



U.S. Securities and Exchange Commission

INVESTOR ADVISORY COMMITTEE

April 6, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

RE: **IAC Views on Crypto Assets**

Dear Chair Gensler:

On behalf of the U.S. Securities and Exchange Commission's (SEC) Investor Advisory Committee (IAC), we are pleased to submit the views articulated below as a consensus of the IAC Members. While choosing not to publish a formal IAC recommendation, the committee nevertheless feels it is important to share these perspectives based on discussions within the IAC.

We have observed that the volume of, and activity around, crypto assets have grown significantly in scale over the last five years with very large fluctuations in value. Many investors recently have suffered significant losses as a result of their investments in crypto assets. It is estimated that these losses have been more than \$2 trillion.¹

As a result of targeted marketing, a significant amount of these losses have been borne by unsophisticated investors, including many minority investors seeking rapid investment growth without the knowledge or information to assess the risks associated with such investments.² Numerous high-profile crypto firms have gone bankrupt, or, are on the edge of bankruptcy, and many of them have been charged with civil and criminal violations of various laws. Further, the semi-anonymous and borderless nature of crypto transactions make them well-suited for various illegal activities such as money-laundering and tax evasion.

Unfortunately, these assets have also been subject to notable levels of fraud and abuse. The U.S. Treasury has estimated that \$14 billion worth of digital asset-based crime occurred globally in 2021. This amount is nearly double the estimate for 2020. The number of scams in 2021 rose by over 60% year-over-year, while the value of stolen digital assets rose by over 80% in 2021.³

¹ See [Crypto Peaked a Year Ago – Investors have lost more than \\$2 trillion dollars](#) (Nov. 11, 2022, CNBC).

² Nearly 44% of Americans who own and trade crypto are people of color, 41% are women and more than 35% have household incomes under \$60,000 annually (NORC at the University of Chicago-More than One In Ten Surveyed Invest in Cryptocurrencies (July 22, 2021). See also Anne Lowry, [The Black Investors Who Were Burned By Bitcoin](#) (Nov. 29, 2022), [The Cryptic Nature of Black Consumer Cryptocurrency](#) Ariel-Schwab Investor Survey (2022)

³ We note that crypto assets are a subset of digital assets. See U.S. Department of Treasury Report-Crypto Assets: Implications for Consumers, Investors and Businesses (Sept. 20, 2022)

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We believe that virtually all, if not all, crypto tokens are securities and that they, as well as the platforms and custodians dealing with them, are subject to regulation under the federal securities laws to protect investors. Accordingly, the offering of crypto asset securities and the platforms trading them should comply with the registration, disclosure, anti-fraud provisions and other investor protector provisions of the federal securities laws. We think it is very unfortunate and disturbing that there are legislative proposals to carve crypto assets out of the federal securities laws and undermine investor protection.

The SEC should continue to be aggressive in bringing enforcement actions against companies that are violating the federal securities laws in the crypto space, including, issuers, custodians and those acting as unregistered platforms that offer trading in crypto asset investments. We note that the SEC has a Crypto Assets and Cyber Unit in its Division of Enforcement to investigate securities law violations related to crypto asset offerings, crypto asset exchanges, and crypto asset lending products. In 2022 alone, the SEC brought 30 enforcement actions against crypto-asset market participants. However, the SEC's Enforcement Division shrank 5% from fiscal year 2016 to fiscal year 2021. This raises questions as to whether the SEC has the resources to keep up with the significant growth and scale of crypto security assets and the rapid pace of change in the crypto markets, along with its other oversight responsibilities in the securities market.

We also recognize and applaud the SEC's Strategic Hub for Innovation and Financial Technology (FinHub), which coordinates the agency's oversight and response regarding emerging technologies in financial, regulatory, and supervisory systems, including in the areas of distributed ledger technology (for example, crypto assets), automated investment advice, digital marketplace financing, and artificial intelligence/machine learning.⁴

SEC staff have issued guidance regarding cryptocurrency and digital assets to promote compliance by crypto industry participants with the federal securities laws.⁵ This position, which in essence is that crypto entities are "non-compliant rather than unregulated," reduces uncertainty for business operations and raises conduct standards. However, some in the crypto industry still assert that there is lack of clarity regarding the application of the federal securities laws to crypto and digital assets, and that there are gaps in the SEC's guidance.⁶

SEC staff also have taken steps to educate investors on the risks of crypto assets. There is important and useful information for investors on the crypto asset section of Investor.gov, the SEC's investor protection portal.⁷ This information educates investors on the extensive risks associated with engagement in crypto-asset markets, as well as the prevalence of frauds, thefts and scams.

Given the growth and issues in the digital asset securities market, we encourage the SEC to:

1. Aggressively continue to assert authority over crypto assets that are securities and over trading platforms that list or transact in such crypto asset securities.
2. Continue to provide guidance regarding crypto assets to promote compliance by crypto industry participants with the federal securities laws. The SEC should consider issuing a request for comment regarding areas where additional guidance is needed related to the application of the federal securities laws to crypto assets. The SEC can then use this input to craft additional guidance or propose rules to address issues identified.
3. Continue to make crypto asset-related enforcement a top priority and, where needed, develop specialized personnel with knowledge of the crypto industry.

⁴ See Strategic Hub for Innovation and Financial Technology (FinHub) on www.sec.gov/finhub.

⁵ See e.g., Staff Accounting Bulletin No. 121; Sample Letter to Companies Regarding Recent Developments In Crypto Asset Markets and Framework for Investment Contract Analysis of Digital Assets by The SEC Staff Strategic Hub for Innovation and Financial Technology.

⁶ See Petition for Rulemaking by Coinbase Global, Inc. (July 21, 2022). We note that the SEC recently proposed a rule regarding safeguarding assets of clients of registered investment advisers that would require that crypto assets be maintained with a qualified custodian.

⁷ See e.g. Investor Bulletin: *Investor Asset Interest-Bearing Accounts; Investor Alert-Digital Asset and Crypto Investment Scams; Investor Alert-Watch Out for Fraudulent Digital Asset and Crypto Trading Websites*, and *Exercise Caution with Crypto Asset Securities: Investor Alert* available at <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/crypto-asset-securities>

4. Seek appropriate additional appropriations from Congress where needed to adequately oversee the crypto securities industry.
5. Oppose legislation that would create special exemptions to the federal securities laws for crypto assets that would undermine investor protection.
6. Continue to educate investors on the risks of crypto assets. The SEC should also engage with industry leaders, consumer groups and other relevant parties to promote financial education related to crypto assets—particularly with regard to populations vulnerable to disparate impacts of crypto investing.
7. Conduct examinations of broker-dealers and investment advisers focused on whether standards of care are being followed when making recommendations and providing investment advice regarding crypto-related assets.

Respectfully submitted on behalf of the Investor Advisory Committee,

Christopher Mirabile

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Committee Chair

Leslie Van Buskirk

Leslie Van Buskirk
Committee Vice Chair

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