



## **BY ELECTRONIC SUBMISSION**

March 19, 2025

Commissioner Hester M. Peirce  
Chair of SEC Crypto Task Force  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

*Re: There Must Be Some Way Out of Here: Recommendations on the Regulation of Digital Securities Markets*

Dear Commissioner Peirce and Members of the SEC Crypto Task Force:

Coinbase Global, Inc. ("**Coinbase**") started in 2012 with the idea that anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the U.S. and provide a trusted and easy-to-use platform relied on by millions of verified users in over 100 countries to access the broader crypto economy.

Throughout our journey we have sought to be the most trusted name in crypto, doing so through regulatory compliance and advocating for efficient and effective regulatory frameworks globally. This is why, in July of 2022, Coinbase petitioned<sup>1</sup> the U.S. Securities and Exchange Commission ("**Commission**" or "**SEC**") to engage in rulemaking regarding the Commission's regulation of digital assets<sup>2</sup> (the "**2022 Petition**"). At that time, there was no path for securities markets participants to use blockchain technology. Our aim then was to identify the key issues and questions for the Commission to resolve for the industry to operate within a clear and workable regulatory regime.

Two and a half years later, we are extremely pleased to see the formation of the Crypto Task Force and Commissioner Peirce's recent request for information, "There Must Be Some Way Out of Here"<sup>3</sup> ("**RFI**"), which identifies 48 questions with which the Task Force is currently wrestling. We commend these important steps, which for the first time gives the public a glimpse into how the Commission staff may be thinking about the treatment of an entirely new market structure. Market participants engaged in digital asset technology finally have a starting point with which to engage the Commission on a comprehensive regulatory framework for digital securities.

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<sup>1</sup> See 17 C.F.R. 201.192(a).

<sup>2</sup> Coinbase, Petition for Rulemaking, (July 21, 2022).

<sup>3</sup> Commissioner Hester Peirce, *There Must Be Some Way Out of Here*, (Feb. 21, 2025) [https://docs.google.com/document/d/14hurL\\_cuJpVf0BeEWF8mYg3mfbrjnYenRewqc8W\\_uZQ/edit?tab=t.0#heading=h.o01bcznkzvcv](https://docs.google.com/document/d/14hurL_cuJpVf0BeEWF8mYg3mfbrjnYenRewqc8W_uZQ/edit?tab=t.0#heading=h.o01bcznkzvcv).

We also welcome and commend the Commission for the significant progress it has made since this January, including rescission of Staff Accounting Bulletin 121, dismissing misguided litigation, active consideration of new exchange-traded products (“ETPs”) based on digital asset commodities other than Bitcoin (BTC) and Ether (ETH), clarification of the status of “meme coins” as not securities, and the announcement its intent to host a series of industry round tables to foster a public dialogue. This is a very promising start.

We are writing today to offer our thoughts on, as the RFI states, “a way out of the mess left to us by the misguided previous approach to regulation.” In doing so, we emphasize several recommendations for how the Commission can use its existing statutory authority to improve the securities markets. Notably, even where rulemaking may ultimately be merited, the Commission can provide much needed regulatory clarity through no-action relief, interpretations, or guidance. Doing so will allow the benefits of blockchain technology to provide immediate improvements to the existing financial architecture – increasing resilience, lowering costs, making markets more efficient, and enabling the Commission to observe and further shape a vibrant and appropriately calibrated approach to regulation in this space.

## **Overarching Recommendations**

To facilitate a functioning market for digital securities, the Commission should clearly and accurately articulate the scope of its authority and mandate by:

1. clarifying that digital assets that do not convey any rights in a business enterprise are not securities, but rather digital commodities;
2. clarifying that, regardless how a digital commodity was initially offered and sold, secondary market transactions in a digital commodity are not securities transactions;
3. acknowledging that it is the purview of Congress to define the appropriate regulatory treatment of digital assets where ambiguity persists; and
4. focusing on enabling market participants to tokenize traditional securities – tokenized debt, equity, and investment funds – and appropriately tailor regulation for securities that are offered and traded via digitally native methods.

Providing clarity around how and to what extent the securities laws should apply to digital assets will open an ever-expanding list of products, goods, and services to the American people. Today digital assets are a \$3 trillion global industry and the most common products have the characteristics of commodities. Distinguishing digital commodities from digital securities and creating a comprehensive and practical regime for the latter will enable traditionally issued and traded securities to move onchain and provide investors with all the benefits of blockchain technology. This will profoundly improve global liquidity for securities through instant access and transfer of assets, leading to dramatic reductions in operating costs and risks in the current system due to the frictions still imposed from our legacy, paper-based market infrastructure.

We of course recognize that the Commission cannot take all necessary actions to create a comprehensive regulatory framework for digital assets on its own – Congress will need to settle certain issues that are beyond the Commission’s purview, and we generally do not discuss those issues here. Nevertheless, the judicious use of existing authorities can help open a more efficient path to that end. Pursuing this approach will not only allow the U.S. to become globally competitive in this space, it will also provide the Commission an opportunity to assess, through observed experience, best-in-kind market practices to inform whether to promulgate future

rules.

Importantly, we are advocating for the Commission to adopt a regulatory approach that levels the playing field for all market participants and facilitates innovation in a way that upholds all parts of the Commission's tripartite mission. In addition to investor protection, a workable regulatory framework for digital securities must also promote capital formation and ensure fair, orderly, and efficient markets.

## Targeted Relief is Needed

To enable the issuance and trading of tokenized securities the Commission should implement targeted relief for industry participants who seek to adhere to longstanding regulatory principles and outcomes, but who lack a practical way of doing so under existing rules. Targeted relief must recognize the economic reality of blockchain technology and the opportunity it offers to remove unnecessary market complexity. Notably, the Commission should take actions that:

### 1. Enable Real-Time Settlement

Digital assets and blockchain technology hold the promise of more efficient and resilient infrastructure for financial transactions. This new infrastructure is being built, from the start, to enable peer-to-peer operability with straight-through-processing between different types of service providers. The result is enhanced competition, more seamless services, faster settlements, greater transparency, and the opportunity to automate complex financial transactions. The opportunity to eliminate undue efficiencies, sources of risk, and information asymmetries should ultimately lead to enhanced investor protections (for example, improving market transparency and transaction verification by recording real-time settlement of transactions on a public blockchain), improved functionality, and lower transaction costs.

Today, existing custody and clearing rules do not contemplate real-time settlement of transactions on blockchains. Instead, these rules are tailored for traditional securities trades that typically require a full business day to settle through a series of intermediaries who, in turn, must manage risks of default over that settlement period. Real-time settlement on blockchains eliminates this need, allowing counterparties to redeploy their capital immediately, vastly improving the allocative efficiencies of markets relative to current practices.

### 2. Recognize Self-Custody and Autonomy Benefits

The current regulatory framework does not adequately address investor autonomy. In implementing the Securities Exchange Act of 1934 (the "**Exchange Act**"), existing rules presume intermediated transactions – a byproduct of the technology available at the time the regime was established nearly a century ago and not because of any statutory requirement. This framework does not consider the potential for digital securities to operate in a self-custodied environment by users with access to secure and efficient self-custodial wallets. Blockchain technology allows these investors to safely and directly hold and control their assets without relying on third-party intermediaries. This capability enhances investor autonomy, reduces the number of counterparties, diversifies risks and frictions introduced by intermediated custody, and aligns with the broader goal of financial inclusion by enabling greater access to capital markets. Self-custody solutions empower investors to manage their own holdings securely and transparently, further reducing transaction costs and improving market efficiencies. New regulatory approaches to this paradigm should recognize self-custody as an innovative and

secure means of holding digital securities.

Preserving the right to self-custody using blockchain technology matters because it unlocks the power and efficiency of decentralized finance (“**DeFi**”) on permissionless blockchain systems and networks. DeFi enables onchain transactions directly between participants and removes the need for brokers, custodians, and clearing agencies entirely. For example, onchain protocols like decentralized exchanges (“**DEXs**”) enable peer-to-peer trading without requiring a central authority to facilitate transaction matching like what is currently done through central limit order books on centralized exchanges.

Enabling self-custody has also been deemed by Congress to be “in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets” – to assure that investors have the opportunity to transact without the need for certain unnecessary intermediation.<sup>4</sup> President Trump’s recent Executive Order similarly underscores the importance of self-custody as a principle the President envisions having enshrined in our financial system. New regulatory approaches need to accommodate and embrace technological evolution by facilitating DeFi’s ability to reduce investor costs through elimination of unnecessary intermediation.

### 3. Unwind Existing Market Structure Complexity

Existing Commission and self-regulatory organization (“**SRO**”) rules generally envision a highly complex market structure involving multiple layers of intermediation – e.g., order placement through an executing broker that routes the order to one or more exchanges, ATSs, and/or market makers, with the trade cleared and settled through a clearing or prime broker at one or more clearing agencies. Those rules evolved over decades based on the technological progress from floor-based trading of paper securities to electronic trading of book-entry securities “dematerialized” through the involvement of DTC. Now, because blockchain technology enables real-time settlement and self-custody, the legacy, intermediated market structure is no longer required – the Exchange Act goals of investor protection, efficiency, competition, transparency, and safety through linkage of markets and clearing and settlement can be achieved natively through blockchain technology.

The enabling technology is already in operation today. Digital asset trading platforms like the one we operate provide direct access to customers with transparent competition through real-time publication of information about prices and transactions. Customers are able to onboard or offboard their digital assets from/to self custodial wallets in a matter of minutes. Orders execute and settle in real-time on the exchange’s books, or when orders are routed to an away exchange they settle in real time, onchain as part of a delivery-versis-payment (DVP) process. At no point is it required or necessary to split brokerage, exchange, custody, or clearing practices into multiple intermediaries – this is all done seamlessly in a single technology stack built on decentralized blockchain technology. Importantly, all other trading venues can operate in the same manner, promoting competition while eliminating the additional costs, rents, and conflicts involved with having your transaction handled by multiple intermediaries each charging their own fee/spread in a non-transparent fashion. Moreover, customers can also transact without any intermediaries at all, using decentralized trading platforms offered on Layer Two

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<sup>4</sup> See, e.g., Exchange Act § 11A(a)(1)(c)(v) (Congressional findings that, in light of technological developments in “data processing and communications techniques,” SEC regulation should assure that investors should have the opportunity to transact “without the participation of a dealer,” where unnecessary for investor protection).

networks, such as Base.

But rules designed for securities markets predate blockchain technology, at a time when the only way to manage the logistics of trading across geographic distance and among various market centers was to require the use of multiple intermediaries – brokers, market makers, custodians, exchanges, transfer agents, and clearing agencies – each with potentially different interests and incentives. Ensuing regulations were premised on the assumed existence of, and need to regulate, these intermediaries, enshrining them and their role in law.<sup>5</sup>

Historical intermediation models should, of course, still be permitted and many market participants will likely continue to believe they add value, but they should not be required when they do not, or when other methods achieve the same goal (i.e., regulatory outcome). And by enabling new technology, like DeFi trading protocols, the ability for customers to engage in the activities themselves will drive traditional intermediaries towards more efficient, less costly, and better customer experiences. So, just as the rulebook needed to change with the move from paper to electronic trading and settlement, the rulebook must adapt to this latest market evolution made possible by blockchain technology.

## Recommendations

None of the objectives and principles above will be achieved without rethinking and reframing specific parts of existing securities regulation so that it is more appropriately tailored for digital securities and securities transactions involving digital commodities. Below, we offer recommendations for a path forward, and answer questions from the RFI that we believe are important for the Crypto Task Force to consider. Our thoughts and beliefs have evolved since we first petitioned the Commission for rules in 2022, and we expect they will continue to do so, particularly as we learn more from other market participants and from the Crypto Task Force itself. To this end, we hope our proposals will contribute to a robust and ongoing discussion that productively informs the Commission and its Staff.

### I. Security Status – Token Classification

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- 1. What type of regulatory taxonomy would provide a predictable, legally precise, and economically rational approach to determining the security status of crypto assets and transactions in such assets without undermining settled approaches for evaluating the security status of non-crypto assets and transactions?*
- 2. Should the Commission address when crypto assets fall within any category of financial instruments, other than investment contracts, that are specifically listed in the definition of “security” in the federal securities laws?*
- 5. Should the security status of certain categories of crypto assets be addressed, such as stablecoins, wrapped tokens, and NFTs?*

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<sup>5</sup> For additional exploration of the existing regulatory framework, and why it is not properly tailored for digital asset markets, see Coinbase’s Digital Asset Policy Proposal (#dApp) at <https://assets.ctfassets.net/c5bd0wqjc7v0/7FhSemtQvg4P4yS7sJCKMj/a98939d651d7ee24a56a897e2d37ef30/coinbase-digital-asset-policy-proposal.pdf>.

6. How can the Commission establish a workable taxonomy while remaining merit- and technology-neutral?

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We strongly agree with the importance of establishing an appropriate and administrable taxonomy to properly guide a discussion of digital asset regulation. As with existing markets, we see only two types of assets – securities and commodities – but as we describe below, some commodities might implicate securities laws by how they are sold (i.e., the transaction) or because of security-like features embedded in the operation of the digital asset (e.g., protocol revenue share).

1. **Digital Commodities.** Fungible digital assets with no claim to a business enterprise and whose value is primarily determined by its intrinsic utility or simply by market demand and speculation. This includes network tokens, digital collectibles, tokenized rewards programs, gaming tokens, NFTs, meme coins, and other similar digital assets;
  - a. **Digital Commodities – sold as part of an extrinsic investment contract.** By definition these assets are not intrinsically securities, but the manner in which they are sold (i.e., the transaction) might implicate securities laws, for example, if the overall transaction entails a post-sale obligation with respect to right, title, interest or profit in a business enterprise. Here, the facts and circumstances of the transaction and the application of the *Howey* test are relevant;
  - b. **Digital Commodities – that provide for intrinsic rights to future financial benefits.** In the RFI, these are referred to as digital assets having the characteristics of a security, and are a harder-to-define class of digital assets because they embed rights to a future financial benefit that is intrinsic to the operation of the digital asset.
2. **Digital Securities.** Tokenized versions of traditional securities like debt, equity, and other financial instruments that are broadly and unambiguously understood to be securities subject to existing securities laws.

The first category, *digital commodities*, is currently the biggest category, totaling over \$3 trillion globally. These digital assets do not have the intrinsic properties of a security (e.g., the right, title, or interest in a business enterprise). They should never be deemed a security, and should not require registration or intermediation by an SEC-regulated entity. They consist of three broad categories:

- **“Network tokens”** and **“Protocol Tokens”** which make up the vast majority of token market capitalization that exist today and derive their value from a blockchain system or protocol. These include, for example, BTC, ETH, AAVE, and UNI, which are the native assets of a particular blockchain network or otherwise facilitate an interaction with a particular blockchain protocol.
- **“Digital commerce tokens”** or **“digital collectible tokens”** are tokenized versions of tangible or intangible goods that have value, utility, or significance beyond its mere existence as a digital commodity. Examples include digital art, music, or literary works; merchandise; video game assets; tokenized rewards and loyalty points such as airline miles and credit card points; and event tickets.

- **“Meme coins,”** as the Commission Staff rightly pointed out, “typically are purchased for entertainment, social interaction, and cultural purposes, and their value is driven primarily by market demand and speculation.”<sup>6</sup>

These subclassifications of digital commodities exclude tokenized versions of real world assets, stablecoins, and deposit coins. Stablecoins are currently considered by the CFTC to be commodities, but we exclude them here for the simple reason that bipartisan legislation is actively being considered in Congress that would create a separate “payment stablecoin” definition. To this end, the Commission should regard stablecoins as outside of its purview with respect to their status as a securities. We should expect new types of digital commodities to emerge as their regulatory treatment becomes more clear to innovators in the digital asset ecosystem, and the Commission should continue to view these assets as outside of their purview in developing its securities-oriented regulatory regime.

The second category of digital assets, *digital securities such as tokenized debt, equity, and registered funds*, offers the greatest scope for impact by the Commission and should be its primary focus. Traditional securities markets are worth more than \$100 trillion globally. This dwarfs the size of the nascent digital commodity market, so that, even though the latter is currently larger, facilitating the transition of traditional securities markets to a digitally native format will have a far greater economic impact. Importantly, the Commission already has the necessary authorities to make this happen. Such a transition would offer incalculable efficiencies and benefits to securities issuers and purchasers globally.

Within the digital commodity classification there can be two additional subtypes. The first is *digital commodities sold as part of an investment contract*, which has been the focus of litigation in the courts for several years. While the Commission can bring much needed clarity, particularly with respect to its past actions, Congress will also likely need to establish clear boundaries and guidance. It is worth reiterating that, regardless of whether a transaction implicates securities laws, the asset itself is never a security.

The second is *digital commodities that provide for intrinsic rights to future financial benefits*, is arguably the most interesting, is not yet well defined in practice, and does not concretely exist as an asset class in the U.S. due to regulatory uncertainty. These are digital assets that embed as part of a smart contract a right to a future financial benefit that is intrinsic to the operation of the asset, and could include a pecuniary payout commensurate with a traditional security, such as a share of profit from the protocol or network in which the asset operates.

As the RFI states, this second digital commodity subtype has the intrinsic characteristics of a security, but not necessarily conventional characteristics, and depending on the design may or may not implicate securities status. The biggest impediment to the developing a regulatory framework for this category, to the extent it does implicate securities status, is: (1) the conditions that require registration; and (2) a registration and disclosure regime that is fit-for-purpose.

Common across the two subtypes of digital commodities is the potential for post-sale obligations regarding profits, either as part of the transaction in which they were sold or embedded in the asset itself. For category 1(a), the obligation takes the form of a promise to

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<sup>6</sup> Securities and Exchange Commission, Division of Corporation Finance, *Staff Statement on Meme Coins* (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

share in future profits of the enterprise that accompanies the sale of an asset associated with that enterprise. In this way the obligation is made as part of the transaction pursuant to which the asset is sold but is not explicitly tied to (or embedded in) the asset. Here, the digital asset is a commodity, but it may be offered or sold in a securities transaction depending on the application of the *Howey* test. If there is no post-sale obligation, then it is an asset sale that should not be subject to securities laws.

The facts and circumstances of a post-sale obligation, if present, play an important role in the determination of securities status. Many promotional statements preview future enhancements to a product or service or operational commitments. These are simply ordinary course commerce and do not necessarily implicate securities laws. Statements of these types could of course impact the value of the product, but without a promise of financial returns this does not make the asset a security.<sup>7</sup>

Similarly, for category 1(b), securities laws are not necessarily implicated even when there is an explicit post-sale obligation related to the future profit share from network or protocol token. A revenue share of this nature bears some similarity to dividends or interest from a stock or a bond, but if the profit does not flow from a business enterprise and the direct efforts of others as is required in an investment contract, then the asset is not a security. For example, a DEX token that algorithmically returns market making fees to its holders is a revenue share that would not confer security status. This determination, as we discuss in more detail below, materially depends on whether a protocol from which the token derives revenue is sufficiently decentralized.

Importantly, while these categories provide an overview of token classification as it exists today, the Commission should be mindful that these categories may not be dispositive and new types of tokens will be created over time as the market evolves. However, this is a strong starting point for the Commission to frame proposed rules on digital securities and provide immediate clarity.

## II. Public Offerings and Registration Exemptions and Safe Harbors

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*7. Could disclosure guidance and/or targeted relief address the concern, or are new forms or other mechanisms needed?*

*8. Should the Commission develop tailored disclosure requirements for offerings or classes of specific categories of crypto assets? What types of disclosures would be important for investor protection? Should disclosure occur both at the time of sale and on an ongoing basis? If so, what information should the ongoing disclosure contain and how should that disclosure occur?*

*9. Does Regulation A under the Securities Act, including the disclosure and ongoing reporting requirements, provide a useful vehicle to conduct offerings of crypto assets? Would revising aspects of Regulation A make it more useful for crypto asset offerings?*

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<sup>7</sup> For example, in another context, the same way they might impact the value of an EV where the manufacturer previews its upgrade roadmap at the time of sale.



10. Should the Commission consider a version of Rule 195, my proposed token safe harbor? Is the iteration on my proposed safe harbor known as "Safe Harbor X," or some other iteration, a better approach?

11. Should the safe harbor be available retroactively for projects that comply with the disclosure requirements?

12. If a safe harbor of some form is the right approach, what disclosure requirements would be feasible for early-stage projects to provide to token purchasers the material information regarding the blockchain project, crypto assets, and development team? What information should be required to be updated on an ongoing basis, and how should that information be provided?

13. At the expiration of the safe harbor as envisioned, if the network were sufficiently decentralized or functional, registration of the tokens would not be required. If decentralization is used as an indicator of network maturity, should the Commission define objective quantitative thresholds (such as percentage thresholds for ownership and control) to provide greater clarity for issuers, developers, or minters of tokens regarding whether their networks and protocols are sufficiently decentralized and to allow third parties to verify decentralization?

- Is dispersion of control a better framework than decentralization? If so, how should ownership of governance tokens and voting rights be considered in assessing dispersion of control? How should the delegation of voting rights be taken into account?
- If an exit marker is achieved, who should be responsible for notifying the Commission?

14. How should the decentralization of a deployed protocol best be evaluated? How should permissioned aspects of crypto-adjacent software or participant roles, such as validators, relayers, and sequencers, be considered? Are there tech-neutral thresholds that can be agreed upon for determining thresholds for decentralization?

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As discussed above, a digital commodity is not itself a security, but can be offered and sold as part of a securities transaction. As an initial matter, the Commission should clarify when the sale of a digital commodity could implicate securities laws pursuant the discussion above. One starting point could be when an issuer raises capital from digital commodity purchasers based on a corresponding commitment to use the capital raised to develop and launch the digital commodity – e.g., network or protocol token ("**tokens**") – and associated network in a manner that sets a reasonable expectation of profits in the minds of such purchasers based on such commitment.

However, unlike with traditional securities, when tokens are sold as part of a transaction that implicates securities laws, the value of the token is not dependent on the operations of the issuer or the issuer's financial condition. Rather, the value of a token routinely depends on the general supply and demand for the token. In such cases, once the token is operational, there is little information possessed by the creator of the token that is unavailable to the public or that impacts the value of the token, making traditional securities disclosures about an issuer irrelevant to holders of tokens.

- *We strongly support a safe harbor (or conditional exemption) from registration for offers and sales of network tokens and protocol tokens through investment contracts provided that the issuer provide a set of disclosures that are useful and relevant to the token*

Today token sales are often limited in the first instance to accredited investors in transactions conducted pursuant to Regulation D. While such sales provide an established path for developers to raise capital, they do not provide an efficient mechanism for developers to distribute the tokens to intended users of the associated network, many of whom do not qualify as accredited investors.

This is important because to access and use a protocol or network, users generally must first purchase the tokens. A safe harbor or conditional exemption for token sales to retail participants, conditioned on tailored disclosure requirements, would solve this problem. To this end, an issuer of a token that is sold as part of a securities transaction (investment contract) should be permitted to rely on an exemption from Section 5 of the Securities Act and, where required, Section 12 of the Exchange Act if it provides a tailored list of disclosures at the time of the initial primary securities transaction.

For development teams seeking to raise capital from public investors to build a project, the following information, or some subset of it, would be feasible and relevant to provide to token purchasers regarding the blockchain project, tokens, and development team.

- **Token Issuer, Affiliates, and Development Team Information:** Information sufficient to identify:
  - the issuer's principal executive officers, directors, and related persons who would provide essential ongoing efforts towards the development of the token or associated network/protocol and each such person's relevant experience and qualifications.
  - Any third party or affiliate that provides essential ongoing efforts towards the development of the token or associated network.
- **Plan of Development:** Description of the project purpose, the current state and timeline for the development of any blockchain system to which the token relates, including anticipated costs of the development relative to the amount of funding sought or secured and the anticipated use of proceeds raised in the offering. Relevant information could also include:
  - Plan of distribution for tokens sold in the offering
  - Path to decentralization for the future
  - Description of native blockchain to the extent one exists for a token.
  - Anticipated post launch support activities
  - Development team statement of the risks associated with the above plan
- **Additional Disclosures:** Descriptions of any:
  - Material conflicts of interest and related party transactions, if any.
  - Material agreements the issuer has entered into with regard to the development and ongoing support of the tokens or associated network.
- **Token Allocations:** to which the issuer, its affiliates, and the respective key members

thereof have rights and, on an aggregated basis, related information, if any, pertinent to the development team or related persons (e.g., employees, consultants, advisors, key vendors, and affiliates).

Additional information that may be relevant to a purchaser regardless of whether the token implicates securities laws.

- **Source code and Security:** the source code and cyber security details for any blockchain system to which the token relates:
  - Blockchain level source code details, including specifically permissions (to confirm that admins cannot make certain changes without additional approval).
  - Information about hacks/previous security issues relevant to the token and/or associated network.
  - Results of any third party audits completed.
- **Token Governance:** Information regarding:
  - Governance mechanisms for implementing changes to the associated network or forming consensus among holders of such network tokens, including any decentralized governance system.
  - Smart contract/governance control mechanisms and permissions, including whether specific persons have material influence, authority, or control over permissions.
  - If, how, and when the token issuer intends for the blockchain system to become decentralized, and a review of progress achieved in satisfying any criteria required for such certification.
- **Tokenomics:** Digital asset supply and distribution information, pricing, lockups, and release schedules:
  - Currently circulating supply compared to total token supply.
  - Calculations underpinning distribution of token rewards, if any, whether through staking, reallocation of network fees, or some other mechanism
  - Description of how the issuer or relevant governing body will manage and use tokens held in “treasury” or by “Foundation” or similar arrangement.
  - Prior sales of tokens and related rights by the issuer or development team as well as key terms of such sales.
  - Token unlock schedule for the issuer, development team and, where applicable, related persons and investors.
  - Information explaining the token launch and supply process and amount, including the number of tokens to be issued in an initial allocation, the total number of tokens ever to be created on the associated network, the release schedule for the tokens, the total number of tokens then outstanding, and other details regarding whether the token supply is intended to be inflationary vs. deflationary and whether issuance is intended to be fixed vs. variable.
  - Information on any applicable consensus mechanism or process for validating

transactions, method of generating or mining digital assets, and any process for burning or destroying tokens on the blockchain system.

- Information explaining the primary blockchain economic mechanisms; and
- Sufficient information for a third party to create a tool for verifying the transaction history of the token.

Other potential considerations that would apply conditions to the exemption or safe harbor.

- **A limitation on token sales by the development team** and related parties for their own account until the network or protocol has become sufficiently decentralized. Such a limitation would help ensure the issuer, development team and related persons have continued economic incentive to complete the project.
- **Retail purchaser Offering Limit.** Existing offering exemptions like Regulation Crowdfunding and Regulation A are subject to retail investor investment limitations, which could be considered here.
  - Maximum per offering dollar investment thresholds could be implemented to help insure token dispersion commensurate with intended associated network usage, but, if too low, the threshold could arbitrarily limit innovation (i.e. not all projects will have same capital raising needs).
  - Percent of total offering limit is an alternative approach, with total retail offering tied to the amount offered to unaffiliated accredited investors. Such an approach would limit sales to retail investors to some proportion of sales made to traditionally more experienced and sophisticated investors that engage in independent diligence efforts.

The information described above may not be relevant to all projects, but describes common considerations used to inform token listing decisions at exchanges, and investment decisions related to early-stage token projects. A lot of the information may be readily available or otherwise publicly verifiable by observing source code, smart contract details, and other onchain information. Some of the information can only be reliably produced by the issuer or development team, but this information will become less relevant as projects mature and to the extent they become decentralized.

Finally, the above disclosures are relevant to the sales of tokens as part of any potential investment contract. At the other end of the spectrum are broad categories of token transactions that are not securities transactions and that do not implicate securities laws. For example: (1) primary and secondary sales of tokens that have established functionality on an associated network; and (2) token airdrops broadly do not implicate securities laws because such transactions do not raise capital for an issuer or otherwise set profit expectations in the minds of recipients based on an issuer's ongoing efforts or commitments.

→ *Any ongoing reporting requirements should be limited to updates regarding key changes in the project—i.e., to the extent they are material to a continued understanding of the project.*

To the extent that ongoing disclosure is required, it should be limited to material changes in the token and associated network and, to the extent that the token and/or associated network was

not yet operational or was still in development at the time of any securities transactions pursuant to these rules, any material developments related to the issuer's ability to complete its initially disclosed development efforts.

- *The safe harbor should be available retroactively for projects that comply with the disclosure requirements, and grandfathered for seasoned assets that no longer have a development team.*

Any safe harbor provision or exemption that is adopted should be made available retroactively so that projects launched before adoption can similarly benefit. Token projects have long sought such protections and have otherwise voluntarily made white papers and other relevant disclosures available to purchasers and users of their tokens and associated networks. Truing up past practices with going forward standards is an appropriate course of action.

However, many projects are no longer supported by their original development teams, and are either decentralized or well on the path to decentralization. As such, the information described above may no longer be available, may not have a well-identified reporting party, or the information may no longer be relevant even if available with a well-identified reporting party. In instances where a token project is no longer supported by its original development team, third parties, e.g. a trading platform listing the asset, should be able to provide the requisite information based on publicly available/observable information in a manner that would result in the tokens and associated networks being able to benefit from the safe harbor provision or exemption.

- *Any ongoing reporting requirements should be suspended when a network or protocol is sufficiently decentralized, and should otherwise be limited to material changes to information initially provided that is not otherwise separately publicly-available.*

Unlike with traditional securities, The appropriateness of ongoing reporting declines with time as a token or associated network becomes decentralized. In these circumstances, ongoing, periodic reporting commensurate with traditional securities is not necessary. Information related to achieving decentralization milestones, or other material changes to the development of the token or associated network while under the control of the issuer, should form the basis for any ongoing reporting.

Termination of any ongoing disclosures requirements should be based on objective criteria that can readily demonstrate when the issuer or original development team is no longer exercising essential managerial control of the token or associated network – i.e. “sufficiently decentralized.” Termination of reporting should be able to be accomplished through a notice filing with self certification of compliance with such criteria.

A token and its associated network could be deemed sufficiently decentralized when it operates autonomously, with full transparency, in a permissionless environment. Below are the characteristics of such a state.

- The associated network is either: a blockchain, whose blockchain protocol is freely and publicly available open-source code; or a blockchain smart contract, whose source code is freely and publicly available open-source code and is recorded on a blockchain.
- No person or group of persons under common control has: the unilateral authority, via operation of the token or associated network, to restrict, censor, or prohibit use of the

token or associated network; or private permissions, hard-coded privileges, or similar rights granted by the source code of the blockchain protocol or blockchain smart contract of the token or associated network that provide preferential treatment as compared to other similarly situated persons;

- The token or associated network has reached an autonomous state; and no person or group of persons under common control has the unilateral authority, directly or indirectly, to alter or change the functionality, operation, or rules of consensus or agreement of the token or associated network.

Dispersion of control is a useful framework to assess the state of decentralization, but is not directly comparable to the paradigm of control for traditional securities. Notably, regardless of the concentration of ownership of a token, as long as the associated network on which it functions cannot be altered by the protocol's decentralized governance system and thereby protects against anyone obtaining unilateral authority over others' assets, limit others' access to the token or associated network, or alter the protocol's autonomous operation in accordance with transparently encoded rules without private permissions or privileges, then the token or associated network should be considered sufficiently decentralized.

→ *We do not think revisions to Regulation A would provide an appropriate framework for the offer of tokens through investment contracts without significant update to both disclosure requirements and the review process.*

We agree with the RFI that an appropriate exemption from registration is necessary. However, Regulation A was designed for use by the issuance of traditional securities, not commodities issued by way of an investment contract, and attempting to retrofit Regulation A to accommodate the issuance of digital commodity would be more challenging than designing an exemption from whole cloth.

### **III. Trading Tokenized Securities on Centralized and Decentralized Exchanges**

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*15. Should the Commission create a new entity registration status with tailored registration requirements for any platform that trades crypto assets that are securities? Should the Commission use or adapt the existing requirements for national securities exchange registration or the alternative trading system exemption from such registration, and if so, how?*

*16. What updates to the Commission rulebook are needed for side-by-side pairs trading of securities and non-security crypto assets to allow for enhanced interoperability and composability in finance?*

*17. Does execution in offchain order books or on blockchain networks pose complexities for broker-dealers in satisfying any applicable best execution obligations? Does onchain execution pose complexities for broker-dealers in satisfying their best execution obligations, given onchain complexities such as transaction ordering and block construction? Should any rules, guidelines, or disclosures be modified to address broker-dealer execution reasonably available under the circumstances in offchain and onchain trading environments?*

*45. The Commission recently adopted rule amendments to shorten the standard settlement*

cycle for most broker-dealer transactions from “T+2” to “T+1,” subject to certain exceptions. Tokenization is often characterized as an innovation that facilitates instant or simultaneous settlement (“atomic settlement”) if all parts of a transaction are executed and settled on the same blockchain. What are the benefits of atomic settlement, and what are the risks? Should the Commission consider taking any actions that would encourage adoption of atomic settlement?

46. What issues are raised by the tokenization of securities subject to National Market System (“NMS”) requirements? Should the Commission clarify any requirements or provide relief from any requirements under Regulation NMS? Are there any other SEC rules that should be clarified or amended to address the trading of tokenized equity or debt securities?

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### Centralized Exchange Trading Recommendations:

There is tremendous opportunity to move forward with the trading of tokenized traditional securities, but the intermediated (centralized) models will require a tailored registration regime – one that can be advanced with relative ease if certain key principles are met. Most notably, registration as a national securities exchange (“**NSE**”) is neither practical nor necessary for two primary reasons. First, the traditionally required (or assumed to be required) separation of exchange, custody, and broker intermediation is a legacy of a paper-based system, where the clearance and settlement of transactions moved faster than the ownership reconciliation process. The trading of securities that can be recorded and transferred onchain should not be limited by this model. Second, and relatedly, NSEs are SROs that regulate their members in ways that are incompatible and unnecessary with vertically integrated practices that digital asset trading platforms have developed outside of securities markets. Digital asset trading platforms entail a direct access model that is more efficient than a membership model and thus more closely resemble ATSs than traditional exchanges.

→ *With minimal exemptive or no-action relief, Regulation ATS can be used to facilitate trading of digital securities on centralized trading platforms*

The Commission can readily facilitate the trading of digital securities on centralized platforms with targeted exemptive or no action relief to existing Regulation ATS (“**Reg ATS**”) rules, which we describe in more detail below. This requires acknowledging that Reg ATS does not prescribe clearing and settlement processes and can accommodate the enablement of atomistic (i.e., T-0 or “real-time”) settlement, which is otherwise not a current practice at ATS platforms. Today, the custody and clearing of securities are predicated on trades settling T+1 so that third-party intermediaries are afforded time to coordinate, reconcile, and settle transactions. Among other things, this legacy process entails using a custodial bank or broker-dealer to hold securities through the Depository Trust Company on behalf of investors – a process designed to “immobilize” what were once paper certificated securities so that electronic trading and ownership reconciliation could move at different speeds.

A workable ATS framework for digital securities trading should permit blockchain-based trading systems to eliminate any requirement for third-party custodians or broker-dealers to conduct post-trade settlement. Moreover, it should accommodate trading activity combined into a single tech stack, as it is currently done for non-securities crypto trading. For example, centralized platforms like Coinbase that offer trading in digital commodities such as BTC and ETH also

serve as custodian and settle transactions in real-time on their own books. When these trading platforms execute transactions on behalf of clients at other trading venues, or when customers request that their assets be transferred to a different custodian or exchange, or to a self-custodial wallet, the associated asset transfers are recorded onchain, wallet to wallet, without the involvement, much less the need, for additional intermediaries. In this way, the functions of operating a digital asset trading platform are intrinsically linked to, and requires, providing and maintaining custody.

A workable ATS model would also continue to ensure important investor protections, and in many cases, enhance them. For example, securities recorded on distributed ledgers offer a transformational approach to transparency. Assets are at all times visible and transaction history never disappears. The process of verifying and monitoring the ownership and status of an asset – such as through proof of reserves – can be automated, eliminating the need for trust in and reliance on another intermediary. Automation streamlines these transactions, reduces delays, and minimizes the operational overhead associated with traditional verification. And these transparency features can enhance traditional market surveillance functions. More generally, all the same regulatory functions performed by traditional intermediaries, like transfer agents, can be performed safely yet more efficiently through permissionless blockchain systems.

Below are the specific recommendations we believe the Commission will need to undertake through a combination of class no-action letters, staff guidance, and ultimately rulemaking proposals to codify a durable regulatory framework for digital securities trading practices.

→ *Permit a digital security trading platform to provide custody of digital securities itself or through a single, affiliated broker-dealer*

For a real-time settlement model to work for digital securities at a centralized exchange, a registration regime needs to accommodate a vertically-integrated approach to custody that permits a trading platform to register as that custodian. In turn, all users of the platform, such as affiliated or unaffiliated broker-dealers, would need to be permitted and required to custody their digital securities with that platform or through the same custodian. This should not require relief from any requirement for an ATS willing to subject itself to Rule 15c3-3 or make arrangements with a carrying broker or other custodian to perform the settlement function.<sup>8</sup>

In securities markets, there is a precedent for exchanges to maintain affiliated broker-dealers, and the use of such broker-dealers has been established in such a way as not to violate considerations such as fair access. Specifically, most national securities exchanges historically have had a captive broker-dealer to use as an outbound router to other exchanges. A captive broker-dealer that exists to facilitate settlement – or an exemption from the broker-dealer registration requirement for an otherwise registered trading platform to perform this function – would be consistent with this already approved approach to oversight.

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<sup>8</sup> Although “mere custody” of securities, on its own, may not itself require a firm to register as a broker-dealer, the Commission and its Staff have regularly viewed custody combined with transaction execution or other services as potentially requiring registration under Section 15(a). See, e.g., Transfer Online, SEC Denial of No-Action Request (May 3, 2000) (transfer agent may be subject to broker-dealer registration when, in addition to custody services, it brings buyers and sellers of securities together, receiving a fee based on the completion of a transaction); M&A Brokers, SEC No-Action Letter (Jan. 31, 2014); GlobalTec Solutions, LLP, SEC No-Action Letter (Dec. 28, 2005); Swiss American Securities, Inc., Streetline, Inc., SEC No-Action Letter (in each case, granting relief from broker-dealer registration where the proposed services did not also include custodying investors funds or securities).



This model would also provide additional safety and soundness benefits that do not currently exist. Clearing agencies primarily exist today because there is a risk that, between the time a trade is effected and the time it settles, one party may fail to deliver either the money or the assets. Atomistic settlement through entirely pre-funded trades, as is typical for digital commodity trading platforms, removes this risk. For example, NSCC clearing fund requirements that result in the temporary suspension of trading at certain brokerages during the infamous Gamestop episode in 2021 due to inadequate capital, would not happen if digital securities were to trade in the same way that digital commodity trading takes place today on centralized platforms.

→ *Ensure that views on fair access do not impede trading platforms from offering a direct access model*

The Commission should not distort the concept of fair access to restrict an ATS from limiting participation on either competitive or technical grounds. Notably, ATSs do today, and should be able to continue to, provide a direct-to-customer access model. This stands in contrast to NSE registration requirements that would encumber a direct-trading model, pursuant Section 6(b)(2) of the Exchange Act – the “fair access” rule. If required, such a rule may prohibit a digital security trading platform from limiting membership to a single broker-dealer (i.e., itself or its affiliate) or multiple broker-dealers that commit to handling custody through a single entity custodial entity (i.e., the exchange, an affiliate of the exchange, or a third party custodian). It is otherwise not practical or possible to admit broker-dealers as members that separately handle custody for their customers, as it would require post-trade netting and a clearing process to settle all of the trades, which reintroduces risk and is precisely the inefficiency sought to be removed.

Similarly, prohibiting direct access to a trading platform by non-broker-dealers such as is the case for NSEs under Section 6(c)(1) of the Exchange Act would forestall one of the primary benefits of existing digital commodity trading platforms, which do not discriminate against sophisticated traders just because they are not registered with the SEC. Broker-dealer exchange membership is a legacy of trading practices that predate computers, and today’s technology does not require intermediaries to represent purchasers, even if we expect that many purchasers will still seek such intermediation.

→ *The Commission should not prescribe classically considered anti-competition restrictions for digital securities trading platforms*

Finally, the SEC should allow a trading platform, or an affiliate of a trading platform, to be fully owned by a single entity and act as a full-service broker for customers. Traditional concerns with permitting this center on: (i) the potential unfair advantage that one broker-dealer would have; (ii) conflicts of interest the exchange would face in regulating its affiliated broker-dealer member; (iii) and/or staff historically concerns about the concentration of ownership of a trading venue.<sup>9</sup> However, restrictions of this nature make sense only when there are a handful of

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<sup>9</sup> See, e.g., Order Approving Proposed Rule Change by the Pacific Exchange, Inc., as Amended, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 Concerning the Establishment of the Archipelago Exchange as the Equities Trading Facility of PCX Equities, Inc., Exchange Act Release No. 44983 (Oct, 25, 2001) (“The Commission recognizes that the potential for unfair discrimination may be heightened if a national securities exchange or its affiliate owns or operates a broker dealer. This is because the financial interests of the national securities exchange may conflict with its responsibilities as an SRO regarding the affiliated broker-dealer. For this reason, the national securities exchange must not serve as the self-regulatory organization that is primarily responsible for examining its affiliated broker-dealer. Moreover, a conflict of interest would arise if the national securities exchange (or an affiliate) provided advantages to its broker-dealer that are not available to other members, or

large exchanges with exclusive listings to which each broker must route its orders, and thereby prevent an exchange from unfairly favoring some brokers over others. In the digital commodity markets, the competitive dynamic is different, with intense competition taking place between exchanges, not between brokers. Customers can easily deplatform assets and move them to other trading venues, and many of these venues are non-custodial (decentralized) exchanges, giving unprecedented customer choice over how to route their orders. This structure should also be allowed to develop for digital securities.

→ *There should be no restrictions on the 24/7 trading of digital securities*

Securities on NSEs currently do not trade 24/7, but open and close each day through an auction process on their listing venue. As the SEC has raised in non-digital asset contexts, NSEs are limited in their ability to operate 24/7 in part due to the requirement that they coordinate with, for example, securities information processors (“SIPs”).<sup>10</sup> SIPs do not currently operate 24/7, and because NSEs are required to coordinate with them, NSEs are thereby also limited in their ability to operate 24/7.

As discussed above, clearing agencies are no longer needed with the atomistic settlement capacities associated with digital assets, removing one of the potential hurdles to 24/7 trading. We have also shown in other contexts that a SIP is not required for market arbitrage to yield efficient market prices.<sup>11</sup> The Commission should confirm that a digital asset trading platform can operate 24/7 without traditional intermediaries and information processes where equivalent or better outcomes are possible. Digital asset markets are global, and 24/7 trading hours provide hedging benefits and allow customers to react in real time to breaking news and market developments on a single venue.

→ *Exempt centralized digital security trading platforms from Regulation NMS or adjust these rules to be compatible*

The most inapposite burden that would inhibit efficient trading of tokenized equity securities in a digital asset ATS structure is Regulation NMS (“**Reg NMS**”). In particular, this regime assumes the existence of a national market in the U.S. for each listed security, and imposes a number of requirements to reconcile pricing, trading, and fees across venues. Reg NMS rules create order-routing incentives among broker-dealers that are not necessary for digital securities trading. Moreover, nothing prevents broker-dealers from employing the same order routing methods they use for traditional securities trading.

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provided a feature to all members that was designed to give its broker-dealer a special advantage”). The Commission has also required national securities exchanges to implement rules prohibiting such exchanges from being affiliated with a broker-dealer member without prior SEC approval. See, e.g., New York Stock Exchange Rule 2B; Nasdaq Stock Market, General Rule 2, Section 4(a); Cboe BZX Exchange Rule 2.10.

<sup>10</sup> Even in approving a recent application for a national securities exchange that proposed to trade 23 hours a day, five days a week, the Commission’s approval was contingent on the exchange not trading during its proposed new extended hours (the “24X Market Session”) until other conditions involving third parties were met. See *In re Application of 24X National Exchange LLC*, Exchange Act Release No. 101777 (Nov. 27, 2024) (granting exchange registration provided that the 24X Market Session would not operate unless and until the equity market data plans are operational during the same hours). See also *In re the Application of 24X National Exchange LLC for Registration as a National Securities Exchange*; Order Instituting Proceedings to Determine Whether to Grant or Deny an Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934, File No. 10-242, pg 16, (May 31, 2024) (citing Exchange Act § 6(b)(5), which requires an NSE’s rules to “foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities...”).

<sup>11</sup> See, e.g., U.S. Securities and Exchange Commission, [Ether ETP Approval Letter](#), p. 14 (May 24, 2024).

Providing relief from Reg NMS requirements to digitally native ATS trading venue gives the Commission an opportunity to rethink certain Reg NMS rules, allowing Commission Staff to observe how and to what extent the economics of market arbitrage can provide better execution outcomes in terms of price, size, and speed of placed orders than what the Commission can generate in other contexts through legal mandates.

→ *Exempt order protection/trade-through rule*

Chief among the rules that should be reevaluated is Rule 611 – the order protection/trade-through rule. In traditional securities trading, the rule prevents a broker from executing an order on one venue if it is at a price inferior to what is displayed on another venue. But it privileges price and speed over size and fill rate. The result is distortions that introduce worse order execution outcomes, tremendous complexity, and perverse incentives for structuring trading activity. At times, it has fostered a “gotcha” approach to regulatory surveillance in circumstances where firms have inadvertently not fulfilled requirements in keeping with the demands of examiners.

The Commission should not impose order protection rule requirements and, instead, observe over time how tokenized trading markets can perform without these order handling rules. We have detailed in prior comment letters that highly liquid digital assets like BTC and ETH already have better market quality measures than all but a few listed securities (e.g. APPL, TSLA, and NVDA).<sup>12</sup> Of course, smaller initial liquidity pools for tokenized versions of traditional securities could lead to price differences across traditional and tokenized securities, but these are the types of dislocations that market makers are well-positioned to close. Moreover, there will be strong market incentives to encourage improvements, and traditional market participants who make use of tokenized platforms will demand high levels of execution quality in connection with the flow that goes to these venues. To this end, the Commission should give markets an opportunity to operate without the cumbersome artifice of legacy order routing requirements until and unless markets do not develop in a way that demonstrates they cannot or chose not to provide high execution quality.

→ *A digital securities trading facility should be exempt from the requirement to transmit quotation for NMS stock to an NSE or FINRA for inclusion in the consolidated tape*

Consistent with not imposing order protection rule requirements on the trading of tokenized equities, there should be exemptions, at least initially, from the requirement for trading venues to report trade data to an exchange or SRO, or if such data is required to be reported, that it not be included in the national best bid and offer (“NBBO”). It is otherwise not clear how or why an NBBO as would be required by Reg NMS should be established for digital securities given that they trade globally across many different types of platforms, including DEXs and other trading venues that do not entail a classical limit order book. It is also unclear what data would be required to be reported to the tape as “core data,” or what the equivalent of the “tape” would even be or what purpose it would serve.

→ *Permit side-by-side and pairs trading of digital securities and commodities*

There is good economic justification for digital securities and commodities to trade side-by-side at a single trading venue. This includes stablecoins, which can serve as a digitally-native cash

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<sup>12</sup> Coinbase, [Grayscale Ether ETP Application – Coinbase Response Letter to SEC](#), p. 14 (Feb. 21, 2024).

settlement instrument. In many cases, digital commodities like BTC and ETH trade at a higher velocity and with better market quality characteristics than all but a handful of the largest U.S. equity securities. The digital asset technology required for trading spot instruments, whether securities or commodities, is sufficiently similar so that they could trade on the same platform with appropriate accommodations for the tokenization of securities as discussed above.

It is not uncommon in traditional markets for a single entity to be dually registered, e.g. registered broker-dealers and futures commission merchants that offer side-by-side trading of securities and futures. The same should be permitted here, with venues registering with the SEC for digital securities trading and with either states or the CFTC for digital commodities trading. Of course, until Congress provides a federal framework for the regulation of digital commodity spot trading, such activity is subject to state oversight. For example, Coinbase is currently regulated by the NY Department of Financial Services (NY DFS) under a BitLicense regime. Other states are also considering or have recently passed laws to regulate the trading of digital commodities.<sup>13</sup> Accordingly, side-by-side trading will require dual registration at the state and federal level until and unless state registrations are preempted by federal authority.

In addition to trading venues offering side-by-side trading of digital securities and commodities, venues could also offer paired-trading of digital securities and commodities. Unlike traditional securities marketplaces, which typically pair a security against a fiat currency, digital commodities are generally traded against stablecoins – a digitally-native currency – or other digital commodities like BTC. Trading venues that offer both digital securities and commodities could similarly pair trading of an equity to BTC or ETH. Of course, the permutations of pairing are endless and the economics are unlikely to support more than just a few virtual settlement instruments beyond a stablecoin.

### **Decentralized Exchange Trading Recommendations:**

While the RFI does not explicitly address the potential trading of digital securities on a DEX, DEXs are an important part of the digital asset ecosystem and should be permitted to engage in securities transactions. DEXs are applications that, once established, operate autonomously on the blockchain via smart contracts to facilitate peer-to-peer digital security trading. Participants do not rely on an intermediary to custody their assets or establish a price for a transaction. Order execution is performed wholly through code or otherwise depends on a decentralized network of validators, none of whom exert control over the DLT system. In this respect, there is no responsible party for a transaction other than the two participants on either side of the trade.

This point bears repeating: any regulatory regime the SEC advances should include recognition of DEXs – otherwise we run the risk of artificially inhibiting the development and deployment of approaches to asset custody, pricing, and transaction execution that are among the most promising and transformational developments of the past few years.

→ *The Commission should formally withdraw the preliminary views expressed in the 3b-16 Reopening Release and make clear a DEX is not included in the definition*

In its proposed amendments to Rule 3b-16 under the Exchange Act (the **“3b-16 Reopening Release”**), the Commission considered whether a DEX is considered an exchange and should be

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<sup>13</sup> E.g., California’s Digital Finance Assets Law, AB-1934 (2024); Louisiana’s Virtual Currency Business Act, SB 185, 2023 Reg. Sess. (2023).

required to register as an NSE or ATS.<sup>14</sup> This of course is not possible for a truly decentralized DEX. Nonetheless, at that time, the Commission shared its belief that DEXs may be legally required to register as NSEs or ATSS,<sup>15</sup> while also acknowledging that, in practice, a DEX would not be able to comply and might be forced to “exit the market for crypto asset security trading services rather than continue operations.”<sup>16</sup>

The Commission should adopt an explicit exemption from the definition of “exchange” for appropriately decentralized DEXs. In doing so, and more broadly, when determining whether a DEX – or more generally any protocol – is sufficiently decentralized, the Commission should consider the following principles:

- The protocol is truly permissionless and does not empower any person or group of persons under common control with unilateral authority, via operation of the protocol or participation in the protocol’s governance system, to restrict or prohibit use of the protocol, including, but not limited to: (i) using or transmitting a digital security; (ii) deploying software that uses or integrates with the protocol; (iii) operating any client, node, validator, or other form of computational infrastructure with respect to the protocol; or (iv) participating in any decentralized governance system.
- The protocol: (i) functions without human intervention in accordance with pre-established, transparent rules encoded within the source code of the protocol; and (ii) no person or group of persons under common control have the unilateral ability, via operation of the protocol or participation in the protocol’s governance system, to: (A) determine the final outcome of decisions relating to the development, provision, publication, management, or administration of the protocol; (B) determine the final outcome of decisions relating to the openness, functionality, autonomy, permissionless nature, distribution, credible neutrality, or economic independence of the protocol; (C) unilaterally alter the rules of consensus or agreement of the decentralized governance system; or (D) unilaterally confiscate a user’s assets in the protocol without the user’s permission in a way that is not part of expected protocol operations.
- The source code of the protocol does not empower specific persons with private permissions, hard-coded privileges, or similar rights over other similarly situated persons.
- The DEX is non-custodial: the protocol does not custody the digital assets that are traded through the DEX.
- The protocol’s source code is freely and publicly available and is recorded for execution by clients on a blockchain.

These principles, founded on open, permissionless, autonomous, and distributed blockchain systems, are generally recognized by digital asset ecosystem participants even if views may differ on the precise language or establishment of a control threshold. A control threshold in

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<sup>14</sup> Exchange Act Release No. 34-97309, (May 5, 2023).

<sup>15</sup> See, e.g., Paul Grewal, Re: Supplemental Information and Reopening of Comment Period for Amendments Regarding the Definition of “Exchange,” File No. S7-02-22, pg. 5 (Aug. 12, 2024), <https://www.sec.gov/comments/s7-02-22/s70222-505235-1472802.pdf> (“Coinbase 2024 3b-16 Comment Letter”); Jai Ramaswamy et al., Re: Supplemental Information and Reopening of Comment Period for Amendments Regarding the Definition of “Exchange,” File No. S7-02-22, pg. 5 (June 13, 2023), <https://www.sec.gov/comments/s7-02-22/s70222-205099-412162.pdf> (“a16z 2023 3b-16 Comment Letter”).

<sup>16</sup> Exchange Act Release No. 34-97309 (May 5, 2024) at n. 368.

particular has tradeoffs – it is a well established metric in securities laws, but unsettled in terms of what level below majority control represents effective control. That said, as long as the immutable aspects of the protocol's source code (i.e., those aspects that cannot be altered by the protocol's decentralized governance system) maintain core protections against anyone obtaining unilateral authority over others' assets, others' access to the protocol, or the protocol's autonomous operation in accordance with transparently encoded rules without private permissions or privileges, then by definition the protocol should not be susceptible to the sort of centralized control that merits regulation as an exchange or ATS.

## IV. Market Surveillance

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*18. The crypto markets are inherently transparent because they use open-source data, from public blockchains to open application programming interfaces ("APIs"). Are there programmatic/technological ways that crypto market participants, intermediaries, potential self-regulatory organizations, or regulators can monitor crypto markets using open-source data? How would this take into consideration nested accounts on centralized exchanges, given that this activity may not appear in public ledgers? Is open-source data sufficient for the market to monitor trading and therefore what non-public information might warrant mandatory disclosure? What sort of open-source tools can be used for enhanced transparency, such as proof of reserves, or proof of holdings? What are the limitations of such tools and such data?*

*19. With the understanding that both APIs and public ledgers can provide order books, what would be a good strategy for regulators to efficiently ingest and analyze order book data? How can the regulators leverage publicly available data to become more efficient and alleviate regulatory burdens?*

*20. How should Commission registrants assess Maximal Extractable Value ("MEV") when they consider building or transacting in these environments? How best should Commission registrants delineate between the different types of MEV occurring onchain? In what ways is the market addressing the MEV in which MEV extractors order or re-order transactions to engage in front running, back running, or so-called "sandwich attacks"?*

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As noted in the RFI, blockchain activity is inherently public and transparent, allowing anyone to review all past and current blocks and transactions. Open blockchain architecture allows for equal visibility into onchain activity, which is in stark contrast to the closed proprietary systems we use today.

However, a vast majority of notional crypto transactions take place on centralized exchanges that take custody of customer assets, making the surveillance and monitoring of offchain activity integral to successful monitoring programs. For accounts on centralized exchanges, public API consumption cannot be relied upon to detect all forms of price manipulation because the order and execution of customer metadata is obfuscated on public crypto exchange market data APIs, similar to traditional securities exchanges. Therefore, the only comprehensive way to adequately surveil centralized exchange trading is to consume or have access to customer metadata.

- *Centralized exchange surveillance works similar to traditional markets, but with enhancements to account for 24/7 trading, and regulators can ingest offchain data and leverage onchain transparency to enhance market integrity and user trust*

Many surveillance tools that have been used successfully in traditional securities markets are also being leveraged to monitor offchain crypto exchanges, and in many cases more effectively given the need to surveil markets 24/7/365. A comprehensive monitoring and investigative suite should utilize both centralized exchange surveillance and blockchain analytics to secure user protection.

However, blockchain transparency aids in the surveillance of offchain centralized exchange activity. The ability to identify wallets for inbound or outbound customer activity on centralized exchanges enables the monitoring of potential cross-market manipulation when used with exchange surveillance tools and investigations. The comprehensive consumption of customer-tagged, offchain exchange data from multiple exchanges provides a holistic view in detecting and mitigating cross-market and cross-exchange price manipulation, which is critical for market integrity and user trust.

For example, the Coinbase Trade Surveillance team utilizes a best-in-class surveillance platform crafted for crypto markets to monitor trading activity on Coinbase custodial exchanges. This platform enhances traditional market tools by leveraging machine learning while taking advantage of the unique characteristics of 24/7 markets, including near-instant settlement and send-and-receive functionality. Automation using machine learning technology will increasingly play a role in effective market surveillance because it vastly exceeds what can be achieved using manual alerting alone. Providing real-time insights and increasing surveillance efficiency allows exchanges to act quickly, which is imperative in crypto markets.<sup>17</sup>

Finally, and importantly, to the extent that centralized trading platforms use central limit order books to match trades, regulators overseeing platforms can expect to rely on existing strategies to ingest and process order book data. Harmonizing data from disparate market participants in fragmented crypto markets will introduce challenges, but no greater than what exists today in traditional securities markets.

- *Maximal extractable value (“MEV”) is a technology feature, not a bug, and should not be subject to financial regulation in decentralized environments*

We recommend that the Commission leave MEV decisions to individual registrants. MEV functions vary dramatically across blockchains, so the solutions available will differ based on the underlying blockchain. Registrants will naturally choose to mitigate any MEV they believe to be against the interest of their customers without requiring guidance from the SEC.

As we recently stated in our response to the European Securities and Markets Authority (ESMA) on the technical requirements of MiCA,<sup>18</sup> MEV describes a wide variety of activities in decentralized environments. Many of these activities are vital for well-functioning crypto markets and are not inherently abusive, including arbitrage and DeFi loan liquidations. These functions keep DeFi operating effectively while contributing to the security and stability of the

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<sup>17</sup> Coinbase, [ESMA's third consultation on MiCA – Response to ESMA](#) (Jun. 25, 2024).

<sup>18</sup> *Id.*

underlying blockchain. Whenever the ordering of transactions matters, including in most blockchain-based applications, there is opportunity for MEV. This is because there is no “correct” ordering of transactions – blockchain transactions are prioritized by block proposers (miners and validators) based on the amount of fees they can earn for including an activity in a block, with the most valuable being included first. This auction mechanism is critical for blockchains to efficiently allocate a scarce resource (block space) without being overwhelmed by economically irrelevant transactions, like spam.

Arbitrage is the essential ingredient for price discovery, convergence, and efficiency in blockchain-hosted digital asset markets, especially across DEXs. Arbitrageurs, often through use of algorithms (a.k.a “bots”), close price differentials among various assets across different centralized or decentralized exchanges by competing for block space. The best arbitrage opportunities are served first by way of higher fees and greater MEV. This makes crypto markets extremely efficient without any need for complicated order routing rules that characterize securities markets.

It is also important to recognize that some forms of MEV are less desirable, such as “sandwiching” of trades within a proposed block. This is where one user offers a higher fee to place transactions on either side of another user’s transaction, within the same block, for a risk-free profit opportunity. The result is a higher price paid by a user seeking to buy an asset from a DEX, made possible because pending DeFi transactions are visible for all to see in a mempool.

However, the ecosystem offers protection against potentially undesirable behavior. Most notably, users can engage with a centralized exchange, like Coinbase, where orders are matched offchain, through a central limit order book, and are therefore not subject to “sandwiching” on a per transaction basis. Users also have access to protections on DEXs – for example, when a user initiates a trade on an automated market maker like Uniswap, they can select the level of slippage (post-order price movement) they are willing to accept, which is akin to specifying the bid-ask spread of a market order in a securities transaction. Users can also choose larger liquidity pools or use private mempools, both which limit the ability of other users to profit from their actions.

More generally, a user’s transactions can only be included in a block only if their preferences – which can include transaction characteristics beyond just price – are met. This is a key differentiator of blockchain technology. Only valid transactions that are executed according to the selected preferences of the user can be included in blocks, regardless of their sequencing within the block. Of course, it is possible that users can poorly specify their transactions characteristics in ways that result in suboptimal execution and unnecessarily high MEV – e.g., specifying a higher slippage than what is necessary to execute a transaction – but should not be considered market abuse.

## **V. Custody of Digital Securities by Broker-Dealers**

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*21. Should the Commission amend existing rules, propose new rules, or provide guidance to facilitate custody arrangements for crypto assets? If so, what rule amendments or new rules would be appropriate, and to which types of activities should they apply? Should the Commission propose*



*any specific changes to its rules to accommodate the self-custody of crypto assets by entities registered with the Commission? If so, what conditions should apply to self-custody arrangements to mitigate any related risks? Should the requirements for crypto assets that are securities and those that are not differ?*

*22. Public, permissionless blockchains are being used to tokenize permissioned assets. To the extent the custody rules for broker-dealers, investment advisers, and investment companies are implicated, how should the Commission differentiate between native crypto assets of permissionless blockchains and tokenized permissioned assets? Does either type of crypto asset present greater risks of theft or loss?*

*24. Should the Commission modify its Special Purpose Broker-Dealer Statement ("SPBD Statement") or formally withdraw it? If the former, what should those modifications be? For example, should the Commission expand the SPBD Statement to cover broker-dealers that custody crypto asset securities alongside crypto assets that are not securities? If the Commission decides to eliminate the SPBD Statement, should the Commission propose any modifications to the customer protection rule (17 CFR 240.15c3-3) to address crypto assets?*

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The current state of the Commission's custody rules presents another major impediment to appropriately shaping the regulatory framework for digital asset markets for both securities and commodities. As noted above, existing securities regulatory custody rules embrace the traditional intermediated model, making them difficult to apply to digital asset markets. But these requirements are based on the assumption that assets — or more accurately the proof that a person holds the asset — take a certain physical form. Proof of ownership of digital assets, including digital securities, is represented differently. The Commission has not yet put forward a workable means of achieving the regulatory goal of broker-dealer custody rules to ensure that customer digital securities are securely held while facilitating the trading in which customers wish to engage.

→ *Eliminate the SPBD regime and allow traditional broker-dealers to engage in digital asset activity if they can provide the same assurances that exist today*

The SPBD regime was created more than four years ago as a way to safely integrate blockchain-based products and services into broker-dealer activities, but the regime's numerous onerous requirements unrelated to customer protection rendered the framework highly unworkable and impractical, and its time has now passed. In particular, the regime's extrastatutory view that separate entities needed to hold traditional securities, digital securities, and digital commodities had no ground in the requirements for ensuring assets were able to customers in a broker-dealer liquidation. The path forward should focus on permitting digital asset activity at traditional broker-dealers with appropriate regulatory treatment given their unique risks (e.g. accounting for the bearer-like features of digital commodities that have no recourse once transferred versus traditional securities that can be canceled/replaced even once onchain).

As we describe in more detail below, the Commission should eliminate extraneous SPBD requirements, such as activity limitations, and limit the conditions to only those things that are actually necessary to ensure that digital securities would be available in a liquidation of the broker-dealer.

- *Allow broker-dealers to satisfy their custody obligations in relation to digital securities by holding private keys and remove extraneous requirements unrelated to the protection of such securities*

Rule 15c3-3, known as the “Customer Protection Rule,” is central to this issue. The rule requires that a broker-dealer maintain “physical possession” or “control” over customers’ fully paid and excess margin securities in particular ways set out in the rule, such as by holding the paper security certificate (physical possession) or holding through a bank or clearing agency (control). Rule 15c3-3, originally adopted in 1972, of course does not list holding blockchain private keys as a permitted method of physical possession or control, and the Staff’s general position has been that holding blockchain private keys does not qualify as good physical possession or control.<sup>19</sup>

As outlined below, the Commission and its Staff have issued a handful directives on the topic of custody and digital securities. The result of these directives is, effectively, a Staff position that broker-dealers must avoid becoming subject to the rule by only facilitating transactions in digital assets that do not involve the broker-dealer maintaining custody, irrespective of the type of digital asset, whether it be a security or a commodity, even though by the terms of Rule 15c3-3 a broker-dealer should be able to custody such securities and commodities. These statements and conclusions persist despite the Commission receiving dozens of comment letters in response to the publication of the SPBD Guidance and impose unworkable requirements that are wholly unnecessary to protect customers.<sup>20, 21</sup>

In September 2020, the Staff approved a process by which ATs could facilitate transactions in “digital asset securities,” where custody is maintained by a third-party custodian (the “Three-Step No-Action Letter”).<sup>22</sup> In December 2020, the Commission provided guidance that would permit so-called “special purpose” broker-dealers (“**SPBDs**”) to maintain custody of “digital asset securities” if many conditions were met (the “**SPBD Guidance**”).<sup>23</sup> This guidance was time-limited (expiring in December 2025) and so narrow – imposing extreme limitations on the types of activities permitted – that few firms sought to rely on it.<sup>24</sup> In particular, the SPBD Guidance imposed requirements that are categorically unrelated to ensuring the digital securities at issue are held in a manner that ensures they will be available in the event of the broker-dealer’s liquidation (the “Extraneous SPD Requirements”). These include that the

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<sup>19</sup> SEC, Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities> (the “Joint Staff Statement”).

<sup>20</sup> SPBD Guidance, *supra* note 80 at 16–17.

<sup>21</sup> SEC, SEC Policy Statement: Custody of Digital Asset Securities by Special Purpose Broker-Dealers (last modified May 3, 2022), <https://www.sec.gov/comments/s7-25-20/s72520.htm>.

<sup>22</sup> FINRA, SEC No-Action Letter at 2 (Sept. 25, 2020), <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

<sup>23</sup> Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act Release No.34-90788, 86 Fed. Reg. 11,627 (effective Apr. 27, 2021), <https://www.sec.gov/rules/policy/2020/34-90788.pdf>.

<sup>24</sup> To date, two firms have been approved to operate as SPDIs. One firm proposes to do so with respect to digital assets that it views (but many market participants do not view) as securities. It is unclear if this firm has actually begun to engage in any business or how it can actually comply with other securities law requirements. The one other firm proposes to engage in these activities with respect to tokenized versions of traditional securities (e.g., tokenized stock).

broker-dealer: (1) not engage in any activity involving digital assets that are not securities, or securities that are not digital assets; and (2) undertake an analysis over whether the digital asset is sold pursuant to a registration statement or exemption.

These requirements have effectively precluded the vast majority of broker-dealers from custodying digital securities, thereby leaving customers with fewer choices and with limited ability to hold digital securities under the protection of the Commission's regulations and the Securities Investor Protection Act. It has also effectively required issuers and trading platforms to use trust companies and banks that are not subject to the Commission's regulatory oversight to provide core intermediation for digital securities.<sup>25</sup>

→ *Financial stability concerns should not unduly inhibit broker-dealer custody of digital securities as they do not confer the same risks as other digital commodities*

We recognize that permitting a traditional broker-dealer to comply with Rule 15c3-3 with respect to digital securities may engender financial integrity concerns at broker-dealers engaged in this activity should a failure or adverse market event be associated with such assets, or if the broker dealer suffers a loss because the assets are lost or stolen. The concern is contagion risk – a run on the broker-dealer because the event triggers concern beyond the specific loss.

While the Commission or its Staff may think digital assets are uniquely vulnerable to theft or loss due the prevalence of such incidents at certain crypto exchanges, the types of assets subject to these unique risks do not typically include digital securities, which will continue to enjoy the cancel and replace functionality of traditional securities.

More generally, run risk is always a concern at broker-dealer and this potential risk should be treated no differently after accounting for the specific risks of potential adverse events. In particular, risk should be assessed based on the merits of the arguments – and any potential activities facilitated by novel technology – and not anchored on sentiment about the asset class generally, as is so often done by those who do not understand the technology. Here, any technology-specific risks can be addressed through appropriate guidance concerning the sorts of policies, procedures, and other safeguards needed for a broker-dealer to maintain control over digital securities onchain, which comprise the substance of the SPBD Guidance's requirements (other than the Extraneous SPBD Requirements).

→ *A broker dealer should be permitted to custody and transact in digital commodities and stablecoins provided that appropriate safeguards are implemented.*

Rule 15c3-3 does not apply to assets or instruments carried by a broker-dealer for its customers other than cash or securities. So, today, the Commission does not regulate a broker-dealer's business in futures, swaps, or commodities. Also, in many instances these non-securities businesses are subject to regulation by other authorities, such as the CFTC. The same is generally true with respect to digital commodities and stablecoin activities, which are presently regulated mostly at the state level, but may in the future become subject to federal regulation once new legislation is enacted. These other authorities, as well as pending legislative proposals, generally require a person custodying digital commodities or stablecoins for others

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<sup>25</sup> See, e.g., Hester M. Peirce, Statement, *In the Matter of Poloniex, LLC* (Aug. 9, 2021), <https://www.sec.gov/news/public-statement/pierce-statement-poloniex-080921> (noting the limited usefulness of the SEC's no-action relief).

to appropriately track those assets separately from its proprietary assets and place limits on hypothecation or other reuse of customer assets.

Consistent with the way the Commission currently treats a broker-dealer's non-securities business, it should generally defer to the customer protection requirements overseen by these other regulatory authorities, subject to appropriate disclosures to customers designed to ensure that they understand the regulatory statuses of the different assets they hold with a broker-dealer. The Commission could also consider, either through exercise of its authority under Section 15(c)(3) of the Exchange Act, or working with FINRA on an interpretation of FINRA Rule 2010's requirement for a broker-dealer to observe just and equitable principles of trade, extending guidance regarding broker-dealer custody of these non-security assets designed to mitigate the risk of theft or loss through appropriate information security safeguards, segregation from firm assets, and restrictions on reuse absent customer consent.

- *Clarify that banks and trust companies may serve as good control locations for digital securities, in satisfaction of the SEC's existing Customer Protection Rule*

Moreover, under the existing Customer Protection Rule, banks can serve as good control locations for securities under Rule 15c3-3.<sup>26</sup> The Commission should clarify that banks — including state-regulated trust companies — may serve as good control locations for digital securities as well, as there is no principled basis to treat digital securities different from traditional securities in this regard.

## VI. Requirement for and Role of Transfer Agents

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*41. How do the programmability and composability properties of blockchain technology and blockchain-based technologies, such as smart contracts, affect the role of a transfer agent? Are there provisions in the transfer agent rules that prevent transfer agents from using blockchain technology for this purpose to the fullest extent possible? Is an offchain record still needed as an official or a complementary record in a tokenization arrangement? Are there any legal or regulatory impediments to using onchain identity solutions?*

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- *The Commission should recognize that public blockchains and related smart contract technology can perform many, if not all, of the roles historically played by transfer agents; and*
- *a registered transfer agent, to the extent used, may look to a blockchain as the stockholder registry of a digital security.*

Blockchain technology provides a public and unchangeable record of transactions and ownership. This feature revolutionizes how transfer agents facilitate securities trades. Before the advent of blockchain technology, transfer agents were established to maintain the issuer's security holder records, record changes of ownership, and issue and cancel certificates. Transfer agents that provide services to securities registered under Section 12 of the Exchange

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<sup>26</sup> Exchange Act Rule 15c3-3(c)(5).

Act are required to register with the SEC, or if the transfer agent is a bank, with a bank regulatory agency. Blockchains and related smart contract technology improves this process by removing friction and updating the official stockholder registry in real time, in a publicly viewable and traceable manner, eliminating most if not all labor costs, and without the risks of human error.

The Commission should clarify that existing rules permit the use of this new technology. In so doing, the Commission should:

- recognize that registered transfer agents may look to and leverage blockchains and smart contract technology as part of their regulated activities as transfer agents;
- consider what role transfer agents will continue to play in light of likely continued technological developments that may obviate many, if not all, of a transfer agent's historic roles; and
- whether legislative changes are required to eliminate the need for registered transfer agents in the context of digital securities offerings and aftermarkets.<sup>27</sup>

We understand that, to date, the Commission has only approved offerings of digital securities involving a transfer agent where that transfer agent has ultimate control over the official stockholder registry of a security, including the ability to unilaterally revise it (e.g., per a court order or to correct errors).<sup>28</sup> Based on structures that have been approved, it appears that the SEC has not yet confirmed that a registered transfer agent may look to a blockchain as its official stockholder registry, and has only permitted models in which the transfer agent “whitelists” permissioned wallets such that it can know the identity of each registered owner.<sup>29</sup> This position prevents the securities markets from realizing the efficiencies and transparency offered by blockchain technology, ultimately harming investors, markets, and issuers alike. The Commission should clarify that transfer agents may look to the blockchain as its official record.

Further, we believe that the Commission could clarify the application of transfer agent rules in the context of a digitally native securities offering and aftermarket. For example, we believe that incremental guidance and/or rules could be provided to make clear that an investor’s digital asset wallet address would satisfy any corresponding Exchange Act address requirements where such requirement is meant to ensure ready access to such investor for purposes of facilitating ongoing investor communications.<sup>30</sup> Electronic communications with investors in a digitally native environment using investor-agreed upon communication channels or addresses

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<sup>27</sup> Exchange Act Section 3(a)(25) (definition of a “transfer agent”); see also Exchange Act Section 17A.

<sup>28</sup> See, e.g., Franklin OnChain U.S. Government Money Fund, Prospectus (Aug. 1, 2024 as amended Sept. 4, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1786958/000174177324003833/c497.htm> (“Unlike permissionless tokens, Fund shares recorded on the transfer agent’s blockchain-integrated system are under the unilateral control of the transfer agent. The transfer agent is responsible for maintaining the accuracy of Fund share ownership on any blockchain network used by the blockchain-integrated system and has the ability to correct errors and unauthorized transactions in, and limit the transferability of, Fund shares.”); Arca U.S. Treasury Fund, Form N-2 (June 24, 2020) <https://www.sec.gov/Archives/edgar/data/1758583/000121465920005869/s624200n2a2.htm> (“Although records of peer-to-peer transactions are viewable on Ethereum, record and beneficial ownership of the Fund’s shares is reflected on the records of DTAC, LLC, the Fund’s transfer agent (the ‘Transfer Agent’). The Transfer Agent is regulated by the Securities and Exchange Commission (‘SEC’). The Transfer Agent’s records constitute the official shareholder records of the Fund and govern the record ownership of ArCoins in all circumstances.”).

<sup>29</sup> See *id.*

<sup>30</sup> See, e.g., 17 CFR 240.17Ad-9(a)(4) (securities holder information requirements for registered transfer agents).

should suffice for purposes of a corresponding transfer agent requirements adopted before the advent of such technology.

## VII. Clearing Agency Status of Blockchains

The Commission should issue guidance clarifying that blockchains that meet certain decentralization and security criteria and blockchain infrastructure providers, such as nodes, miners, validators, sequencers, relayers, are not clearing agencies, thereby exempting them from the clearing agency registration requirement under the Exchange Act and related regulations.

Under the Exchange Act, a person performs functions that are within the definition of a “clearing agency” if, among other things, it acts as an “intermediary in making payments or deliveries or both in connection with transactions in securities,” it “acts as a custodian of securities in connection with a system for the central handling of” fungible securities, or it “otherwise permits or facilitates the settlement of securities transactions . . . without physical delivery of securities certificates.”<sup>31</sup> A person who engages in “clearing agency” activities must generally register with the SEC as a clearing agency or obtain an exemption from registration. The purpose of such a requirement is to address and mitigate the risk to the securities market that can arise from the concentration in a single, centralized entity, such as a central counterparty or central securities depository, of activities critical to the settlement of securities transactions.

Given the functionality of various components of blockchain technology, it is possible that any or all of these components – i.e., blockchains and blockchain infrastructure providers, including nodes, miners, validators, sequencers, and relayers – may be erroneously labeled “clearing agencies.” But, because a blockchain and each of its components operate without central control or by persons that do not have control over the entire system, they are not capable of registering as a clearing agency and meeting the obligations of an SRO individually. For example, the regulatory standards for clearing agencies that are requirements for registration assume a traditional corporate ownership and management structure that is often not associated with the operations of blockchains. However, unlike a central securities depository, central counterparty, or other clearing agency, a blockchain and its operators do not centralize critical functions in a single entity. In fact, they do the opposite: they use decentralization, transparency, and verification to ensure that no single actor can erroneously or intentionally interfere with the effectiveness or integrity of securities settlements. Accordingly, blockchain technologies and their operators should not be considered clearing agencies.

Many clearing agency rules are also not relevant in the context of real-time settlement of digital security trades using a blockchain and components contributed by blockchain infrastructure providers. For example, numerous rules applicable to clearing agencies are designed to manage counterparty credit risk exposure between the time of a trade and its settlement, ensure that a clearing agency provides fair representation and access to its users, ensure that the systems used to settle transactions are safe and secure, and ensure that there is clear, legal finality to the settlement of settlement obligations.

Once again, real-time settlement using the security of decentralized blockchain technology is specifically designed to mitigate many of the risks that regulation of clearing agencies is

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<sup>31</sup> Exchange Act § 3(a)(23).

intended to address, such as ensuring trades settle promptly, securely, and with finality. Therefore, not only is it clear that such blockchains, their underlying technologies, and blockchain infrastructure providers that contribute to their functionality are not clearing agencies, it is also clear that the rules applicable to clearing agencies are unnecessary with respect to digital securities. Granting exemptive relief would be appropriate in the public interest and consistent with the protection of investors.

## VIII. Staking and Staking as a Service<sup>32</sup>

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*3. Certain crypto assets are used in a variety of functions inherent to the operation of a blockchain network, such as mining or staking as part of a consensus mechanism or securing the network, validating transactions or other related activities on the network, and paying transaction or other fees on the network. These technology functions may be conducted directly or indirectly, such as through third-party service providers. What types of technology functions are inherent to the operation of a blockchain network? Should the Commission address the status of technology functions under the federal securities laws and, if so, what issues should be addressed?*

*4. Users of liquid staking applications receive a so-called “liquid staking token.” This token represents their staked crypto asset, and the token can be used in other activities, all while continuing to participate in the proof-of-stake protocol. Should the Commission address the status of liquid staking tokens under the federal securities laws, and, if so, what issues should it address?*

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→ *The Commission should issue guidance confirming that “staking as a service” does not constitute or involve the issuance, offer or sale of securities when certain requirements are met.*

We offer at the outset proposed definitions of “staking” and “staking as a service,” to help delineate what is, and is not, covered by this recommendation. We define “staking” to mean the act of committing or locking a digital asset in a smart contract to permit the owner or the owner’s delegate to act as a validator for a particular proof-of-stake consensus mechanism in a blockchain system, in accordance with the blockchain protocol. We define “staking as a service” to mean the provision of technical solutions by a third party service provider to token owners to enable their participation in staking, including the operation of the necessary staking software and validator node operations on behalf of the token owner to enable the earning of rewards from the blockchain network. Staking as a service does not involve services designed to generate returns to the token holder other than rewards paid by the network for validation activity. We explain these processes below.

The protocol rules of a blockchain are often referred to as its “consensus mechanism” and they dictate how the computers in the network reach agreement on what transactions and blocks to add to the blockchain. These consensus mechanisms prevent digital assets from being

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<sup>32</sup> The overview of staking and staking as a service provided in this part is adapted from our March 2023 comment letter in response to our 2022 Petition. See Coinbase, *RE: Petition for Rulemaking – “Proof-of-Stake” Blockchain Staking Services* (Mar. 20, 2023), [https://assets.ctfassets.net/c5bd0wqjc7v0/37LaXLBcdqLHa7GE4TPnmw/7824df367e12f4136951db794a5df63d/Staking\\_Comment\\_Letter\\_3-20-2023\\_FINAL.pdf](https://assets.ctfassets.net/c5bd0wqjc7v0/37LaXLBcdqLHa7GE4TPnmw/7824df367e12f4136951db794a5df63d/Staking_Comment_Letter_3-20-2023_FINAL.pdf).

“double-spent” and protect a blockchain from attack and manipulation. The most commonly known consensus mechanisms are “proof-of-work” and “proof-of-stake.”

In protocols with proof-of-stake consensus mechanisms, token holders can validate the network’s security by “staking” their tokens. Validators typically are rewarded for their efforts with additional tokens, often based on the size of their stake. However, on many networks the staked tokens can be seized by the network or other network participants (called “slashing”) if the validator engages in problematic behavior, such as attempting to confirm invalid transactions.

While it is generally easier to participate in proof-of-stake networks than proof-of-work networks, as this participation does not require expensive specialized hardware or excessive energy usage, operating a validator node nonetheless requires some technological know-how and reliable systems. It typically also requires a dedicated computer with a highly reliable internet connection, as inadvertent downtime can result in lost rewards. Additionally, running a node securely requires frequent attention to ensure software is up to date, all hardware is functioning correctly, and signing keys have not been compromised.

Because of these operational chores, many token holders who could engage in validation directly elect to rely on a staking service. With the significant proliferation of proof-of-stake blockchains over the past few years, various “staking as a service” businesses have developed to meet this need. Customers choose to use these services for their convenience and security. The services themselves perform routine ministerial functions, such as executing customers’ staking requests, operating the computer hardware and software related to a proof-of-stake blockchain, and ensuring that the underlying protocol requirements are observed. Users do not obtain more rewards through the use of a service than they would if they staked independently (indeed, they earn less because of fees paid for the services). Further, providing these technical services is key to supporting blockchain infrastructure, as they allow more people to stake, increasing validating capabilities as well as network participation and security.

Staking services are fundamentally a form of cloud computing services: a common technology concept where shared data centers are made available to users over the internet, often with open-source preinstalled software packages. Users of cloud computing services avoid the time, cost and complexity of running hardware and managing software updates and ensuring their systems are always operational. Instead, they outsource this functionality by paying a fee to the cloud computing service operator who performs these IT tasks on their behalf. Moreover, cloud computing service operators are often able to obtain economies of scale, for example by building larger data centers, sharing unused compute time across multiple customers, and batch processing certain routine tasks.

Similarly, staking service providers operate blockchain software as a service for token holders who already custody their tokens with the staking provider. The custodian and service provider manages (including through affiliates and third-party vendors) the security of the staked tokens and operation of validator nodes. Staking rewards come from the underlying protocol as a reward for validation activities, and not through the staking service provider’s use of the user’s tokens to generate returns.

In our March 2023 comment letter in response to our 2022 Petition, we addressed the following topics:



- why a staking service is not a securities offering;
- how past Commission actions can inform the treatment of staking services;
- lessons offered by the SEC's adoption of Rule 3a-4 under the Investment Company Act;
- unintended consequences of the improper application of securities laws; and
- recommendations for a path forward.<sup>33</sup>

The points made in our March 2023 comment letter continue to offer the right path forward. After that comment letter, however, the SEC pursued additional enforcement actions against staking service providers, including Coinbase, which the Commission recently dismissed. While we commend the Commission for its dismissal of the lawsuit against Coinbase, there is a pressing need for the Commission to clarify that staking service providers may continue to operate in the United States without the threat of enforcement if they meet certain requirements. We urge the SEC to seek stakeholder feedback in identifying those requirements in such a way that (1) excludes services that are not true staking services but (2) are not so narrow and rigid that service providers fear of inadvertent non-compliance and withdrawal from the market.

To help further this conversation, we offer the following ideas as a guide:

- A staking service that consists of the following features is “staking as a service” and not a securities offering:
  - o the staking service provider's terms of service provide that the user retains ownership of their staked tokens at all times;
  - o the staking service provider (or its affiliate or third-party designee) limits itself to ministerial functions necessary to facilitate end users' participation in validation activities, including:
    - executing customers' staking and unstaking requests;
    - operating all of the computer hardware and software related to a proof-of-stake blockchain; and
    - ensuring that the underlying protocol requirements are observed;
  - o the staking service provider adequately discloses the features and risks of staking, including but not limited to the risk of loss due to penalties and the inability to sell, transfer or otherwise use tokens while they are staked, including during periods of unbonding, which can last multiple weeks;
  - o the staking service provider neither advertises that it will generate returns nor generates returns as part of the service other than rewards paid by the network for validation activities;
  - o the staking service customer receives real-time account information containing a description of all relevant account activity; and
  - o the staking service provider is subject to another regulatory scheme, such as by virtue of being a money transmitter or trust company.

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<sup>33</sup> *Id.*

## IX. Spot Crypto Exchange-Traded Products

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35. *If the listing exchange does not have an SSA with a regulated market and no regulated market for the crypto asset underlying an ETP exists, could the listing exchange address concerns regarding fraud and manipulation based on the size and liquidity of the underlying spot market? What would be an appropriate measure of size and liquidity that would address these concerns? Are there more appropriate ways to address concerns regarding fraud and manipulation?*

36. *How should the Commission consider market capitalization, unique number of wallets, trading volume, the number of spot markets, geographic distribution of spot markets, size and frequency of price divergences, or speed of price convergence/arbitrage?*

38. *What factors should the Commission consider with respect to an SSA between an exchange listing an ETP on a crypto asset and a spot crypto market?*

39. *How should the Commission weigh the reliability, frequency, and dissemination of pricing information on the crypto assets underlying the ETP in its consideration?*

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→ *Adopt a clear set of standards for approving digital commodity spot ETPs that are known and knowable to all market participants.*

In 2024, the SEC approved proposed rule changes under Exchange Act Rule 19b-4 by several national securities exchanges to allow for the listing and trading of shares of ETPs tied to the spot prices of Bitcoin and Ether. The approval of these spot digital commodity-based ETPs marked a significant milestone in the integration of digital commodities into traditional financial markets, allowing investors to gain direct exposure to these digital commodities through regulated investment vehicles, enhancing accessibility and potentially broadening market participation. We understand that the Commission is currently considering a number of other applications to establish ETPs tied to the spot prices of other digital commodities. Just as the SEC has approved ETPs that track a number of precious metals and foreign currencies, we urge the SEC to permit other spot digital commodity-based ETPs.<sup>34</sup>

→ *Clarify that a “comprehensive surveillance-sharing agreement” is not the exclusive way for a digital commodity spot ETP issuer and associated exchange to satisfy compliance with Exchange Act requirements related to preventing fraud and manipulative practices, or adopt a broader view on what qualifies.*

Exchange Act Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “protect investors and the public interest.” As a result, to approve a new exchange rule, the Commission must find the proposed rule meets this requirement.

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<sup>34</sup> We note that Question 37 of the RFI appropriately distinguishes between ETPs, which reference non-securities, and ETFs, which reference securities. This question asks how the Commission should consider a proposed ETP whose assets are already referenced by a registered ETF. We are not aware of any such proposal, as the digital assets that are referenced by existing ETPs are digital commodities, rather than ETFs referencing digital securities. If the Commission were to approve an ETF that referenced a digital asset, then it would be implicitly taking the view that the reference asset is a security, which would make it ineligible to be the primary asset referenced by an ETP.

In the context of approving spot Bitcoin and Ether ETPs, the SEC found that this requirement was met *only* on the condition that the listing exchanges had “a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets.” Notably, this sort of subjective condition is not one that the Commission has ever imposed as an explicit requirement to list non-digital asset based spot commodity ETPs.

At the same time, the Commission has claimed that having a comprehensive surveillance-sharing agreement is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.<sup>35</sup> The Commission has explained that a “listing exchange could, alternatively, demonstrate that other means to prevent fraudulent and manipulative acts and practices will be sufficient to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.”<sup>36</sup> Yet, prior to a court determination vacating the Commission’s rejection of an exchange rule filing to list a Bitcoin-based ETP,<sup>37</sup> many listing exchanges sought to demonstrate that such “other means” were met but were consistently rejected by the Commission.<sup>38</sup>

The Commission’s prior rejections of spot digital commodity ETPs did not sufficiently take into account the widespread ownership of digital commodities and the extensive, active, decentralized global market for digital commodities — which makes the sort of manipulation risks presented by microcap assets nearly impossible. Nor did the SEC seriously consider the market surveillance that does exist on U.S. regulated digital commodity markets.

Coinbase, for example, applies surveillance and monitoring measures for its spot digital asset trading platforms designed to identify and address potential manipulative or fraudulent trading activity on those platforms, which we described in our February 2024 comment letter to the SEC regarding Grayscale’s spot Ether ETP application.<sup>39</sup> In that comment letter, we also demonstrated how non-U.S. Ether spot ETPs demonstrate a high correlation between the ETP price and that of the underlying Ether market. Digital commodity-based ETP issuers can and do employ global best practices that have been learned from offering these products to mitigate potential manipulation of share prices so that these prices more closely reflect the underlying digital commodity market. These best practices include, for example:

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<sup>35</sup> See, e.g., SEC; Release No. 3499306; File Nos. SRNYSEARCA202190; SRNYSEARCA202344; SRNYSEARCA202358; SRNASDAQ2023016; SRNASDAQ2023019; SRCboeBZX2023 028; SRCboeBZX2023038; SRCboeBZX2023040; SRCboeBZX2023042; SRCboeBZX2023044; SRCboeBZX2023072; Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, p. 5 (Jan. 10, 2024) (the “Spot Bitcoin ETP Approval Order”) (citing other examples).

<sup>36</sup> *Id.* (emphasis added and internal citations omitted).

<sup>37</sup> Grayscale Investments, LLC v. SEC, No. 22-1142 (D.C. Cir. 2023).

<sup>38</sup> See, e.g., Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Exchange Act Release No. 95180 (June 29, 2022) (“Listing exchanges have also attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices ... Based on its analysis, the Commission concludes that NYSE Arca has not established that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the detection and deterrence of fraud and manipulation provided by a comprehensive surveillance-sharing agreement with a regulated market of significant size related to spot bitcoin.”).

<sup>39</sup> Coinbase, [Grayscale Ether ETP Application – Coinbase Response Letter to SEC](#), pp. 23–25 (Feb. 21, 2024).

- using an index whose price is based upon data from multiple exchanges;
- weighting pricing data by relative volumes, price deviations, and recency of activity; and
- using an index that filters inputs to select exchanges and trade datasets that are more resistant to manipulation.

The Commission's previous position with respect to spot digital commodity ETPs was unique in the efforts it took to reject them: its disapproval orders created brand new tests that applied only to proposed spot digital asset ETPs, untethered from the statutory standards, based on vague concepts like "comprehensive" agreements, "regulated markets," and "significant size," with required showings of "novel" and "unique" market attributes. The result was that the Commission created for itself the flexibility to reach whatever outcome it then desired, no matter the facts presented.

Although the Commission eventually approved ETPs tied to Bitcoin (and later Ether) following its loss in the D.C. Circuit, the Commission has lost credibility that it will fairly and appropriately evaluate the next proposed spot digital commodity ETP. Indeed, reports suggest that the Staff has recently rejected proposed applications prior to their even being published for public comment.<sup>40</sup>

→ *The Commission should set clear and objective standards as part of the 19b-4 process for spot digital commodity-based ETPs.*

This should include eliminating or rationalizing the unique and ambiguous standards it created specifically for spot digital commodity ETPs. For example, the Commission could set objective standards based on a digital commodity's global market capitalization, number of holders, number of digital commodity trading platforms that support it, or similar objective standards that relate to the digital commodity itself.

Alternatively, to the extent the Commission believes surveillance sharing arrangements are necessary, it should recognize that this policy goal can be reached through surveillance sharing arrangements between a proposed listing exchange and a spot digital commodity trading platform, like Coinbase, that is registered with the Financial Crimes Enforcement Network ("**FinCEN**") as a money services business ("**MSB**") and subject to state regulation focused on digital commodities (like the New York BitLicense) – rather than looking to whether there are U.S.-regulated futures markets that facilitate trading in futures referencing the digital asset.

→ *The Commission should approve in-kind creation and redemption of digital commodity spot ETPs – just as it does for every other type of ETP*

The SEC's approval of spot Bitcoin and Ether ETPs included another limitation that does not apply to any other type of spot commodity ETP: that such ETPs utilize only cash-based creation and redemption mechanisms, rather than the in-kind process used for every other spot commodity ETP.

In traditional in-kind creation and redemption processes, authorized participants ("**APs**") create and redeem ETP shares directly in exchange for the underlying asset, allowing a seamless

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<sup>40</sup> See, e.g., Ana Paula Pereira, *SEC to reject bids for spot Solana ETFs*, CoinTelegraph (Dec. 6, 2024), <https://cointelegraph.com/news/sec-reject-bids-solana-etfs-report>; Vivian Nguyen, *SEC signals it would reject spot Solana ETF filings and pause new crypto ETF approvals*, Cryptobriefing.com (Dec. 6, 2024), <https://cryptobriefing.com/solana-etf-rejection-sec-pauses/>.

arbitrage mechanism that ensures that the ETP's market price closely tracks the value of the underlying asset. For the two sets of digital commodity ETPs that were approved, the Staff at the time informed applicants that it would not permit in-kind creations or redemptions, but only in-cash transactions. This introduced unnecessary frictions, additional levels of intermediation, and the risk of tracking error, as the trusts must receive or deliver cash and are themselves required to purchase or sell the underlying digital commodity.

Requiring ETP issuers to purchase or sell the underlying asset in the open market imposes unnecessary trading costs on issuers and increases the risk of tracking error as compared to in-kind creation and redemption that is permissible for all other spot commodity ETPs. We urge the SEC to revisit this issue and permit in-kind creation and redemption processes for spot digital commodity-based ETPs, just like for any other type of spot commodity ETP. Doing so can involve the Commission or its Staff acknowledging that:

- A broker-dealer holding a digital asset for its own account when acting as an AP should not be treated as holding it for customers, and thus the Customer Protection Rule does not apply.<sup>41</sup>
- Many digital commodities — and certainly Bitcoin and Ether — trade in a highly liquid market where they can be readily converted into cash. For example, the Staff could treat digital assets similar to foreign stock, which treats foreign stock as having a “ready market” where it has certain minimum market caps, trading volumes, and an active exchange listing.<sup>42</sup>

## **X. Additional Questions Related to Tokenized Equity**

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*40. Tokenization enables dematerialized securities to be mobilized (i.e., not held in and confined to a single centralized ledger). Are there any provisions under the federal securities laws that prevent these securities from being used in new blockchain-based transactions and applications, and, if so, what steps should the Commission consider taking to facilitate this innovation while mitigating any related risks? Are there amendments or new rules that the Commission should consider to ensure a merit- and technology-neutral approach to tokenization? Does the type of blockchain used (i.e., permissioned versus permissionless) bear on this risk assessment?*

*44. Do other federal laws, or state corporate or commercial laws present challenges to firms seeking to issue tokenized securities or engage in activities involving tokenized securities?*

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<sup>41</sup> Of course, resolving the application of the Customer Protection Rule to digital commodities, as discussed in Part [IV.B], would also address this issue.

<sup>42</sup> See, e.g., SEC, Definition of “Ready Market” with Regard to Foreign Equity Securities pursuant to Rule 15c3-1(c)(11)(i) (Feb. 9, 2016).

→ *The Commission should issue guidance or targeted no action relief to facilitate the adoption of tokenized equity and thereby incorporate blockchain and related smart contract technologies into its regulatory framework to address market inefficiencies*

Tokenized equity enabled through blockchain technology creates more efficient and transparent processes for clearance, settlement, and security ownership. Much in the same way that our existing intermediated regulatory framework was implemented in response to the “paperwork crises” of the 1960s, we believe that the Commission should consider ways in which to incorporate blockchain and related smart contract technologies into its regulatory framework to address existing market inefficiencies.<sup>43</sup> For this reason, the Commission should consider issuing tailored guidance, exemptive, or no-action relief, and to engage in rulemaking, where appropriate, to facilitate innovation that leverages technological developments, while ensuring investor protection.

In addition to the issues described in the preceding parts related to the issuance, trading and custody of digital securities more generally, existing SEC rules create additional challenges for the adoption of digital equity securities (“**digital equity**”). For example, digital equity that represents the same interests as common stock registered under Section 12, once issued and outstanding, would entitle the holder to receive proxy statements from the issuer and vote on shareholder matters.<sup>44</sup> Traditional proxy delivery is typically made indirectly through a shareholder’s broker-dealer or other intermediary. As we have discussed above, however, the use of a blockchain permits digital assets to be held and traded without many traditional intermediaries and it is therefore likely that many tokenized equity-holders will not hold securities through an intermediary.

This non-intermediated approach, combined with the fact that digital equity may be held in a pseudonymous wallet, creates new opportunities for how an issuer can affect proxy delivery. The Commission should seek to facilitate such an outcome, which could dramatically increase the efficiency and efficacy of shareholder communications. The Commission should confirm that required stockholder communications can be transmitted via direct communication to the stockholder’s digital asset wallet with investor informed consent.

To the extent that a digital equity-holder does use a broker-dealer as an intermediary for their digital equity trading, that broker-dealer would be subject to recordkeeping obligations with respect to the digital equity.<sup>45</sup> The SEC’s latest public view, however, is that a blockchain, despite being the native recordkeeping system for digital securities, fully transparent, and updated in

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<sup>43</sup> For background on the Paperwork Crisis, and today’s intermediated market structure and related inefficiencies, see SEC Rel. No. 34-76743 (Transfer Agent Regulations Dec. 22, 2015), SEC Staff Report on the Regulation of Clearing Agencies, at Section II.A (October 1, 2020), available at: <https://www.sec.gov/files/regulation-clearing-agencies-100120.pdf>; see also Final Report on the Work of the Task Force on Securities Holding Infrastructure, American Bar Association (ABA), Charles William Mooney Jr and Sandra M Rocks (Aug 29, 2024), available at: [https://www.americanbar.org/groups/business\\_law/resources/business-lawyer/2024-summer/final-report-on-the-work-of-the-task-force-on-securities-holding-infrastructure/](https://www.americanbar.org/groups/business_law/resources/business-lawyer/2024-summer/final-report-on-the-work-of-the-task-force-on-securities-holding-infrastructure/).

<sup>44</sup> Exchange Act Rule 14a-3.

<sup>45</sup> Exchange Act Rules 17a-3 and 17a-4.

real-time, is insufficient to satisfy a broker-dealer's recordkeeping obligations, which would require a broker-dealer to build out alternative recordkeeping systems for digital equity and other tokenized securities.<sup>46</sup> Instead, the Commission should recognize that a blockchain can serve as an appropriate record for a broker-dealer's digital security activities, retract its prior guidance and issue guidance clarifying this point.

These are some examples of ways in which Commission rules and the securities laws assume the presence of an intermediary, which may not exist for digital equity. The Commission should consider what other impediments may exist to digital equity and how they can be resolved to embrace and facilitate the use of this new technology.

→ *Recognize the developments in state law that facilitate tokenized equities*

State corporate and commercial law generally facilitates reliance on the blockchain as books and records evidencing stock ownership for tokenized equities. For example, in 2017, Delaware General Corporate Law was amended to permit Delaware corporations to maintain books and records on a "distributed electronic network or database." Around this time, a number of other states adopted similar provisions. Notwithstanding such amendments, states that did not amend their respective provisions generally do not prohibit the use of any specific technology for the maintenance of corporate books and records. As an example, New York Business Corporations Law provides that a corporation's books and records "may be in written form or in any other form capable of being converted into written form within a reasonable time." The California Corporations Code states that "books and records shall be kept either in written form or in another form capable of being converted into clearly legible tangible form or in any combination of the foregoing." Accordingly, the SEC should not view these state laws as challenges to firms seeking to issue tokenized securities or engage in activities involving tokenized securities.

## Conclusion

Our discussion highlights the complex legal, policy, and technical considerations in applying the existing federal securities laws to digital assets. We are encouraged to see the progress the Commission and Crypto Task Force have made so far – but there is more that can be done. With this in mind, we believe the Commission should take the following next steps:

First, as it has already begun doing, the Commission should continue seeking input from market participants on digital securities. We applaud the Crypto Task Force for making this a top priority. Public outreach ensures that the rules proposed will function as intended when put into practice.

Second, the SEC's approach to digital asset regulation should be informed by ongoing developments in the executive and legislative branches. The Trump Administration has

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<sup>46</sup> Division of Trading and Markets, U.S. Securities and Exchange Commission and Office of General Counsel, Financial Industry Regulatory Authority, Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019).

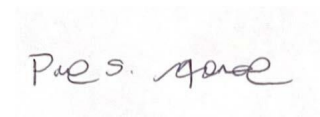
signaled a keen interest in crafting new digital asset policy that promotes responsible innovation, as reflected by its recent Executive Order.<sup>47</sup> Congress is also actively working on legislation that could materially affect the regulatory landscape.<sup>48</sup>

Third, coordination between the SEC and other agencies, most notably the CFTC, is critical. In 2022, CFTC Commissioner (now Acting Chairman) Pham and Commissioner Peirce recommended such joint collaboration, noting that “crypto is still early in its development,” and such cooperation “would benefit the capital markets, not just the crypto markets.”<sup>49</sup> It is time for the SEC to act on this recommendation.

For these reasons, we respectfully provide our response to the Commission and Crypto Task Force to address the RFI’s questions and challenges related to the regulation of digital securities with the goal of informing an important rulemaking and relief on this subject. As noted above, we are committed to this endeavor as well, and expect to continue to submit our thoughts on how to address some of these challenges in a series of additional follow-up responses.

We would be pleased to answer any questions the Commission, its Staff, or the Crypto Task Force may have regarding our response. We appreciate the Commission’s continuing attention to this important matter and for allowing us an opportunity to present our views.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Grewal", is centered below the word "Sincerely,".

Paul Grewal

Chief Legal Officer

Coinbase Global, Inc.

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<sup>47</sup> White House, Strengthening American Leadership in Digital Financial Technology (Jan. 23, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/>.

<sup>48</sup> See, e.g., Lummis-Gillibrand Responsible Financial Innovation Act (released June 7, 2022), <https://www.lummis.senate.gov/wp-content/uploads/Lummis-Gillibrand-Responsible-Financial-Innovation-Act-Final.pdf>.

<sup>49</sup> Caroline D. Pham and Hester M. Peirce, *Making progress on decentralized regulation – It’s time to talk about crypto together* (May 26, 2022), <https://thehill.com/blogs/congress-blog/3503277-making-progress-on-decentralized-regulation-its-time-to-talk-about-crypto-together/> (“As an initial step, we are calling on our agencies to hold a joint set of public roundtables to evaluate recent market events and risks, and to discuss how to regulate crypto responsibly. These roundtables would be open to the public, and panelists would include crypto users, investor and customer advocates, industry members, and other regulators. The goal would be to assess whether new regulations are necessary to protect the public and the markets, how existing regulations might be modernized to better account for innovation, and how technology is likely to reshape our markets. We could start with topics such as digital asset trading platforms, crypto derivatives, stablecoins, decentralized finance, and the balance between privacy and anti-money laundering measures.”).



cc:

Hon. Mark Uyeda, Acting Chairman

Hon. Hester Peirce, Commissioner, Chair of the Crypto Task Force

Hon. Caroline Crenshaw, Commissioner