**Testimony on "Overseeing the Fintech Revolution: Domestic and International Perspectives on Fintech Regulation"**

**Before the United States House of Representatives Committee on Financial Services Task Force on Financial Technology**

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Chairman Lynch, Ranking Member Hill, and Members of the Task Force, thank you for inviting me to testify before you today about the work of the U.S. Securities and Exchange Commission's (SEC) Strategic Hub for Innovation and Financial Technology (FinHub).[1] I am the SEC's Senior Advisor for Digital Assets and Innovation and an Associate Director in the SEC's Division of Corporation Finance, and I head the FinHub, which is staffed by representatives from across the SEC's divisions and offices who have expertise and involvement in FinTech-related issues. I am honored to appear before you and pleased that the Task Force is holding this hearing to study technological innovation in our financial markets and the efforts of the SEC and its staff to foster beneficial changes while protecting investors and the strength of the U.S. markets. I am also pleased to see in attendance those who represent similar roles as my own from among the SEC's regulatory partners as we continue to closely collaborate in these efforts.[2]

We are at a remarkable inflection point—a convergence of transformative technologies such as cloud computing, predictive analytics, artificial intelligence, Internet of Things, and distributed ledger technology. We enjoy an environment in which developers can collaborate across the world on open-source projects so that knowledge, talent, and hard work is globally crowdsourced. New technologies are in effect driven by a borderless, human supercomputer and they are moving rapidly. In the securities markets, a generation of digital natives is demanding new ways to interface with markets and to own a piece of the future of financial innovation.

These innovative technologies promise the potential to enhance efficiency, cost savings, integrity, performance and transparency in our markets, among other things. They may help facilitate capital formation, streamline trading, and provide promising investment opportunities for institutional and retail investors alike. We strive for these improvements in our U.S. markets.

This convergence also can result in disintermediation of regulated entities and automation of functions historically performed by traditional gatekeepers. This may create new modes of

[1] The views expressed in this testimony are those of the author, and do not necessarily reflect those of the SEC, the Commissioners, or other members of the SEC staff.

[2] *See, e.g.,* Jay Clayton and J. Christopher Giancarlo, "Regulators are Looking at Cryptocurrency," Wall St. Journal (Jan. 24, 2018), *available at* https://www.wsj.com/articles/regulators-are-looking-at-cryptocurrency-1516836363?mod=searchresults&page=1&pos=2.

governance, allocations of risk, and theories of accountability. These transformations compel us, as regulators, to collectively and carefully think through their effects—intended and unintended—and to contribute to important discussions. Developers, entrepreneurs and advisors who take the time and effort to engage with the SEC staff, and with the staff of our fellow regulatory agencies who have their own innovation initiatives and statutory mandates, will play a critical role in shaping the future of FinTech and in assuring that the U.S. capital markets continue to adhere to the high standards that have made them so deep, liquid, fair, and attractive for decades. The possibilities for developers and entrepreneurs who want to create products and systems in a compliant way are theirs to imagine and build. We encourage them to do so.

Our job as regulators is to strike the right balance between fostering efficient new ways to raise capital and trade securities, on the one hand, and preventing potentially harmful and illicit practices against investors, on the other. If we get this balance right, we help our capital markets and investors flourish. If we do not, harm and inefficiency will follow. Investor harm and other adverse developments could cast a shadow on these new technologies and potentially curtail investment in them or arrest their development altogether. No one who believes in the promise of FinTech would want that result. Rather, we want to choose the path that promotes investor confidence in our markets as they incorporate innovations. We hope that through thoughtful engagement with innovators and practitioners, the right balance can be struck.

Just over eight months ago, on October 18, 2018, the SEC announced the launch of FinHub to serve as a resource for public engagement on the SEC's FinTech-related issues and initiatives, such as distributed ledger technology (including digital assets), automated investment advice, digital marketplace financing, and artificial intelligence and machine learning.[3] FinHub replaced and built upon the work of several internal working groups at the SEC that had focused on similar issues for a number of years. I welcome this opportunity to now describe some of FinHub's activities and future plans.

***FinHub provides a portal for industry and the public to engage directly with SEC staff on innovative ideas and technological developments.***

When it launched, SEC Chairman Jay Clayton called FinHub "a central point of focus for our efforts to monitor and engage on innovations in the securities markets that hold promise, but which also require a flexible, prompt regulatory response to execute our mission."[4] We have set up FinHub to do just that. As financial technologies, methods of capital formation, market structures, and investor interfaces evolve, FinHub plays an important role in the SEC's active engagement with the industry. Through FinHub's webpage, entrepreneurs, developers and their advisors routinely request meetings with the staff, and we have held dozens of such meetings to provide one-on-one engagement with industry participants. In this way, we are essentially leveraging this discourse to help us do our job better.

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[3] *See* Press Release 2018-240, *SEC Launches New Strategic Hub for Innovation and Financial Technology* (Oct. 18, 2018), *available at* https://www.sec.gov/news/press-release/2018-240.

[4] *Id*.

***FinHub also organizes events through which the public can participate in FinHub's work.***

FinHub has implemented a number of ways— and will continue to proactively explore new ways—to engage with the public. For example, as I mentioned, we actively invite engagement with FinHub staff through our web portal and, as a result, have conducted numerous calls and in-person meetings with entrepreneurs, developers, and their advisors. This year, we began hosting local peer-to-peer meetings to engage with FinTech communities across the country. These "P2P meet ups," as we call them, offer the opportunity to speak in person with FinHub staff at a local venue to discuss a general issue or specific question, or to give a presentation about a particular project. Already, we have traveled to cities across the United States—including San Francisco, Denver, New York and Philadelphia—to give interested stakeholders a chance to interact one-on-one with FinHub staff at a place convenient to them. We have conducted nearly two dozen separate local P2P meet ups with a broad range of participants, including innovators developing new technologies, entrepreneurs looking to bring new businesses to market, advisers and advocates interested in discussing a host of issues, universities and academics starting FinTech programs, SEC registrants or those seeking to become registered, and more. Later this week, we will host another P2P meet up in Chicago. While FinHub staff cannot give legal advice, we can provide helpful guidance and feedback. We often describe how we interpret the federal securities laws and point out potential issues for consideration with respect to a particular proposal.

On May 31, 2019, we hosted a public FinTech Forum, which was simultaneously webcast through the SEC's website.[5] This event brought together academics and industry participants to discuss a host of important issues before an audience of the public, SEC staff, and staff from a number of other government agencies.[6] Approximately 2,000 people attended in person or viewed our webcast. The Forum featured four panels moderated by SEC staff, which covered a wide range of topics concerning technology, asset classes, market structure, and application of the securities laws.[7] Each panelist brought unique expertise and perspective that helped inform the audience of the scope of issues and their import and complexity. As was evident by the breadth and depth of the topics discussed at the forum, the staff has a sophisticated understanding of the technology, continues to engage frequently with industry stakeholders, and has been thoughtful in their approach in this area. The Forum included remarks by Chairman Clayton, Commissioner Hester Peirce, and the Directors of the Divisions of Corporation Finance, Trading and Markets, Investment Management, and the Office of Compliance Inspections and Examinations, who demonstrated the significance of FinTech issues at the highest levels of the SEC.

***FinHub acts as a clearinghouse of information regarding the SEC's activities and initiatives involving FinTech.***

[5] *See* Press Release 2019-35, *SEC Staff to Hold FinTech Forum to Discuss Distributed Ledger Technology and Digital Assets* (Mar. 15, 2019), *available at* https://www.sec.gov/news/press-release/2019-35.

[6] *See* Press Release 2019-59, *SEC Staff Announces Agenda for May 31 FinTech Forum* (Apr. 24, 2019), *available at* https://www.sec.gov/news/press-release/2019-59.

[7] *See id*.

On FinHub's webpage, we link to publications, statements, speeches, testimony, requests for public input, and cases relevant to each area of technological innovation we feature.[8] One area on which we have been focusing a significant amount of attention and resources relates to digital assets and initial coin offerings (ICOs)—issues which implicate many SEC divisions and offices. We recognize that distributed ledger technology holds great promise to help facilitate capital formation. In order to assist those seeking to comply with the U.S. federal securities laws, on April 3, 2019, FinHub staff published a framework to aid market participants in analyzing whether a digital asset is an investment contract, and, therefore, is a security.[9] On that same day, the Division of Corporation Finance issued a staff no-action letter to a market participant in connection with a proposed offer and sale of a digital asset.[10] Further, the SEC has solicited comment in connection with proposed rule changes by self-regulatory organizations to list new products, such as exchange traded products involving digital assets.[11] The Division of Investment Management has issued letters welcoming public input on various topics, including one identifying significant legal and investor protection issues that potential funds with cryptocurrency-related holdings present under the Investment Company Act and its rules.[12] Another Division of Investment Management letter seeks to engage with the public on digital asset custody under the Advisers Act Custody Rule.[13]

The staff recognizes that knowing in what regulatory space you stand when it comes to a new product or system requires careful analysis. For example, determining whether a new type of financial instrument, including a digital asset, is a security requires an analysis of the nature of the instrument and how it is offered and sold. That is why we encourage market participants to use the materials on FinHub's website as a resource, to consider consulting with securities counsel, and to request further guidance from staff if questions remain. Regrettably, while some market participants have engaged with us constructively, others have not. The SEC's Division of

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[8] *See* https://www.sec.gov/finhub.

[9] *See* Framework for "Investment Contract" Analysis of Digital Assets (last modified Apr. 3, 2019), *available at* https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

[10] *See* Response of the Division of Corporation Finance re: TurnKey Jet, Inc. (Apr. 3, 2019), *available at* https://www.sec.gov/divisions/corpfin/cf-noaction/2019/turnkey-jet-040219-2a1.htm.

[11] *See* SEC Release No. 34-85093; File No. SR-NYSEArca-2019-01 (Feb. 11, 2019) (notice soliciting comment on the listing of Bitwise Bitcoin ETF Trust shares), *available at* https://www.sec.gov/rules/sro/nysearca/2019/34-85093.pdf (comments posted at https://www.sec.gov/comments/sr-nysearca-2019-01/srnysearca201901.htm); and SEC Release No. 34-85119; File No. SR-CboeBZX-2019-004 (Feb. 13, 2019) (notice soliciting comment on listing of VanEck SolidX Bitcoin Trust shares), *available at* https://www.sec.gov/rules/sro/cboebzx/2019/34-85119.pdf (comments posted at https://www.sec.gov/comments/sr-cboebzx-2019-004/srcboebzx2019004.htm).

[12] *See* Staff Letter Engaging on Fund Innovation and Cryptocurrency-related Holdings (Jan. 18, 2018), *available at* https://www.sec.gov/investment/fund-innovation-cryptocurrency-related-holdings.

[13] *See* Staff Letter Engaging on Non-DVP Custodial Practices and Digital Assets (Mar. 12, 2019), *available at* https://www.sec.gov/investment/non-dvp-and-custody-digital-assets-031219-206.

Enforcement has been and will continue to recommend enforcement actions for alleged violations of the federal securities laws relating to digital assets.[14]

The SEC's Office of Investor Education and Advocacy (OIEA) regularly partners with the FinHub to identify areas of potential risk and to issue investor alerts, as appropriate. For example, OIEA launched a mock ICO to alert investors about potential fraud in the ICO market. OIEA advertised "HoweyCoin," on a website called HoweyCoins.com that imitates the common features of scams, such as guaranteed returns, "get in early" notices, celebrity endorsements, and assurances of "SEC compliance." If a visitor attempts to purchase a coin through the website, the visitor is automatically redirected to the SEC's investor education webpage, which alerts the investor to the existence of scams and contains links to pages with warnings from other of our regulatory partners. FinHub staff continues to work with OIEA to devise creative ways like this to reach investors and maximize the impact of our messaging.

***FinHub acts as a platform for SEC staff to acquire and disseminate information and FinTech-related knowledge within the agency.***

When evaluating the impact of rapidly-evolving and often unpredictable new technologies, it is critical to on-board knowledge and necessary tools and expertise. As the financial landscape continues to evolve, the skillset regulators need becomes increasingly multi-disciplinary. Innovations in today's markets require knowledge of finance, law, market structure, economics, computer science, cryptography and more. FinHub staff continually seeks to stay apace of new developments and to acquire and deploy expertise where it needs to go within the SEC's various Divisions and Offices.

To help with this effort, we have been exploring ways to enrich our academic collaborations and leverage all the groundbreaking work being done by scholars conducting research at the cutting edge. Our staff regularly participates in conferences and forums hosted by industry and academia. And, we are seeking to hire digital asset experts through our visiting scholars program to work alongside FinHub staff in our day-to-day work. In this way, we hope to continue the strong tradition of government and academic partnership. We are committed to understanding the technologies that impact our markets and we are taking proactive steps through FinHub to ensure that SEC staff has hands-on opportunities to work with these technologies.

***FinHub serves as a liaison to other domestic and international regulators regarding emerging technologies in financial, regulatory, and supervisory systems.***

In the United States, a number of different regulators may have jurisdiction over different aspects of FinTech. In the digital asset space, as in the broader financial space, for example, it is not uncommon for a particular activity to implicate the one or more of the respective jurisdictions of the SEC, the U.S. Commodity Futures Trading Commission (CFTC), the Financial Crimes Enforcement Network (FinCEN), and various state authorities with jurisdiction

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[14] *See* U.S. Securities and Exchange Commission, Cyber Enforcement Actions, *available at* https://www.sec.gov/spotlight/cybersecurity-enforcement-actions.

over money transmission and investor protection issues. Accordingly, it is important for the SEC to work together with other regulators and to coordinate our activities to the extent possible and appropriate under the circumstances. Our level of coordination in this regard has been extensive. For example, the FinHub staff plays a key role in the Financial Stability Oversight Council (FSOC) Digital Asset and DLT Working Group. This group brings together federal financial regulators whose jurisdictions are relevant to the oversight of digital assets and their underlying technologies. The group seeks to enable the agencies to collaborate regarding these issues, including to promote consistent regulatory approaches and to identify and address potential risks.

FinHub staff actively monitors international developments related to FinTech, and engages with foreign regulators on a bilateral and multilateral basis to further our understanding of issues. Bilaterally, SEC staff regularly meets with foreign counterparts to share experiences and lessons learned on a wide range of FinTech topics. Multilaterally, staff directly participates in a number of ongoing initiatives by international bodies such as the Financial Stability Board (FSB), the International Organization of Securities Commissions (IOSCO), and the Financial Action Task Force (FATF).

To highlight some of the work we have done with IOSCO, in 2017, SEC staff initiated the launch of the ICO Network, a forum to facilitate a cross-border dialogue on ICO and related issues. The ICO Network is also developing a support framework to assist members as they consider ways to address such issues in their jurisdiction. Staff also actively participates in the IOSCO FinTech Network, created in May 2018 to facilitate collaboration among IOSCO members on FinTech. The group focuses on trends and potential implications for regulators in four areas: distributed ledger technology; artificial intelligence and machine learning ethics; regulatory technology (RegTech) and supervisory technology (SupTech); and lessons learned from innovation initiatives. Staff also contributed to a recently published consultation paper on risks and regulatory considerations relating to crypto-asset trading platforms.[15] This paper includes a "toolkit" of possible strategies that individual IOSCO member jurisdictions could use when developing their own regulatory approaches.[16]

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We are eager to see new beneficial technologies succeed, and do not view them as inconsistent with the SEC's core mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation. However, the long term promise of these technologies will be achieved only if those developing and implementing them comply with the laws, rules, and regulations that Congress and the SEC has put in place to further the agency's core mission.

[15] *See* Board of the International Organization of Securities Commissions, *Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms* (May 2019), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD627.pdf.

[16] *See id*.

I cannot overstate the level of thought and effort that FinHub staff devote to evaluating the potential benefits and risks to investors and the markets associated with technological developments. Our goal, working with fellow regulators and market participants, is to thoughtfully assess how these new technologies impact the securities regulatory regime and to provide a path—and encouragement—for participants engaging in securities-related activities to promptly transition into compliance with regulatory requirements. We also evaluate requests for no-action letters and regulatory relief.

Thank you for the opportunity to testify before you today about the work of the SEC's FinHub and for your support of FinTech innovations. I appreciate the opportunity to work with the Task Force to engage with market participants on new approaches while continuing to enhance investor protection and market integrity. I look forward to answering any questions you may have.