, It's a Bubble, It's a Super Challenge for Regulators*, 60 HARV. INT'L L.J. 267 (2019).

[4] Shane Shifflett & Coulter Jones, *Buyer Beware: Hundreds of Bitcoin Wannabes Show Hallmarks of Fraud*, WALL ST. J. (May 17, 2018), https://www.wsj.com/articles/buyer-beware-hundreds-of-bitcoin-wannabes-show-hallmarks-of-fraud-1526573115.

[5] *See* Chris Brummer, *Disclosure, Dapps and DeFi*, 5 STAN. J. BLOCKCHAIN L. & POL'Y 137, 152-53 (2022); INT'L MONETARY FUND, REGULATING THE CRYPTO ECOSYSTEM: THE CASE OF UNBACKED CRYPTO ASSETS 16 (2022), https://www.imf.org/en/Publications/fintech-notes/Issues/2022/09/26/Regulating-the-Crypto-Ecosystem-The-Case-

Without consistent, comprehensive, and accurate disclosures in crypto markets, users are left vulnerable. When both legitimate and illegitimate market activities are opaque, consumers and investors cannot readily distinguish fraud and scams from other token projects. The result is the Wild West of investing—an ecosystem that invites and rewards both bad actors and shoddy products. By contrast, mandatory, universal disclosures smoke out bad actors and shoddy products alike.

We've seen repeatedly how weak disclosures facilitate scams, fraud, and insider self-dealing. For instance, in ubiquitous "rug pulls," scammers whip up interest in an asset that they claim has real functionality and value, only to vanish with the funds they collect from investors.[6] Insiders can manipulate platforms' governance structures for their own benefit, or simply misappropriate funds to support their lavish lifestyles.[7] The multi-billion-dollar Celsius fraud was just a culmination of these long-running dynamics, with the company allegedly misrepresenting everything from the success of its fundraising to the number of its users.

While fraud occurs in traditional markets, deceptions as damaging and extensive as those in crypto are greatly facilitated by the lack of regular, consistent, and comprehensive disclosures that the market can scrutinize. And even where promoters have no malign intent, weak disclosures about protocol security can leave Americans vulnerable to the hacks that siphon off billions of dollars of crypto assets every year.[8]

Crucially, opacity creates risks not only with specific crypto assets, but also with the platforms that structure token markets. Exchanges or other intermediaries can obscure, or even hide, conflicts of interest or favorable treatment for their affiliates or executives. The major exchange Crypto.com, for example, manages proprietary trading and market making teams that trade against the exchange's own customers—a fact only known due to press reports[9]—creating a scenario where "the house always wins," to customers' detriment. Platforms can likewise fail to clearly disclose fees, spreads, or other costs associated with trading, leaving users facing steep expenses just to cash out their crypto assets.[10]

Ultimately, inadequate disclosures persist because opacity serves sponsors, executives, and other crypto industry insiders. It is far easier to profit when customers are left in the dark. That's why

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of-Unbacked-Crypto-Assets-523715; Shaanan Cohney, David Hoffman, Jeremy Sklaroff & David Wishnick, *Coin-Operated Capitalism*, 119 COLUM. L. REV. 591, 597-98 (2019).

[6] For just one recent example, *see* SlowMist, *Beware of Covert Rug Pulls, Exit Scams Driven by Contract Storage Manipulation* (Jul. 26, 2023), https://slowmist.medium.com/beware-of-covert-rug-pulls-exit-scams-driven-by-contract-storage-manipulation-3631c8cbe1a. In recent years, consumers have lost billions of dollars to these schemes. CHAINALYSIS, *The Biggest Threat to Trust in Cryptocurrency: Rug Pulls Put 2021 Cryptocurrency Scam Revenue Close to All-Time Highs* (Dec. 16, 2021), https://blog.chainalysis.com/reports/2021-crypto-scam-revenues/.

[7] For recent allegations of misappropriation, *see* Complaint, SEC v. Richard J. Schueler, No. 1:23-cv-5749 (E.D.N.Y. July 31, 2023).

[8] *See* CHAINALYSIS, THE 2023 CRYPTO CRIME REPORT at 56.

[9] Nikou Asgari, *Trading Teams at Crypto.com Exchange Raise Conflict Questions*, FIN. TIMES (Jun. 19, 2023), https://www.ft.com/content/b5d2bf4b-225c-4f30-9f1c-cbe8dc762fa8.

[10] *See* CONSUMER FIN. PROTECTION BUREAU, COMPLAINT BULLETIN: AN ANALYSIS OF CONSUMER COMPLAINTS RELATED TO CRYPTO ASSETS 21-23 (2022), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_crypto-assets_2022-11.pdf.

the crypto companies resist real transparency and try to force Americans to accept the paltry, self-serving disclosures endemic to the industry.

Some of my colleagues in Congress have proposed merely applying limited disclosure requirements to digital asset tokens. This would be a profound mistake. We cannot water down the high standards that have protected investors and supported businesses for decades. We have the strongest, most successful markets in the world because of our bedrock, unwavering commitment to full transparency—not because we compromise on disclosure to accommodate specific industries.

The same principle must guide our approach to disclosure in crypto markets. Alongside steps to prevent conflicts of interest, protect consumer funds, and curtail illicit finance, we must do all we can to advance genuine transparency. That is the only path forward that upholds the basic integrity of our financial system, protecting the savers and entrepreneurs that rely on it.

As Congress reviews crypto legislation, I ask that your agencies assess their authorities and evaluate how we can build on our existing disclosure guardrails to effectively target the deficiencies we have observed in digital asset tokens and digital asset platforms. Where additional tools would facilitate addressing these issues, Congress can work to provide Americans with the information they need. Finally, I urge you to use existing tools to strengthen transparency and hold bad actors accountable.

Americans deserve complete and genuine disclosures that protect them and reflect the longstanding principles of transparency that make our markets work.

Sincerely,

Sherrod Brown