Testimony of Coy Garrison
Partner, Steptoe LLP
Before the U.S. House Committee on Financial Services
Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence
February 11, 2025

Thank you, Chairman Steil, Ranking Member Lynch, and members of the Subcommittee for inviting me to testify today on the path forward for digital asset regulation.

My name is Coy Garrison. I am a partner in the Washington, DC office of Steptoe LLP. For nearly three years my practice has focused on advising clients how to navigate challenging legal and regulatory issues related to blockchain technology. Prior to private practice, I was an attorney for the U.S. Securities and Exchange Commission ("SEC" or the "Commission"), including serving as counsel to Commissioner Hester M. Peirce from 2019-2022 and in multiple roles with the Division of Corporation Finance from 2013-2019. My testimony today is informed by both my private and public sector experience, but I appear before you on my own behalf and not on behalf of Steptoe LLP or any client of the firm.

The 119th Congress and the Trump Administration have a tremendous opportunity to work together to bring sensible regulation to the digital asset industry. New leadership at the federal financial regulators are already beginning to reverse the failed crypto policies of the last four years. The SEC, in particular, has a heavy burden to undo the harmful policy decisions of former Chair Gensler and begin the hard, but necessary, work of rulemaking and providing actionable guidance. However, regulatory actions, alone, will not be sufficient to stand up a comprehensive regime. Congress needs to fill regulatory gaps and provide clear jurisdictional lines by passing legislation establishing regulatory frameworks for digital asset market structure and dollar-denominated payment stablecoins. I focus my testimony on discussing concrete actions the SEC can take and highlighting the need for Congressional action on market structure and stablecoins.

I. The 119th Congress and the Trump Administration have a tremendous opportunity to work together to bring sensible regulation to the digital asset industry.

It is no secret that the digital asset industry was met with open hostility from federal financial regulators during the prior administration. The SEC and CFTC brought a steady stream of enforcement actions for alleged registration violations under the securities and derivatives laws, but never deigned to engage in rulemaking to provide a pathway for registration. The Fed, FDIC, and OCC adopted supervisory processes that required banks to seek permission before engaging in crypto-related activities—permission that rarely, if ever, was granted. Moreover, mounting evidence suggests that the FDIC may have engaged in activities to encourage the debanking of crypto companies. The unmistakable message to industry from the last administration was that crypto was not welcome in the U.S.

This ill-conceived approach benefited no one. Americans who hold and trade digital assets are left unprotected with no regulatory framework imposing baseline protections. Today there is no federal regulation of spot market trading of digital assets. Industry participants are

forced to operate with no clear rules of the road and under the ever-present and existential risk of an SEC enforcement action. On the global stage, the U.S. ceded leadership in this technology to other jurisdictions as entrepreneurs and capital flew to jurisdictions willing to provide regulatory certainty for the industry, including the European Union, United Arab Emirates, and Hong Kong.

Fortunately, we live in a very different world today. The early actions of President Trump and the 119th Congress signal a fresh approach. Promoting U.S. leadership in digital assets is a priority for the Trump Administration, which has promised to "provid[e] regulatory clarity and certainty . . . and well-defined jurisdictional regulatory boundaries."[1] Special Advisor for AI and Crypto David Sacks chairs the newly established President's Working Group on Digital Asset Markets, which has been tasked with "propos[ing] a Federal regulatory framework governing the issuance and operation of digital assets, including stablecoins, in the United States."[2]

New leadership at the relevant agencies have wasted no time in pursuing these goals and are busy laying the groundwork for meaningful regulatory reform. SEC Acting Chairman Mark Uyeda announced the formation of a Crypto Task Force "dedicated to developing a comprehensive and clear regulatory framework" on his first day in the new role.[3] The Crypto Task Force, which is led by Commissioner Peirce, recently announced its first milestone: the rescission of the Staff Accounting Bulletin 121.[4] SAB 121's accounting guidance discouraged regulated financial institutions from safeguarding digital assets and was repealed by the 118th Congress with overwhelming bipartisan support before being vetoed by President Biden. The SEC's work is just beginning. Commissioner Peirce recently outlined a non-exhaustive list of ten workstreams for the Task Force's consideration and invited public engagement through a transparent process.[5]

CFTC Acting Chairman Caroline Pham announced the launch of a digital asset markets pilot program for tokenized non-cash collateral and accompanying CEO Forum.[6] She also announced the launch of roundtables to address issues relating to digital assets,[7] and a reorganization of the agency's division of enforcement to end regulation by enforcement.[8] FDIC Acting Chairman Travis Hill announced that the FDIC is actively reevaluating its supervisory

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[1] Executive Order, Strengthening American Leadership in Digital Financial Technology (Jan. 23, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/.
[2] *Id.*
[3] Press Release, SEC, SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-30.
[4] SEC, Staff Accounting Bulletin No. 122 (Jan. 23, 2025), https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122.
[5] SEC Commissioner Hester M. Peirce, Statement, *The Journey Begins* (Feb. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425 (hereinafter "Peirce Statement").
[6] Press Release, CFTC, CFTC Announces Crypto CEO Forum to Launch Digital Asset Markets Pilot (Feb. 7, 2025), https://www.cftc.gov/PressRoom/PressReleases/9049-25.
[7] Press Release, CFTC, Acting Chairman Pham to Launch Public Roundtables on Innovation and Market Structure (Jan. 27, 2025), https://www.cftc.gov/PressRoom/PressReleases/9038-25.
[8] Press Release, CFTC, CFTC Division of Enforcement to Refocus on Fraud and Helping Victims, Stop Regulation by Enforcement (Feb. 4, 2025), https://www.cftc.gov/PressRoom/PressReleases/9044-25.

approach to crypto-related activities, and looking to provide "a pathway for institutions to engage in crypto- and blockchain-related activities while still adhering to safety and soundness principles."[9]

The change is a breath of fresh air. These regulators are not promising special treatment of the industry. Rather, they are promising a fair shake: the opportunity to know which rules apply and to have a legitimate pathway to compliance. Industry participants are taking note and eager to come back to the U.S. if there is regulatory clarity. I am optimistic that the moment can be met and that a responsible regulatory framework will be implemented.

II. The SEC's Crypto Task Force is poised to foster innovation without compromising investor protection.

Commissioner Peirce and the SEC Crypto Task Force are well-positioned to bring discipline and rigor to the agency's approach to digital assets. I offer the following suggestions that are consistent with and complementary to the ten priorities published by Commissioner Peirce for the SEC Crypto Task Force.

a. The SEC should articulate a sound legal interpretation for when digital asset transactions are subject to the securities laws.

Commissioner Peirce's first two priorities for the SEC Crypto Task Force are to determine the status of digital assets under the securities laws and scope out areas that fall outside of the Commission's jurisdiction. She explains that "[t]he status of crypto assets under the securities laws is fundamental to resolving many other questions."[10] Indeed, providing clarity on the SEC's position will allow the agency to make principled and consistent determinations, and allow industry participants to understand when their activities fall within the SEC's jurisdiction and require registration.

A starting point for the interpretation should be an acknowledgment that the digital asset itself is not a security, which is clear from the statute and supported by case law. The term digital asset is not included in the list of instruments Congress defined as a "security" under the federal securities laws. Since 2017, the SEC has argued that digital asset transactions may be sold pursuant to *investment contracts*, which are securities under the relevant statutes. That analysis is guided by case law, anchored by the Supreme Court's *Howey* test of whether there is a "contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party."[11]

The corollary to the acknowledgement that the digital asset itself is not a security is that even if a digital asset is sold pursuant to an investment contract, subsequent transactions in the same digital asset can only constitute securities transactions if made pursuant to an investment

[9] FDIC, Press Release, FDIC Releases Documents Related to Supervision of Crypto-Related Activities (Feb. 5, 2025), https://fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities.
[10] *See* Peirce Statement *supra* note 5.
[11] SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

contract. The *Howey* analysis requires a transaction-by-transaction examination of the facts and circumstances of each sale.

The interpretation would represent a clean break from the Gensler-led SEC's sweeping and baseless assertion that nearly all digital assets are securities. In an attempt to mask the lack of a consistent legal theory as to when a digital asset embodies an investment contract in secondary transactions, the SEC under Gensler coined the term "crypto asset security" in court filings. Multiple district courts reprimanded the agency for its legal imprecision, with one court describing the label "unclear at best and confusing at worst,"[12] and another court explaining how the approach is inconsistent with the statute and *Howey*:

> Insisting that an asset that was the subject of an alleged investment contract is itself a "security" as it moves forward in commerce and is bought and sold by private individuals on any number of exchanges, and is used in any number of ways over an indefinite period of time, marks a departure from the Howey framework that leaves the 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. It is not a principle the Court feels comfortable endorsing or applying based on the allegations in the complaint, particularly since the only term among the approximately twenty options included in the statutory definition of "security" that is being relied upon in this case is "investment contract."[13]

The court's reproach highlights the importance of crafting a disciplined interpretation that is both consistent with the law and practical for implementation by industry participants. Once the Commission has settled on its baseline interpretation, it should consider rescinding the SEC staff's 2019 Framework for "Investment Contract" Analysis of Digital Assets. While well-intentioned, the 2019 guidance contained over sixty factors to consider when conducting an analysis under *Howey* and yielded no clear answers. In its place, the Commission should consider issuing targeted interpretations on whether common transactions in the industry involve securities transactions or require registration with the SEC. For example, the SEC could consider drawing clear lines addressing the following non-exhaustive list:

- whether staking services constitutes securities transactions,
- whether software interfaces and their developers may be required to register as exchanges or broker-dealers,
- whether blockchain infrastructure participants (such as validators, nodes, relayers, etc.) may be required to register in any capacity with the SEC,
- whether transactions in NFTs with royalties constitute securities offerings,
- whether airdrops involve an investment of money under the *Howey* test, and
- whether transactions in stablecoins constitute securities offerings.

[12] SEC v. Payward Inc., et al., No. 23 Civ. 06003 (WHO), ECF No. 90 (N.D. Cal. Aug. 23, 2024) at 19.
[13] SEC v. Binance Holdings Ltd, et al., No. 23 Civ. 1599, ECF No. 248 (D.D.C. June 28, 2024 at 42-43.

An honest application of *Howey* to many transactions will require regulatory humility on behalf of the agency to admit when it simply does not have jurisdiction.

b. The SEC should consider withdrawing litigation alleging unregistered exchange, broker-dealer, and clearing agency activities under the Securities Exchange Act of 1934.

A glaring example of an issue that requires clarification by the new SEC is whether secondary market digital asset transactions are investment contract transactions subject to the SEC's jurisdiction. To highlight just a few relevant enforcement actions, the SEC's litigation against Coinbase, Binance, and Kraken for allegedly operating unregistered exchanges, broker-dealers, and clearing agencies is premised on the theory that such transactions are investment contracts. The issue has thus far divided district courts and was recently elevated by Coinbase to the Second Circuit Court of Appeals through an interlocutory appeal of a district court order that endorsed the SEC's legal theory.[14]

The SEC should consider withdrawing charges brought under Gensler's leadership alleging unregistered exchange, broker-dealer, and clearing activities under the Exchange Act for two reasons. First, the *Howey* analysis is circumspect because there is no contract, commitment or meaningful connection between the original digital asset issuer and a buyer on the platform. The nature of blind bid-ask trading of digital assets makes it difficult to understand how the common enterprise or reasonable expectation of profits elements of *Howey* can be met. Second, even if the new SEC believes it has jurisdiction over secondary market digital asset transactions, consideration should be given to whether beginning a rulemaking process would be a more productive pathway leading to the registration of covered entities.

c. The SEC should consider how to better facilitate token offerings in the US and improve disclosures provided to token purchasers.

It is well established that token offerings conducted to raise capital for a project involves the sale of investment contracts and are subject to the securities laws. However, many token issuers avoid selling to U.S. investors because the existing registration and exempt offering framework is a poor fit for the realities of the projects they are building. Commissioner Peirce indicated that the Task Force will seek "to recommend that the Commission modify existing paths to registration, including Regulation A and crowdfunding, so that people interested in registering token offerings will have a viable path for doing so."[15]

Bold reforms to the existing disclosure requirements and restrictions on secondary trading under the Regulation A and Regulation Crowdfunding exemptions should be considered by the agency for token offerings sold pursuant to investment contracts. For example, audited financial statement requirements appropriately form the cornerstone of the SEC's disclosure system for public companies. However, for many development teams looking to build a

[14] Petition for Permission to Appeal Pursuant to 28 U.S.C. § 1292(b), Coinbase, Inc. v, SEC, No. 25-145 (2d Cir. Jan. 21, 2025).
[15] Peirce Statement *supra* note 5.

decentralized network, the financial information that is relevant to a token holder is likely not the financials of the development team, but rather the wallet address(es) of the project's treasury and transparency into how and why tokens move from that address. A streamlined exemption that leverages the benefits of blockchain for transparency and contains disclosure requirements that are carefully crafted for token holder protection would be an ideal outcome. In addition to examining existing exemptions, the SEC should consider whether a new exemption is appropriate for token offerings, building off of Commissioner Peirce's prior token safe harbor proposals.[16]

d. The SEC should consider rulemakings and guidance necessary to permit registrants to engage with digital assets.

Broker-dealers need guidance from the SEC on how they can perform the full set of broker-dealer functions with respect to digital assets. Specifically, broker-dealers would benefit from guidance on how they can demonstrate possession and control of digital assets held for customers in compliance with the Customer Protection Rule and the appropriate regulatory capital treatment for digital assets under the Net Capital Rule. Commissioner Peirce noted that the Task Force will "explore possible updates to the special purpose broker dealer no-action statement," including potentially permitting broker-dealers to hold non-security digital assets. This would be a welcome step given the special purpose broker dealer license has not been meaningfully utilized to date.

Investment advisers need guidance from the SEC on how they can custody clients' digital assets in accordance with the Custody Rule. Commissioner Peirce highlighted this issue as a priority. These efforts should preserve a pathway for state-chartered special purposes trusts to meet the status of a qualified custodian.

e. The SEC should consider withdrawing Gensler-era proposed rulemakings that unduly harm digital asset industry participants.

The SEC should consider withdrawing the proposed rule *Safeguarding Advisory Client Assets*, which would have unduly limited the manner in which private keys may be stored and included statements interpreting the current rule that unnecessarily call into question certain market practices. Additionally, the SEC should consider withdrawing the proposed rule *Amendments Regarding the Definition of "Exchange"* which would subject decentralized finance protocols, and potentially even software developers, to the onerous regulations applicable to national securities exchanges, without any legitimate pathway to compliance. Withdrawing these rules ensure that broad interpretations of existing rules articulated in the releases do not become binding or persuasive authority and prevents future administrations from moving straight to an adopting release on the subjects. Relatedly, the SEC should withdraw its appeal to the Fifth Circuit Court of Appeals of the district court decision in *Crypto Freedom Alliance of Texas & Blockchain Association v. SEC*, holding that the SEC's amended definition of "dealer" to cover decentralized finance protocols exceeded its statutory authority.

[16] *See* Github, CommissionerPeirce/Safe Harbor 2.0, https://github.com/CommissionerPeirce/SafeHarbor2.0.

f. The SEC should consider rulemakings and guidance necessary to permit registrants to engage with tokenized securities.

While there are some tokenized money market funds available today, there is a growing interest in tokenizing stocks and bonds more generally. The potential for efficiency gains, cost savings, and enhanced risk management capabilities have some entities seeking to utilize blockchain technology to modernize traditional financial markets. In the short term, the transfer agent and clearing agency rules are natural starting points to consider whether modernization is needed to permit the use of blockchain technology. Longer-term, the SEC should facilitate conversations across major securities industry participants to the extent they seek to migrate their operations to a blockchain.

III. Congress has a vital role to play in implementing a workable regulatory framework for digital assets.

There are limitations to what the SEC and other federal regulators can achieve absent direction from Congress. One significant regulatory gap is that neither the SEC or CFTC have clear statutory authority to regulate spot market trading of digital assets. The CFTC does not have regulatory oversight authority over spot trading of commodities. While the SEC has clear authority to regulate the primary issuance of a digital asset sold pursuant to an investment contract, as previously discussed, there is significant doubt that the secondary trading of digital assets constitute investment contract transactions within the SEC's jurisdiction.

Accordingly, Congress alone can provide a responsible regulatory framework for digital asset trading. Some high-level principles that this subcommittee should seek in market structure legislation include:

- Establishing clear lines between the SEC and CFTC and a process to determine which transactions are subject to the SEC's jurisdiction and the CFTC's jurisdiction.
- Requiring disclosures that are tailored to the needs of digital asset holders.
- Allowing regulated entities and their customers to benefit from disintermediated trading and real-time settlement of digital assets.
- Imposing the same types of corporate controls and risk management requirements on digital asset intermediaries that exist for securities and derivatives intermediaries.
- Requiring segregation of customer assets and prohibiting the commingling of customer funds.
- Limiting regulation to the issue at hand: spot market trading of digital assets.

A second regulatory gap that requires Congressional action is federal oversight of dollar-denominated stablecoins. The discussion draft of the STABLE Act provides appropriate protections for consumers and establishes a regulatory framework for the issuance and operation

of dollar-denominated payment stablecoins. The bill would preserve the ability for state regulation of stablecoin issuers, while granting federal regulators with enforcement authorities against issuers regulated by a state stablecoin regulator under exigent circumstances. The bill also establishes clear reserve requirements on a 1:1 basis, a prohibition on rehypothecation, and a monthly reporting and certification regime. Additional consumer protections include the requirement that a person providing custodial services must be subject to supervision or regulation by a federal regulator and comply with specific segregation requirements. Finally, the bill would clarify that dollar-denominated payment stablecoins issued under this framework are not securities under the securities laws.

IV. Conclusion

The timing is right for Congress and the Administration to work together to implement a much-needed regulatory framework for digital assets in the US. While the SEC has many opportunities to provide regulatory clarity under its existing jurisdiction, Congressional action is needed to implement oversight of spot market digital asset trading. Thank you for your leadership on this important topic and I look forward to your questions.