

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

LEJILEX; CRYPTO FREEDOM ALLIANCE OF  
TEXAS,

Plaintiffs,

v.

SECURITIES AND EXCHANGE COMMISSION;  
ERIC R. WERNER; GARY GENSLER;  
CAROLINE A. CRENSHAW; JAIME E.  
LIZARRAGA; HESTER M. PEIRCE; and MARK  
T. UYEDA, in their official capacities,

Defendants.

No. 4:24-cv-00168-O

**BRIEF FOR *AMICUS CURIAE* COINBASE, INC.  
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

**CORPORATE DISCLOSURE STATEMENT**

Counsel for Coinbase, Inc. certifies that Coinbase, Inc., is wholly owned by Coinbase Global, Inc., which is a publicly held corporation. Coinbase Global, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of Coinbase Global, Inc.'s stock.

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## INTRODUCTION AND INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Coinbase, Inc. (“Coinbase”) is the largest and only publicly traded digital-asset trading platform in the United States. It is also a leading provider of financial infrastructure and technology for the digital-asset economy. LEJILEX now wishes to start a digital-asset trading platform.

Coinbase has felt the brunt of the SEC’s regulation-by-enforcement approach toward digital assets. Three years ago, Coinbase became a public company through a public offering allowed by the SEC—and the agency never asserted that any digital assets listed on Coinbase’s platform at that time were unregistered securities. But since then the SEC has turned sharply against Coinbase and other digital-asset firms, adopting an untenably sweeping, yet indeterminate, view of its jurisdiction over the industry. The SEC has compounded the problem by stubbornly refusing to explain through rulemaking or otherwise *which* digital assets it now believes are subject to the securities laws and *how* digital-asset firms can comply with the agency’s inapt, decades-old rules. Rather than engage in rulemaking, as Coinbase and others have urged and the law requires, the agency has revealed its revisionist view only piecemeal by pursuing a scorched-earth enforcement campaign against digital-asset firms, Coinbase included.

The upshot is that digital-asset firms are caught in a Catch-22 of the SEC’s making. The SEC sues digital-asset firms seeking punitive, retroactive penalties for their purported failure to “come in and register,” but the agency refuses to engage in the rulemaking necessary to make possible the compliance it is demanding—it even openly disputes that it has an obligation to make compliance with its regulations feasible. The dilemma is particularly perilous for digital-asset

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<sup>1</sup> Counsel for *amicus curiae* certify that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* made any monetary contribution to its preparation or submission.

trading platforms like Coinbase and LEJILEX, which have been indiscriminately targeted by the SEC for enforcement, regardless of their size or business model.

Granting summary judgment to plaintiffs in this case would be a critical step on the path out of this morass. By declaring what the SEC refuses to admit—that digital assets are generally not “investment contracts” under the federal securities laws—this Court can help relieve the pressure of the agency’s unlawful enforcement threats that have loomed over the digital-asset industry for the past two years.

## ARGUMENT

### I. Coinbase, Its Mission, And Its Engagement With Regulators

Coinbase is the largest digital-asset trading platform in the United States, serving millions of Americans. Founded in 2012, Coinbase’s mission is to bring economic freedom worldwide by creating a more open, inclusive, and efficient financial system by leveraging digital assets and blockchain technology. See Brian Armstrong, *Coinbase Is a Mission Focused Company*, Coinbase Blog (Sept. 27, 2020), <https://tinyurl.com/3x63ajk7>.

That mission has been an overwhelming success. Digital assets are now a mainstream part of global financial markets, with a market capitalization of around \$2 trillion and hundreds of millions of users around the world. Digital assets have provided a financial lifeline to millions of unbanked individuals, and they have significantly reduced the costs of cross-border remittances to developing countries.<sup>2</sup>

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<sup>2</sup> See, e.g., María Paula Mijares Torres, *Venezuela Crypto Remittances Skyrocket as Migration Crisis Worsens*, Bloomberg (July 5, 2024), <https://tinyurl.com/mrxx8dna>; Cecilia Chapiro, *Working Toward Financial Inclusion with Blockchain*, Stan. Soc. Innovation Rev. (Nov. 24, 2021), <https://tinyurl.com/56vt6us7>; Jonathan Wheatley & Adrienne Klasa, *Cryptocurrencies: Developing Countries Provide Fertile Ground*, Financial Times (Sept. 5, 2021), <https://tinyurl.com/59t67kaf> (“According to the World Bank, the cost of sending \$200 to countries in sub-Saharan Africa averaged 9 per cent of the transaction value .... On peer-to-peer crypto networks, however, these fees are typically about 2-5 per cent ....”).



Since its founding, Coinbase has been an industry leader in compliance and at the forefront of regulatory engagement. Coinbase has been registered as a money-services business with FinCEN since 2013; is a member of the federal Bank Secrecy Act Advisory Group; is licensed by the New York State Department of Financial Services; and is authorized to transmit money in dozens of states. Coinbase is also a critical partner to law-enforcement agencies around the world, having trained thousands of law-enforcement agents and analysts in blockchain analytics and other cutting-edge investigative techniques. For its years of law-enforcement assistance, Coinbase has been recognized three times with awards from the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). Hearing Before the Subcomm. on Digital Assets, Financial Technology and Inclusion (Feb. 15, 2024) (Statement of Grant Rabenn, Coinbase), <https://tinyurl.com/bdf3fypp>. Coinbase also was recently selected by the U.S. Marshals Service as a trusted partner for handling digital-asset forfeitures. Brett Tejpaul & Greg Tusar, *U.S. Marshals Service Chooses Coinbase to Safeguard, Trade Its Large Cap Digital Assets Portfolio*, Coinbase (July 1, 2024), <https://tinyurl.com/mryj3jfv>.

Coinbase is not registered with the SEC because Coinbase does not list securities. The digital assets on Coinbase's platform are instead commodities, like gold or diamonds. Other digital assets, such as tokenized versions of traditional stocks, *can* be sold as securities if the tokens are accompanied by contractual rights to the profits, income, or assets of an underlying business. Because Coinbase and many others in the digital-asset industry would like to be able to offer those kinds of digital-asset securities, however, Coinbase has actively engaged with the SEC for years, including about the need for the SEC to explain its views about how the securities laws apply to digital assets through notice-and-comment rulemaking rather than in ad hoc enforcement actions.

## II. The SEC's Sharp And Unexplained Reversal In Its Interpretation Of The Securities Laws Has Put The Digital-Asset Industry In A Catch-22

Over the past few years, the SEC has put Coinbase and the entire digital-asset industry in an impossible position. The SEC has launched an aggressive and accelerating campaign of enforcement suits, prosecuting digital-asset firms for purportedly failing to comply with the SEC's existing rules. At the same time, the SEC obdurately refuses to explain its views about *when* those rules apply to digital-asset firms and *how* digital-asset firms possibly can comply with the rules.

As plaintiffs explain, for years the SEC adhered to the well-founded position that it had at most limited authority over digital assets. *See* Pl. Br. 9-11. In 2018, the SEC's then-Director of Corporation Finance publicly stated that a digital asset "all by itself is *not* a security." William Hinman, Dir., Div. of Corp. Fin., SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 14, 2018), <https://tinyurl.com/5n94tj64> (emphasis added). And in May 2021, the SEC Chair testified before Congress that "the exchanges trading in these crypto assets do not have a regulatory framework either at the SEC, or our sister agency, the Commodity Futures Trading Commission." *Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III: Hearing Before the H. Comm. on Fin. Servs.*, 117th Cong. 12 (2021). "[O]nly Congress," the Chair stated, "could really address" that issue. *Id.*

The SEC's actions evidenced the same understanding. In April 2021, for example, the SEC cleared the way for Coinbase to become a public company after reviewing and commenting on Coinbase's business model. SEC, *Correspondence Related to Draft Registration Statement 4* (Dec. 7, 2020), <https://tinyurl.com/5n6f375n>. The agency allowed Coinbase's public listing as consistent with "the public interest and the protection of investors," 15 U.S.C. § 77h(a), without ever asserting that Coinbase's business model violated the securities laws, that Coinbase

unlawfully listed unregistered securities on its platform, or that Coinbase must register as a national securities exchange or an alternative trading system.

Over the past two years, however, the SEC's views have shifted dramatically. In December 2022, contradicting his prior testimony to Congress, the SEC Chair publicly claimed that the agency *does* “have enough authority ... in this space” to require digital-asset firms “to come into compliance” with the SEC's registration requirements.<sup>3</sup> And the Chair now regularly asserts that the “vast majority” of digital assets *are* securities, that there is a “clear way” for digital-asset firms to register with the agency, and that digital-asset firms must “come in and register” or face “enforcement actions.”<sup>4</sup> True to the Chair's threats, the SEC is pursuing a punitive enforcement campaign against a wide array of digital-asset firms—including Coinbase. *See* Pl. Br. 13-18; *infra* at 11-13.

The SEC has never coherently explained—through rulemaking or otherwise—the scope of the newfound authority it now purports to possess. The agency has not explained which digital assets it believes to be subject to the securities laws. It has offered no rational justification for treating Bitcoin and Ether—which the agency has determined are *not* securities—differently from any of the digital assets the SEC has asserted *are* securities. Nor has the SEC explained how it reads the securities laws to encompass digital assets when a wide array of traditional assets—including real estate, commodities, and trading cards—are not and have never been subject to SEC jurisdiction, even though they share attributes of digital assets that the SEC appears to regard as indicative of a security. Instead, as a district court recently recognized in rejecting the SEC's novel

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<sup>3</sup> *SEC's Gensler: The 'Runway Is Getting Shorter' for Non-Compliant Crypto Firms*, Yahoo (Dec. 7, 2022), <https://tinyurl.com/538un3xt>.

<sup>4</sup> *E.g.*, Gary Gensler, SEC Chair, *Partners of Honest Business and Prosecutors of Dishonesty* (Oct. 25, 2023), <https://tinyurl.com/ayp4tkwp>; First on CNBC: CNBC Transcript: SEC Chair Gary Gensler Speaks with CNBC's “Squawk Box” Today, CNBC (Feb. 10, 2023), <https://tinyurl.com/3z38uavc>; *SEC's Gensler: The 'Runway Is Getting Shorter'*, *supra* note 3.

view, the agency has spoken “out of both sides of its mouth” in articulating its legal theories, “leav[ing] th[at] Court, the industry, and future buyers and sellers with no clear differentiating principle between tokens in the marketplace that are securities and tokens that aren’t.” Mem. Op. and Ord. at 42-43 & n.12, *SEC v. Binance Holdings Ltd.*, No. 1:23-cv-01599-ABJ, 2024 WL 3225974 (D.D.C. June 28, 2024), ECF 248. A small sampling of the agency’s contradictory positions over the past couple of years bears this out:

Issue	Examples Of The SEC’s Conflicting Statements			
Is a digital asset a security?	<b>No (2018):</b> A digital asset “all by itself is <i>not</i> a security.” <sup>5</sup>	<b>Yes (2021):</b> A digital asset “embodi[es]” and “represents th[e] investment contract.” <sup>6</sup>	<b>No (2024):</b> A digital asset is just “computer code.” <sup>7</sup>	<b>Yes (2024, five days later):</b> The digital asset itself “represents the investment contract.” <sup>8</sup>
Can the SEC regulate digital asset exchanges?	<b>No (2021):</b> “Right now, there is not a market regulator [for] crypto exchanges.” <sup>9</sup>		<b>Yes (2022):</b> “Congress gave us a broad framework ... to regulate exchanges.” <sup>10</sup>	
Is existing law clear?	<b>No (2020):</b> There is “no certainty” about whether digital assets are securities. <sup>11</sup>		<b>Yes (2023):</b> “We have a clear regulatory framework built up over 90 years.” <sup>12</sup>	

The SEC also has failed to explain how digital-asset firms *could* comply with the agency’s existing rules, which were designed decades ago for legacy financial instruments that look nothing

<sup>5</sup> Hinman, *When Howey Met Gary*, *supra* (emphasis added).

<sup>6</sup> Opp. to Mot. to Intervene at 24, *SEC v. Ripple Labs, Inc.*, No. 20-cv-10832 (S.D.N.Y. May 3, 2021), ECF 153 (emphasis omitted).

<sup>7</sup> Tr. at 18:23, *SEC v. Payward, Inc.*, No. 3:23-cv-06003 (N.D. Cal. Feb. 22, 2024), ECF 26-1.

<sup>8</sup> Tr. at 92:14-15, *Payward*, No. 3:23-cv-06003 (N.D. Cal. Feb. 22, 2024), ECF 26-2.

<sup>9</sup> Gensler, *Game Stopped?*, *supra*.

<sup>10</sup> Gary Gensler, SEC Chair, Prepared Remarks of Gary Gensler on Crypto Markets Penn Law Capital Markets Association Annual Conference (Apr. 4, 2022), <https://tinyurl.com/bd767cuv>.

<sup>11</sup> SEC, *Correspondence Related to Draft Registration Statement*, *supra*.

<sup>12</sup> *Oversight of the Securities and Exchange Commission* at 4:12:30-58, 118th Cong., 1st Sess. (Apr. 18, 2023), <https://tinyurl.com/3pf7d9xu>.

like digital assets. The SEC’s digital-asset-related enforcement actions are ostensibly premised on the proposition that digital-asset firms can “come in and register” with the agency. Yet, as Coinbase and others have repeatedly demonstrated in face-to-face meetings with the SEC, petitions for rulemaking, and multiple lawsuits, digital-asset firms simply cannot comply with the SEC’s existing rules. *See, e.g.*, Coinbase, Petition for Rulemaking, SEC File No. 4-789 (July 21, 2022), <https://tinyurl.com/4mt2evcz> (“Coinbase Rulemaking Petition”).

At the most basic level, if many digital assets had to be registered as securities, they simply could not function. All digital-asset transactions would have to be routed through a broker-dealer on a registered exchange, subjecting them to clearing and settlement rules that would not permit the real-time uses for which the assets are designed. Coinbase Rulemaking Petition at 8. Digital-asset firms also are unable to comply with registration and disclosure requirements designed for legacy financial instruments managed by centralized companies, rather than for digital assets operating on decentralized blockchains. *Id.* at 12-14, 18; *see also* Coinbase, Supplemental Comment Letter, SEC File No. 4-789, at 3 (Dec. 6, 2022), <https://tinyurl.com/36zmapuw>. And those problems are just the tip of the iceberg. *See* Coinbase Rulemaking Petition at 23-27 (discussing additional problems); *see also* Coinbase Opening Br. 40-46, *Coinbase v. SEC*, No. 23-3202 (3d Cir. Mar. 11, 2024), ECF 16 (same).

Instead of confronting these glaring workability problems, the SEC has refused to respond—let alone engage in the rulemaking necessary to tailor its rules for the digital-asset industry, as it has done for other industries.<sup>13</sup> As a result, the SEC has quite purposely put digital-

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<sup>13</sup> *See, e.g.*, SEC Final Rule, *Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities* (July 1, 2024), <https://tinyurl.com/yx2kec5z> (modifying SEC registration forms for registered index-linked annuities); Mark T. Uyeda, Comm’r, SEC, *Statement on the Registration for Index-Linked Annuities and Registered Market-Value Adjustment Annuities* (July 1, 2024), <https://tinyurl.com/njb5p3z6> (“Consideration should be given to allowing variances from

asset firms in a Catch-22: They are told to comply with inapt, inapplicable existing rules designed for legacy financial instruments that would render many digital assets useless; yet companies are subject to punitive, retroactive SEC enforcement actions for failing to achieve the impossible. And all the while, the SEC refuses to conduct the rulemaking that would be needed to make possible the compliance the agency demands. The ultimate goal is to drive the industry out of business by demanding compliance the agency knows is infeasible, and then aggressively pursuing companies for their supposed disregard for the law.

### **III. The SEC Has Unlawfully Rebuffed Coinbase’s Efforts To Seek Clarity Through Rulemaking**

Coinbase’s experience epitomizes the digital-asset industry’s predicament. In July 2022, seeking to break the SEC-created regulatory logjam, Coinbase petitioned the SEC for rulemaking. *See* Coinbase Rulemaking Petition, *supra*. To be clear, Coinbase strongly disagrees that the SEC has the statutory authority it now claims over digital assets. But if the agency is going to assert that authority, the APA and fundamental principles of fair notice and due process require the agency to articulate and explain its revised position in advance through notice-and-comment rulemaking—resulting in regulations subject to judicial review *before* the SEC attempts to enforce its new view.

Coinbase’s rulemaking petition identified several critical issues that the SEC needs (but has refused) to address. It highlighted the SEC’s “[l]ack of clarity regarding how to determine whether a digital asset is a security,” and urged the SEC to “provide clarity” on that key threshold issue “by defining a digital asset security through rulemaking.” Coinbase Rulemaking Petition at 5, 7-12. The rulemaking petition also detailed the many ways that existing securities regulations

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Form S-1 for crypto digital assets, similar to that given for fund and insurance products and other securities products.”).

are “fundamentally incompatible with the operation of digital asset[s],” which in turn render those rules unworkable for digital assets and make compliance with those rules impossible. *Id.* at 5; *see also id.* at 6-8, 12-13, 15-18, 20-27. Coinbase’s rulemaking petition garnered widespread support from more than a thousand stakeholders, including the U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness. *See* Comments of Tom Quaadman, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, SEC File No. 4-789 (Jan. 19, 2023), <https://tinyurl.com/46v7twz4>.

Yet the SEC stood silent. In April 2023, after ten months without word from the SEC, Coinbase filed a petition for a writ of mandamus in the Third Circuit, seeking to compel the SEC simply to act on the long-pending rulemaking petition. *In re Coinbase, Inc.*, No. 23-1779 (3d Cir. Apr. 26, 2023), ECF 1-1. As Coinbase explained, the SEC had long shown by its conduct—including its rapidly expanding flotilla of enforcement actions—that it had determined not to engage in rulemaking. But by withholding a formal denial of Coinbase’s rulemaking petition, the agency was frustrating judicial review through an impermissible pocket veto. *See id.* at 17-22.

Even then the agency dragged its feet, opposing mandamus and asserting that it had not made up its mind to deny Coinbase’s rulemaking petition. But the SEC’s actions soon belied that stance. Within weeks of filing its opposition to Coinbase’s mandamus petition, the SEC commenced an enforcement action against Coinbase itself, alleging that Coinbase was failing to comply with the very securities regulations that Coinbase’s rulemaking petition (and mandamus petition) explained do not work for digital assets. *See SEC v. Coinbase, Inc.*, No. 1:23-cv-04738 (S.D.N.Y. filed June 6, 2023), ECF 1. Within hours after the SEC filed its suit, the Third Circuit *sua sponte* ordered the SEC to explain its refusal to respond to Coinbase’s rulemaking petition.

Only in December 2023, after months of additional delay and when the Third Circuit appeared on the verge of granting relief, did the SEC finally act on Coinbase’s rulemaking petition. But its response did not begin to engage with the serious issues the rulemaking petition raised. The SEC issued a terse, two-page letter denying Coinbase’s rulemaking petition with virtually no rationale. *See* Letter from the SEC to Paul Grewal, Chief Legal Officer, Coinbase Global, Inc. (Dec. 15, 2023), <https://tinyurl.com/5cdy3xsb>. In response to the workability concerns Coinbase had detailed, the SEC offered a single sentence of ipse dixit: “The Commission disagrees with the Petition’s assertion that application of existing securities statutes and regulations to crypto asset securities, issuers of those securities, and intermediaries in the trading, settlement, and custody of those securities is unworkable.” *Id.* at 2. The agency said nothing whatsoever explaining *why* it disagreed—flouting the bedrock APA principle that agency action must be “reasonable and reasonably explained.” *Ohio v. EPA*, No. 23A349, 2024 WL 3187768, at \*7 (U.S. June 27, 2024) (citation omitted); *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Coinbase promptly sued the SEC in the Third Circuit again to challenge its unexplained denial of Coinbase’s rulemaking petition. *See Coinbase, Inc. v. SEC*, No. 23-3202 (3d Cir.). That litigation is ongoing. Coinbase’s opening brief argues that the SEC’s denial of Coinbase’s rulemaking petition was arbitrary and capricious and that the agency violated its obligation to engage in rulemaking given its changed position and the unworkability of its existing rules. *See* Coinbase Opening Br., *Coinbase*, No. 23-3202 (3d Cir. Mar. 11, 2024), ECF 16. Tellingly, the SEC in its response brief *still* made no effort to explain how its rules could work for digital-asset firms. Instead, the agency has taken the remarkable position that it *doesn’t matter* whether “this new industry *can* comply with the existing regulatory framework.” SEC Br. 2, *Coinbase*, No. 23-



3202 (3d Cir. May 10, 2024), ECF 39 (quotation marks omitted). In other words, the SEC believes it can enforce its wavering views of purported legal requirements it knows companies cannot satisfy and thereby drive an industry the agency disfavors into the ground. Never mind that, under the APA, “[i]mpossible requirements imposed by an agency are perforce unreasonable.” *All. for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991).

That stunning response, combined with the SEC’s obstinate refusal to explain itself, eliminates any doubt about the SEC’s endgame. The agency believes workability is not required. It prefers to bludgeon digital-asset companies with enforcement actions one-by-one—while preventing those firms from complying with the agency’s inapt rules—because the SEC wants the vibrant, transformative digital-asset industry to die. As two of the SEC’s own Commissioners have explained in protesting the agency’s unlawful strategy, the SEC’s digital-asset-related initiatives are transparent efforts to “block access to crypto as an asset class” and achieve the “extinction of [this] new technology.”<sup>14</sup>

#### **IV. The SEC Seeks To Use Its Regulatory Catch-22 To Shut Down All Digital-Asset Trading Platforms**

Despite the SEC’s refusal to articulate through rulemaking which digital *assets* it believes are subject to the securities laws, and notwithstanding its contradictory and incoherent positions on that critical issue, one thing is clear: The SEC’s Catch-22 has ensnared digital-asset trading *platforms* of all varieties. Plaintiff LEJILEX, which seeks to start a digital-asset trading platform, is therefore right to fear an (unlawful) enforcement action from the SEC.

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<sup>14</sup> Mark T. Uyeda, Comm’r, SEC, *Statement on Proposed Rule Regarding the Safeguarding of Advisory Client Assets* (Feb. 15, 2023), <https://tinyurl.com/2ztdcxx5>; Hester M. Peirce, Comm’r, SEC, *Rendering Innovation Kaput: Statement on Amending the Definition of Exchange* (Apr. 14, 2023), <https://tinyurl.com/4v7hvwa>.

Statements by the Chair standing alone justify LEJILEX's fear of enforcement. In recent years, the Chair has repeatedly proclaimed that all or nearly all digital-asset trading platforms are violating the securities laws. Consider just these examples of the Chair's public statements in the last two years since the SEC's dramatic change in its view of digital assets:

- December 2022: "I've got one goal is that these platforms, the exchanges, ... come into compliance. They can do that appropriately working with the SEC. Or we can continue on the course with more enforcement actions. And I would have to say that the runway is getting shorter."<sup>15</sup>
- April 2023: "It's just a bunch of [crypto] intermediaries in this market that think they have a choice. They don't have a choice ... [T]hey need to come into compliance."<sup>16</sup>
- April 2023: "The law is clear. If you're a securities exchange, clearinghouse, broker, or dealer, you must come into compliance, register with us, and deal with conflicts of interest and disclose important information."<sup>17</sup>
- June 2024: "This is a field that's sort of built up on a business model that's a non-compliant model."<sup>18</sup>

The SEC's bite matches the Chair's bark. Since last summer, the agency has been on an indiscriminate enforcement crusade. It has filed a barrage of lawsuits against digital-asset trading platforms big and small, including Coinbase, Binance, Kraken, Bittrex, and Beaxy. *See, e.g., SEC v. Binance Holdings Ltd.*, No. 1:23-cv-01599 (D.D.C. filed June 5, 2023); *SEC v. Coinbase, Inc.*, No. 1:23-cv-04738 (S.D.N.Y. filed June 6, 2023); *SEC v. Payward, Inc.*, No. 3:23-cv-06003 (N.D. Cal. filed Nov. 20, 2023); *SEC v. Bittrex, Inc.*, No. 2:23-cv-00580 (W.D. Wash. filed Apr. 17, 2023); *SEC v. Beaxy Digital, Ltd.*, No. 1:23-cv-01962 (N.D. Ill. filed Mar. 29, 2023).

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<sup>15</sup> *SEC's Gensler: The 'Runway Is Getting Shorter'*, *supra* note 3.

<sup>16</sup> *Oversight of the Securities and Exchange Commission* at 4:12:30-58, 118th Cong., 1st Sess. (Apr. 18, 2023), *supra* note 12.

<sup>17</sup> Ari Levy & MacKenzie Sigalos, *SEC's Gensler Says 'The Law Is Clear' for Crypto Exchanges and that They Must Comply with Regulators*, CNBC (Apr. 27, 2023), <https://tinyurl.com/3e4shw5d>.

<sup>18</sup> *SEC's Gensler on May 2024 Agenda* at 8-10, Bloomberg Invest (June 25, 2024), <https://tinyurl.com/yc547m9m>.

No business model has been safe from the SEC's enforcement onslaught. The SEC sued Coinbase despite the agency having previously cleared the way for Coinbase to become a publicly traded company, and even though Coinbase's business model has not materially changed. *See supra* at 4-5. The SEC also recently issued a Wells Notice to Robinhood, which primarily facilitates trading in traditional securities but also offers a small selection of digital assets. *See Robinhood Crypto Gets Wells Notice From SEC*, Reuters (May 6, 2024), <https://tinyurl.com/bdfrmmsv>. And the SEC's fusillade shows no signs of slowing.

It is no accident that the SEC has targeted so many different trading platforms. Its Chair's stated position is that "most crypto tokens are subject to the securities laws" and that "it follows that most crypto intermediaries have to comply with securities laws as well."<sup>19</sup> Under that misguided view, if a digital-asset trading platform offers any digital asset that the SEC has alleged is a security in one of its enforcement actions—as LEJILEX alleges it intends to do on its platform, Pl. Br. 20—it is a virtual certainty that the price of doing so will be to face an SEC enforcement action seeking punitive, retroactive penalties. The only way for digital-asset trading platforms like LEJILEX to escape the threat of SEC enforcement is to cease doing business in the United States altogether.

Under these circumstances, digital-asset trading platforms are entitled to preemptive judicial relief. This Court should put a stop to the SEC's unlawful campaign of regulation by enforcement and provide the clarity that the SEC has obstinately withheld from the digital-asset industry.

## CONCLUSION

The Court should grant plaintiffs' motion for summary judgment.

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<sup>19</sup> Gary Gensler, SEC Chair, "*We've Seen This Story Before*"; *Remarks before the Piper Sandler Global Exchange & Fintech Conference* (June 8, 2023), <https://tinyurl.com/2sjnmhe4>.

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