



**Testimony before the House Financial Services Subcommittee
On Digital Assets, Financial Technology, and Inclusion**

**Hearing Title: Coincidence or Coordinated? The Administration's Attack on the Digital
Asset Ecosystem**

Submitted by Dr. Tonya M. Evans on March 9, 2023

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To Chairman Hill and Distinguished Members:

Thank you for the invitation to participate in this important conversation about the current United States regulatory landscape as applied to the emerging crypto asset ecosystem. I welcome the opportunity to explore the chilling impact of *ad hoc* agency enforcement actions, as well as the benefits of comprehensive, bipartisan legislative efforts by policymakers, and thoughtful rulemakings and prudent use of regulator discretionary powers on the emerging crypto asset class. The optimal balance between cultivating a competitive, and transparent regulatory environment, and establishing effective and clear regulatory frameworks on which the crypto asset industry (and their professional representatives) can reasonably rely, is essential to guide industry decision-making and growth.

I view today's hearing topic through a non-partisan academic lens to express my concerns for investors and innovators participating in the latest wave of financial innovation when a powerful agency uses its broad discretionary powers on a piecemeal basis without also providing commensurate clarity for regulated parties or fair opportunity for good faith actors to understand the rules and the consequences that apply to the entire industry. Such is clearly in the best interests of the country, if our collective goal is, in fact, to protect U.S. investors and consumers.

My goal today is three-fold: 1) to advocate for clear rules and regulations for the crypto asset ecosystem and efficient, effective approaches toward that end; 2) to ensure that laws, rules, and regulations are crafted to promote best practices and policies that continue to strengthen access and inclusion for all Americans (not just the wealthy few) in the digital asset ecosystem and future of money, work, and innovation while also protecting those communities from financial and predatory harms; and 3) to encourage Congress to use its legislative authority to enact laws to rebalance its delegation of authority to the Securities and Exchange Commission (SEC) and to empower the Commodity Futures Trading Commission (CFTC) to regulate spot digital asset markets.

Such lofty but achievable goals also serve to protect American consumers and investors, and to encourage businesses to innovate here in the United States by promulgating rules for *all* regulated parties, while enhancing the benefits and mitigating the risks of this emerging and potentially revolutionary technology. These goals are especially important at this pivotal and consequential moment in history as we emerge from the economic ravages of the pandemic, especially for those citizens who have been historically and systemically marginalized and disenfranchised in the current financial and technology sectors.

I am an intellectual property and technology lawyer and full-tenured professor at Penn State Dickinson Law School with a distinguished co-hire appointment at the Penn State Institute for Computational and Data Sciences. My research, scholarship, and teaching focus primarily on the intersection of law and economic justice in innovation and new technologies and includes a range of doctrinal and experiential courses; most notably, blockchain, cryptocurrency and the law, copyright law, information privacy law, and administrative law. Prior to joining Dickinson Law, I served as Associate Dean of Academic Affairs at the UNH Franklin Pierce School of Law, where I created and directed the school's Blockchain, Cryptocurrency & Law online professional certificate program, developed its curriculum, and managed its world-class instructor pool.

I am the founder and CEO of the Advantage Evans Academy, digital asset onboarding to prepare members of marginalized communities, as well as legacy leadership, to enter the digital asset space safely, legally and confidently, and host of the Tech Intersect Podcast, a weekly show that highlights new and notable experts at the intersections of law, business and technology. From 2020-21, I also served as Chair of the Maker Ecosystem Growth Foundation, the now-dissolved entity that developed and deployed the MakerDAO protocol. My full curriculum vitae has been submitted with this written testimony.

Call-to-Action in President Biden's 2022 Executive Order re: Digital Currencies

One year ago today, President Biden signed an Executive Order (EO) calling for an executive agency-wide approach to the responsible development of digital assets.¹ Section 1 detailed the Administration's digital currency policy. It called upon the administrative state to take strong steps to reduce the risks that digital assets could pose to consumers, investors, and business protections; maintain financial stability and financial system integrity; combat and prevent crime and illicit finance; ensure national security and the ability to exercise human rights; to promote financial inclusion and equity; and to address climate change and pollution.²

Section 2 identifies six goals of the Executive Branch to give effect to its newly articulated policy to: protect consumers, investors, and business in the United States;³ protect United States and global financial stability and mitigate systemic risk;⁴ mitigate the illicit finance and national

¹ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

² See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

³ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

⁴ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

security risks posed by misuse of digital assets;⁵ reinforce U.S. leadership in the global financial system and in technological and economic competitiveness, including through the responsible development of payment innovations and digital assets;⁶ promote access to safe and affordable financial services;⁷ and support technological advances that promote responsible development and use of digital assets.⁸

Importantly, given the topic of today’s hearing, Section 3 calls for interagency coordination, led by the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP). This coordination mandate reaches every executive agency from the Cabinet-level to independent agencies and officials.⁹

Section 4 articulates the Administration’s policy regarding the research, development, and possible deployment of a U.S. central bank digital currency (CBDC), to create a digital and programmable version of its physical counterpart.¹⁰ Note that a U.S. CBDC option would serve as legal tender, be convertible one-for-one into other forms of central bank money (reserve balances or cash), and would, presumably, settle nearly instantly.¹¹

Section 5 addresses measures to protect consumers, investors, and businesses, “... from risks of crimes such as fraud and theft, other statutory and regulatory violations, privacy and data breaches, unfair and abusive acts or practices, and other cyber incidents faced by consumers, investors, and businesses.”¹²

Sections 6-10 cover (listed in order): actions to promote financial stability, mitigate systemic risk, and strength market integrity; actions to address finance and national security risks; a call to foster international cooperation and United States competitiveness; definitions of terms of art; and other general provisions.

⁵ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

⁶ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

⁷ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

⁸ See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

⁹ This includes the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and other Federal regulatory agencies.

¹⁰ See also, Jesse Hamilton, COINDESK.COM, *Ex-Biden Adviser Said Administration Was Pushing for Digital Dollar* (Feb 28, 2023 at 6:22 p.m. EST, Updated Mar 1, 2023 at 9:51 a.m. EST), <https://www.coindesk.com/policy/2023/02/28/ex-biden-adviser-said-administration-was-pushing-for-digital-dollar> (last visited: Mar. 5, 2023).

¹¹ Nellie Liang (Under Secretary for Domestic Finance Speech), “Next Steps to the Future of Money and Payments” (Mar. 1, 2023), Workshop was organized by The Atlantic Council GeoEconomics Center, The Digital Assets Policy Project of the Harvard Kennedy School Mossavar-Rahmani Center for Business and Government, The MIT Digital Currency Initiative, and Stanford University’s Future of Digital Currency Initiative, <https://home.treasury.gov/news/press-releases/jy1314> (last visited: Mar. 7, 2023).

¹² See Exec. Order No. 14067, 87 FR 14143 (Mar. 9, 2022).

A “Framework” that Has Yet to Fulfill Its Promise

On September 16, 2022, the White House released what it described as the “First-Ever Comprehensive Framework for Responsible Development of Digital Assets.” The commonly accepted understanding of the word framework is ‘an essential supporting structure’ or ‘basic structure underlying a system, concept, or text’, for example. But the Administration’s proffered framework failed in that regard, serving more as a report-out of initial agency findings and recommendations than a workable framework regulated parties could reasonably rely on to operate lawfully within clear rules of engagement for this novel, programmable, dynamic asset class.

Instead, good faith industry participants, and the financial and legal professionals charged with the considerable task of zealously representing them, are left with little on which to rely, unless or until they trip a hidden regulatory wire that leads to retroactively applied sanctions and cessation of services at the hands of powerful regulators, most notably the SEC.¹³ Based on this interagency call-to-action by the country’s Chief Executive, we need not guess whether the recent and substantial uptick of interest, inquiry, and aggressive action from agencies is coordinated. The simple answer (indeed the *only* answer) is yes.

Answering the call of this question, however, is only the first step. The next is for Congress to examine how agencies, generally, and the SEC in particular, are using their statutorily prescribed powers, including considerable discretionary powers, to give effect to this coordinated policy call-to-action. Although agencies have followed up on reporting requirements by issuing initial reports and findings, none have offered any clarity on the appropriate rules of engagement that protect consumers, investors and businesses while also ensuring the country’s leadership in innovation as the next iteration of the world wide web (web3) continues to be developed on the rails of decentralized protocols, automated performance via smart contracts and crypto assets.

It remains unclear how responsible builders and market participants in the future of money, work, and creativity can operate confidently, efficiently, and with clarity. Without such a foundation, private industry development will be left in a holding pattern or will simply move valuable tax dollars and opportunities to jurisdictions with clearer rules and policies that encourage, rather than stifle, innovation.

Finally, while the Administration moves forward to consider launching its own version of digital money to “squeeze out” private currencies,¹⁴ industry actors and their representatives are left to their own devices to read the proverbial tea leaves of principles of law from case-specific

¹³ Case in point is the recent settlement between the SEC and Kraken over its staking product. Kraken was fined \$30 million and prohibited from ever relaunching a staking product in the U.S. In a blistering rebuke, SEC Commissioner Hester Peirce dissented in that case, arguing that “Using enforcement actions to tell people what the law is in an emerging industry is not an efficient or fair way of regulating,” and given that staking systems are not all the same, “one-off enforcement actions and cookie-cutter analysis does not cut it.” Statement Kraken Down: Hester Pierce Statement on SEC v. Payward Ventures, Inc., et al.” (Feb. 9, 2023), <https://www.sec.gov/news/statement/peirce-statement-kraken-020923> (last visited: Mar. 7, 2023).

¹⁴ See Jesse Hamilton, COINDESK.COM, *Ex-Biden Adviser Said Administration Was Pushing for Digital Dollar* (Feb. 28, 2023), <https://www.coindesk.com/policy/2023/02/28/ex-biden-adviser-said-administration-was-pushing-for-digital-dollar> (last visited: Mar. 5, 2023).

piecemeal enforcement actions rather than to be assured of clear rules promulgated, after notice-and-comment, to apply prospectively to *all* regulated parties.

Separating Fact from Fiction

In 2022, the crypto asset ecosystem experienced numerous crises at the hands of major players that caused reverberating effects within both the crypto asset economy and broader economy.¹⁵ The domino effects of crypto lender and exchange failures have subsequently been used by critics as exhibit A to support a narrative that all crypto assets—all 22,700+ tokens and native coins (and counting)—are scams and fraudulent. This is both counterproductive and patently false. Case in point, in its 2022 report on crypto crime, Chainalysis found “[t]ransactions involving illicit addresses represented just 0.15% of cryptocurrency transaction volume in 2021.”¹⁶ If there is any hope for meaningful, well calibrated regulation of the crypto asset ecosystem, it is important to separate fact from fiction.

For example, disgraced FTX and Alameda Research founder Sam Bankman-Fried is accused of diverting billions of dollars in customer funds to a trading platform he controlled. He is charged, essentially, for using his power, position, and privilege to maximize his profits at the expense of FTX investors, customers, employees, and the crypto asset industry. The list of charges in the federal indictment, as well as the SEC and CFTC actions currently on pause pending the federal case, allege that he and his cohorts misappropriated customer funds held in yield bearing accounts that promised an eight percent return to leverage up his hedge fund and make extremely risky investments. All without the knowledge or consent of customers.

Misuse of client funds is clearly illegal and has serious consequences. What Bankman-Fried is accused of doing, however, is not a failure of a cryptographically secured asset, or its underlying technology. What he is accused of doing is what a litany of now-infamous financial fraudsters have been convicted of in the past, namely: Enron, Bernie Madoff, Lehman Brothers, Theranos, and WorldCom, to name just a few.

Bankman-Fried’s alleged criminal activities were not a crypto asset problem any more than the aforementioned frauds were a U.S. dollar problem. The charges against Bankman-Fried describe classic fraud. All the charges leveled against him and his cronies, were apparently done using centralized ledgers and fraudulent bookkeeping to perpetrate fraud valued into the billions while good faith market participants chose, instead to move to jurisdictions providing clarity for innovators and investors and consumers.¹⁷

¹⁵ See, generally, Julian Mark, WASHINGTONPOST.COM, *The companies that helped create 2022’s ‘crypto winter’* (Dec. 5, 2022), <https://www.washingtonpost.com/business/2022/12/05/crypto-ftx-collapse-bankruptcy-companies/> (last visited: March 6, 2023).

¹⁶ See Report: *Crypto Crime Trends for 2022: Illicit Transaction Activity Reaches All-Time High in Value, All-Time Low in Share of All Cryptocurrency Activity* (Jan. 6, 2022) (<https://blog.chainalysis.com/reports/2022-crypto-crime-report-introduction/>). The annual report shows percentage of crypto crime as compared to overall use down considerably and becoming a smaller and smaller part of the cryptocurrency ecosystem: 1.42% (2017), 0.76% (2018), 3.3% (2019), 0.62% (2020), and 0.15% (2021). 2019

¹⁷ For example, crypto borrowing and lending platform Nexo chose to move its operations overseas rather than spin its proverbial wheels and remain at the whims of the SEC without clear guidance, rules or regulations on

The Deleterious Impact on the Future of Financial Access and Inclusion

Web 3.0 has the potential to be the decentralized and democratized internet promised when Web 2.0 first emerged. An optimally functioning public, permissionless blockchain gives true access to all. For example, from its inception, the Bitcoin protocol has been fully permissionless, secure and transparent to mitigate (or in some cases eliminate) the asymmetry of information that plagues the current opaque, privileged financial system.

Given the still relatively early-stage development of the distributed ledger infrastructure, it is imperative that private and public entities work together to explore and enhance those aspects of the blockchain, decentralized finance, crypto assets, and stablecoins that empower, include, and uplift all communities, not just the privileged. A critical and unique opportunity exists to achieve these aspirations, one that has not existed since the dot com era that created enormous Silicon Valley wealth for generations. The reason is because in a decentralized financial environment, it matters not one's race, ethnicity, age, gender, orientation, or any "othered" characteristic.

Further, legacy financial institutions have seized the early-mover opportunity among their peers to innovate in delivering products and services for the digital future by leveraging blockchain technology or offering direct or indirect exposure to crypto to their customers. Despite public comments injecting misguided narratives about crypto assets, major banking and financial institutions like Deutsche Bank, Morgan Stanley, and even long-time Bitcoin skeptic JPMorgan, have all recognized the value proposition of crypto and blockchain and started to position themselves for a decided advantage in this new distributed value frontier. This includes giving exposure to high-net-worth individuals.¹⁸

Unchecked imbalance in access to future wealth-generating opportunities only serves to reinforce the status quo of yesteryear. Without sufficient investment, education, resources and support, small businesses—especially minority and women-owned businesses—will likely be eclipsed by large enterprises looking to stake their proverbial flags in this new world of fintech advancement. They will also be left to suffer the greatest harm when bad actors are allowed to flourish and good actors are driven offshore, as occurred in the most recent bear market.

FDIC.com defines economic inclusion as when "... all consumers have access to safe, affordable financial products and services." Accordingly, "[o]wnership of a transaction account is a first step toward economic inclusion". Yet, the current system is broken because it does not serve all Americans equitably. In fact, a 2019 FDIC Survey titled "Key Findings from How America Banks: Household Use of Banking and Financial Services"¹⁹ revealed that 5.4 percent

which to rely and innovate in the U.S. *See, generally*, Tom Blackstone, CoinTelegraph.com, Nexo leaving US, says country lacks clear regulations (Dec. 5, 2022) <https://cointelegraph.com/news/nexo-leaving-us-says-country-lacks-clear-regulations> (last visited: Mar. 6, 2023).

¹⁸ *See, generally*, Ian Allison, COINDESK.COM, *Deutsche Bank Quietly Plans to Offer Crypto Custody, Prime Brokerage* (Feb 12, 2021 at 9:10 p.m. EST, Updated Sep 14, 2021 at 8:11 a.m. EDT), <https://www.coindesk.com/business/2021/02/13/deutsche-bank-quietly-plans-to-offer-crypto-custody-prime-brokerage/> (last visited: Mar. 6, 2023).

¹⁹ <https://www.fdic.gov/analysis/household-survey/index.html> (Nov. 14, 2022).

of U.S. households (approximately 7.1 million) were “unbanked” in 2019. Twenty-nine percent of unbanked households reported not having enough money to meet minimum balance requirements”, the first-most cited reason, and 16.1 percent cited a lack of trust in the banking system as the main reason for not having an account—the second-most cited main reason.

McKinsey & Co reports that “A lack of financial inclusion for black Americans exists at every level of the financial system.”²⁰ And the International Monetary Fund (IMF) describes financial inclusion as the critical bridge between improved economic opportunity and improved economic outcomes. The black community’s historical distrust of the centralized power of government, and healthcare and banking systems further compounds problems while widening the wealth gap.²¹

In 2020, the Hamilton Project released a comprehensive evaluation of wealth in the U.S.²² It found evidence of staggering racial disparities in generational wealth accumulation. For example, in 2016, the net worth of a typical White family was \$171,000, nearly 10 times greater than that of a black family (\$17,150). The report also shows that families with the same income can have dramatically different wealth profiles, thanks to lower debt, past accumulated income, inherited wealth, and other liquid assets. This wealth gap can be viewed both as a cause and a symptom of a lack of access to affordable and reliable means to save, borrow and invest, especially when coupled with redlining and predatory loan practices that perpetuate and exacerbate these chronic concerns.

In the 2022 Ariel/Schwab Black Investor Report, surveyors included crypto asset investment statistics for the first time. The report found that:

- 25% of Black Americans currently own crypto
- 23% cited excitement over crypto as being the reason they started investing
- twice as many Black Americans as White ranked crypto as the best investment choice overall (8% vs 4%)
- Black crypto investors are more likely than Whites to believe it’s safe (33% vs 18% of Whites)

Additionally, Black Americans are saving and investing significantly more than they did in 2020, with the highest contributions coming from new investors, high earners, and young respondents. But trust in legacy financial institutions is still very low. The surveyors conclude that “[t]here is a clear need for financial institutions to build trust and address the education gap between Black and White investors.”

This data point is likely the reason crypto assets and defi are so attractive to Black investors, especially digital natives. The idea of a trusted intermediary—a bank, for example—is no longer needed to have a secure way to exchange value and leverage crypto assets to earn interest or

²⁰ <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-case-for-accelerating-financial-inclusion-in-black-communities>

²¹ <https://www.forbes.com/sites/ericbrotman/2020/09/30/the-wealth-gap-widens-covid-19s-k-shaped-recovery/?sh=52f453bcce6e>

²² https://www.hamiltonproject.org/blog/examining_the_black_White_wealth_gap.

extract value like equity out of a home, all without the gatekeepers in a system plagued with systemic ills like racism and sexism that has not proved itself to be trustworthy.

Sadly, this distrust is well earned and reaches back to the first bank created specifically for Black citizens in America. The Freedman's Bank, created by President Abraham Lincoln with oversight by the Office of the Comptroller of Currency, was allowed to fall into corrupt hands leading to the bank's collapse and caused "a major blow to the confidence and livelihood of scores of [B]lack depositors who trusted the bank [and country] with their savings."²³

Role of Administrative Agencies

Congress regularly delegates its lawmaking function to executive agencies, and does so for good and practical reasons. Legislators simply cannot think of every single detail required to implement policy and procedure. Nor do they have the luxury of time or experience to develop deep subject matter expertise. Accordingly, Congress enacts enabling legislation to empower agencies led, presumably, by subject matter experts without having to develop the expertise itself. That delegation of power often comes with considerable discretion.

Some agencies are empowered to render case-specific determinations through adjudicative powers that apply to one or a few regulated parties and to create rules and regulations having the effect of law through rule promulgation and apply to *all* regulated parties within the agency's reach. Rulemakings are applied prospectively, are general, in nature, apply to a large number of people, depend on social facts, are usually followed by adjudications (not the other way around) and are protected by the democratic process (rather than a specific due process inquiry).²⁴ In contrast, adjudications are intended to be retrospective, specific, applicable to one or only a few people, depends on specific facts related to the party to the adjudication and dependent on specific facts, generally preceded by rulemaking, and are susceptible to abuse and corruption.²⁵

The Securities and Exchange Commission

Numerous agencies are empowered to oversee and to regulate American financial markets and institutions.²⁶ Much thought, discussion and proposed legislation has focused on the

²³ See Marcus Anthony Hunter, CHICAGOREPORTER.COM, *Black America's distrust of banks rooted in Reconstruction* (Feb. 22, 2018) <https://www.chicagoreporter.com/black-americas-distrust-of-banks-rooted-in-reconstruction/> (last visited: Mar. 7, 2023). See also, Carl R. Osthaus, FREEDMEN, PHILANTHROPY, AND FRAUD: A HISTORY OF THE FREEDMAN'S SAVINGS BANK (URBANA, IL, 1976); REGINALD WASHINGTON, "THE FREEDMAN'S SAVINGS AND TRUST COMPANY AND AFRICAN AMERICAN GENEALOGICAL RESEARCH," PROLOGUE, 29: 2 (SUMMER 1997), AT [HTTP://WWW.ARCHIVES.GOV/PUBLICATIONS/PROLOGUE/1997/SUMMER/FREEDMANS-SAVINGS-AND-TRUST.HTML](http://www.archives.gov/publications/prologue/1997/summer/freedmans-savings-and-trust.html) (last visited: Mar 7, 2023).

²⁴ Hickman & Pierce, FEDERAL ADMINISTRATIVE LAW CASES AND MATERIALS (2020, Foundation Press).

²⁵ *Id.*

²⁶ The Federal Reserve Board (the FRB or Fed) provides commercial banking oversight and regulates bank holding companies (BHCs); Office of the Comptroller of the Currency (OCC) is an independent bureau within the Treasury Department that supervises, regulates, and issues charters to banks; The Federal Deposit Insurance Corp. (FDIC) insures bank deposits; Commodity Futures Trading Commission (CFTC) is an independent authority that regulates commodity futures and options and related derivatives markets, and facilitates competitive and efficient market trading; The Financial Industry Regulatory Authority (FINRA) oversees all securities firms, trains financial services

appropriate agency to take the lead, if any, in regulating the crypto asset market. The SEC and CFTC have become the consensus agencies at issue.²⁷ They enjoy distinct areas of jurisdiction but also have joint powers to regulate financial markets with the overall goal of acting in a coordinated, complementary, and effective manner, to protect investors and ensure the integrity of the markets.

Congress established the SEC in response to the Stock Market Crash of 1929 and the resulting Great Depression. The agency was created to regulate the securities industry and enforce the Securities Act of 1933 and the Exchange Act of 1934. Since that time, its mission and discretionary powers have grown considerably. Its regulatory mandate is three-fold: to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation. In addition to enforcing rules and regulations regarding securities trading, including disclosure requirements for public companies, the agency's oversight authority includes the regulation of investment advisers and broker-dealers.

The SEC is a very powerful agency with broad discretionary powers. Through its enabling legislation, it is empowered to choose rule promulgation or adjudications to fulfill its statutory mandate. The agency is also empowered to choose against whom it will exercise its enforcement authority making it more difficult to understand the rules of the road regarding crypto assets and when it will enforce those unwritten rules.²⁸ Congress can, and must, act to curtail regulation by enforcement via statutory limitation and also empower the CFTC to regulate virtual currency and other spot markets in addition to derivatives markets.

Conclusion

The SEC has chosen to wield its considerable discretionary authority in the aggressive way that Justice Robert H. Jackson warned of in his strongly worded dissent in the 1947 Supreme Court decision *S.E.C. v. Chenery II*. In that seminal administrative law case, admittedly a win for SEC discretionary authority, Justice Jackson reminds us “[s]urely an administrative agency is not a law unto itself?”²⁹ Or at least it should not be. Administrative agency officials are not elected by the People; Congress is.

Accordingly, as Congress considers how best to re-evaluate its delegation of powers to the SEC and empower CFTC to have jurisdiction over spot crypto asset markets, I offer these three points to consider:

professionals, licensing and testing agents, and oversees mediation and arbitration processes for disputes between customers and brokers; The Securities and Exchange Commission (SEC) enforces federal securities laws and oversees most of the securities industry. Other implicated

²⁷ See Joel Seligman, CLSBLUESKY.LAW.COLUMBIA.EDU, *The Lummis-Gillibrand Responsible Financial Innovation Act*, The CLS Blue Sky Blog (June 27, 2022). <https://clsbluesky.law.columbia.edu/2022/06/27/the-lummis-gillibrand-responsible-financial-innovation-act/> (last visited: Mar. 6, 2023).

²⁸ See *Heckler v. Chaney*, 470 US 821 (1985). See also, David Zaring, *Enforcement Discretion at the SEC* (noting that “[a]gencies have always enjoyed unfettered discretion to choose their enforcement targets and their policymaking fora.”).

²⁹ 332 U.S. 194, ___ (1947).

- Re-consider legislation with bipartisan support across oversight committees that would reign in unwieldy executive agency actions and empower the CFTC to regulate spot crypto asset markets;
- Ensure that all citizens have equal access and opportunity to thrive safely, legally and confidently in the future of work, wealth and industry; and
- Request the SEC to appear before Congressional oversight committees to explain how its aggressive piecemeal approach to regulation of crypto assets comports with efficient and effective regulation and in line with its legislative mandate to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation.

Sincerely,

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