U.S. Chamber of Commerce



1615 H Street, NW Washington, DC 20062-2000 uschamber.com

January 19, 2023

Vanessa A. Countryman Secretary U.S. Securities and Exchange Commission 100 F Street, NE Washington, DC 20549

Re: Coinbase Petition for Rulemaking – Digital Asset Issuer Registration and Reporting

Dear Ms. Countryman:

The U.S. Chamber of Commerce urges the Securities & Exchange Commission to propose rules that would clarify the regulatory landscape governing the issuance of digital assets deemed to involve investment contracts. To protect American investors and ensure that America remains a hub for digital asset innovation, the Commission must craft a clear regulatory framework for digital assets deemed to be investment contracts.

Nearly two years ago, the Chamber issued a report urging the Commission to "avoid regulation by enforcement" and instead "provide fair notice concerning what the law requires" of digital asset firms and digital asset securities.² For your convenience, that report is attached as an exhibit to this letter. As we explained then, a regulation-by-enforcement approach discourages innovation and competition in the digital assets industry, threatening America's position as the preeminent global hub for financial innovation. This also creates uncertainty that is detrimental for investors, as well as competition.

Digital asset firms cannot be expected to deduce the Commission's positions on important regulatory issues from one-off enforcement actions against parties whose conduct may be materially different from their own.³ The resulting lack of

-

¹ Coinbase Global, Inc. Comment Letter in Response to Petition for Rulemaking on Digital Asset Securities Regulation (Dec. 2, 2022), https://tinyurl.com/4237dvxy; Coinbase Global, Inc. Petition for Rulemaking on Digital Asset Securities Regulation (July 21, 2022), https://tinyurl.com/4zj3srve.

² U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, *Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader* 4–6 ("Chamber Report on Digital Assets") (Jan. 2021), https://tinyurl.com/yckh568y.

³ *Id.* at 56–57.

clarity makes it "difficult for firms to operate for fear of an enforcement action," since they cannot determine with confidence "if they are in compliance with applicable securities laws, or need to be in compliance with them at all." Seeking to avoid this outcome, the Chamber offered the Commission several concrete regulatory guideposts that the Commission could use to clarify the legal landscape.

Since the Chamber's January 2021 report, calls for regulatory clarity have only grown louder and more urgent. This rulemaking petition has received support from nearly 1,700 individuals and organizations who seek to offer and invest in digital assets. Industry groups separately have asked the Commission to "provide much-needed clarity as to how actors can comply with the applicable federal laws."

Policymakers agree. The Commission's own Hester M. Peirce has called for the Commission to "provide a level of clarity that heretofore has been absent" to regulated parties.⁸ Last week, Commissioner Mark Uyeda stated, "There needs to be that path to say if you are a security, here's how the rules apply to you." Likewise, Commissioner Caroline Pham of the Commodities Futures Trading Commission has urged agencies to use the "tools" they "have . . . right now" to provide "more regulatory clarity for the industry." Bipartisan members of Congress have joined the chorus, urging the Commission to provide a clearer regulatory framework for

⁴ U.S. Chamber of Commerce, Center for Capital Markets Competitiveness, *Growth Engine Report* at 74 (2020), https://tinyurl.com/yhc9r45d.

⁵ Chamber Report on Digital Assets at 52–58.

⁶ Soyoung Yoo, *Industry Ratchets Up Pressure on SEC Asking for Crypto Regulation, but Gensler Says Clear Rules Already Exist*, Thompson Reuters (Aug. 26, 2022), https://tinyurl.com/bpj3tvkr.

⁷ E.g., Brief of the Crypto Council for Innovation as *Amicus Curiae* at 1, *SEC v. Ripple Labs, Inc.*, No. 20-cv-10832 (Nov. 15, 2022), ECF No. 711.

⁸ Hester M. Pierce, *Remarks at Regulatory Transparency Project Conference on Regulating the New Crypto Ecosystem: Necessary Regulation or Crippling Future Innovation?* (June 14, 2022), https://tinyurl.com/3ysjzd9w.

⁹ Mark Uyeda, *Politico Pro Q&A: SEC Commissioner Mark Uyeda* (January 11, 2023)

¹⁰ Benjamin Pimentel, *A CFTC Commissioner Says Getting Crypto Right is Critical to the US*, Protocol (July 25, 2022), https://tinyurl.com/2p93u27p.

digital assets¹¹—even proposing legislation that would give the industry the direction that the Commission has declined to provide so far.¹²

The Chamber therefore strongly encourages the Commission to propose rules that would clarify the regulatory landscape governing the issuance of digital assets deemed to involve investment contracts and to consider the petition. The Commission should update its rules to recognize the specific features of crypto securities, including ways in which these assets can pose new risks or information asymmetries not addressed by existing regulation. To clarify the regulation of digital asset securities the Commission should at a minimum:

- Modernize Regulatory Requirements. Any principles-based approach to regulating digital assets must recognize that digital assets deemed to be investment contracts "present an additional layer of new features that do not exist in any other class of securities." It is therefore critical to tailor disclosure and custody requirements to accommodate these differences instead of "shoehorning blockchain technology into existing regulatory requirements that are not sensible as applied to digital assets." 14
- Recognize the Intrinsic Utility of Digital Assets. One way in which digital assets deemed to be investment contracts differ from traditional securities is that many digital assets have intrinsic utility. As explained in the rulemaking petition, whereas "a share of Apple stock is not needed to operate an iPhone," "digital assets are often needed to, among other things, execute smart contracts on blockchain protocols and/or applications." One implication of this, as the Chamber has explained, is that the intrinsic utility of a digital asset should bear on whether the digital asset should be treated as a security in the first place. Equally importantly, even if a digital asset is deemed to be part of an investment.

¹¹ Letter from John Hickenlooper, U.S. Senator, to Gary Gensler, Chair, U.S. Sec. & Exch. Comm'n (Oct. 13, 2022), https://tinyurl.com/2vbkzsxy; Letter from Pat Toomey, U.S. Senator, to Gary Gensler, Chair, U.S. Sec. & Exch. Comm'n (July 26, 2022), https://tinyurl.com/bdft6nu8.

¹² See, e.g., Digital Trading Clarity Act of 2022, S. 5030, 117th Cong. (2022); Lummis-Gillibrand Responsible Financial Innovation Act, S. 4356, 117th Cong. (2022).

¹³ Coinbase Comment at 2; Coinbase Petition at 20–28.

¹⁴ Chamber Report on Digital Assets at 52–54.

¹⁵ Coinbase Comment at 2.

¹⁶ Growth Engine Report at 74; see also Chamber Report on Digital Assets at 57.

contract, the Commission should recognize that not all transactions involving the underlying asset are necessarily securities transactions.¹⁷

• Create a Pathway to Non-Security Status. Another unique aspect of the digital assets industry is that many development teams seek to achieve decentralization over time by relinquishing control of their projects to community or network members. Members of the Commission have recognized that certain digital assets—such as bitcoin—are sufficiently decentralized such that they do not fall within the ambit of the securities laws.¹⁸ The Chamber believes that the Commission should provide advance notice of what will be required of digital asset issuers in order to exit reporting requirements following sufficient decentralization of control.¹⁹

The Chamber appreciates your attention to this important matter. We believe rulemaking would serve the dual purposes of making it easier for the Commission to enforce the securities laws and clarifying for market participants what activity is permissible.

Sincerely,

Tom Quaadman

Executive Vice President

Center for Capital Markets Competitiveness

U.S. Chamber of Commerce

¹⁷ Coinbase Comment at 2–3.

¹⁸ Andrew Ackerman, *SEC's Gensler Signals Support for Commodities Regulator Having Bitcoin Oversight*, Wall St. J. (Sept. 8, 2022), https://tinyurl.com/y7ywx6fb.

¹⁹ Coinbase Comment at 3–4; Chamber Report on Digital Assets at 57–58.