coinbase

Via electronic submission

September 15, 2025

Nicholas J. Schilling, Jr.
Supervisory Official
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Re: Justice Department and National Economic Council Partner to Identify State Laws with Out-Of-State Economic Impacts,
OLP182; Docket No. DOJ-OLP-2025-0169

Dear Mr. Schilling:

Coinbase appreciates the opportunity to comment on the Department of Justice's request for "information pertaining to State laws, regulations, causes of action, policies, and practices (collectively, State laws) that adversely affect interstate commerce and business activities in other States." Press Release, *Justice Department and National Economic Council Partner to Identify State Laws with Out-Of-State Economic Impacts*, U.S. Dep't of Justice (Aug. 15, 2025), https://tinyurl.com/yz8wtcek. As a leader in the crypto industry, Coinbase commends the Department's effort to ensure that state laws do not "rais[e] costs unnecessarily" and improperly "projec[t] the regulatory preferences of a few States into all States." *Id.* Those concerns apply forcefully in the developing digital-asset marketplace, which must be open, fair, and governed by uniform regulation.

Coinbase started in 2012 with the radical idea that anyone, anywhere, should be able to easily and securely own, send, and receive cryptocurrencies. Today, Coinbase is the leading U.S. crypto trading platform and provider of end-to-end financial infrastructure and technology for the crypto economy. Coinbase thus has a vital interest in the development and proper functioning of the nationwide and global digital-asset market.

Through a series of recent measures, including enacted stablecoin legislation and two pending market-structure bills with significant bipartisan support, the current Administration has taken steps to promote fairness, consistency, and uniformity in regulation of the digital-asset market. Those efforts have started to ameliorate the harm caused by the disastrous regulation-by-enforcement campaign launched under the prior Administration. But some States today are attempting to carry the torch of that discredited campaign through novel, expansive, and flawed interpretations of their own securities laws and by enacting new crypto licensing regimes for the express purpose of counteracting the federal government's pro-innovation agenda.

In April, for example, the Oregon Attorney General sued Coinbase, asserting that many digital assets on Coinbase's exchange are unregistered securities and expressly calling upon other States to "fill" a purported "enforcement vacuum being left by federal regulators." Press Release, Oregon Department of Justice (Apr. 18, 2025), https://tinyurl.com/5n9xfkp7. On the other side of the country, the New York Attorney General launched a suit seeking to regulate as "securities" under New York law even transactions in digital assets based on decentralized protocols. And purporting to apply their own securities laws, four States have issued and continue to maintain summary cease-and-desist orders against Coinbase that compel it to stop providing retail staking services in those States—orders that were lawless at the time and are inconsistent with the actions of the vast majority of other States and the federal government. Indeed, the SEC has issued staff guidance permitting under federal law the very retail staking activities that these States are attempting to prohibit under similarly worded state laws.

Meanwhile, four States—New York, California, Illinois, and Louisiana—have enacted licensing regimes that require crypto companies to obtain licenses from state agencies to operate within those States. In signing Illinois's law just last month, Governor J.B. Pritzker made clear that the law aims squarely to undermine what he called the federal government's efforts to "actively deregulat[e] the crypto industry." Press Release, Office of the Governor (Aug. 18, 2025), https://tinyurl.com/muaa4n6c. And Maine has recently launched a regulatory broadside against self-custody—an essential feature of digital assets.

The Department should take steps to fix these pressing problems by urging Congress to step in and enact broad preemption provisions. Preemption is the tried-and-true way to deal with these kinds of state efforts to interfere with national markets. When States previously attempted to regulate the national derivatives market in the 1970s and the national securities market in the 1990s, Congress enacted federal legislation to preempt those efforts. Like the States' historical efforts, their interventions today disrupt the efficient operation of nationwide markets, cause Americans to have unequal access to increasingly important assets and services based on where they live, and conflict with the federal government's objectives.

The pending crypto market-structure bills provide a prime opportunity to solve these problems. The Department should submit a views letter urging Congress to adopt broad preemption provisions in any market-structure legislation. Any preemption provision should characterize federally regulated digital assets as exempt from state blue-sky laws, make clear that new state licensing and other state regulatory requirements do not apply to crypto intermediaries, and apply retroactively. The Department also should urge the SEC to promptly issue rules and provide Commission guidance explaining why digital-asset transactions and services (like staking) are *not* securities, which would make it more difficult for States to adopt contrary positions under their similarly worded state laws.

I. Crypto Markets Need National, Uniform, Innovation-Enhancing Rules

The crypto market is an enormous and growing sector in the nationwide economy. Today, "more than one in five Americans, or over 68 million people, own cryptocurrencies," and "the number of successful, monthly transactions on public blockchains reached highs of 3.8 billion in early 2025." The President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* 5, 17 (July 2025), https://tinyurl.com/2n2vpftm ("White House Crypto Report").

But despite its rapid growth, the market currently lacks clear, nationwide rules of the road. As Coinbase has long recognized, the "existing financial regulatory system doesn't work effectively for the open, decentralized networks that crypto has created." Brian Armstrong, *We Need a New Approach to Regulating Crypto*, WSJ (Oct. 14, 2021), https://tinyurl.com/2kmr8y5j. And the lack of a clear, uniform regulatory framework can hamper innovation and drive U.S. businesses overseas. *See* White House Crypto Report 5-6 (explaining that "regulatory overreach" under the prior Administration "created a hostile environment for crypto entrepreneurs that at times drove their projects and ventures overseas"). The crypto industry therefore needs an updated set of nationally uniform rules with bright lines of authority drawn between regulators. *Id.*; Faryar Shirzad, *Digital Asset Policy Proposal: Safeguarding America's Financial Leadership* (Oct. 24, 2021), https://tinyurl.com/3kdf334v. Costly turf battles among federal and state regulators can undermine customer protections, stifle responsible development, and leave federal agencies exposed to reputational risks from conflicting enforcement actions.

Coinbase has long been on the front lines requesting clear rules of the road. For years, it was generally understood that most digital assets and digital-asset transactions are not securities. *See, e.g.*, William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 14, 2018) ("Hinman Speech"). But the prior Administration threw the crypto industry into chaos by refusing to take a clear position on the status of digital assets under federal law and instead authorizing federal regulators to bring ad hoc enforcement actions and to announce their interpretations of federal law for the first time in litigation.

That untenable state of affairs prompted Coinbase to petition the SEC in July 2022 to propose new rules setting forth the agency's views about whether and when digital assets may qualify as securities subject to the federal securities laws, and whether and when transactions in digital assets may be subject to the federal securities laws. *Coinbase, Inc. v. SEC*, 126 F.4th 175, 202 (3d Cir. 2025) (explaining that "the heart of [Coinbase's] request" was "global clarity on how digital-asset firms could comply with existing federal securities regulations, and why the law requires them to do so"). Although the SEC denied Coinbase's rulemaking petition, the U.S. Court of Appeals for the Third Circuit granted Coinbase's petition for review, reprimanded the Commission for denying Coinbase's rulemaking petition with an arbitrary and threadbare explanation, and remanded to the Commission for further explanation. *Id.* at 203-04. In a concurring opinion, Judge Bibas added that the SEC's "silence and contradictory unofficial signals" up to that point had "br[e]d uncertainty," "target[ed] a whole industry," and "risk[ed] de facto banning it." *Id.* at 214-15 (Bibas, J., concurring).

The current Administration is now correcting the prior Administration's missteps and taking up the call to establish the rules the crypto industry needs. In July, the President's Working Group on Crypto Assets released a comprehensive report with legislative and policy recommendations for Congress, the SEC, the CFTC, and other federal agencies. The report "encourage[d] the Federal government to operationalize President Trump's promise to make America the 'crypto capital of the world' and adopt a pro-innovation mindset toward digital assets and blockchain technologies." White House Crypto Report 6. Among other recommendations, the report emphasized the need to create a lasting legislative framework for crypto market structure, given that "digital asset markets function differently from markets for stocks, bonds, commodities, and derivatives." *Id.* at 54. And it stated that "[a]bsent congressional action, the SEC and CFTC should use their existing authorities to provide fulsome regulatory clarity that best keeps blockchain-based innovation within the United States." *Id.* at 143.

Federal agencies have begun to respond. Echoing the White House Crypto Report's conclusions, SEC Chairman Paul Atkins recently explained that "the SEC and other federal agencies" are working "to build a framework to maintain U.S. dominance in crypto asset markets" and to ensure "that regulatory moats do not hinder progress and competition." Paul Atkins, *American Leadership in the Digital Finance Revolution*, SEC (July 31, 2025), https://tinyurl.com/ve7283vm ("Atkins Speech"); *see also Acting Chairman Pham Announces CFTC Crypto Sprint*, Release No. 9104-25, CFTC (Aug. 1, 2025), https://tinyurl.com/429k55u3.

But only legislative solutions can provide a permanent fix. Congress and the President recently took a major step in the direction of regulatory clarity by enacting the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "Genius Act"). The Genius Act creates a largely federal scheme for regulating stablecoins and preempts state-law licensing requirements, while leaving some room for States to regulate smaller stablecoin issuers. "[A]lign[ing] State and Federal stablecoin frameworks" in this way, the White House recognized, helps "ensur[e] fair and consistent regulation throughout the country." *Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law*, The White House (July 18, 2025), https://tinyurl.com/pdkb8685.

While those initial steps are a welcome development, much more work remains to be done. The next step is to clarify the classification of digital assets and provide a market structure for those assets more broadly. Two bills that would establish a federal market structure and regulatory framework for digital assets are currently pending, one in each chamber of Congress. *See* H.R. 3633, Digital Asset Market Clarity Act of 2025 (the "CLARITY Act"); Senate Discussion Draft, Responsible Financial Innovation Act of 2025. The CLARITY Act passed the House of Representatives on July 18, 2025, with a bipartisan vote of 294 to 134, and the Chair of the Senate Banking Committee has declared his intent to pass the Responsible Financial Innovation Act in the near future. *See* Jasper Goodman, *Senate Republicans Draft Updated Crypto Market Structure Bill*, PoliticoPro (Sep. 5, 2025), https://tinyurl.com/jeswajv7.

Although the two bills differ in some ways and remain works-in-progress, both would offer much-needed clarity to the crypto industry by allocating federal jurisdiction over digital assets between the CFTC and the SEC—and, just as importantly, by preempting state laws purporting to regulate digital assets. The CLARITY Act would expressly exempt digital assets from state blue-sky laws and preempt state regulation of crypto intermediaries.[1] The current discussion draft of the Responsible Financial Innovation Act would similarly preempt the application of state blue-sky laws and also expressly preempt other state licensing and regulatory requirements. RFIA Discussion Draft § 109(f) (preempting, among other things, any "law, rule, regulation, or order, or other administrative action of any State" that would impose any "licensing, registration, money transmitter, … financial or operational reporting, or any other regulatory requirement on any person registered with the Commission … in connection with that person's business in digital assets").

II. Outlier States Are Attempting to Usurp The Federal Government's Role, Undermine National Crypto Markets, And Thwart The Administration's Priorities

With these federal legislative efforts pending, certain outlier States are in the meantime using state securities laws—interpreted in novel and expansive ways that conflict with similar federal laws—to interfere with national crypto markets. And in doing so they are undermining this Administration's efforts to provide regulatory certainty to crypto market participants.

A. Some States Are Expansively Interpreting Their Securities Laws In Ways That Undermine Federal Law

Despite Chairman Atkins' recent recognition that "most crypto assets are not securities," Atkins Speech, some States have continued to attempt to regulate a broad range of transactions in digital assets as "securities" under state "blue sky" laws. Those States' positions are diametrically opposed to federal law and the Administration's pro-innovation policies (as well as those of the vast majority of their sister States'). Although those States are in the minority, their rogue efforts give them an outsized influence in effectively directing policy for the Nation. This ongoing state-federal policy conflict underscores the urgent need for new federal legislation preempting state interference with the national crypto market.

In April of this year, for example, Oregon's Attorney General sued Coinbase for "creat[ing] and operat[ing] an exchange for the purchase and sale of crypto assets," and thus allegedly engaging in "the sale of unregistered securities" under Oregon's blue-sky law. Compl. ¶ 2, *Oregon v. Coinbase, Inc.*, No. 3:25-cv-00952 (D. Ore. June 2, 2025), Dkt. 1-1. Oregon's suit (if successful) could effectively bar the sale of digital assets in Oregon, deprive Oregonians of the right to trade crypto, and undermine the national crypto market and the federal government's policies. That lawsuit also indirectly impugns the hundreds of thousands of Oregonians who hold and trade

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[1] *See* H.R. 3633 § 308 (amending 15 U.S.C. § 77r(b), "Exemption from State regulation of securities offerings," to provide that "[a] digital commodity shall be treated as a covered security"); *id.* § 404 (proposed 7 U.S.C. § 5i(k): "Notwithstanding any other provision of law, the [CFTC] shall have exclusive jurisdiction over any digital commodity exchange registered under this section with respect to activities and transactions subject to this Act."); *id.* § 406 (proposed 7 U.S.C. § 4u(k): "Notwithstanding any other provision of law, the [CFTC] shall have exclusive jurisdiction over any digital commodity broker or digital commodity dealer registered under this section with respect to activities subject to this Act.").

digital assets—and who the Oregon Attorney General now contends engage in illegal securities transactions.

In another example, the New York Attorney General has declared that transactions in assets based on *decentralized* protocols like Ether ("ETH")—the native asset of Ethereum, one of the most-used blockchains in the world—constitute securities under New York's blue-sky law. Petr. Mem. of Law ISO Verified Petition at 19, *People v. KuCoin*, No. 450703/2023 (N.Y. Sup. Ct. Mar. 9, 2023). The New York Attorney General's position is wrong, and it conflicts with how federal regulators have understood ETH's status for years under similar federal securities laws. As former SEC Director of Corporation Finance William Hinman put it in 2018: "[C]urrent offers and sales of Ether are not securities transactions" because there is no "central third party whose efforts are a key determining factor in the enterprise." Hinman Speech. And the SEC more recently cemented that view by approving eight ETH exchange-traded products and closing its "Ethereum 2.0" investigation without bringing any enforcement actions.[2] The CFTC, for its part, has long taken the view that ETH is a commodity, not a security. *See, e.g.*, Release No. 8051-19, CFTC (Oct. 10, 2019), https://tinyurl.com/5bjnkabh ("It is my view as Chairman of the CFTC that ether is a commodity, and therefore it will be regulated under the CEA.").

Like Oregon's lawsuit, New York's contrary position would have devastating consequences for the crypto industry and the Administration's pro-innovation policies. The New York Attorney General could seek to impose civil or even criminal liability under state law on developers of decentralized protocols unless they register with New York and comply with complicated and inapt requirements designed for centralized securities issuance and dealing, not decentralized blockchain technology. *See* N.Y. GBL § 352-c(4). As a practical matter that could mean transactions in ETH and most digital assets would need to cease flowing through New York, the financial capital of the world, even while those transactions are authorized by the federal government and the vast majority of other States.

New York's and Oregon's suits are a transparent effort to revive the SEC's abandoned and discredited regulation-by-enforcement campaign against the crypto industry. Just like the SEC under prior leadership, these States are "proceed[ing] with ex post enforcement without announcing ex ante rules or guidance," in a situation where "old regulations fit poorly with … new technology." *Coinbase*, 126 F.4th at 204 (Bibas, J., concurring); *see SEC v. Payward, Inc.*, 763 F. Supp. 3d 901, 913 (N.D. Cal. 2025). But it is axiomatic that "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Regulated parties "are entitled to have 'ascertainable certainty' of what conduct is legally required." *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 251 (3d Cir. 2015).

Companies like Coinbase have long been burdened by opaque and shifting positions from *federal* regulators about the classification of digital assets under federal law. But fair-notice

[2] *See* SEC, Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products (May 23, 2024), https://tinyurl.com/2d9eszze; Termination Notice, *In the Matter of Ethereum 2.0 (C-08950)* (June 18, 2024), https://tinyurl.com/4d9mn862.

concerns are further amplified when a regulated party could be subject to patchwork *state-by-state* regulatory enforcement. Parties must "divine" not only what one regulator may choose to do, but what 50 different potential regulators may do—"or else be held liable when" the States announce their interpretations "for the first time in an enforcement proceeding." *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 159 (2012). Oregon's suit is illustrative. For years, the State of Oregon advised the public that digital assets, including cryptocurrencies, are "not regulated" by the State as securities and should be viewed as commodities "similar ... to gold." Compl. 3, *Coinbase, Inc. v. Kotek*, No. 25-cv-40324 (Or. Cir. Ct., Cnty. of Marion) (July 10, 2025). Its new suit is a sudden, unexplained, and unforeseeable change of course.

State suits under their blue-sky laws also raise structural constitutional concerns about one State impermissibly projecting its regulatory preferences beyond its borders. Effectively imposing New York's or Oregon's securities laws on the national crypto market could violate the dormant Commerce Clause principle by inflicting "sweeping extraterritorial effects" and imposing burdens on interstate commerce in excess of any putative local benefits. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 400 (2023) (Roberts, C.J., concurring); *id.* at 393 (Barrett, J., concurring). Inconsistent regulation could balkanize an emerging national economic engine into fifty splintered markets. That benefits neither the regulated industry nor the customers they serve. And Congress has previously recognized as much with respect to other national markets. Acknowledging "the redundancy and inefficiencies inherent" in requiring registering "securities with state authorities prior to marketing in the state," for example, Congress amended the securities laws in 1996 "to preclude states from requiring issuers to register or qualify certain securities with state authorities." *Lander v. Hartford Life & Annuity Ins. Co.*, 251 F.3d 101, 108 (2d Cir. 2001).

Ultimately, the States' contrived interpretations of their longstanding blue-sky laws are not a legitimate exercise of the States' police powers; they are an attempt to manipulate laws those States themselves have long construed otherwise to opportunistically countermand current federal policy. These circumstances call out for preemption. Otherwise, as Chairman Atkins has explained, a 50-state regulatory scheme for digital assets would stifle innovation, increase unnecessary compliance costs through duplicative and conflicting rules, and harm businesses and customers. Atkins Speech.

B. States Have Distorted Their Blue-Sky Laws To Balkanize The National Crypto Market

Other States have weaponized their blue-sky laws to restrict Americans' access to the national crypto market through onerous and unlawful cease-and-desist orders. Again, these aggressive interpretations of state law clearly conflict with the federal government's policies and similarly worded federal laws. And, once again, the States' actions raise serious constitutional concerns about due process for regulated entities.

Since June 2023, for example, Coinbase has been subject to cease-and-desist orders prohibiting the company from offering retail staking services in California, Maryland, New Jersey, and Wisconsin. "[S]taking is the process of locking up digital asset tokens that are native to a particular blockchain in a node to assist in the validation of transactions." White House Crypto Report 27. Staking is not some risky investment scheme—it's a safe and secure way for crypto owners to receive compensation for providing a valuable service that makes the crypto ecosystem stronger. No customer has *ever* lost assets through Coinbase's staking services, which have been available in most States and internationally for years.

Yet California, Maryland, New Jersey, and Wisconsin maintain that Coinbase's staking offerings are illegal, unregistered "securities, in the form of investment contracts, under" state law. *E.g.*, Cease-And-Desist Order 7, Cal. Dep't of Fin. Prot. & Innovation (June 6, 2023), https://tinyurl.com/ynrdxwza. And those States empower their securities regulators to issue summary cease-and-desist orders preventing a party from engaging in conduct that the regulators determine (in their sole discretion) violates state securities laws. Cal. Corp. Code § 25532; Md. Corp. & Assns. Code § 11-701.1; N.J. Stat. § 49:3-69; Wis. Stat. 551.604; *see also* Md. Corp. & Assns. Code § 11-701(a) (also requiring regulator to conclude that "immediate action … is in the public interest"). The cease-and-desist orders are effective immediately when issued, and these States do not provide the party subject to the cease-and-desist order with notice and an opportunity to be heard *before* issuing the order—which can last for *years* without resolution, as Coinbase's experience demonstrates.

The staking cease-and-desist orders issued against Coinbase cannot stand. States are undermining federal policy by explicitly rejecting guidance from the federal government that similarly worded federal securities laws do *not* apply to staking. The SEC has made it crystal clear that "proof-of-stake blockchain protocol 'staking' activities are *not* securities transactions within the scope of the federal securities laws." Commissioner Hester M. Peirce, *Providing Security is not a "Security" – Division of Corporation Finance's Statement on Protocol Staking*, SEC (May 29, 2025), https://tinyurl.com/ye2a8aad ("Peirce Statement"). As the SEC's staff recently explained in guidance, companies like Coinbase engaged in retail staking transactions thus "do not need to register with the Commission transactions under the Securities Act." SEC Division of Corporation Finance, *Statement on Certain Protocol Staking Activities* (May 29, 2025); *see also* SEC Division of Corporation Finance, *Statement on Certain Liquid Staking Activities* (Aug. 5, 2025). And the views expressed in that guidance undergird the SEC's decision in February to voluntarily dismiss with prejudice its own prior lawsuit against Coinbase for its provision of retail staking services. *See* Jt. Stipulation to Dismiss, *SEC v. Coinbase, Inc.*, No. 1:23-cv-04738 (S.D.N.Y. Feb. 28, 2025), Dkt. 177 (voluntary dismissal with prejudice).

These cease-and-desist orders also underscore the harm caused by patchwork state regulation of the crypto market. They impose disparate access to crypto products and services among Americans and significant compliance costs on regulated entities. Americans in the overwhelming majority of States have access to Coinbase's retail staking services, while Americans in four States do not. It is untenable for someone from Maryland to have fewer rights to participate in the crypto market compared to someone across the Potomac River in Virginia—especially when the two States have statutes substantially similar not only to each other, but also to the federal securities laws. And the mere fact of inconsistency and "uncertainty about regulatory views on staking" harms the national crypto market by "discourag[ing] Americans from" staking "for fear of violating the securities laws." White House

Crypto Report 27. In the prior Administration, that uncertainty, in turn, "artificially constrained participation in network consensus and undermined the decentralization, censorship resistance, and credible neutrality of proof-of-stake blockchains." Peirce Statement.

Making matters worse, the States' summary cease-and-desist orders violate Coinbase's due-process rights. Coinbase has a protected property and liberty interest in offering staking services to customers, and the cease-and-desist orders deprived it of those interests by completely prohibiting the company from engaging in staking. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972). The States' failure to provide a hearing "before the State[s]" stripped Coinbase of that interest is presumptively unconstitutional. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). And the availability of a post-deprivation administrative hearing and judicial review here does not remedy the lack of a *pre*-deprivation hearing. Even if Coinbase were to overturn the cease-and-desist orders on the merits, Coinbase will have lost an important opportunity to drive growth and innovation in the crypto space. Coinbase's experience thus highlights the costs that overzealous state regulators have exacted and the concomitant negative effects such regulation can have on the national crypto market.

C. Onerous State-Specific Crypto Licensing Regimes Designed To Undermine The Administration's Regulatory Policies Are Proliferating

In addition to blue-sky laws, a handful of States have enacted broad digital-asset licensing regimes. Each of those laws effectively projects a State's policy preferences beyond its borders and imposes ever-increasing burdens on the crypto economy.

New York's regime was the first. To engage in digital-asset business activities in New York, companies must obtain a digital license (BitLicense) from New York's Department of Financial Services. *See generally* 23 NYCRR Part 200. As of January 2024, DFS was regulating BitLicensees with assets totaling more than $175 billion. *See* Office of the New York State Comptroller, Report 2022-S-18, *New York Department of Financial Services Virtual Currency Licensing* 6 (Jan. 2024), https://tinyurl.com/4r4ezn32. New York's law imposes wide-ranging requirements—including capital requirements, 23 NYCRR § 200.8, a highly reticulated set of anti-money laundering requirements, *id.* § 200.15, and a cyber security program requirement, *id.* § 200.16, as well as additional restrictions and requirements under individual licensees' supervisory agreements entered under the BitLicense. Those requirements produce effects far beyond New York—requiring any crypto company seeking to enter the New York market to satisfy requirements that would necessarily affect all of its operations nationwide.

"While the BitLicense has provided a source of regulatory certainty, market participants have also criticized it due to both its cost and the length of the licensing process." White House Crypto Report 31. The subsequent approvals and conditions required by DFS to launch even common crypto products in New York often result in the State falling far behind other States in making economically empowering products available to New York residents. It has also given New York an outsized influence in directing *national* digital-asset policy.

More problematic still, New York's example is now inspiring other States to follow suit. Louisiana was the second State to adopt a digital-asset-business licensing regime. *See* Louisiana

Virtual Currency Businesses Act, La. Rev. Stat. § 6:1381 *et seq*. In 2023, California enacted another, set to take effect in 2026. Among other requirements, California's law requires any person "engaging in digital financial asset business activity" to make monthly reports regarding its compliance with California law and would authorize the exchange or transfer of stablecoins only "if the stablecoin is approved by" the Commissioner of California's Department of Financial Protection and Innovation. Cal. AB 1934 Bill Summary, Digital Democracy CalMatters (Sept. 24, 2024), https://tinyurl.com/bde2b2rc; AB 1934 §§ 2, 4. It also imposes obligations beyond New York's BitLicense regime, including a mandated 10 hours per day of live customer phone support, heightened disclosure rules (*e.g.*, 14-day advance notice of fee or terms changes), and a required legal assessment of each listed asset's likelihood of being a security. Those requirements create both operational and legal burdens not found in New York's regime. And a regulated party could face significant per-day penalties for unlicensed activities and other noncompliance.

Illinois's SB 1797 is the most recent example. It contains its own set of requirements, including anti-money-laundering requirements, capital requirements, and requirements concerning investment disclosures. SB 1797 broadly grants the "Illinois Department of Financial and Professional Regulation (IDFPR) authority to regulate and supervise digital asset exchanges and other digital asset businesses." Press Release, *Gov. Pritzker Signs Historic Legislation to Protect Consumers from Cryptocurrency Scams* (Aug. 18, 2025). And Governor Pritzker minced no words about the State's objective of countering the current Administration's approach to digital assets: "Illinois is sending a clear message" against "the Trump Administration," which, in the Governor's view, "is letting crypto bros write federal policy." *Id.* Absent federal intervention, more onerous (or at least different and potentially contradictory) state regimes are likely to follow.

Subjecting market participants to a patchwork of different and potentially inconsistent regulatory requirements also impedes investment and innovation. A byzantine web of overlapping regulations makes it more difficult for companies to understand and comply with their legal obligations. It could even prevent a firm operating under the rules in one State from functioning in another—meaning that market participants would be forced to forgo doing business in certain jurisdictions. Moreover, complex regulations benefit incumbents, undermine accountability, and deter smaller innovators who lack the resources to navigate unclear or overly burdensome rules.

Avowedly passed to flout the federal government's deregulatory agenda, these state laws are at odds with the fundamental maxim that "State sovereign authority is bounded by the States' respective borders." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025). States may not set crypto policy for the Nation.

D. States Have Begun Launching Attacks On Self-Custody

Some States have gone further still by attempting to regulate self-custody. Self-custody is an essential feature of many digital-asset transactions. It allows participants in the digital-asset ecosystem to hold assets in and transact directly from their own "wallets," *i.e.*, "software or hardware that allows for the safekeeping of private keys that enable users to transact with their digital assets on blockchains." White House Crypto Report 33. The White House Crypto Report urged Congress to reaffirm "[t]he importance of U.S. individuals maintaining the capability to lawfully hold, or custody, their own digital assets without a financial intermediary." White House Crypto Report 153.

Not all States have agreed with that policy call. In 2024, for example, Maine enacted a statute requiring cryptocurrency companies to exhaustively "identify" recipients of transfers to unhosted (*i.e.*, self-custody) wallets. Separate statutory provisions require Coinbase to keep records of the identities of recipients and to report that information to Maine during investigations. 32 M.R.S. § 6100-TT(3)(A)(3), (4); § 6081(2); *see also* § 6100-TT(4). And these requirements are backed by civil penalties. § 6100-CC. Requiring companies like Coinbase to identify the holders of unhosted wallets threatens the very purpose of self-custody—to protect user privacy and autonomy. White House Crypto Report 38 ("Using self-custody and privacy-enhancing technologies can reduce privacy risks.").

In addition to conflicting with national policy, Maine's law threatens to unlawfully "burde[n] interstate commerce in clear excess of [its] putative local benefits." *Nat'l Pork Producers Council*, 598 U.S. at 393 (Barrett, J., concurring) (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). To the extent the law applies to transfers by non-Maine customers or to non-Maine recipients, Maine's requirement could force companies like Coinbase to identify the recipients of all off-exchange transfers initiated by any customer—no matter the connection of the sender or recipient to the State. That would burden out-of-state and foreign customers, interfere with Coinbase's business in those other jurisdictions, and could be inconsistent with other States' and countries' regulatory regimes.

Maine's scheme also constitutes an unreasonable search of Coinbase's customers by forcing them to disclose private information about their (and others') private wallet ownership to Coinbase, which must then make that information available to the State. *See Carpenter v. United States*, 585 U.S. 296 (2018) (collection of cell phone location data from third-party providers was an unreasonable search). And it constitutes an unreasonable search *of Coinbase* by forcing it to collect sensitive information about its users and make it available to the State. *Cf. Patel v. City of Los Angeles*, 738 F.3d 1058, 1061-62 (9th Cir. 2013) (en banc), *aff'd*, 576 U.S. 409 (2015).

Those constitutional defects put in stark relief Maine's policy disagreement with the federal government: Where Maine views Americans' wallet ownership information as belonging to the State, the federal government has understood that information to be each individual's own and touted "[t]he importance" of promoting private peer-to-peer transactions in the digital-asset ecosystem. White House Crypto Report 153.

III. The Department Should Support Broad Preemption of State Law In The Crypto Market-Structure Bills And Urge The SEC To Promptly Issue Rules

To prevent continued state interference with the national crypto market, the Department (and other components of the federal government) should request that Congress preempt state laws, such as the ones discussed above. Specifically, the Department should submit a views letter to Congress in connection with the pending market-structure legislation advocating for broad preemption, as it routinely does when legislation implicates executive-branch interests. *Cf., e.g.*, Letter from Peter S. Hyun, Acting Assistant Attorney General, Office of Legislative Affairs, to the Honorable Kenneth Buck, Ranking Member, House Committee on the Judiciary, *Re: State Antitrust Enforcement Venue Act of 2021* (June 1, 2022) (writing in support of bill that "would harmonize the treatment of venue for antitrust cases filed by state attorneys general with those filed by federal agencies"); Letter from Ronald Weich, Assistant Attorney General, Office of Legislative Affairs, to the Honorable Byron Dorgan, Senate Committee on Indian Affairs, *Re: Tribal Law and Order Act of 2009* (June 23, 2009) (proposing changes to bill that would "clarify and streamline the process by which concurrent criminal jurisdiction in Public Law 280 (P.L. 280) states may be retroceded to the United States").

This is not the first time the federal government has confronted duplicative and inefficient state efforts to regulate novel technologies and assets under state law. When States tried to regulate the national securities markets through their blue-sky laws in the 1990s, Congress stepped in and preempted them. *See, e.g.*, *Lander*, 251 F.3d at 108 ("The primary purpose of [the National Securities Markets Improvement Act of 1996 ("NSMIA"), Pub.L. No. 104–290, 110 Stat. 3416 (1996) (codified at 15 U.S.C. § 77r)] was to preempt state 'Blue Sky' laws which required issuers to register many securities with state authorities prior to marketing in the state."). And when States in the 1970s attempted to undertake a similar effort for the national derivatives markets, Congress preempted those efforts, too, through the Commodity Exchange Act. *See, e.g.*, H.R. Rep. No. 93-1383, at 35-36 (1974) (explaining that, in enacting the Commodity Exchange Act, Congress intended to "preempt the field" against state laws that might otherwise interfere with legitimate derivatives trading). States' efforts to interfere with national regulation of the crypto market are only the latest example in that historical trend.

The pending crypto market-structure bills offer an opportunity to correct course. Those bills include provisions preempting contrary state laws requiring registration. Both the House CLARITY Act bill and the Senate discussion draft would amend 15 U.S.C. § 77r (NSMIA) to make federally regulated digital assets a "covered security" exempt from state blue-sky laws. Both bills also preempt state regulation of crypto intermediaries. The CLARITY Act would give the CFTC "exclusive jurisdiction" to regulate intermediaries. H.R. 3633 §§ 404, 406. And the Senate draft would prohibit state licensing, registration, and other regulatory requirements potentially applicable to crypto companies subject to federal regulation under that bill. RFIA Discussion Draft § 109(f).

Coinbase endorses both bills' proposed approaches to preempt the application of state blue-sky laws to digital assets. The current language in the Senate RFIA discussion draft, in particular, provides an excellent template. In supporting broad preemption in the final market-structure bill, Coinbase urges the Department to keep two principles in mind.

First, the final crypto market-structure bill should preempt not only state blue-sky laws but also state licensing, registration, and other regulatory requirements as applied to crypto intermediaries. Although the CLARITY Act achieves this by granting the CFTC exclusive jurisdiction over crypto intermediaries, the House could eliminate any doubt about the comprehensive effect of that provision by adding a standalone preemption provision akin to § 109(f) in the Senate Banking Committee's discussion draft. That would make even clearer that the CLARITY Act is meant to preempt the recent proliferation of state licensing and other requirements enacted in response to the federal government's efforts to create clear, innovation-unlocking rules for the national crypto market.

Second, both the House and the Senate bills could be strengthened by expressly providing that the bills' preemption provisions apply not only prospectively, but also to any effort to impose liability for transactions made before the legislation's effective date. States have made clear that they intend to thwart federal law and thus may argue that any preemption provision does not apply to pre-enactment conduct, which could spawn costly litigation and uncertainty for years. Although the Senate bill currently prohibits the "Commission" and "any private plaintiff" from bringing any action seeking to impose liability for the offer, sale, or distribution of digital assets made *before* that bill's effective date, States may aggressively argue that such a prohibition does not apply to them. RFIA Discussion Draft § 101 (proposed Section 4B(k)(1) of Securities Act of 1933).

The Department's backing of these principles in a views letter to Congress would help sharpen the promising preemption provisions that appear already in the pending market-structure bills.

Finally, the Department also should urge the SEC to promptly issue rules and provide Commission guidance explaining in more detail what its Chairman has already publicly recognized—that "most crypto assets are not securities," Atkins Speech. Many States, such as Oregon, expressly tie their state-law definition of an investment-contract security to the federal-law definition. *See, e.g.*, *Pratt v. Kross*, 276 Or. 483 (1976) (adopting modified version of *Howey* test); *Amerivest Fin., LLC v. Malouf*, 263 Or. App. 327, 336-37 & n.8 (Or. App. 2014) (*Pratt*'s adoption of "modified" Howey test ran "parallel" to federal courts' own modification of the *Howey* standard). Through prompt rulemaking and more detailed guidance, the SEC could formalize and crystallize its explanations for why digital-asset transactions and related services (such as staking) are *not* investment-contract securities, which in turn would make it more difficult for States to manipulate their blue-sky laws to cover those same transactions and services. Although the SEC has indicated that it will begin rulemaking on these issues, time is of the essence in light of the ongoing, anti-crypto enforcement campaigns by States such as Oregon. The Department should urge the SEC to finalize rules and Commission guidance on an accelerated timetable.

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Thank you for the opportunity to comment. If you have any questions on our comment letter, please feel free to contact me at paul.grewal@coinbase.com, or Ryan VanGrack, Vice President, Legal, at ryan.vangrack@coinbase.com.

Sincerely,

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