

MEMORANDUM

To: Members of the House Committee on Financial Services

From: Financial Services Committee Republicans

Date: March 6, 2023

Re: Subcommittee on Digital Assets, Financial Technology, and Inclusion Hearing: “Coincidence or Coordinated? The Administration’s Attack on the Digital Asset Ecosystem”

On Thursday, March 9, 2023, at 2:00 p.m. (ET), the Subcommittee on Digital Assets, Financial Technology, and Inclusion will hold a hearing entitled: “Coincidence or Coordinated? The Administration’s Attack on the Digital Asset Ecosystem.” Testifying at the hearing will be:

- Mr. Paul Grewal, Chief Legal Officer, Coinbase
- Ms. Tonya Evans, Professor, Penn State Dickinson Law
- Mr. Mike Belshe, CEO and Co-Founder, BitGo
- Mr. Jonathan Gould, Partner, Jones Day
- Mr. Lee Reiners, Policy Director, Duke Financial Economics Center, Duke University

Overview Blockchain Technology and Digital Assets

Blockchain – a type of digital distributed ledger – is the underlying technology for most digital assets. Blockchain technology makes it possible to create a digital ledger of transactions that is shared and maintained among a distributed network of computers. Using cryptography, blockchain networks allow individual participants in a given network to append the ledger in a secure way without the need for a central authority.

The term “digital asset” means any digital representation of value recorded on a cryptographically secured distributed ledger or similar technology. This term encompasses a wide range of digital assets of which there are thousands in existence.¹ Since many of these projects are in their infancy, most of the attention is focused on the largest digital assets. Today, the total digital asset market capitalization stands at approximately \$1.06 trillion, with Bitcoin and Ether making up approximately 60 percent of the market.²

The digital asset ecosystem, while nascent, contains a diverse array of businesses and operations united in their common use of distributed ledger technology. Digital asset trading platforms allow

¹ CoinMarketCap, Today’s Cryptocurrency Prices by Market Cap, (accessed January 27, 2023), *available at* <https://coinmarketcap.com/>.

² *Id.*

individuals to buy or sell non-security digital assets. Trading platforms are licensed to engage in money transmission in most U.S. jurisdictions. Thus, they are subject to states' money transmission laws and corresponding regulations. In addition, trading platforms are also registered as money services businesses (MSBs) with Financial Crimes Enforcement Network (FinCEN) and must comply with Bank Secrecy Act (BSA) obligations.

Federal Regulatory Framework

The SEC regulates digital assets if they are determined to be offered as part of an "investment contract," thus fitting within the definition of "security" for purposes of federal securities laws. The CFTC oversees virtual currencies used in a derivatives contract and enforces against fraud or manipulation involving a virtual currency.³ Aspects of digital asset activities may also implicate additional state and federal regulators, including the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and FinCEN.

Over the last two years, the Biden Administration has issued statements and proposed rulemakings that have inappropriately impacted the digital asset ecosystem. Many of these actions can be considered an overreach of jurisdictional authority. In addition, the consequences of these policies cannot be understated. Because of actions taken by this Administration, the United States is at risk of pushing the digital asset ecosystem overseas. Committee Republicans have long advocated for increased collaboration across agencies to provide regulatory certainty in the digital asset space and have worked to encourage federal regulators to nurture innovation in a thoughtful and deliberative manner. Over the last several months, events have made clear that Congress must enact legislation in order to bring clarity to the digital asset ecosystem.

State Regulatory Framework

Some state laws require entities engaged in money transmission activities to obtain a license. In addition, money transmitters must abide by certain regulatory requirements and take certain actions to safeguard consumers.⁴ Although many state money transmitter statutes did not contemplate digital asset businesses, there are a few states that are forging a regulatory path with specific requirements tailored to digital asset firms and their activities.

Legislative Proposals

H.R. _____, *Keep Your Coins Act (Davidson)*

³ CFTC Commissioner Dawn Stump, Digital Assets: Clarifying CFTC Regulatory Authority & the Fallacy of the Question, "Is it a Commodity or a Security?" (Aug. 23, 2021), available at https://www.cftc.gov/media/6306/DigitalAssetsAuthorityInfographic_CommStump082321/download.

⁴ American Bar Association 50-state survey of virtual currency regulation (Oct. 8, 2020), available at https://www.americanbar.org/content/dam/aba/administrative/business_law/buslaw/committees/CL620000pub/digital_assets.pdf.

The Keep Your Coins Act is designed to preserve Americans' right to privacy in transacting with digital assets. The bill prohibits any federal agency from promulgating a rule that would impair a person's ability to act as self-custodian.

H.R. _____, Blockchain Regulatory Certainty Act (Emmer)

The Blockchain Regulatory Certainty Act exempts blockchain developers and providers of blockchain services that do not take control of consumer funds from certain financial reporting and licensing requirements.

H.R. _____, Financial Technology Protection Act (Nunn)

The Financial Technology Protection Act provides for the investigation of new financial technologies and their use to combat terrorism and other illicit activities. The bill establishes the Independent Financial Technology Working Group to Combat Terrorism and Illicit Financing, which must research terrorist and illicit use of new financial technologies and issue an annual report.

H.Res. _____, Resolution Expressing Support for Blockchain Technology and Digital Assets

The Resolution expresses support for blockchain technology and digital assets.

H.R. _____, Keep Innovation in America Act (McHenry)

The Keep Innovation in America Act amends the digital asset reporting provisions in the Infrastructure Investment and Jobs Act by modifying the definition of broker to exclude those who provide facilities in which others effect sales or who help operate the exchange but who maintain no records on the terms of the sales and sets guardrails around the definition of digital asset. The bill also requires a study and a report on the treatment of digital assets as cash for purposes of reporting requirements.