Testimony of
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On Behalf of
BitGo, Inc.

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Subcommittee on Digital Assets, Financial Technology and Inclusion
Of the
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Chairman Hill, Ranking Member Lynch, and members of the subcommittee, thank you for the opportunity to offer testimony today about the digital asset regulatory environment in America. I am the Co-Founder and CEO of BitGo, an institutionally-focused digital assets company based in Palo Alto, California with offices in Sioux Falls and New York City, and employees in 22 states, including Indiana, Oklahoma, Illinois, Florida, Massachusetts, New Jersey, Texas, and more. We've been building regulated products and platforms for digital assets, and are regulated by numerous state and federal regulators, including the New York Department of Financial Services (NYDFS), South Dakota Division of Banking, the SEC, and FinCEN. We are primarily known for our role as the first purpose built digital asset fiduciary Trust Company. Trust Companies are different from banks in that we are not depositories, do not lend assets, and are focused solely on the technology and compliance related to the safekeeping of our clients assets in segregated accounts.

My personal background is in technology. I am a 30 year veteran of Silicon Valley, having started my early career at Netscape, worked at numerous startups, founded a company building the first search engine for email, was an early developer of Chrome at Google, and I am the creator of HTTP/2.0, the open protocol which drives almost all web based communications across the globe today. For the last 10 years, I have focused specifically on digital assets and their ability to bring transparency and reduced risk to the financial system, along with advocating for sensible regulation.

I hope it is clear that BitGo and all of the regulated firms building digital asset technologies and services in America are absolutely and unequivocally committed to preventing financial crime, providing the utmost investor protections, abiding by sanctions controls, building safety and soundness in our custodians and banks, and building a stable market structure. We are not seeking to avoid regulatory oversight, we are not here for the purpose of building speculative assets and markets. We are here to make the financial system better.

It has been over 10 years since the invention of Bitcoin and the blockchain unlocked the creation of digital property and the ability to transfer digital property in a peer to peer fashion. This seemingly simple technology has profound effect, and enables the instant transfer of value between anyone across the globe. The second big innovation is that of smart contracts, which have the potential to replace much of modern finance. Stock brokers, money managers, and market makers can be implemented in transparent code.

So innovation is what I want to talk about today.

Software has a tendency, that once it enters an industry, it pushes innovation and change faster than that industry has ever changed before. And that is what has happened to our financial industry in recent years - software is changing it fast. But unlike other industries which software has upended, American finance is highly regulated. It's not enough for our businesses to move quickly - our regulators need to move quickly too. And if they don't we will be surpassed by other nations who will.

When BitGo decided to pursue a Trust Company charter back in 2017, we reached out first to the OCC for federal oversight of our safekeeping activity. At the time, the OCC clearly stated it would not allow a charter for any business in the digital asset space, so we instead pursued a state-chartered Trust Company. This left us with a question as to whether our fiduciary safekeeping would be considered a "qualified custodian" in the eyes of the SEC.

To answer the very basic question of how to provide custody of assets to regulated firms under the Investment Advisers Act, BitGo proactively and voluntarily approached the SEC back in 2018, and submitted a formal no-action letter to the SEC. Ultimately, the SEC declined to opine on our letter. With the OCC closed for business and the SEC unwilling to answer, the question remained - how to custody digital assets under the Advisers Act.

That question lingered for years until just a few weeks ago, when the SEC issued a draft amendment to the Custody Rule. While we are happy the amendment affirms that BitGo's state-chartered, fiduciary trust company is indeed a qualified custodian, it took over 4 years to answer that single question. If it takes that long to answer the most basic questions, how can we expect to answer the myriad of other questions that will follow without falling behind global competing markets?

Some of our federal regulators today state, "Just come talk to us. Fill out a form, and we'll sort this out." That statement does not match BitGo's experience. Further, the claim that questions about how to handle digital assets have already been answered or are well understood is also untrue. Regulators can either declare that digital assets are regulated in the same way as other assets, and thereby apply the same rules, or regulators can say that they are different, and create new rules. But what regulators cannot be allowed to do is to claim that assets are different, and also claim that the rules are already understood.

As a side-note, I want to point out that this is not uniquely the fault of the current administration's approach to guidance. We filed our letter to the SEC in 2018, under the prior administration's oversight. The difficulty of keeping up with innovation is constant; but technology is getting faster and more global, so keeping up is going to get much harder.

2022 was an undeniably miserable year for digital assets, with a number of dramatic failures in the system. This has led opponents of digital assets to wrongly proclaim, “I told you so, digital assets are unsafe for the banks and the financial system.”

But the underlying problem is not caused by *including* digital assets in our markets; the problem is caused by *excluding* digital assets from our markets. Our regulatory failure to keep pace with innovation has created a regulatory exclusion which is directly responsible for harming the very investors we are supposed to protect.

There is no doubt that our established trading markets do mitigate risk better than crypto markets. This is because crypto markets today are the most vertically operated markets anywhere, with exchanges acting in every capacity, from the seller’s broker, to the buyer’s broker, to the exchange, to the clearing house, to the custodian. It doesn’t take a market expert to realize this structure inherently creates a single point of failure.

Why then, do we not recognize that the best thing we could do to mitigate risk in crypto markets would be to help the established trading markets, banks, and custodians, our stewards of risk mitigation, participate in these markets?

In 2020, the OCC briefly opened its doors to digital assets and encouraged OCC chartered custodians to participate in the market. This was short lived, however, and the door was closed less than a year later, with no plan from regulators as to what the right approach should be.

At some point, we have to ask ourselves why do American investors flock to weak digital asset opportunities managed offshore? The reason is not because they want to - it’s hard to do and risky. The reason is because regulators have failed to keep pace and create safe paths to invest under the safety of American supervision.

Regulatory exclusion has had another unfortunate side effect. The digital asset sector is now a trillion dollar industry, and requires proportional banking support. By refusing to allow our traditional banks to participate, regulators have inadvertently created significant *concentration risk* on a handful of relatively small banks. Silvergate Bank this last week experienced a run on the bank. This was no fault of Silvergate, which grew its business through successful, innovative digital asset products. But with few other banks in the industry, Silvergate soon found itself with a heavy reliance on a single asset class, enabling the possibility of a bank run once the match of fear was lit. Had regulators provided clear guidance to enable banks (and I posit that every bank in America has wanted to participate in digital assets for at least 4 years now), we created a single point of failure in our banking system. It is regulatory exclusion, not the activities of Silvergate, which caused the run on the bank.

To conclude, I’d like to remind everyone why we’re here. We are here because we can have better markets, better payment systems, and better financial services, but only if we embrace smart innovation.The blockchain is the first global technology that enables investor participation at an equal level to banks. It enables financial inclusion for all, creates transparency within our institutions, reduces risk to the investor, and will help maintain the US position in the global economy.