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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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September 24, 2021

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

Dear Chair Gensler:

Thank you for your testimony before the Senate Banking Committee on September 14, 2021. I write to follow up on the concerns I expressed at the hearing about the need for regulatory clarity around emerging technologies like cryptocurrencies, including stablecoins.

For investors to benefit from a fair and competitive marketplace, regulators must proactively provide rules of the road to industry. Unfortunately, the Securities and Exchange Commission (SEC) has instead adopted a strategy of regulation-by-enforcement in this area. At the hearing, you noted the SEC's success in pursuing crypto-related enforcement actions. In many of these enforcement actions, the SEC did not identify the securities involved or the rationale for their status as securities, which would have provided much-needed public regulatory clarity.¹ This approach appears related to your belief that "the probability is quite remote that . . . any given [cryptocurrency] platform has zero securities."² However, the SEC has a responsibility to do more than just provide probabilistic estimates.

My concerns about the SEC's lack of regulatory clarity are shared by others, including SEC commissioners. In one recent enforcement action, SEC Commissioners Hester Peirce and Elad Roisman stated they were "disappointed" by the SEC's failure to explain which digital assets were securities. They stated this omission was "symptomatic of [the SEC's] reluctance to provide additional guidance about how to determine whether a token is being sold as part of a securities offering or which tokens are securities."³

In an effort to obtain that additional guidance, attached are questions for the record for the recent hearing. Many of them would give industry clarity on developing promising technologies within the confines of existing laws and regulations. Please provide detailed answers so that innovators have the guidance they need to ensure domestic investment and innovation in these technologies.

Sincerely,



Pat Toomey
Ranking Member

¹ See, e.g., the SEC's enforcement actions against Poloniex, Coinschedule, ICO Rating, EtherDelta, and TokenLot.

² Gary Gensler, SEC Chair, Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, Sept. 14, 2021, available at <https://www.banking.senate.gov/imo/media/doc/Gensler%20Testimony%209-14-21.pdf>.

³ In the Matter of Coinschedule, Statement of SEC Commissioners Hester Peirce and Elad Roisman, July 14, 2021, <https://www.sec.gov/news/public-statement/peirce-roisman-coinschedule>.