Hearing Before the Digital Assets, Financial Technology, and Artificial Intelligence Subcommittee

American Innovation and the Future of Digital Assets: Aligning the U.S. Securities Laws for the Digital Age

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Subcommittee Chair Steil, Ranking Member Lynch, and distinguished members of the Subcommittee, thank you for the invitation to participate in today's hearing. My name is Tiffany J. Smith, and I'm a partner at the law firm WilmerHale. I am a member of the Securities and Financial Services Department and Co-Chair of the firm's Blockchain and Cryptocurrency Working Group. I have been at the firm my entire legal career, for over 16 years, and have advised a wide variety of financial services firms including broker-dealers, exchanges, and other financial institutions on compliance with the federal securities laws and the rules of the Financial Industry Regulatory Authority ("FINRA"), a self-regulatory organization ("SRO"). My clients include both traditional financial institutions as well as financial technology ("Fintech") and crypto-native firms.[1]

The views I share today are my own, and do not represent those of my colleagues, my law firm, our clients, or any other person or organization.

I commend the Digital Assets, Financial Technology, and Artificial Intelligence Subcommittee for the important and necessary work it is doing to understand the current state of securities market structure to evaluate the changes that may be necessary to bring regulatory clarity to the digital assets industry and U.S. markets.

While the Securities and Exchange Commission ("SEC") has taken steps within its jurisdiction to provide regulatory clarity, these actions alone are not sufficient. I believe that Congressional action is necessary to have true regulatory clarity for the digital assets[2] industry. Indeed, the current lack of regulatory clarity has caused harm to both crypto-native and traditional financial services firms. Crypto-native firms have expended significant resources trying to determine, first, if they were required to register with the SEC, and if so, how they could comply with the

[1] The term "crypto-native" generally refers to firms and businesses that are formed to operate in the crypto ecosystem.

[2] The SEC has defined the term "digital asset" to mean an asset that is issued and/or transferred using distributed ledger or blockchain technology, including, but not limited to "virtual currencies," "coins," and "tokens." *See* Custody of Digital Assets by Special Purpose Broker-Dealers, Securities Exchange Act Release No. 90788 (Dec. 23, 2020), https://www.sec.gov/files/rules/policy/2020/34-90788.pdf. The SEC also uses the term digital asset and crypto asset interchangeably. *See* Proposed Regulation Best Execution, Securities Exchange Act Release No. 96496 (Dec. 14, 2022), https://www.sec.gov/files/rules/proposed/2022/34-96496.pdf. As further described herein, the assets within this category may warrant different treatment.

applicable complex regulatory requirements. More recently, a number of crypto firms have been the subject of SEC investigations and spent significant resources defending these actions. Some have decided to settle these actions by discontinuing a product line, or worse, ceasing operations in the United States. Many traditional financial services firms, which are heavily regulated, have decided not to offer digital asset products or services altogether because of this regulatory uncertainty.

In furtherance of the title of this hearing "Aligning the U.S. Securities Laws for the Digital Age," I want to cover three topics:

- Why the decentralized nature of certain digital assets presents unique challenges to federal securities law compliance
- The digital asset-specific guidance previously issued by the SEC
- Limits to the SEC's jurisdiction and why congressional action is necessary

I. Why the decentralized nature of certain digital assets presents unique challenges to federal securities law compliance

Broadly speaking, the federal securities laws, including the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") are premised on, respectively, the disclosures that issuers are required to provide when raising capital from others and the registration framework for intermediaries that facilitate transactions between parties. In their current form, many of these statutes are challenging to apply to digital assets and digital assets market participants.

a. The Securities Act

The Securities Act is often referred to as the "truth in securities law" and has two basic objectives:

- Require that investors receive financial and other significant information concerning securities being offered for public sale; and
- Prohibit deceit, misrepresentations, and other fraud in the offer and sale of securities.[3]

According to the SEC, the "primary means of accomplishing these goals is the disclosure of important financial information through the registration of securities."[4] The registration process requires issuers of securities to provide certain information including, in relevant part: a description of the company's business, a description of the security to be offered or sold, risk

[3] *See Statutes and Regulations*, SEC (last reviewed or updated Oct. 1, 2013), https://www.sec.gov/rules-regulations/statutes-regulations.
[4] *Id.*

factors, and information about the management of the company and financial statements certified by independent accountants.[5]

b. The Exchange Act

The Exchange Act empowers the SEC with broad authority over all aspects of the federal securities laws, including the power to register, regulate and oversee brokerage firms, transfer agents, clearing agencies, securities exchanges, and national securities associations.[6] By its terms, the Exchange Act segregates and regulates these functions individually. The Exchange Act also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities.[7]

c. Application to Digital Assets

The Securities Act and Exchange Act only apply to transactions in securities, thus, in order to determine whether these statues apply, the threshold question is whether a proposed product or service involves a security. The investment contract test articulated in *SEC v. Howey*[8] has been used by the SEC to determine whether digital assets were offered or sold as securities. In particular, *Howey* applies to a contract, scheme, or transaction and focuses on the circumstances surrounding the digital asset and the manner in which it was sold.[9]

The term "digital assets" has broadly been used by the SEC to refer to "an asset that is issued and transferred using distributed ledger or blockchain technology" and includes virtual currency, coins, and tokens.[10] The SEC also used the term "crypto asset security" to refer to digital assets that meet the definition of "security" under the federal securities laws and that rely on cryptographic protocols.[11] Importantly, these broad terms combined with the expansive past views of SEC officials that most digital assets are offered and sold as securities[12], failed to distinguish between different types of digital assets, including those that are intended to be offered and sold as securities, like tokenized securities and security tokens, versus assets that were not intended to be offered and sold as securities, like many other types of crypto assets such

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[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The test for an investment contract, as described in *Howey* and subsequent case law, provides that an investment contract exists when there is (i) an investment of money (ii) in a common enterprise (iii) with a reasonable expectation of profits to be derived from the efforts of others.
[9] S*ee* SEC Division of Corporation Finance, *Framework for "Investment Contract" Analysis of Digital Assets*, SEC (last reviewed or updated July 5, 2024), https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets.
[10] *See* Custody of Digital Assets by Special Purpose Broker-Dealers, Securities Exchange Act Release No. 90788 (Dec. 23, 2020), https://www.sec.gov/files/rules/policy/2020/34-90788.pdf.
[11] Proposed Regulation Best Execution, Securities Exchange Act Release No. 96496 (Dec. 14, 2022), https://www.sec.gov/files/rules/proposed/2022/34-96496.pdf.
[12] *See, e.g.*, Former SEC Chair Gary Gensler, Speech, *Car Keys, Football, and Effective Administration* (Nov. 14, 2024), https://www.sec.gov/newsroom/speeches-statements/gensler-remarks-pli-s-56th-annual-institute-securities-regulation-111424.

as tokens. I believe this distinction is important because separate compliance considerations apply to these different categories of assets.

Importantly, today, a diverse set of market participants in the United States, including crypto-native and traditional financial services companies implementing emerging technologies, have a significant interest in achieving regulatory clarity. Both Congress and the SEC should consider taking prompt, concrete steps to provide clarity for this industry to flourish and to ensure market integrity and the protection of investors. To be clear, my comments today are not about tokenized securities or other types of digital assets that are clearly securities. Instead, my comments are focused on crypto assets that were not initially offered and sold as securities. With respect to these assets, there are many complex challenges to complying with the federal securities laws, and I want to highlight a few.

- Information Required by the Securities Act May Be Both Overinclusive and Underinclusive for Crypto Assets: As noted above, the Securities Act requires information about the issuer of the securities, including a description of its business, management of the company, financial statements certified by independent accountants and risks associated with the offering. Notably, crypto assets offered and sold as securities, as distinguished from traditional securities, do not represent an interest in an enterprise like stock, so it may be impractical or impossible to satisfy disclosure requirements. Additionally, traditional disclosures may not provide materially important information to purchasers such as the governance model for the network, ongoing role of the network development team and any plans for decentralization, among others. In a similar vein, crypto assets may not have an identifiable "issuer"[13] to comply with the registration requirements. Even if there is an identifiable person or persons who may be an "issuer" of crypto assets, the person or persons likely do not have financial statements certified by an independent accountant. As crypto assets often do not represent an interest in the "issuer's" enterprise, the burden imposed on obtaining audited financial statements does not equate with the value that an updated and appropriately tailored disclosure would provide a potential investor in the offered crypto assets.

- Securities Intermediaries Cannot Offer or Sell Crypto Assets That Were Not Sold in Compliance with the Securities Act: National securities exchanges and broker-dealers cannot sell or transact in securities that did not comply with the Securities Act when they were offered and sold. National securities exchanges are prohibited from selling any security that is not registered under the Securities Act. Broker-dealers may sell assets that are either registered under the Securities Act or that complied with an

[13] Prior SEC guidance stated whether a digital asset that was initially offered and sold as a security still remains a security is based on whether ownership and control of such asset was decentralized. *See* Former SEC Director of the Division of Corporation Finance William Hinman, Speech, *Digital Assets Transactions: When Howey Met Gary (Plastic)* (Jun. 14, 2018), https://www.sec.gov/newsroom/speeches-statements/speech-hinman-061418. As a result, in my experience, many crypto projects have focused on decentralizing ownership and control following this guidance, which by nature made it more difficult to identify an issuer for the token.

applicable exemption from registration but would face material compliance risk for offering or selling assets that did not meet either of these requirements. These compliance obligations on both national securities exchanges and broker-dealers are the reasons why neither intermediary can easily begin offering and selling crypto assets that the SEC deems to be securities. Moreover, there are rules, such as Rule 144[14] and Rule 15c2-11[15] that permit broker-dealers to facilitate secondary market transactions in securities, that are dependent on the issuer of the securities making certain information available such as financial records, which are generally not available for, or relevant to, crypto assets, as discussed above.

- Market Structure for Crypto Differs from Traditional Securities: The federal securities laws are premised on there being multiple intermediaries involved in a securities transaction. Investors directly interact with a broker-dealer. Only broker-dealers can be members of a national securities exchange.[16] Transactions executed on a national securities exchange in turn clear through registered clearing agencies, and banks and larger broker-dealers are participants of the clearing agencies. Conversely, many crypto asset companies perform all of these functions in a single entity either through the use of blockchain technology or in a decentralized manner using smart contracts. Individual users can directly access a blockchain network through a front-end interface or a company's platform to submit trading interest. The individual's trading interest is generally prefunded and will match with counterparty interest either on a company's platform or directly on the blockchain network. Through blockchain technology, settlement occurs near real-time, and the individual's assets are either custodied at the company's platform or through a self-custodial solution onchain. I express no opinion on the separate models, but instead only note that there are distinctions that must be addressed before crypto assets can be offered in compliance with the Exchange Act.

- Custody Practices for Crypto Assets Differ from Traditional Securities: Broker-dealers are required to comply with Rule 15c3-3 under the Exchange Act, also known as the Customer Protection Rule, which was adopted at a time when physical securities existed. The purpose of the Customer Protection Rule is to safeguard customer securities and funds held by a broker-dealer, to prevent investor loss or

[14] SEC Rule 144 permits the public resale of restricted and control securities, provided that certain conditions are met. *See* 17 C.F.R. § 230.144. One of these conditions is that "[a]dequate current public information with respect to the issuer of the securities must be available." 17 C.F.R. § 230.144(c). This includes, for example, certain financial reports concerning the issuer. *See id*.

[15] SEC Rule 15c2-11 generally prohibits broker-dealers from publishing OTC quotations for securities unless the broker-dealer has satisfied certain conditions. *See* 17 C.F.R. § 240.15c2-11. Relevant here, Rule 15c2-11 permits broker-dealers to publish quotations if the broker-dealer has reviewed current and publicly available information about the issuer who is the subject of the quotation, including certain financial reports, and the broker-dealer reasonably believes that this information is accurate. *See* 17 C.F.R. § 240.15c2-11(a)(1)(i).

[16] *See* 15 U.S.C. § 78f(c).

harm in the event of a broker-dealer's failure[17], and to enhance the SEC's ability to monitor and prevent unsound business practices.[18] Pursuant to the rule, broker-dealers are required to physically hold customers' fully paid for and excess margin securities or maintain them free of lien at a good control location.[19] In joint guidance with FINRA, the SEC staff has previously noted the "differences in the mechanics and risks associated with custodying traditional securities and digital asset securities" and that broker-dealers may have trouble complying with the rule.[20] Of particular concern, the SEC staff noted a broker-dealer may face challenges evidencing it has exclusive control over digital assets – which exist solely on the blockchain and are safeguarded via a private cryptographic key – and evidencing that the broker-dealer has the ability to reverse or cancel mistaken or unauthorized transactions.[21] Subsequently, the Commission issued the Special Purpose Broker-Dealer Statement, which provided time-limited relief for broker-dealers to maintain custody over digital asset securities if certain conditions were satisfied.[22] In addition to being time limited, the guidance was restrictive as it limited "special purpose broker-dealers" to only transacting in digital asset securities.[23] This effectively meant established broker-dealers would need to register a new entity to transact in digital asset securities. In addition, operations involving Bitcoin, the most liquid crypto asset and a commodity that falls outside of SEC jurisdiction, would have to be offered from a separate entity. Despite being in effect for four years, only two firms have

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[17] The Customer Protection Rule requires broker-dealers to safeguard customer assets and to keep customer assets separate from the firm's assets, thus increasing the likelihood that customers' securities and cash can be returned to them in the event of the broker-dealer's failure. *See* SEC Division of Trading and Markets and FINRA Office of General Counsel, Statement, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (July 8, 2019), https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities.

[18] *See* SEC Division of Trading and Markets and FINRA Office of General Counsel, Statement, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (July 8, 2019), https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities.

[19] *See* paragraphs (b) and (c) of Rule 15c3-3. 17 C.F.R. § 240.15c3-3(b); 17 C.F.R. § 240.15c3-3(c). An entity's designation as a good control location is based, in part, on its ability to maintain exclusive control over customer securities. *See, e.g.*, paragraph (c)(5) of Rule 15c3-3 (deeming a "bank" as defined in Section 3(a)(6) of the Exchange Act to be a good control location so long as, among other things, the bank has acknowledged that customer securities "are not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank"). 17 C.F.R. § 240.15c3-3(c)(5).

[20] *See* SEC Division of Trading and Markets and FINRA Office of General Counsel, Statement, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (July 8, 2019), https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities.

[21] *Id.*

[22] *See Custody of Digital Assets by Special Purpose Broker-Dealers*, 86 Fed. Reg. 11627 (Feb. 26., 2021), https://www.federalregister.gov/documents/2021/02/26/2020-28847/custody-of-digital-asset-securities-by-special-purpose-broker-dealers.

[23] Of note, broker-dealers are not generally limited to solely offering securities. *See, e.g.,* FINRA Regulatory Notice 08-66, *FINRA Addresses Firms' Retail Foreign Currency Exchange Activities* (Nov. 4, 2008), https://www.finra.org/rules-guidance/notices/08-66 (explaining broker-dealer obligations for their retail foreign exchange activities).

successfully obtained this relief.[24] Most recently, Commissioner Hester Peirce, who leads the SEC's Crypto Task Force, stated that the Task Force will explore possible updates to the Statement, "which in its current form has not been a success."[25]

II. The Digital Asset-Specific Guidance Previously Issued by the SEC

As a result of the differences between traditional securities and digital assets offered and sold as securities, I believe it is critical to provide concrete guidance to market participants in the near-term. This guidance should: (i) help market participants identify the circumstances when a digital asset is offered and sold as a security so market participants can understand when the federal securities laws apply, and (ii) when the federal securities laws do apply, provide guidance to market participants on how to comply with the federal securities laws given the differences between traditional securities and digital assets.

The SEC has previously issued guidance on these topics, however, putting aside the guidance that was recently issued in 2025[26], the SEC had not issued specific guidance related to digital assets since 2020. Instead, in various speeches, market participants were urged to register with the SEC without a clear path, a number of enforcement actions were brought against market participants[27], and, in the context of the SEC's general rulemaking agenda, digital assets were identified in certain proposals but final rules were never adopted.[28] Nonetheless these proposals were generally criticized by digital asset market participants because they did not provide clarity on when the federal securities laws apply to digital asset transactions and did not account for

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[24] *See* Gaurav Roy, *Special Purpose Broker-Dealer for Digital Asset Securities (SPBD): Why Are They Divisive?*, Securities.io (Sept. 17, 2024), https://www.securities.io/special-purpose-broker-dealer-for-digital-asset-securities-spbd-why-are-they-divisive/.

[25] SEC Commissioner Hester M. Peirce, Statement, *The Journey Begins* (Feb. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425. Commissioner Peirce noted "[a]n initial change we may suggest is that the statement be expanded to cover broker-dealers that custody crypto asset securities alongside crypto assets that are not securities. We will work with the public to identify other obstacles to registration." *Id.*

[26] *See* SEC Division of Corporation Finance, Statement, *Staff Statement on Meme Coins* (Feb. 27, 2025), https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins; *see also* SEC Division of Corporation Finance, Statement, *Statement on Certain Proof-of-Work Mining Activities* (Mar. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025; SEC Division of Corporation Finance, Statement, *Statement on Stablecoins* (Apr. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425.

[27] *See, e.g.*, Cornerstone Research, SEC Cryptocurrency Enforcement Reports, https://www.cornerstone.com/insights/reports/sec-cryptocurrency-enforcement/.

[28] *See* Tiffany Smith and Kyle Swan, *Potential Impact of the SEC's Rulemaking Agenda on Crypto*, 57 The Review of Securities & Commodities Regulation No. 5 (Mar. 6, 2024), https://www.civicresearchinstitute.com/online/PDF/RSCR-5705-20240306-Smith.pdf (describing general SEC proposals that would apply to digital assets securities as well as traditional securities, including proposed amendments regarding the definition of "exchange," the definition of "dealer," Best Execution, proposed rule 223-1, and the predictive data analytics rule). Note that the amendments regarding the definition of "dealer" were ultimately finalized before being struck down in court on the grounds that the amendments exceeded the SEC's statutory authority. *See National Association of Private Fund Managers v. SEC*, 4:24-cv-00250 (N.D.T.X. 2024).

differences between traditional and digital assets.[29] As a result of the differences described above, I believe it is critical for any formal guidance or rulemaking to take into account the key differences between traditional securities and crypto assets so compliance is feasible and regulation is effective. Such formal guidance or rulemaking should consider the specific risks related to digital assets that may not be of concern for traditional securities (e.g., network security or tokenomics[30]).

The following are examples of guidance the SEC issued prior to 2025 that may require updating as a result of the changes in the digital asset industry over the years.

- Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO: The SEC issued an investigative report (the "DAO Report") explaining that digital tokens issued in the context of an initial coin offering ("ICO") may be securities and therefore subject to the agency's jurisdiction.[31] The investigative report was issued under Section 21(a) of the Exchange Act, which provides the SEC with a mechanism to issue its findings after an investigation instead of bringing an enforcement action. As noted, the DAO Report was issued in the context of ICOs. A funding and distribution mechanism that is not frequently used today. Given the developments in the digital assets market since 2017 and how rapidly the industry changes, 21(a) Reports are tools the SEC can consider using to explain its views when identifying novel applications of the federal securities laws.

- Framework for "Investment Contract" Analysis of Digital Assets: This guidance, initially published in 2019, provides a framework for analyzing whether a digital asset is offered and sold as an investment contract.[32] The Framework identifies the *Howey* factors and provides considerations for each prong of the test. While the guidance was well-intentioned, stakeholders have noted the difficulties in applying the various factors of the guidance.[33] In addition, significant changes to

[29] *See, e.g.*, Lydia Beyoud, *SEC's Gensler Takes on Crypto Defi Exchanges with Refreshed Rule Plan,* Bloomberg L.P. (Apr. 14, 2023), https://www.bloomberg.com/news/articles/2023-04-14/gensler-takes-on-crypto-defi-exchanges-with-refreshed-rule-plan (describing industry criticism of the SEC's proposed amendments regarding the definition of "exchange").

[30] Generally, tokenomics refers to the factors that go into the value of cryptocurrency. Relevant factors include the maximum token supply, how tokens are added and removed from circulation, incentives for token holders, and the project's utility. *See What is Tokenomics?* The Motley Fool (last updated Feb. 22, 2025), https://www.fool.com/terms/t/tokenomics/.

[31] *See* Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Securities Exchange Act Release No. 81207 (July 25, 2017), https://www.sec.gov/files/litigation/investreport/34-81207.pdf.

[32] *See Framework for "Investment Contract" Analysis of Digital Assets* (last reviewed or updated July 5, 2024), https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets.

[33] *See* SEC Commissioner Hester M. Peirce, Speech, *Paper, Plastic, Peer-to-Peer* (Mar. 15, 2021), https://www.sec.gov/newsroom/speeches-statements/peirce-paper-plastic-peer-peer-031521#_ftnref27 (stating that the SEC's framework "is difficult to apply").

the digital assets market have occurred in the six years since this guidance was issued, e.g., the guidance mentions ICOs, which are no longer popular[34]; there is no mention of proof-of-stake networks[35] and how to evaluate them. Moreover, there is no guidance on how to evaluate secondary market transactions, which was the crux of the litigation cases the SEC brought against crypto platforms.[36] Since the federal securities laws only apply to securities transactions and a determination that an asset is a security triggers a number of regulatory requirements, I believe it is critical to have as much clarity as possible about the circumstances under which digital assets are securities.[37]

- Peirce Safe Harbor: In 2021, SEC Commissioner Peirce published a proposed safe harbor that sought "to provide network developers with a three-year grace period within which, under certain conditions, they can facilitate participation in and the development of a functional or decentralized network, exempted from the registration provisions of the federal securities laws."[38] While there have been different views about the conditions of the proposed safe harbor,[39] I believe its overall purpose to provide clarity for network developers is important. The SEC's Crypto Task Force is currently seeking feedback on the safe harbor,[40] including whether it can be available retroactively for projects that comply with its disclosure requirements. I believe this is a step in the right direction to bring clarity for developers launching new protocols and encourages development and investment in the United States.

- Special Purpose Broker-Dealer Statement: The Special Purpose Broker-Dealer Statement went into effect in 2021 and as noted above, is restrictive in terms of business activities and timing, and only two firms met the conditions for this

[34] *See* Mayank Joshipura et al., *ICOs Conceptual Unveiled: Scholarly Review of an Entrepreneurial Finance Innovation*, 11 Financial Innovation Article No. 26, (2025), https://jfinswufe.springeropen.com/counter/pdf/10.1186/s40854-024-00721-4.pdf.

[35] Proof-of-stake is a system of agreement used to validate cryptocurrency transactions. It was created to improve upon perceived flaws of proof-of-work consensus mechanism. *See* Tessa Campbell and Brian Nibley, *What is Proof of Stake (PoS)?* Business Insider (last updated Nov. 22, 2024), https://www.businessinsider.com/personal-finance/investing/proof-of-stake.

[36] *See* Cornerstone Research, *SEC Cryptocurrency Enforcement 2023 Update*, https://www.cornerstone.com/insights/research/sec-cryptocurrency-enforcement-june-2023-update/.

[37] On April 5, 2025, SEC Acting Chairman Uyeda announced that he has asked SEC staff to review the Framework for an "Investment Contract" guidance pursuant to Executive Order 14192. *See* SEC Acting Chairman Mark T. Uyeda, Statement Regarding Executive Order 14192 (Apr. 5, 2025), https://x.com/SECGov/status/1908546943686492633.

[38] *See* SEC Commissioner Hester M. Peirce, Statement, *Token Safe Harbor Proposal 2.0* (Apr. 13, 2021), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20.

[39] *See, e.g.*, Barbara Piro, *SEC Cmr. Hester Peirce's Token Safe Harbor Proposal 2.0: First Impressions*, SLS Blogs (Apr. 15, 2021), https://law.stanford.edu/2021/04/15/sec-cmr-hester-peirces-token-safe-harbor-proposal-2-0-first-impressions/; Miles Jennings et al., *The Return of the Token Safe Harbor*, Latham & Watkins Global Fintech & Digital Assets Blog (Apr. 29, 2021), https://www.fintechanddigitalassets.com/2021/04/the-return-of-the-token-safe-harbor/.

[40] *See* Commissioner Hester M. Peirce, Statement, *There Must Be Some Way Out of Here* (Feb. 21, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125.

relief. As a result, I believe the Statement should be evaluated to reflect feedback the SEC has received from market participants and to take into account changes in the industry over the last four years. The Crypto Task Force is currently seeking input on the Statement and specifically asked whether the statement should be withdrawn or modified. I take no position on which approach is preferred, but I do believe clarity is necessary so broker-dealers can provide custody for digital asset securities.

III. Limits to the SEC's Jurisdiction and Why Congressional Action is Necessary

Acting Chairman Uyeda recently formed the Crypto Task Force, which is "dedicated to developing a comprehensive and clear regulatory framework for crypto assets."[41] Since its formation in January, the SEC has agreed to pause, withdraw or dismiss several actions against digital asset firms for violations of the federal securities laws[42], closed seven investigations against crypto market participants[43], issued three statements about the priorities of the Task Force including 48 specific questions on which it is seeking feedback[44], announced five roundtables on various digital asset related topics[45], and issued three staff statements providing clarity on digital asset products or services.[46]

Despite the progress the Crypto Task Force is making, SEC action alone is not sufficient to provide regulatory clarity for digital assets. As noted by Acting Chair Uyeda:

> [t]he Task Force will operate within the statutory framework provided by Congress and will coordinate the provision of technical assistance to Congress as it makes changes to that framework. The Task Force will coordinate with federal departments and agencies, including the Commodity Futures Trading Commission, and state and international counterparts.[47]

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[41] *See* Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force*, SEC (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-30.
[42] *See,* Nikhilesh De, *Where All the SEC Cases Are*, CoinDesk (updated Mar. 31, 2025), https://www.coindesk.com/policy/2025/03/29/where-all-the-sec-cases-are.
[43] *See id.*
[44] *See* SEC Commissioner Hester M. Peirce, Statement, *There Must be Some Way out of Here* (Feb. 21, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125.
[45] *See Crypto Task Force Roundtables*, SEC (last reviewed or updated Mar. 26, 2025), https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables.
[46] *See* SEC Division of Corporation Finance, Statement, *Staff Statement on Meme Coins* (Feb. 27, 2025), https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins; SEC Division of Corporation Finance, Statement, *Statement on Certain Proof-of-Work Mining Activities* (Mar. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025; SEC Division of Corporation Finance, Statement, *Statement on Stablecoins* (Apr. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425.
[47] *See* Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force* (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-30.

Because the jurisdiction of the SEC and other federal agencies is limited, Congressional intervention is necessary to create a comprehensive and clear regulatory framework for digital assets. In addition, Congress should consider codifying guidance of the SEC and other agencies to create regulatory certainty. As seen through recent actions, guidance issued by agencies can be proposed and rescinded, thus Congressional action could provide more regulatory certainty and consistency.[48]

IV. Conclusion

I appreciate your attention to these important issues, and I look forward to discussing them with you.

[48] *See, e.g.*, *Staff Accounting Bulletin No. 122*, SEC (Jan. 23, 2025), https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122#_ftn1.