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before the

U.S. Senate Banking, Housing and Urban Affairs Committee

"From Wall Street to Web3: Building Tomorrow's Digital Asset Markets"

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Mr. Chairman and Ranking Member Warren, members of the committee and staff, thank you for inviting me to testify today.

Introduction

Many of us are familiar with the movie "Ground Hog Day," in which Bill Murray is condemned to repeat the same day over and over. He finally escapes the time loop not through external means but by changing his outlook on life.

I suggest that we are in a similar time loop when it comes to achieving "clarity" in the regulation of digital assets, and we need to change our outlook.

There have been repeated hearings by this committee and House committees at which members of Congress and many witnesses have called for clarity.   There have been legislative proposals that have attempted to classify tokens with complex definitions and revisions to the securities laws, in the hope that we can draw a fixed line in the law that will forever solve the problem. But there has never been a consensus on any proposal, and all of them have been likely to fail to bring clarity but to undermine regulation of our existing capital markets. Unfortunately, the latest attempt, the Clarity Act, is no different.

Clarity is needed, but it is time to rethink our approach. That requires stepping back and considering not just the goals of legislation, but the proper balance between legislation and regulation.

The principal objectives of digital asset market structure legislation –together with related regulation-- should be to (i) provide greater clarity when it comes to whether a digital asset is a security, a commodity or something else; (ii) provide a federal regulatory framework for the issuance and trading of digital assets that are not securities and (iii) ensure that securities and

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derivatives laws are technologically neutral with respect to the use of this technology. The balance we strike between using legislation and regulation to achieve these goals is critical for several reasons.

First, although we often speak of "digital assets," there is no specific asset class that is distinctly "digital." Instead, tokenization and blockchain are technologies that can and will be used in various ways. Some of the most valuable use cases will be in tokenizing traditional securities. That means the Securities and Exchange Commission (SEC) will have a substantial role in the regulation of the uses of this technology. Second, proper regulation will depend on a number of factors—what does the token represent, is there an issuer, is the transaction one in which capital is being raised, is it being traded, is it even a financial instrument. Third, this is a rapidly evolving and changing technology and therefore use cases will evolve and change. For all these reasons, a regulatory framework needs to mandate that the SEC and the Commodity Futures Trading Commission (CFTC) work together and provide them with the proper authority as well as flexibility. Legislation that writes detailed rules that create a binary classification scheme is bound to fail.

Perhaps most important, an approach requiring the SEC and CFTC to work closely together will address the principal source of the lack of clarity, and that is the fragmentation of our financial regulatory system. Most jurisdictions have one financial market regulator, which makes it easier to deal with innovations that cross product or other jurisdictional lines. The single regulator comes up with new rules to address the innovation. In our system, however, we have two market regulators, and neither has authority over the spot market in the trading of digital assets that are not securities. Indeed, the crypto industry has exploited this fragmentation, by arguing that tokens are not securities and therefore not subject to regulation. It is this fragmented authority, and this gap, that has led to the high degree of fraud, manipulation and lack of investor protection, as well as rampant speculation, that has characterized the digital asset sector to date.[1]

Unfortunately, the primary regulatory response to date—court cases that seek to interpret the Howey test—has not been sufficient. It was a whack-a-mole strategy even when the particulars of a case made sense, as I wrote almost four years ago. Today, many believe Congress needs to pass a law with extremely detailed provisions precisely because regulators failed to develop appropriate rules and guidance over the last four years. But that is like fighting the last war. We now have leadership at the SEC and CFTC who are committed to developing appropriate rules and guidance. While I may not agree with everything they do, I don't think Congress can do their jobs better.

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[1] I have spoken about this gap since shortly after I became chairman of the Commodity Futures Trading Commission (CFTC) in 2014 and we declared bitcoin to be a commodity. *See for example*, Timothy Massad, *It's Time to Strengthen the Regulation of Crypto-Assets*, The Brookings Institute, p. 2 (Mar. 2019), https://www.brookings.edu/research/its-time-to-strengthen-the-regulation-of-crypto-assets/ (hereinafter "Massad 2019"); and my testimony before the Subcommittee on Digital Assets, Financial Technology and Inclusion of the U.S. House of Representatives Financial Services Committee and the Subcommittee on Commodity Markets, Digital Assets and Rural Development of the U.S. House of Representatives Committee on Agriculture, "The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Market," May 10, 2023, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408754 ("2023 Testimony").

Congress should instead provide regulators with the authority to regulate the spot market in digital tokens that are not securities and create a process and principles for achieving clarity and for developing rules that are technologically neutral.

Two years ago, Jay Clayton, the former SEC chair appointed by President Trump, and I said that the critical way forward was to have Congress require the SEC and CFTC to work together to develop joint standards, and apply those standards to any intermediary that trades bitcoin or Ether—the two tokens whose status as non-securities is generally agreed upon. In this way, we would establish a regulatory framework over all relevant platforms "without first debating classification of each token or Congress pursuing tortured rewriting of existing definitions of securities and commodities." The rules would apply to all tokens traded on such platforms, with the proviso that the SEC would retain jurisdiction over tokens that were securities. We warned that rewriting existing law "might fail to bring clarity and inadvertently undermine decades of regulation and jurisprudence as they apply to traditional securities and commodities markets." [2]

Bringing the SEC and CFTC closer together could be done in a few ways, such as mandating a joint committee with shared staff, or appointing common commissioners, or through the creation of a jointly-overseen self-regulatory organization. For decades there have been proposals to merge the two agencies.[3] We may not wish to take that radical step, but we must create a process where they work together and not just on a few isolated joint rules. An SRO does not mean the industry would govern itself. Consistent with U.S. practice since the 1930s, this SRO would be closely supervised and overseen by regulators—in this case, by the SEC and the CFTC jointly. [4]

By contrast, the Digital Asset Market Clarity Act (the "Clarity Act"), its predecessor the Financial Innovation and Technology Act for the 21st century ("FIT 21"), and the Lummis-Gillibrand Responsible Financial Innovation Act issued in July 2023 ("Lummis-Gillibrand") all exemplify how our approach is stuck in a time loop. The latest principles for market structure legislation issued by the leaders of this committee are similar. The Clarity Act, the most recent proposal, in particular fights the last war: because of the enforcement only approach of the past, and the mistaken view that Congress can be a better regulator than the regulators, it is 236 pages of overly complex, highly detailed provisions that contain very subjective definitions, unnecessary exemptions from existing law, and rules that unnecessarily favor particular applications of the technology. As a result this latest proposal, like its predecessor FIT 21 and Lummis-Gillibrand, will (i) fail to bring the clarity that is desired, (ii) fail to provide adequate regulation of that spot market and (iii) undermine existing securities and derivatives laws.

We need a different approach.

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[2] *See* Clayton, Jay and Timothy Massad. "A Path Forward for Regulating Crypto Markets." *Wall Street Journal*, 7 July 2023 , and also "How to Start Regulating the Crypto Markets—Immediately." *Wall Street Journal*, 4 December 2022.

[3] *See* Massad, Timothy G. and Howell E. Jackson. "How to Improve Regulation of Crypto Today—Without Congressional Action—and Make the Industry Pay For It." *Hutchins Center Working Paper*, no. 79, October 2022 ("Massad-Jackson 2022"). I also proposed the SRO concept in my testimony in May 2023. *See* note 1.

[4] *See* note 32.

My testimony proceeds as follows. I first discuss two principles that should inform market structure legislation: it must do no harm to our existing markets, and it should be kept simple. I then discuss why I believe the current approach—as exemplified by these three legislative proposals violates both these principles and why this approach will not achieve the desired objective. I provide several examples of the failings, and in particular the risk of undermining our existing capital markets, the foundation of the American economy. I then explain in more detail the alternative approach that former SEC Chair Jay Clayton and I advocated two years ago. I then turn to the risks of illicit activity, a subject that unfortunately gets very little attention in these proposals, as well as the risk of financial instability arising from this sector.

I conclude with a discussion of the President's crypto activities. While not an official subject of this hearing, it cannot be ignored in any discussion of how to regulate the digital asset market. The President and members of his family have launched several business ventures to personally profit from crypto, including issuing meme coins and a stablecoin. Traditional ethical standards have been ignored. It seems as if the President's primary goal is not to promote innovation but to promote his and his family's own personal enrichment.

I have spoken to many people involved in crypto who abhor the President's activities. They recognize it hurts the industry but they do not speak out because they fear it will adversely affect their business interests. They also know that the President's activity can only be addressed by Congress, but they doubt that Congress will do anything. So the question is, if not you, then who? And if not now, then when?

The Importance of Doing No Harm and Keeping Things Simple

There have been several suggestions for the principles that should inform market structure legislation, including by the chair and other leaders of this Committee[5] I suggest two that are overlooked but need to be central in our focus : do no harm and keep it simple.

Do no harm means making sure that any digital asset market structure legislation does not undermine our existing capital markets. The U.S.'s $120 trillion equity and debt markets, together with our derivatives markets, are the foundation of the U.S. economy and the envy of the world. They directly impact the health and well-being of our citizens and our businesses. Their depth, liquidity and diversity has been the source of great innovation over the years—and probably more useful innovation since the launching of bitcoin fifteen years ago than has come from digital asset technology. Their strength and integrity rests on a legal regulatory framework that has been gradually and thoughtfully created over almost 100 years.

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[5]"Scott, Lummis, Tillis, Hagerty Release Principles for Market Structure Legislation," June 24, 2025, https://www.banking.senate.gov/newsroom/majority/scott-lummis-tillis-hagerty-release-principles-for-market-structure-legislation. With all due respect, I believe the first principle, like the Clarity Act, exemplifies how our approach to clarity is stuck in a time loop: "A clear, economically rational line distinguishing digital asset securities from digital asset commodities should be fixed in statute, contemplating existing law and providing predictability, enhanced legal precision, and much-needed regulatory certainty."

For all the talk about the innovative potential of digital asset technology, it is vital to maintain perspective about its relative role in our economy and the fact that it is a *technology*, not an asset class.

Here is one point of comparison: the collective market capitalization of the "Magnificent Seven" companies—Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia and Tesla—is $16 trillion today. At the time bitcoin was launched in early 2009, two of these companies were not even public, and the other five had a collective market capitalization of just over $300 billion. Their collective growth (of over 5,000%) and the incredible innovation they have brought over that period is due in part to the strength of our capital markets.

Legislation that rewrites the definition of a security, or that creates new exemptions from regulation, to promote this technology, can easily undermine the markets. It can create fractures in the legal underpinnings of our markets that lead to evasion and regulatory arbitrage as market participants seek to take advantage of new standards to avoid compliance obligations.

I point out examples of how the Clarity Act, Lummis-Gillibrand and FIT 21 could give rise to this below. This includes exemptions for "DeFi" that will encourage migration of regulated activities to an unregulated status, exemptions from Securities Act registration requirements that are not required and can be misused, and revisions to the definition of security that will cause confusion. My examples scratch the surface. The ingenuity of market participants will come up with endless ways to manipulate and exploit the provisions in these bills.

The desire to rewrite the definition of a security or revise the Howey test has been motivated in large part not by the *absence* of legal clarity as to what constitutes a security, but rather by a *dislike* of recent judicial decisions as to that standard. The fact is the SEC won most of its cases as to what constitutes a security, particularly in the context of primary offerings. A submission for a recent SEC roundtable documented in detail how the Howey test has been consistently applied in digital asset cases. [6]

A new framework that leads to regulation of non-security digital assets will, however, reduce the importance of the Howey test. That is, by giving regulators the authority to regulate the spot market in non-security digital assets, with the flexibility needed given the complexity and speed of evolution of this technology, we can create a reasonable regulatory framework and thereby reduce the importance, from an investor protection standpoint, of concluding that something is a security. No longer will the choice be between securities regulation and no regulation. There is a long line of jurisprudence to this effect, as I discuss below.

In addition, if it is not clear *how* one complies with the law in the case of digital technology—as opposed to simply being unwilling to do so—regulators can and should address that. Whether the rules pertain to registration of intermediaries, custody, clearing and settlement, recording and transfer of securities or other areas, regulations should be technologically neutral.

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[6] Lee Reiners, Prepared Statement for SEC's Crypto Task Force March 21, 2025 Roundtable titled "How We Got Here and How We Get Out – Defining Security Status" and Responses to "Security Status" Questions in SEC Commissioner Hester Peirce's February 21, 2025 Statement Titled "There Must Be Some Way Out of Here." https://www.sec.gov/files/ctf-input-reiners-2025-3-18.pdf

Consistent with the keep it simple principle, that task should be left to the regulatory process and should not be the focus of legislation at this time. The SEC and the CFTC are now led by chairs who wish to address those issues and they can be expected to do so, ideally through public rule-making or other processes open to public input. Indeed, they already are. Congress should step in only if regulators determine that they lack the authority to do so.

The keep it simple principle calls for choosing a path forward that is most likely to achieve the primary goals most efficiently, with least risk of inadvertent harm. That means writing legislation that is not overly complicated, that establishes general principles, and that leaves to an administrative process the development of more detailed rules or guidance. Unfortunately, the Clarity Act, like the other proposals previously issued, does not do this.

The Weaknesses of the Current Approach

The CLARITY Act is an extremely complicated, 236-page bill. It is difficult to comprehend fully how its various provisions will interact. It replaced FIT 21, which was of similar length and complexity. Lummis-Gillibrand is slightly less complicated in its relevant provisions but still contains significant weaknesses. A few things are certain with respect to all these proposals. First, regulation of the spot market for digital tokens that are not securities will not be adequate. Second, these proposals will incentivize lawyers to spend huge amounts of time developing ways to exploit their provisions and engage in regulatory arbitrage strategies on behalf of their clients, in order to take advantage of lesser compliance burdens. (I was a corporate lawyer for 25 years with one of the top firms in the world and am very familiar with how complex legislation can be very susceptible to regulatory arbitrage.) Third, this approach will undermine existing securities and derivatives regulation. And finally, the bills will not give regulators the flexibility to address shortcomings as they become obvious.

I wish to highlight a few examples of the reasons why I say this.

“DeFi” Exemptions Will Undermine Existing Regulation. The Clarity Act creates an exemption from the Securities Exchange Act and the Commodity Exchange Act for certain “DeFi” activities that is massive in scope.[7] (FIT 21 had a very similar exemption.) It is not simply for the development, or autonomous operation, of a software program for which the code is public—the type of exemption that some in the crypto industry have argued for. Rather, it covers a broad range of activities “in relation to the operation of a blockchain system or in relation to a decentralized finance trading protocol.” For example, the exemption covers “developing, publishing, constituting, administering, maintaining or otherwise distributing” a decentralized finance trading protocol, a “liquidity pool” or software that “facilitate[es] an individual user’s own personal ability to keep, safeguard or custody” digital assets. Moreover, the exemption is generally not limited to activities related to “digital commodities” but is instead applicable to “digital assets,” which are defined as “any representation of value” recorded on a distributed ledger or similar technology. That would include tokenized securities, tokenized derivatives and other tokenized financial instruments.

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[7] Clarity Act, Sections 309 and 409.

Thus, a variety of intermediation or trading activities pertaining to conceivably any financial instrument in tokenized form could become exempt from the securities and commodities laws. This will encourage migration of all sorts of activities that are currently regulated to so-called "DeFi" platforms, and regulators will be powerless to stop it.

Lummis-Gillibrand also had an exemption for certain decentralized activities, though not quite as broad. The proposal also imposed some obligations on regulated crypto asset exchanges and futures commission merchants that transacted with or routed orders through such decentralized platforms. But it did not impose those obligations on all businesses that might facilitate use of such platforms, nor set standards for such platforms generally.

There is no justification for broad DeFi exemptions. A principal argument often made is that activity that is autonomous and does not involve human actors exercising custody or discretion does not pose the same risks. But there are several flaws in this argument.

The first is that such an exemption—as with the use of the term DeFi" generally—can cover all sorts of protocols, processes, activities and services that can vary tremendously with respect to the degree to which they are automated, decentralized or distributed, and with respect to the degree to which firms or human actors exercise control or discretion. Even with so-called autonomous protocols, there are centralization vectors or means of exercising control and discretion, such as administrative keys that permit modification of code or restrictions on access.[8] But in addition, these exemptions are often much broader than so-called autonomous protocols. For example, the Clarity Act (and its predecessor FIT 21) includes activities that facilitate the use, distribution and operation of those autonomous protocols and that are offered or run by businesses, including "front-end" services. Those businesses may exercise control and discretion in various ways and can and should be touchpoints for regulation where necessary to achieve regulatory objectives. Lummis-Gillibrand imposed some "risk-management" standards on the use by crypto asset exchanges of decentralized platforms but those were less comprehensive than the core principles imposed on the exchanges themselves, and it refrained from regulating decentralized platforms generally or all businesses connected to them.

Secondly, while automation and ability for users to control assets may reduce certain types of risks that are often the targets of regulation, they may introduce others, and we must ensure that the regulatory goals of consumer and investor protection, market integrity and transparency, financial stability and prevention of financial crime are achieved, even if in a different manner. A simple example is to imagine a "decentralized" or automated platform for the trading of Treasury securities that becomes a dominant, and indeed systemically important, platform given the importance of the Treasury securities market. Even if such a platform truly was automated and not subject to the control of a human operator, and even if participants engaged in self-custody, we would still want to make sure various regulatory goals were achieved.

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[8] DeFi protocols and services have various types of what have been called "centralization vectors"—that is, ways in which some degree of control or discretion is exercised, including administrative keys that permit modification of code or restricting access. See Shuler, Katrin, et al. "On DeFi and On-Chain CeFi: How (Not) to Regulate Decentralized Finance." *Journal of Financial Regulation*, vol. 10, no. 2, 2024.

Proponents of making wholesale exceptions for "DeFi" also often ignore the fact that the "trad fi" world has experienced waves of automation before. We developed regulatory responses to automation and can do so again, even if this is a somewhat different type of automation. Our securities and derivatives markets have gone from manual floor trading to highly automated processes in just a few decades. Our rules have generally kept pace with an increasing diversity of trading platforms, faster speed, and less human involvement.[9]

Another argument that is made for a DeFi exemption is that the amount of "DeFi" trading of crypto is very small relative to trading on centralized platforms, so we should focus on the latter and not worry about the former. But the DeFi world could grow, and grow quickly, and an exemption written into a statute would be hard to change. The relatively small amount of activity today argues for regulators prioritizing the regulation of centralized platforms, not for exempting DeFi activity through legislation. Similarly, the right to self-custody of assets does not justify such a massive exemption.

DeFi protocols that engage in providing financial market services or transactions should meet, or have outcomes consistent with, the requirements we impose through regulation on similar "trad fi" services and transactions, even if the manner of meeting those requirements might vary.

The "Classification Schemes" in these Proposals Will Not Provide Clarity Nor Sufficient Regulation of the Spot Market in Non-security Tokens. They Will Also Undermine Securities Regulation. The Clarity Act's classification scheme rests on circularity: it defines digital commodities so as to exclude most securities, but separately redefines securities so that some securities are now digital commodities. It does this by rewriting the definition of "investment contract" to exclude "investment contract assets."[10] Those are defined as digital commodities sold as part of an investment contract.

Lummis-Gillibrand created a new category called "ancillary assets" that were intangible assets issued in connection with an investment contract. It then classified those ancillary assets, subject to meeting certain criteria, as commodities.[11]

Even SEC Commissioner Hester Peirce has recently warned of the dangers of carving out "investment contract assets" from the definition of securities in the context of secondary sales—and the dangers are obviously even greater if done generally:

> [T]reating all secondary sales of crypto assets as being free of the investment contract runs the risk of facilitating bad behavior: the dumping of crypto assets bought as part of

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[9] As an example, internalizers in the securities markets could be thought of as having certain similarities to the automated market makers of the digital asset world: they are large broker-dealers who fill orders from their own inventory rather than routing them to public exchanges. Internalizers have been made subject to order routing, best execution and payment for order flow requirements. Under Regulation SCI, an internalizer that operates a system critical to market infrastructure can be designated an SCI Entity which is then required to maintain robust cybersecurity, disaster recovery and reporting systems. While internalizers are centralized entities that provide a clear point of attachment for regulations, the regulatory response to them is an example of how we have responded to automation in the past and can do so again.

[10] Clarity Act, Section 201.

[11] Lummis-Gillibrand, Section 501.

> an investment contract on retail investors while the crypto asset lacks function and its associated network or application remains centralized (and thus subject to information asymmetry concerns). If the initial holders are out of the picture because they have sold their crypto assets, the investment contract is unenforceable, and the issuer can dump its crypto assets too and walk away—wealthy and unaccountable—for completing the project.[12]

FIT 21 had an even more complicated classification scheme. It created two new categories of assets: restricted digital securities and digital commodities, the former to be regulated by the SEC and the latter by the CFTC. The test to determine how a token was classified had three components: the level of decentralization and functionality of the digital asset's associated blockchain system; how the digital asset was acquired by the holder; and who holds the digital asset (e.g., an issuer vs. an unaffiliated third party). This was an unworkable, subjective point in time test that would have bifurcated the market in particular tokens, could have meant the classification changed over time, and depended on information that wasn't available. It was roundly criticized and thus it is no surprise that it was discarded.

Secondly, the Clarity Act definition of digital commodity is vague, and its exclusions will likely mean the Act will only cover a small fraction of the tokens currently traded in the spot market—which means the regulation created by the Act will not be sufficient. The basic definition is a digital asset "intrinsically linked" to a blockchain and whose value "is derived from or is reasonably expected to be derived from a blockchain." That could include just about any token. The exclusions, however, include one for "collectibles"—which likely includes meme coins—and digital assets that have value separately from their relationship to a blockchain system. In my conversations with staff involved in drafting the bill as well as experienced lawyers, no one knows for sure what the definition will cover, but they agree that universe is likely much smaller than what is listed and traded today.

Centralized platforms like Coinbase and Kraken each list several hundred tokens, for example. Although these platforms would be regulated as "digital commodity exchanges" under the Clarity Act, that Act does not prohibit them from listing and trading tokens that are not "digital commodities" and thus are not subject to regulation. That would mean a lack of investor protection and confusion on the part of the public: if you trade on a platform like Coinbase, some products are regulated and some are not, and you likely would not know which are which. Regulated platforms should not be allowed to trade products that are exempt from regulation.

Lummis-Gillibrand, which created a different classification scheme as noted above, also would have likely resulted in a regulatory scheme that would not cover all the digital tokens currently traded by existing centralized platforms.

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[12] Commissioner Hester Peirce, "New Paradigm: Remarks at SEC Speaks," May 19, 2025, at https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks

The problem would be even greater with respect to decentralized exchanges or trading protocols that are exempted from regulation under these proposals.[13] The number of tokens that can be traded on those platforms is much, much larger since hundreds of thousands of tokens are created each year—Coingecko estimated that 600,000 were created in January of 2025 alone.[14] The solution is to curtail the broad exemption for DeFi in the Act.

These Proposals Fail to Create Adequate Regulation of the Spot Market for Digital Commodities In Many Other Ways As Well. Even to the extent that some tokens are deemed to be digital commodities, and platforms that trade even one digital commodity are required to register with the CFTC as a digital commodity exchange, the regulation that applies to those platforms is quite weak in numerous ways. Indeed, the drafters seem to have ignored the lessons of the collapse of FTX. Here are some examples:

These proposals do not appear to require the regulated exchanges to own the digital commodities (or other tokens) that their customers purchase and purportedly hold. The Clarity Act has a financial resources provision that requires exchanges to have "adequate financial. . . resources," including an amount "necessary to meet the financial obligations of the digital commodity exchange to all customers".[15] A separate provision requires the exchange to "treat and deal with all money, assets, and property that is received by the . . exchange, or accrues to a customer, . . as belong to the customer.[16] Lummis-Gillibrand has similar provisions.[17] These provisions appear to mean that if a customer transfers a digital asset, such as bitcoin, to an exchange, the exchange must keep that digital asset or own a corresponding amount of it. But if the customer transfers dollars to the exchange and then purchases bitcoin, the exchange need only have value equivalent to the bitcoin so purchased.[18] Thus, a digital commodity exchange need not actually own the digital assets its customers think they own.

This risk reflects the fundamental characteristic of centralized platforms: trading is not "on-chain". That is, centralized platforms keep ledger accounts as to their customers' assets, much as a traditional exchange or bank would. They can have omnibus blockchain accounts in which they may hold—or claim to hold-- digital assets for multiple customers but need not actually own the assets. This is a significant risk.

Like its predecessor, the Clarity Act does not prohibit proprietary trading by digital commodity exchanges. Today's digital commodity exchanges often engage in their own proprietary trading, which leads to conflicts of interest with respect to the services they provide customers. They can front-run customer orders or take advantage of their customers in other ways. Our securities and derivatives laws prohibit securities and derivative exchanges from engaging in proprietary

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[13] The Clarity Act has a very broad exemption for "DeFi" activities as discussed above. See text at note 7. Lummis-Gillibrand prohibited regulated crypto asset exchanges from using decentralized platforms for trading unless such platforms met certain "risk-management" standards, but those did not appear to pertain to the tokens traded, and as noted earlier it did not generally regulate decentralized platforms. See Lummis-Gillibrand, Section 404.

[14] https://www.coingecko.com/research/publications/bobbys-crypto-aggregate-2025-02

[15] Clarity Act, Section 404(c)(12).

[16] *Ibid.*, Section 404(d).

[17] Lummis-Gillibrand, Section 404.

[18] While the drafting is unclear, it may be that the exchange must have bitcoin in an amount equal to any *appreciation* on such bitcoin once purchased, but not for the original amount.

trading, and the same should be the case with digital commodity exchanges. Although the ClarityAct contains a prohibition on such activity, it contains an exception that swallows the rule. The exception covers trading that "is not solely for the purpose of the profit of the exchange," which an exchange could easily claim and regulators will be hard pressed to contest it. Indeed, transactions that "manage the credit, market and liquidity risks associated with the digital commodity business" as well as transactions "related to the operational needs" of the business of the exchange or its affiliate" are explicitly excluded from the prohibition and thus eligible.[19]

While Lummis-Gillibrand, issued in 2023, contained a prohibition on proprietary trading with only a "market-making" exception, FIT 21 contained a prohibition with a broader exception, and the Clarity Act broadened the exceptions even further.[20] The increasing breadth of the exceptions to the rule suggest the industry is getting its way.

The proposals do not prohibit other conflicts at digital commodity exchanges, such as having economic interests in the tokens they choose to list or in other ventures. Although the Clarity Act has general language requiring mitigation of conflicts of interest, exchanges are given substantial discretion in implementing the requirement.[21] Some crypto trading platforms have investments in other businesses, and this could mean they have investments or economic interests in the tokens (or issuers of the tokens) they list. This could lead to conflicts of interest in the determination of whether to list such tokens and how they should be traded or regulated. The other proposals have similarly not had strong prohibitions on conflicts of interest.

The Clarity Act Creates New Exemptions From the Registration Requirements of the Securities Act That Are Not Justified and Will Undermine the Basic Framework of the Securities Laws.
The new exemptions from registration under the Securities Act are meant to be used for offerings to raise funds for the creation of "mature blockchain systems." They are further examples of the weakness of the bill because (i) the exemptions give preference to such offerings without justification; (ii) the conditions to their use will not ensure that the intended purpose is achieved; and (iii) the exemptions can be used to evade securities law registration requirements generally.

The Act creates a new Section 4(a)(8) of the Securities Act which exempts the offer and sale of an investment contract containing a digital commodity for the development of a blockchain system that is, or is intended to become, a "mature blockchain system."[22] The amount of funds that can be raised is quite high--—$75 million over a 12-month period, or $300 million over four years. There is no apparent reason to create this special exemption. We have not traditionally created exemptions that are solely for a particular technology or business. There are many other private offering exemptions that can be and have been used to raise money for digital asset projects. To the extent that there is insufficient clarity as to the status of a native token of a blockchain once created, that could be achieved without creating a special exemption for the offering.

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[19] Clarity Act, Section 404. See proposed Section 5(i)(B)(2) of the CEA.
[20] Lummis-Gillibrand, Section 404; FIT 21, Section 504.
[21] Clarity Act, Section 404. See proposed Section 5(i)(c)(11) of the CEA.
[22] Clarity Act, Section 202.

It is particularly troubling, however, that the exemption is available simply if one "intends" to create a mature blockchain system. There is no requirement that the funds actually be used for that purpose, and there appears to be no significant adverse consequence if the issuer fails to create a mature blockchain system.

In the same speech noted above, Commissioner Hester Peirce has warned that this type of exemption can easily be used to evade the securities laws:

> Companies looking at capital raising options might even be tempted to use such crypto asset sales instead of other capital-raising methods: promise to build a network or functional product, do a crypto asset presale to venture capitalists, stop developing the network or product once they have sold out to retail, and plow the proceeds of the initial crypto asset sale into building their actual business.[23]

Note that Commissioner Peirce's example pertains to a secondary sale. It is obviously much worse under the Clarity Act because it specifically exempts primary sales based on such promises.

The conditions on use of the exemption do not limit its possible damage nor justify its existence. While there is a requirement to provide certain disclosures, the SEC could provide guidance of this sort without creating a new exemption. Another condition is that after the completion of the transaction, a purchaser does not own more than 10 percent of the outstanding units. This suffers from the many flaws in the Act's treatment of "control" discussed below.

Lummis-Gillibrand contained a different regime for offers and sales related to ancillary assets.[24] Ancillary assets could be distributed in connection with an offer or sale of a security under an investment contract and could then be classified as commodities and subject to different disclosure requirements. While this was a narrower exception, it would likely have given rise to similar efforts to use it for purposes other than what its authors intended.

The Clarity Act's Control Tests Are Lax, Difficult to Verify and Contradict Longstanding Securities Law Principles. In addition to the control metric in the exemption for primary offerings to finance—or to promise to finance-- "mature blockchain systems, the Act has various other provisions related to showing the absence of control, such as the criteria for certifying a mature blockchain system.[25] All of these are flawed.

Many of these flaws were also in FIT 21.

The first problem is that the test for the absence of control in several places contradicts decades of securities law regulation by combining two concepts that are traditionally distinct, separate measures of control—that of a "group of persons" and being "under common control." A group can exist by virtue of an agreement (whether or not written) or other understanding, whereas common control refers to structural relationships among entities, such as sister subsidiaries. By

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[23] See note 12.
[24] Lummis-Gillibrand, Section 501.
[25] Clarity Act, Section 205.

combining these two concepts—in the Clarity Act, a group of persons must themselves be under common control to trip the standard—the Act creates a weak standard.[26] One could have an agreement or understanding among several persons to exercise control, but if they themselves are not under common control—ie, not already part of the same corporate family—there would be no control, and no violation of the standard.

The measure of control is weak in another respect: a person or group of persons under common control must own or be able to direct the voting of 20% or more of the units of the digital commodity or voting power, respectively, in order for there to be control.[27] This 20% threshold also contradicts longstanding securities law interpretations, in which control depends on facts and circumstances, but a 5% threshold triggers a presumption of control for purposes of being required to file a form 13D or 13G.[28]

Moreover, the test further weakens the notion of control by providing that control does not exist unless a person or group of persons under common control has *"unilateral authority"* (emphasis added) to restrict access, alter the blockchain or direct the voting of 20% or more of the voting power.[29] A person or group could therefore have effective control simply by vesting a veto power or similar right in some other person or group that might be difficult or unlikely to ever be exercised. One could do this in multiple ways, such as requiring a supermajority where it is difficult to achieve such consensus or exercise such power, or vesting the right in friendly hands (particularly easy to do given the Act's ignorance of what a "group" traditionally is in securities laws), etc. Nevertheless, the mere existence of the veto would mean that "unilateral authority" did not exist.

Similarly, no person or group of persons under common control can have "*unique* permission or privilege to alter the functionality, operation or rules of the blockchain system" (emphasis added). This standard could also be avoided by creation of a veto right. In addition, the standard allows alterations that "address errors, regular maintenance or cybersecurity risks" or that are adopted through a "decentralized governance system" anyway.[30]

Perhaps the biggest—and certainly most ironic-- problem in the whole construct of a "mature blockchain system" and the control standards in the Act is the assumption that control can even be measured when information as to the beneficial ownership of tokens is not available How can one even apply the metrics when blockchain addresses are pseudonymous and beneficial ownership is not known? Ownership that exceeds the metrics or thresholds is therefore easy to disguise, which means the Act's requirements can be easily evaded.

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[26] This change to basic standards of control in the securities laws runs throughout the Clarity Act. In addition to appearing several places in the definition and certification process for a mature blockchain system, it is also found in the definitions of a decentralized governance system (Section 101), a decentralized finance trading protocol (Section 103) and a blockchain control person (Section 412).

[27] This is in the context of certifying a mature blockchain system. *See* Section 205. The percentage for use of the primary offering exemption is 10%, which is still twice the 13D/13G standard. *See* Section 202.

[28] *See* Rule 405 under the Securities Act.

[29] Clarity Act, Section 205.

[30] Ibid.

Summary. These are just a handful of examples of the weaknesses and flaws of the Clarity Act. There are many other ways in which it may generate confusion, result in inadequate regulation and undermine existing law. Even where there is a valid argument for customizing rules for assets in digital form, Congress should focus on higher level principles and leave the work of writing detailed rules or guidance to an administrative process.

The Alternative Approach: Congress Mandates Joint Regulation

Instead of trying to write a hard and fixed rule for classification questions, Congress should create an administrative process for their resolution. And instead of being the regulator, Congress should provide the SEC and CFTC with the direction, authority and flexibility to do the job. Congress should direct the SEC and CFTC to work together to (i) address the gap in investor protection that exists with respect to the spot market in non-security digital assets, (ii) clarify the treatment of various digital assets under the securities laws and this new spot market regulation and (iii) make sure existing rules are technologically neutral. Congress can require the agencies to work together through a joint committee, a single SRO or other means.

A primary reason why the security versus commodity debate has been so vexing is because of our fragmented regulatory structure. It has been easier for countries with a single regulator with broad authority to respond to the rise of digital asset technology because it did not trigger a jurisdictional question between different agencies. Any solution therefore needs to bring the SEC and CFTC closer together.[31]

Congress can provide the SEC and CFTC with the necessary authority by using a simple way of addressing what has otherwise seemed like a difficult problem: how does one define "non-security digital asset tokens" in order to create regulatory oversight of that market, without rewriting securities laws in ways that undermine traditional protections? The way to do so is for Congress to require that these joint rules would apply to any trading platform or other intermediary transacting in bitcoin or Ether.[32] This will ensure that any significant intermediary is covered. The rules would then apply to all digital asset tokens in which any such intermediary transacts, subject to certain carve outs. Any digital asset token that is deemed a

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[31] There have been many proposals over the years calling for a merger of the two agencies or at least better coordination between them because of gaps in oversight, lack of coordination, inefficiencies or other problems arising from having two market regulators. *See, for example,* Report of the President Task Force on Market Mechanisms (under Treasury Secretary Nicholas Brady in 1988) recommending greater coordination; the U.S. Treasury, Blueprint for a Modernized Financial Regulatory Structure (under Treasury Secretary Henry Paulson in 2008) recommending a merger; The Group of Thirty Report: Financial Reform: A Framework for Financial Stability, (chaired by former Federal Reserve Board chairman Paul Volcker in 2009), recommending a merger; the U.S. Government Accountability Office, Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System (2009), recommending merger or better coordination; the Financial Crisis Inquiry Commission Report of 2011 (highlighting problems caused by having two regulators); and the U.S. Treasury, A Financial System That Creates Economic Opportunities: Capital Markets, (under Treasury Secretary Steve Mnuchin in 2017), calling for greater harmonization. This is a good time to take a simple step to institutionalize greater cooperation.

[32] Because bitcoin and ETH represent so much of the total crypto trading, any platform of consequence would be covered. But of course, other assets as to which there is a consensus that they are not securities could also be included for purposes of this jurisdictional provision.

security would not be included, could not be traded on a digital commodity exchange and would remain subject to the securities laws.

If a single SRO path is chosen, Congress should spell out its structure, governance and responsibilities, drawing on the precedents that exist in both the Securities Exchange Act and the Commodity Exchange Act, except that this SRO would be jointly and closely governed by the SEC and CFTC. The board of governors should be diverse, and include not only representatives of digital asset market participants, but also traditional financial institutions, academics, public interest organizations, and others. The SEC and CFTC would approve the board of governors, the SRO's rules and its budget (though funding can be imposed on the industry consistent with our traditional SRO practice). Strong controls and governance provisions like these are critical to ensure the SRO is not vulnerable to capture by the industry. While a new SRO would be mandated, the SEC and the CFTC can draw on the expertise and staffing of existing SROs such as the Financial Industry Regulatory Association (FINRA) and the National Futures Association (NFA) in forming the entity.

Lummis-Gillibrand contained language for multiple "customer protection and market integrity authorities"—essentially SRO-like entities that would have been jointly overseen by the SEC and CFTC, and the bill drew on precedents in the Securities Exchange Act and Commodity Exchange Act regarding some issues of structure and governance. But their overall purpose and responsibilities were different than what I am suggesting here—the proposal appeared to contemplate entities that would be focused on developing and enforcing standards of conduct by members. The potential creation and recognition of multiple such entities also underscores that difference in purpose and responsibilities. In addition, these entities would have operated within the flawed classification scheme noted earlier.[33]

Congress could also consider other ways of requiring the SEC and CFTC to work together to achieve these goals. There could be common commissioners, overseeing a joint committee. The Treasury Department could also be given some authority if deemed necessary to arbitrate any differences between the two agencies.

Whatever the method chosen for the agencies to work together, Congress would :

- mandate that any trading or lending platform that trades or otherwise deals in bitcoin or Ether would be subject to the joint rules devised by the agencies (or the jointly supervised SRO), as would any broker or dealer or certain other intermediaries, unless the platform or intermediary is registered with the SEC or CFTC as a securities or derivatives intermediary. (There could be de minimus exceptions for small actors.)

- mandate the core principles that would serve as the basis for such rules, which would be similar to the principles used in our securities and derivatives markets and similar to those in the Clarity Act (though with appropriate revisions to correct the weaknesses in the Clarity Act and the other proposals noted);[34] and

[33] See Lummis-Gillibrand, Title VI.
[34] See *also* Massad and Jackson (2022), *supra,* note 3, for a discussion of core principles for an SRO.

— mandate that those rules would apply to all digital asset tokens traded or used on or by any such platform or intermediary, subject to certain limitations that pertain to the "boundaries" of the "non-security" digital asset market to be regulated.

There are two critical boundary questions in filling the gap in regulation. The first is whether a digital asset token is a security, and that is precisely why any solution must bring the SEC and CFTC together. The SEC could have the equivalent of a right of first refusal to determine that a digital asset token is a security and therefore must be traded on an SEC-registered platform or by an SEC-registered intermediary. An intermediary would not face the threat of being shut down, however, for having listed any such token.

While the SEC would rely on the Howey test and the other jurisprudence in this area, the mere fact that there would now be a regulatory framework for those non-security tokens should make the determinations easier. Although it is not expressly articulated as a fifth prong of the Howey test, Supreme Court cases have made clear that the existence of an alternative regulatory scheme can be an important factor in concluding that a financial instrument is not a security. For example, in Marine Bank v. Weaver, the Supreme Court held that neither a federally insured certificate of deposit nor a related agreement constituted a security in part because the CD was subject to a robust, alternative regulatory regime, and therefore it lacked the risk typically associated with a security.[35] Similarly, in International Brotherhood of Teamsters v. Daniels, the Supreme Court overturned a lower court ruling that held that participation in a non-contributory, compulsory pension plan was an investment contract and subject to the protections of the securities laws. The court said that the argument that securities regulation should apply was undercut by the fact that such plans are subject to extensive regulation under the Employee Retirement Income Security Act of 1974.[36] The existence of an alternative regulatory scheme reduces the importance, from an investor protection standpoint, of concluding that something is a security.

Lummis-Gillibrand contemplated that a member of a "customer protection and market integrity authority" could make a request for "an initial determination of the legal character of a crypto asset as a security, an ancillary asset, a commodity . . .or as otherwise provided by law."[37] But while this would have created an administrative process similar to what I am suggesting, it would have operated under the flawed classification scheme noted earlier, which created a new "ancillary assets" category by revising the definition of security.

Congress could give the SEC and the CFTC authority to identify a third category of classification: tokens that are not securities and do not have sufficient financial characteristics to warrant financial market regulation (and the limited resources of our regulatory agencies) and therefore should not be considered commodities. Digital commodity exchanges (under the Clarity Act) or crypto asset exchanges (under Lummis-Gillibrand) would be prohibited from trading these assets. However, ideally this could be coupled with some other arrangement to provide some basic investor or user protection, given the scams and frauds we have seen to date in this industry.

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[35] Marine Bank v. Weaver, 455 U.S. 551 (1982)
[36] Teamsters v. Daniel, 439 U.S. 551 (1979)
[37] Lummis-Gillibrand, Section 603.

The approach outlined here is a pathway to achieving investor protection quickly and comprehensively. Congress would provide the overall direction and principles, and mandate the agencies work together. It would give the agencies the authority and flexibility to carry out the job, building on the work the agencies are already doing.

Illicit Finance Risks

It is surprising to me how little is said about the risks of illicit finance in these three market structure proposals. When proposals have been recently made in connection with the stablecoin legislation to expand the authority of the Treasury Department to address illicit finance, particularly in decentralized finance activities, some proponents of the legislation responded that those subjects should be addressed in the market structure legislation. But that is not evident in these proposals. Lummis-Gillibrand, for example, contains an entire title on combating illicit finance which calls for useful studies and research and creates an inter-agency working group. It does not, however, provide any significant new authority.[38]

The legislation should give the Treasury Department and market regulators ample authority with respect to preventing the use of digital assets for illicit finance or evasion of sanctions. This should include requiring crypto intermediaries to comply with the Bank Secrecy Act (BSA) and the International Emergency Powers Act (IEEPA), but it should not be limited to that because digital assets can be transferred on decentralized blockchains without the involvement of an intermediary. The authority needs to be broad and flexible for that reason.

In 2023, the Treasury Department proposed several ways in which its authority should be expanded, which could be included in this legislation. Among other things, it should make clear that Treasury has the authority to create a new sanctions tools, analogous to Correspondent Account or Payable-Through Account (CAPTA) sanctions, to deploy in the cryptocurrency space. Treasury's existing CAPTA authorities enable Treasury to prohibit U.S. correspondent accounts and transaction processing for certain financial institutions that have operated in the financial services sectors of certain economies or facilitated transactions for a designated entity, without requiring that all property and interests of the institution be blocked. Congress should make clear that these tailored authorities can be extended to foreign crypto exchanges and other crypto intermediaries.

In addition, Congress should give OFAC the ability to block stablecoin transactions to the same extent as its existing power to block US dollar transactions, and extend BSA and IEEPA jurisdiction to foreign crypto intermediaries with U.S. touchpoints (though with possible provision for substituted compliance in the case of BSA obligations). Treasury should also have flexible authority to require domestic crypto actors that are not registered as money service businesses to comply with the BSA and IEEPA where appropriate, such as custodial wallet providers. It should have authority to address the role of mixers, tumblers and other devices used to disguise identity. That can be coupled with a recognition that rules must strike a balance between preventing illicit finance and respecting individuals' privacy.

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[38] See Lummis-Gillibrand, Title III.

We also need creative approaches in the context of DeFi protocols. One is that suggested by Rebecca Rettig and Michael Mosier (former Acting Director of FinCEN and former Associate Director of OFAC) which is to require certain businesses that (a) are necessary to the transmittal of communications about DeFi transactions, (b) transmit a material portion of such communications and (c) offer this service for profit to take on additional illicit finance risk management practices, without becoming "financial institutions" subject to the BSA.[39] Similar responsibilities could be extended to businesses that are "front-ends" to, or that otherwise facilitate use of, DeFi protocols.

In general, the authority needs to be broad and flexible also because we do not know exactly how the sector and technology will evolve.

Financial Stability Risks

A comprehensive regulatory framework is also needed to minimize potential risks to financial stability. While the digital asset sector may be small in relation to the entire financial system today, it can grow quickly, and certainly proponents of the technology believe it will. Moreover, financial stability risks can arise from interconnectedness or contagion risks even when the scale of activity is not that large. To date, crypto trading has been characterized by rampant speculation and high volatility, contributing to dramatic price swings. Highly leveraged activity multiplies the risk, as does the lack of transparency. These factors can contribute to the build-up of risks and exposures that can escape prudential oversight. The pseudonymity of the blockchain is not equivalent to a regulatory framework that provides regulators with sufficient knowledge as to leverage, exposures and interconnections among institutions. The lack of a regulatory framework also allows for trading practices that can amplify risks: excessively leveraged trades; wash trading and other fraudulent and manipulative schemes that distort prices; centralized exchanges that can engage in front-running of customer orders or have interests in the tokens they list; and exemptions from regulation for so-called decentralized activity that allow for migration of regulated activity to an unregulated sphere. While detection of potential financial stability risks is never assured, clearly the absence of a comprehensive regulatory framework means the job is nearly impossible.

The President's Crypto Business Ventures

As we consider legislation to regulate the crypto markets, we cannot ignore the actions by President Trump to personally profit from crypto. These actions violate the ethical standards we have always expected our presidents to follow, and are especially of concern at a time when regulation of digital asset technology is such a prominent public issue.

The Trump meme coins were issued two days before inauguration and five days before the issuance of the Executive Order on Strengthening American Leadership in Digital Asset

[39] This proposal also contemplates designating truly autonomous DeFi protocols as "critical infrastructure" that would be subject to oversight. See Rettig, Rebecca, Michael Mosier and Katja Gilman, "Genuine DeFi as Critical Infrastructure: A Proposal for Combating Illicit Finance Activity in Decentralized Finance," January 29, 2024.

Technology.[40] It is hard to imagine an action that could have been more contrary to the spirit and opening words of that order, which is to "promote United States leadership in digital assets" and "responsible growth and use of digital assets."[41] The meme coins have been described as a "classic meme-coin pump and dump scheme."[42] They appear to serve no purpose other than the personal enrichment of the president. In the words of Vitalik Buterin, the creator of Ethereum, they are vehicles for "unlimited political bribery," because those seeking to curry favor with the Administration—whether they be individuals, companies or countries—may purchase the coins, knowing the President will profit from their actions, while they can still deny that seeking government favoritism was their purpose. Instead, they can claim they were merely speculating on a digital asset.[43] Crypto entrepreneur Justin Sun was reportedly one of the biggest investors in the token. He also is reported to have invested a total of $75 million in World Liberty Financial, including a $45 million investment in late January, 2025. The SEC lawsuit against him was dismissed in late February.[44]

Some have not even bothered to claim a purpose other than seeking influence. Texas transportation firm Freight Technologies Inc. announced the issuance of $20 million of bonds to finance the purchase of $TRUMP memecoins as an "effective way to advocate for fair, balanced, and free trade between Mexico and the US".[45] The reports concerning the dinner that the President held for the top 220 holders indicate he spent little time there and had little of substance to say, which suggests his crypto agenda is more about making a profit.

The Trump Organization's acquisition of World Liberty Financial and its issuance of a stablecoin is equally inappropriate and shocking, particularly as Congress works to pass stablecoin legislation.[46] WLF's transactions are continuing at a fast pace: the investment firm MGX acquired $2 billion in WLF's stablecoin to make an investment in leading crypto exchange Binance. This took place shortly before the SEC dismissed its enforcement case against Binance and its founder Changpeng Zhao.[47] This purchase made the WLF stablecoin one of the largest in

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[40] United States, Executive Office of the President [Donald J. Trump]. Executive Order 14178: Strengthening American Leadership in Digital Financial Technology. 23 January 2025. *Federal Register*, vol. 90, no. 20, pp. 8647-8650 ("Executive Order 14178").

[41] *Ibid.*

[42] Khalili, Joel. "The Trump Memecoin's 'Money-Grab' Economics." *Wired*, 20 January 2025 (citing interview with Jacob Silverman).

[43] Turner Wright, "Vitalik Buterin takes aim at "unlimited political bribery" using tokens," Cointelegraph, January 23, 2025, at https://cointelegraph.com/news/vitalik-buterin-unlimited-political-bribery-tokens

[44] Northrop, Katrina and Vic Chiang, "Who is Justin Sun, the Chinese Billionaire at Trump's Crypto Dinner?", The Washington Post, May 23, 2025, https://www.washingtonpost.com/world/2025/05/23/trump-crypto-dinner-justin-sun/

[45] "Freight Technologies Secures up to USD $20 Million to Create an Official Trump Token ($TRUMP) Treasury," Freight Technologies press release, April 30, 2025, https://fr8technologies.com/press-release/freight-technologies-secures-up-to-usd-20-million-to-create-an-official-trump-token-trump-treasury/

[46] The WLF stablecoin is technically issued by another firm, Bitgo, and thus WLF would likely not even be subject to the provisions of the GENIUS Act if passed. But that does not make the arrangement any less of a conflict of interest. See "USD-1, the Blueprint for Bitgo's Stablecoin as a Service," Bitgo press release, March 28, 2025, https://www.bitgo.com/resources/blog/usd1-the-blueprint-for-bitgos-stablecoin-as-a-service/

[47] Frederico Maccioni, "Trump's stablecoin chosen for $2 billion Abu Dhabi investment in Binance, co-founder says," Reuters, May 1, 2025, https://www.reuters.com/world/middle-east/wlfs-zach-witkoff-usd1-selected-official-stablecoin-mgx-investment-binance-2025-05-

the market.[48] Another United Arab Emirates-related entity, Aqua 1 Foundation, recently invested $100 million in WLF tokens.[49] The various other business ventures that have been discussed in the press—such as the acquisition of bitcoin mining capacity—further suggest that the priority of the Administration is not promoting crypto innovation but promoting the President's personal enrichment.

This activity creates a cloud over the crypto industry, and over the enterprise of developing market structure legislation. Only Congress can address this and I strongly encourage Congress to do so.

Conclusion

The strength of our securities and commodities laws is in their flexibility, in their focus on function, and their ability to evolve with changes in financial markets and developments in new financial instruments. We need a new approach that builds on those strengths and does not undermine existing regulation.

Thank you for the opportunity to testify. I would be happy to take your questions.

01/#:~:text=Speaking%20at%20a%20crypto%20conference,the%20world's%20biggest%20crypto%20exchange; Alexander Osipovich, "SEC Dismisses Lawsuit Against Binance," The Wall Street Journal, May 29, 2025, https://www.wsj.com/finance/currencies/sec-dismisses-lawsuit-against-binance-cce1dcae

[48] https://coinmarketcap.com/view/stablecoin/

[49] "Aqua 1 Announces $100M Strategic World Liberty Financial Governance Token Purchase to Help Shape and Accelerate Decentralized Finance Adoption," Reuters, June 26, 2025, https://www.reuters.com/press-releases/aqua-1-announces-100m-strategic-world-liberty-financial-governance-token-purchase-to-help-shape-and-accelerate-decentralized-finance-adoption-2025-06-26/