

Testimony of Daniel M. Gallagher
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Before the U.S. House of Representatives Committee on Agriculture
“The Future of Digital Assets: Providing Clarity for Digital Asset Spot Markets”
June 6, 2023

I. Introduction

Thank you, Chairman Thompson, Ranking Member Scott, Chairman Johnson, Ranking Member Caraveo, and members of the Committee for inviting me to testify today on the important topic of digital asset regulation. I’d also like to thank Financial Services Committee Chairman McHenry, Ranking Member Waters, Chairman Hill, and Ranking Member Lynch for their attention to this topic.

My name is Dan Gallagher. I am Chief Legal, Compliance and Corporate Affairs Officer of Robinhood Markets, Inc. (“Robinhood”). I was formerly a Commissioner of the U.S. Securities and Exchange Commission (“SEC” or “Commission”) from 2011 to 2015, and Deputy Director of the SEC’s Division of Trading and Markets from 2008 to 2010. I have been an active legal practitioner in the financial services industry for twenty-five years.

Robinhood is a NASDAQ-listed company formed in 2013 by Vlad Tenev and Baiju Bhatt with a single mission – to democratize finance for all, regardless of a customer’s background, income, or wealth. Robinhood employs over two thousand individuals working remotely and in offices across six states – California, Colorado, Florida, Illinois, New York, and Texas – and the District of Columbia. Robinhood pioneered the commission-free, no-account-minimums investing model that has helped open the stock market to tens of millions of new retail investors and saved them billions of dollars in the process.¹ Robinhood has two wholly-owned subsidiary broker-dealers, Robinhood Financial LLC and Robinhood Securities, LLC. Our brokerage customers can invest in and trade thousands of publicly-listed stocks and exchange-traded funds using fractional or whole shares, as well as options.² Established in 2018, Robinhood’s wholly-owned subsidiary Robinhood Crypto offers customers in 48 states and the District of Columbia the ability to buy, sell, store, and transfer (depending on the jurisdiction) up to 18 cryptocurrencies – in contrast to hundreds of listed tokens at other firms – at low cost with no trading

¹ A 2021 study by Professors Kothari, Johnson, and So commissioned by Robinhood found: “Since the industry adopted Robinhood’s zero commission model in late 2019, retail investors have saved tens of billions in [equities] trading commissions, with Robinhood customers alone saving \$11.9 billion during 2020–2021.” The same study also found: “During 2020–2021, Robinhood customers benefited from more than \$8 billion in price improvement compared to the national best bid and offer prices.” Kothari, S.P., Travis L. Johnson, and Eric C. So, Commission Savings and Execution Quality for Retail Trades (Dec. 2, 2021), at 1, available at <https://ssrn.com/abstract=3976300> or <http://dx.doi.org/10.2139/ssrn.3976300>.

² Options are for eligible customers only. Robinhood Financial does not offer over-the-counter (“OTC”) stock trading, with the exception of select American Depositary Receipts (“ADRs”). Robinhood Financial does not allow naked options trading or short-selling.



commissions and no account minimums.³ As described below, Robinhood Crypto employs a rigorous review process designed to ensure that it does not list digital asset securities.

Robinhood shares the goal of policymakers who seek to foster the development of blockchain technology and digital asset markets in the U.S. through tailored, responsible regulation. Unfortunately, Robinhood and other digital asset market participants in the U.S. face a patchwork of state regulatory frameworks, not all of which are consistent, as well as a lack of regulatory clarity at the federal level. In many ways, the regulatory landscape for digital assets is like it was for the equities markets in 1932.

The lack of federal regulatory clarity in particular has created an unlevel playing field for market participants and hindered the broader adoption of digital asset products and services in the U.S. While some view existing regulations as sufficient to regulate digital asset markets, we disagree. The federal securities laws have been remarkably flexible in response to many forms of technological innovation in the financial services space, but they were enacted in the 1930s at a time when the idea of blockchain technology and cryptocurrencies was unimaginable. And likewise, the federal commodities laws are inherently principles-based and flexible, but they arose decades ago and were geared towards markets very unlike today's digital asset markets. As a result, serious gaps in existing statutes and regulations exist when it comes to digital assets.

The most fundamental problem in digital asset markets is that there is no clear guidance on which digital assets the SEC and Commodity Futures Trading Commission ("CFTC") deem to be securities and commodities, respectively, and how cryptocurrency platforms and digital asset securities can be appropriately registered under federal law.⁴ For example, without the provision of additional regulatory relief addressing, among other things, exchange listing requirements; SEC custody requirements, including capital and accounting requirements for custodians; the trading of non-security digital assets and digital asset securities on the same platform; the application of SEC trading rules, such as those under Regulation NMS and Regulation SHO; the application of SEC disclosure rules; and SEC clearing agency and transfer agent requirements, exchanges, market intermediaries, and other market participants are unable to register with the SEC.

The SEC bases its analysis of whether a digital asset is a security on decades-old Supreme Court cases. The primary case, *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), which was decided in 1946, establishes a four-part test to define an "investment contract." As a threshold matter, there are legitimate questions around whether certain digital asset transactions involve contracts and therefore should be governed by the *Howey*

³ Aave (AAVE), Avalanche (AVAX)*, Bitcoin (BTC), Bitcoin Cash (BCH), Cardano (ADA)*, Chainlink (LINK), Compound (COMP)*, Dogecoin (DOGE), Ethereum (ETH), Ethereum Classic (ETC), Litecoin (LTC), Polygon (MATIC)*, Shiba Inu (SHIB)*, Solana (SOL)*, Stellar Lumens (XLM)*, Tezos (XTZ)*, Uniswap (UNI)*, and USD Coin (USDC)**. Note: "*" means it is not available for trading in New York, and "**" means it is not available for trading in New York or Texas.

⁴ See "Regulating cryptocurrencies is a national concern, not a political issue, says former SEC Chair Harvey Pitt," CNBC (Dec. 13, 2022) ("It's reminiscent of the old recipe for rabbit stew – first you have to start with a rabbit and it's not clear to me that these are securities. And in any event FTX wasn't registered with the SEC and there is a need here for a concise and considered national policy that lays out the rules of the road."), available at <https://www.cnbc.com/video/2022/12/13/regulating-cryptocurrencies-is-a-national-concern-not-a-political-issue-says-former-sec-chair.html>.



test. Moreover, *Howey* involves interests in orange groves, a markedly different context compared to today’s digital asset markets. Yet some in senior federal regulatory positions maintain that the law is clear and no further federal guidance is necessary. Again, we disagree. As my dear friend and mentor, the late Harvey Pitt, SEC Chairman from 2001 to 2003, said in a 2022 television interview, “there is a need here for a concise and considered national policy that lays out the rules of the road.”⁵

Given this lack of federal regulatory clarity for digital assets, it is no wonder that SEC Chairman Jay Clayton and CFTC Chairman Chris Giancarlo called for coordination with Congress in regulating digital assets, and why CFTC Chairman Rostin Benham has called for Congress to provide additional authority to regulate digital asset markets.⁶

The current environment is bad for American consumers who want greater access to digital assets, bad for innovation in the blockchain and digital asset industries, and bad for the already-eroding competitive position of the U.S. with regard to digital asset markets.⁷ Regulatory clarity for digital assets is, therefore, critical: it would allow token issuers, exchanges, intermediaries, and other market participants to provide products and services their customers want without the constant threat of crippling enforcement actions, and would help ensure that the U.S. remains the global leader in responsible blockchain and digital asset innovation, as well as vibrant, appropriately regulated digital asset markets.

The Digital Asset Market Structure Discussion Draft (the “Discussion Draft”) is an important step in providing the necessary regulatory clarity with regard to the market structure for digital asset commodities and digital asset securities. I commend the coordination and diligence of the Agriculture and Financial Services Committees under the strong leadership of Chairmen Thompson and McHenry in acting quickly to introduce this important Discussion Draft. In particular, as I describe below, the intent of the Discussion Draft to establish regulatory regimes to register digital asset securities offerings and to register intermediaries under both the Securities Exchange Act of 1934 (the “Exchange Act”) and the Commodity Exchange Act is critical to establishing a rational federal system that will protect customers, allow responsible market participants to innovate and serve their customers’ needs, and ensure fair, efficient, and globally competitive digital asset markets in the U.S.

⁵ *Id.*

⁶ SEC Chairman Clayton’s testimony entitled “Virtual Currencies: The Roles of the SEC and CFTC” before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Feb. 6, 2018), *available at* <https://www.sec.gov/news/testimony/testimony-virtual-currencies-oversight-role-us-securities-and-exchange-commission>; CFTC Chairman Giancarlo’s testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Feb. 6, 2018), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37#P21_6885; CFTC Chairman Behnam’s testimony entitled “Why Congress Needs to Act: Lessons Learned from the FTX Collapse” before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Dec. 1, 2022), *available at* <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehtnam29>.

⁷ Browne, Ryan, “EU lawmakers approve world’s first comprehensive framework for crypto regulation,” CNBC (Apr. 20, 2023), *available at* <https://www.cnbc.com/2023/04/20/eu-lawmakers-approve-worlds-first-comprehensive-crypto-regulation.html>.



II. Robinhood's Customers

For decades, economic and non-economic barriers to entry kept millions of hardworking Americans from participating in the stock market, which has been one of history's primary drivers of wealth creation. Robinhood changed that. Our innovative model helped spur a retail investor revolution. By eliminating costly trading commissions and account minimums, by providing innovative products like fractional shares and recurring investments, and by offering an easy-to-use mobile platform, the “have nots” – blue-collar workers, younger Americans with smaller amounts to invest, women and people of color, first-time investors, people from rural communities and inner cities alike, gig-economy workers and freelancers – now have access to markets historically reserved for the wealthy few. Similar to its equities business, Robinhood has provided broad access to digital asset markets through a low-cost, intuitive platform that forgoes many of the fees charged by other cryptocurrency companies.

Today, Robinhood has over 23 million net funded accounts, about half of which report being first-time investors, and \$78 billion in assets under custody. Our customers hail from every state in the country and are a representative cross-section of America. With a median age of 33, Robinhood's customers are younger, have smaller account balances, and are more diverse than customers at incumbent firms.⁸ We believe the trend of rising retail investor participation, particularly by younger people and historically underserved demographics, is good both for individual Americans looking to generate long-term financial security and the continued strength of U.S. capital markets and our economy.

We believe allegations from some policymakers and commentators that digital assets are too complex and risky for individual Americans are overly paternalistic and unproductive. These critics often ignore the fact that millions of Americans – including millions of Robinhood customers – *want to participate and are participating responsibly* in the digital asset economy, and they will continue to do so whether in the U.S. or through foreign platforms. We believe policymakers should support policy solutions that encourage Americans to engage in digital asset markets through responsible, appropriately-regulated U.S. firms, rather than incentivizing people to participate through often unregulated or lightly regulated foreign platforms.⁹ At Robinhood, we stand behind our customers' ability to access digital asset markets and transact in tokens that meet our robust listing criteria – which require, among other things, significant liquidity, valid use cases, and strong developer networks – and we accompany this access with a well-developed compliance infrastructure, strong cybersecurity controls, digestible educational content, and multiple channels for customer support.

⁸ Median age as of February 2023. Demographic Data comes from a monthly Robinhood survey, powered by Dynata. Sample is representative of the U.S. population with brokerage accounts across age, gender, income, race/ethnicity, and regional residence. Incumbent firms include Charles Schwab, E*Trade, Fidelity, TD Ameritrade, Vanguard.

⁹ This appears to be happening in greater numbers as a result of recent U.S. government actions targeting the cryptocurrency industry. See Chipolina, Scott, “US crypto clampdown pushes exchanges to go offshore,” Fin. Times (May 16, 2023), available at <https://www.ft.com/content/10979399-ba25-45b9-b85d-776c1b75bfea>; Osipovich, Alexander, “U.S. Crypto Traders Evade Offshore Exchange Bans,” Wall Street Journal (July 30, 2021), available at <https://www.wsj.com/articles/u-s-crypto-traders-evade-offshore-exchange-bans-11627637401>.



III. Robinhood Crypto’s Business

Unlike many platforms in the digital asset industry, Robinhood Crypto is proud to be headquartered in the United States. As noted above, Robinhood Crypto allows customers in 48 states and the District of Columbia to buy, sell, store, and transfer (depending on the jurisdiction) a select number of cryptocurrencies – currently up to 18 tokens – at low cost without trading commissions, account minimums, and many other fees charged by our competitors.¹⁰ Robinhood Crypto is federally-registered as a money services business with FinCEN, licensed as a money transmitter in 27 states, and holds a “BitLicense” from the New York Department of Financial Services. Robinhood Crypto was the first in the industry to provide customers 24/7 voice support, with chat support also available as of October 2022.

Robinhood Crypto is a marketplace, not an exchange. It does not match customer buy-and-sell orders directly – rather, it sends customer orders to liquidity providers who compete for the opportunity to execute these orders. Robinhood routes customer orders to its liquidity providers based on the best price and has established an execution quality committee that monitors the quality of cryptocurrency order execution on behalf of its customers. This generally results in highly competitive, low-cost executions without the fees charged by some competitors. In fact, some competitors charge both a commission/fee *and* a markup for providing trade executions to customers.

Robinhood Crypto also enables customers to deposit and withdraw cryptocurrencies to and from our custodial platform (“Crypto Transfers”).¹¹ With Crypto Transfers, customers have full access to their digital assets and can use this service to participate in the cryptocurrency ecosystem – by tipping on social media, paying for non-fungible tokens (“NFTs”), and more.¹² Unlike some other digital asset platforms, Robinhood Crypto does not charge an extra fee to withdraw cryptocurrency from the Robinhood Crypto platform. With Crypto Transfers, we aim to offer a seamless and intuitive way for customers to use their digital assets by scanning QR codes to easily send digital assets to a wallet address. Robinhood Crypto has enhanced security and fraud protection mechanisms, including mandatory two-factor authentication to help protect customers’ cryptocurrency and validate most wallet addresses so customers can make sure they are sending assets to a valid wallet address.

Robinhood Crypto is committed to providing access to digital assets for users across all demographics. Robinhood Learn (“Learn”)¹³ is at the center of our efforts to make trading digital assets more accessible and provide financial education both to our customers and to those who have not yet started their digital asset ownership journey. Learn is available to everyone (not just our customers) on the Robinhood website. Through Learn, Robinhood provides an extensive hub of educational articles for customers of every experience level in an easy-to-read format. We regularly collect feedback from readers to understand

¹⁰ Unlike other digital asset platforms, Robinhood Crypto does not charge any extra fees to send or receive digital assets, and in fact Robinhood Crypto covers users’ gas fees for network trading (but not for withdrawals).

¹¹ Due to local regulations, Crypto Transfers are not yet available in New York. We will inform customers in New York when this changes.

¹² Robinhood Crypto does not offer NFTs on its platform.

¹³ Robinhood Learn, available at <https://learn.robinhood.com/>.



whether the content is helpful, and this feedback helps guide updates to our Learn articles. Educational articles on Learn received around four million page views throughout 2022. We even offer educational content specific to digital assets on Learn.¹⁴ We have also partnered with the U.S. Hispanic Chamber of Commerce to continue Robinhood’s Opportunity Crypto program that brings crypto education workshops to local communities across the country.¹⁵

Additionally, we offer Crypto Learn and Earn, an exclusive in-app educational module available to all Robinhood Crypto customers via Robinhood Learn to teach customers the basics about cryptocurrency.¹⁶ Customers who complete the free learning modules related to either Avalanche or USDC are eligible to receive rewards, paid out in the applicable cryptocurrency (either AVAX, if customers have completed the Avalanche module, or USDC, if customers have completed the USDC module). Among the topics included are content discussing how cryptocurrency works, how cryptocurrency is different from traditional currency, and “what are stablecoins.” Robinhood also has a site within our Help Center dedicated to cryptocurrency education.¹⁷ Some examples of the cryptocurrency-focused educational content vary from explanatory information about cryptocurrencies and the blockchain to “what is a hashrate.” We warn our customers that trading in cryptocurrencies comes with significant risks, including volatile market price swings or flash crashes, market manipulation, and cybersecurity risks. We also make available a Robinhood Crypto Risk Disclosure.¹⁸ We recognize and highlight for our customers that cryptocurrencies are a risky asset class, which should be carefully researched and evaluated by anyone thinking about purchasing a particular cryptocurrency.

Finally, the Snacks newsletter, produced by Sherwood Media, LLC, is yet another avenue for educating our customers and the general public about investing and buying digital assets in a very approachable and accessible format. Snacks is a curated digest of business news stories, including stories related to digital assets, delivered both daily and weekly via a newsletter that allows subscribers to start their days with the top business news of the day in an accessible, digestible medium. The Snacks newsletter has around 40 million subscribers as of December 2022, reinforcing our belief that Snacks is one of the most widely consumed newsletters in the U.S.

IV. Robinhood Crypto’s Safety-First Approach

In contrast to many cryptocurrency platforms, Robinhood has extensive experience operating in highly-regulated industries with two broker-dealer subsidiaries registered with the SEC and FINRA. We apply this

¹⁴ Robinhood Learn: What is a Cryptocurrency?, *available at* <https://learn.robinhood.com/articles/1thUPqVffWfMYJvxthNrHn/what-is-a-cryptocurrency/>.

¹⁵ Robinhood Blog: Taking a Safety First Approach to Crypto, *available at* Education <https://blog.robinhood.com/news/2022/10/11/taking-a-safety-first-approach-to-crypto-education-through-opportunity-crypto>

¹⁶ Robinhood Crypto Learn and Earn, *available at* <https://robinhood.com/us/en/support/articles/crypto-learn-and-earn/>.
Robinhood does not earn direct revenues from Learn and Earn.

¹⁷ Robinhood Help Center: Cryptocurrency Education, *available at* <https://robinhood.com/us/en/support/articles/cryptocurrency-education/>.

¹⁸ Robinhood Cryptocurrency Risk Disclosure, *available at* <https://cdn.robinhood.com/assets/robinhood/legal/Robinhood%20Crypto%20Risk%20Disclosures.pdf>.



experience operating highly-regulated entities, as well as industry best practices, to Robinhood Crypto’s business. Indeed, Robinhood Crypto has taken a thoughtful, incremental approach to building its cryptocurrency business – an approach we call “Safety-First.”

For example, despite consistent customer demand, Robinhood Crypto does not offer yield-generating products, such as lending and staking. Robinhood does not and has never facilitated ICOs or issued its own native tokens, nor does it engage in proprietary trading. And, unlike some of our competitors that have grown quickly and now list hundreds of digital assets on their platforms, Robinhood Crypto has taken a more conservative approach to supporting digital assets.

Prior to 2022, Robinhood Crypto supported seven cryptocurrencies, including Bitcoin, Ether, and certain forks of these tokens. Robinhood Crypto has since incrementally added 12 additional assets and delisted one asset for a total of 18 available to customers today (depending on the jurisdiction). Robinhood Crypto employs a robust process for reviewing digital assets designed to ensure that it does not make digital asset securities available to customers, which includes conducting thorough due diligence and receiving listing guidance from Robinhood stakeholders across, among other areas: (1) technology; (2) security; (3) legal; (4) compliance; (5) finance; (6) operations; and (7) anti-money laundering.¹⁹ This process is overseen by Robinhood Crypto’s Listing Committee, which includes the entirety of Robinhood Crypto’s Board of Managers, including its General Manager and President, COO, CFO, and CISO. Other compliance, legal, and technical subject-matter experts contribute to the Committee’s decision making process. The Committee also seeks the advice of outside counsel both on its listing process and methodology, as well as on each individual digital asset under consideration.

In addition to engaging in a thorough review before deciding whether to support a digital asset, the Committee also conducts periodic reviews of the assets available on the Robinhood Crypto platform to ensure the assets continue to meet the listing requirements. As noted above, the Committee determined to cease support for one asset in 2022 as a result of this periodic review.

As a Safety-First company, Robinhood Crypto has robust risk controls and monitoring in place to protect customer assets. Robinhood Crypto holds all settled cryptocurrencies in custody on behalf of customers, and closely monitors its wallet balances to ensure that the majority of customer assets are held in cold storage. Robinhood Crypto also has strict controls around any wallet movements.

Since Robinhood Crypto’s inception in 2018, it has pursued appropriate licenses required to be fully operational in the states in which it operates. Moreover, although Robinhood Crypto is confident that it does not list digital asset securities among the select group of 18 assets supported on the platform, it has nevertheless proactively pursued registration as a digital asset special purpose broker-dealer at the federal level.

¹⁹ Robinhood does not accept payments from third parties in connection with any decision to support digital assets on its platform.



In 2021, SEC Chair Gensler called on market participants in digital asset markets to “come in and register.”²⁰ In testimony before the Senate Banking Committee in September 2021, Chair Gensler stated, “I’ve suggested that platforms and projects come in and talk to us. . . . I believe that the SEC, working with the CFTC and others, can stand up more robust oversight and investor protection around the field of crypto finance.”²¹ Robinhood Crypto heeded the Chair’s call, notwithstanding its current business model and its robust policies to ensure that it does not support digital asset securities on its platform.

In fact, in December 2021, I announced on CNBC that Robinhood Crypto would attempt in good faith to register with the SEC, or what we at Robinhood call “crypto the hard way.”²² Over the next year and a half, we had over a dozen meetings and calls with the SEC to discuss our cryptocurrency business, including our listing process, as well as our targeted, written request for relief for a registered special purpose broker-dealer that would be able to support both digital asset commodities and digital asset securities in compliance with federal law. While these discussions with the SEC staff have always been cordial and often deeply substantive, we have unfortunately not been able to make any progress with the Commission on our request for relief to register. While we are disappointed with this lack of progress, we continue to attempt to engage with SEC staff regarding our efforts to register and remain open to further dialogue if given the opportunity.

V. The Discussion Draft Provides Much-Needed Regulatory Clarity

Following the SEC’s crackdown on fraudulent ICOs, the SEC under Chairman Clayton engaged in a commendable (though ultimately limited) effort to provide tailored relief to the digital asset industry *without* sacrificing important investor protections. Three actions by the SEC during this period are worth highlighting:

- First, on October 28, 2019, the SEC’s Division of Trading and Markets provided “no-action” relief for Paxos’ blockchain settlement platform to process transactions for a limited number of broker-dealers in certain listed U.S. equity securities.²³
- Next, on December 3, 2020, Chairman Clayton converted the SEC’s Strategic Hub for Financial Innovation and Technology into a standalone office to formally spearhead the agency’s efforts to

²⁰ Wieczner, Jen, “Gary Gensler on Crypto, SPACs, and Robinhood Wall Street’s top cop wants to police new finance with old rules,” *New York Magazine* (Sept. 13, 2021), available at <https://nymag.com/intelligencer/2021/09/gary-gensler-sec-chair-crypto-spacs-robinhood.html>.

²¹ Testimony of Gary Gensler Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Sept. 14, 2021), at 6, available at <https://www.banking.senate.gov/imo/media/doc/Gensler%20Testimony%2009-14-21.pdf>.

²² See “Crypto legislation likely won’t come anytime soon: Robinhood’s chief legal officer,” *CNBC* (Dec. 8, 2021), available at <https://www.cNBC.com/video/2021/12/08/crypto-legislation-likely-wont-come-anytime-soon-robinhoods-chief-legal-officer.html>.

²³ See Paxos Trust Company, LLC No-Action Letter, available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>. As a former SEC Commissioner and practitioner, I cannot emphasize enough the importance of the Paxos no-action letter. At a policy level, it demonstrates the proper role of government – allowing for innovation in a controlled manner without sacrificing investor protections. From a practitioner level, it plainly lays out the broad need for regulatory relief if we are to allow SEC-regulated digital asset securities trading in the U.S.



“encourage responsible innovation in the financial sector, including in evolving areas such as distributed ledger technology and digital assets.”²⁴

- Finally, on December 23, 2020, the SEC released its policy statement on the “Custody of Digital Asset Securities by Special Purpose Broker-Dealers” (the “Commission Statement”), which articulated the SEC’s position that, for a period of five years, a broker-dealer that satisfies the conditions set forth in the Commission Statement would not be subject to a Commission enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer-fully-paid and excess margin digital asset securities for the purposes of the Customer Protection Rule.²⁵

This short-lived period of innovation at the Commission ended with Chairman Clayton’s term. Rather than work with Congress to pass comprehensive legislation governing digital assets or issue a generally applicable proposed rule, the SEC’s current approach to addressing digital asset regulatory issues is now largely through enforcement actions and by attempting to shoehorn cryptocurrency into proposed rules primarily addressing other discrete areas of traditional finance, such as communications protocols for trading government securities (definition of an exchange), investment advisor custody requirements (qualified custodians), and equity market structure (best execution).²⁶

Robinhood Crypto remains committed to engaging with the SEC (if possible) and operating in a fully compliant manner to provide our customers with low-cost access to the cryptocurrency products and services they want. At the same time, however, the persistent lack of federal regulatory clarity and recent enforcement actions against individual cryptocurrency platforms have created an environment in which a firm that is truly committed to regulatory compliance and investor protection, such as Robinhood Crypto, is working at a competitive disadvantage. Regulatory uncertainty has at times rendered Robinhood Crypto unable to meet the demands of our customers for additional digital asset products and services (e.g., certain additional cryptocurrency tokens or yield products, including lending and staking). As a result, the Discussion Draft comes at a critical time for Robinhood Crypto and other responsible digital asset market participants seeking to grow their businesses and serve customers in a manner fully compliant with applicable federal commodities and securities laws.

The Discussion Draft is a significant step toward providing regulatory clarity to market participants and authority to regulators in key areas where neither exist today. As described below, Robinhood Crypto

²⁴ See SEC Release No. 2020-303, “SEC Announces Office Focused on Innovation and Financial Technology,” available at <https://www.sec.gov/news/press-release/2020-303>.

²⁵ SEC Release No. 2020-340, “SEC Issues Statement and Requests Comment Regarding the Custody of Digital Asset Securities by Special Purpose Broker-Dealers,” available at <https://www.sec.gov/news/press-release/2020-340>; see SEC Proposed Rule, “Custody of Digital Asset Securities by Special Purpose Broker-Dealers,” 86 Fed. Reg. 11627 (Feb. 26, 2021).

²⁶ SEC Proposed Rule, “Amendments Regarding the Definition of ‘Exchange’ and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities,” 87 Fed. Reg. 15496 (Mar. 18, 2022); SEC Proposed Rule, “Safeguarding Advisory Client Assets,” 88 Fed. Reg. 14672 (Mar. 9, 2023); SEC Proposed Rule, “Regulation Best Execution,” 88 Fed. Reg. 5440 (Jan. 27, 2023).



generally supports the intent of the Discussion Draft and recommends additional matters to consider as the legislative process continues.

A. *Title II – Digital Asset Exemptions*

While Robinhood Crypto does not issue tokens, we generally support the intent of Title II of the Discussion Draft to provide a path for issuers of digital asset securities to offer such assets to the public in a compliant manner, including with appropriate disclosures to investors that take into account the unique issues presented by digital asset issuers and the assets themselves. Importantly, the Discussion Draft recognizes that traditional securities-offering rules should not apply to decentralized digital assets and that the secondary trading of these assets is more appropriately regulated under the federal commodities laws.

B. *Titles I & III – Digital Asset Intermediaries*

Robinhood Crypto generally supports the Discussion Draft’s provisions allowing broker-dealers to register with the SEC as digital asset intermediaries. As described above, Robinhood Crypto and other digital asset intermediaries have no viable path to register with the SEC as broker-dealers and thus cannot offer digital asset securities to customers. Importantly, the Discussion Draft provides both provisional and full registration categories for broker-dealers offering digital asset securities, as well as dual CFTC registration for platforms that also offer or seek to offer digital asset commodities. Robinhood Crypto respectfully suggests that the Committees clarify that dual registrants are able to offer both digital asset securities and digital asset commodities to customers on the same platform.

The Discussion Draft also grants provisionally registered digital asset intermediaries with limited relief from enforcement action. Robinhood Crypto believes this relief is an essential component of any viable path to registration for digital asset intermediaries, particularly where the classification of a digital asset as a security versus a commodity is unclear.²⁷ We respectfully request that the Committees consider expanding the scope of the proposed relief to include other alleged violations, including alleged violations of the “specified regulations” identified in Section 306.

Robinhood Crypto also respectfully encourages the Committees to address the predicament created for broker-dealer custodians of digital assets by SEC Staff Accounting Bulletin (“SAB”) 121. Issued by Commission staff without public notice and comment, SAB 121 requires that customer digital assets custodied by a broker-dealer – and potentially even customer digital assets custodied by an affiliate of the broker-dealer – be recorded as a liability on the broker-dealer’s balance sheet. We believe this requirement would result in few, if any, broker-dealers being sufficiently capitalized to operate as digital asset intermediaries under existing SEC rules. Robinhood Crypto respectfully requests that the Committees consider clarifying that (1) a broker-dealer affiliated with a non-broker-dealer digital asset custodian, in the ordinary course, is not obligated to record the custodied digital assets on the broker-dealer’s balance sheet

²⁷ See, e.g., Press Release, “Hagerty Introduces Legislation to Provide Crucial Regulatory Clarity for Digital Assets” (Sept. 29, 2022), available at <https://www.hagerty.senate.gov/press-releases/2022/09/29/hagerty-introduces-legislation-to-provide-crucial-regulatory-clarity-for-digital-assets/>.



and (2) a broker-dealer digital asset custodian is permitted to consider the custodied digital assets to be allowable assets that offset the liabilities that result from recording the custodied digital assets on the broker-dealer's balance sheet.

C. Title III – Alternative Trading Systems for Digital Asset Securities

Robinhood Crypto generally supports the provisions of Title III of the Discussion Draft allowing platforms to register with the SEC as alternative trading systems for digital asset securities. The Discussion Draft provides a practical path for digital asset securities to trade on SEC-registered platforms that match customer orders without the complications of certain requirements prescribed for national securities exchanges that do not easily apply to digital asset platforms.

D. Title IV – Commodity Exchange Act Amendments

Robinhood Crypto generally supports the Discussion Draft's amendments to the Commodity Exchange Act, including spot market authority for the CFTC, as well as provisions in Section 406 establishing a system for registering and regulating digital commodity brokers and dealers. In particular, we support the efficiencies created by allowing intermediaries to satisfy the registration requirements of digital commodity brokers by registering either as a futures commission merchant or an introducing broker.

E. Title V – SEC Modernization

Robinhood Crypto supports Section 504's amendments to the Securities Act of 1933 and the Investment Advisers Act of 1940 requiring the Commission to consider whether its rulemaking promotes innovation. The proper role of the SEC should be to encourage innovation in our financial markets, and this can and should be done in harmony with the SEC's statutory mission to protect investors; ensure fair, orderly, and efficient markets; and facilitate capital formation.

There are additional matters that we believe the Committees should consider addressing with regard to digital asset securities (including, for example, clarifying whether digital asset securities are covered by the Securities Investor Protection Act and provisions governing clearing firms and transfer agents), and we look forward to working with members and staff to further enhance this productive Discussion Draft.

VI. Conclusion

Robinhood Crypto commends the Agriculture and Financial Services Committees for their work on this important legislation. For too long, the digital asset economy and millions of Americans who wish to participate in it have had to contend with stifling regulatory uncertainty. The Discussion Draft is a positive step forward in finally bringing more clarity to the regulations governing U.S. digital asset markets.