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"Exploring Bipartisan Legislative Frameworks for Digital Assets"
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Introduction

Chair Lummis, Ranking Member Gallego, and distinguished members of the subcommittee, thank you for the opportunity to testify today on a subject that will shape the future of American finance and technological innovation. I am Lewis Cohen, a partner at Cahill Gordon & Reindel and co-head of our CahillNXT emerging technologies practice. My career has included more than two decades as a capital markets specialist at major global law firms working in traditional finance, with nearly ten additional years focusing on the needs of clients working with digital assets and blockchain technology. This experience has allowed me to witness firsthand both the tremendous promise, as well as the regulatory challenges, of this transformative technology.

Today, I offer testimony in support of a bipartisan legislative framework for activity involving the use of digital assets on my own behalf and not on behalf of my firm or any client of the firm or other third party. Over the past several years, divergent regulatory approaches, inconsistent agency pronouncements, and a fragmented legal landscape have created uncertainty that stifles innovation and leaves American competitiveness at risk. My testimony will explain why a clear, coherent, and flexible statutory regime is necessary and will propose an approach that both harnesses the benefits of blockchain technology and protects consumers and investors.

I will discuss the historical context that shaped our current financial regulatory system, the unique characteristics of digital assets, and how the bifurcated U.S. regulatory structure—where the oversight of activity involving securities and commodities derivatives fall under different federal agencies—complicates the regulation of the digital asset sector. Finally, I will outline a legislative proposal based on an "ancillary asset" framework, as featured in the bipartisan Responsible Financial Innovation Act (RFIA) introduced by Senators Cynthia M. Lummis and Kirsten Gillibrand, that distinguishes between core "investment contract" activity appropriately characterized as securities transactions and overseen by the Securities and Exchange Commission (SEC), on the one hand, and the day-to-day transactions in digital assets not constituting securities activity, on the other.

I. Background

The U.S. financial system was reformed in the wake of the Great Depression through the enactment of the Securities Act of 1933 (the Securities Act) and the Securities Exchange Act of 1934 (the Exchange Act), among other federal legislation. These laws were designed to restore investor confidence in our financial markets through a variety of reforms, perhaps most critically by ensuring that issuers of securities provided full and fair disclosures about their businesses, both when capital raising and, in certain circumstances, on an ongoing basis. Over the decades, these statutory frameworks evolved to incorporate new financial instruments and market practices. However, the advent of blockchain technology and digital assets has upended many of the foundational assumptions underlying our current regulatory framework.

When I first encountered blockchain technology in 2015, I immediately recognized its potential to bring unprecedented transparency and efficiency to financial markets, among many other uses. Unlike traditional securities, digital assets are often designed to be used as a means of exchange, to facilitate the governance and/or use of decentralized applications, or to provide utility and incentives for the maintenance of a blockchain network—functions that go far beyond the conventional role of an investment instrument. And yet, as we have seen over the past several years, the absence of clear Congressional direction has allowed disparate regulatory agencies to impose inconsistent and sometimes conflicting frameworks on the various uses of this developing technology.

For example, while the Commodity Futures Trading Commission (CFTC) oversees only those digital asset transactions deemed to involve the creation and transfer of commodity interests, like swaps and futures, the Securities and Exchange Commission (SEC) has historically viewed almost all activity involving digital assets through a framework of securities regulation—primarily through an overbroad application of the Supreme Court's "*Howey* test" (discussed below)—regardless of the digital asset's intrinsic characteristics. Further complicating matters, for digital assets currently acknowledged not to constitute securities, such as bitcoin and ether, operators of "spot" exchanges have no federal supervisory oversight and are overseen under state money transmission law. As has been frequently observed, the lines between these approaches are anything but clear.

This complex and uncertain approach inevitably creates legal ambiguity, hinders market innovation and may well put American consumers and investors at a disadvantage compared to their counterparts in jurisdictions, like the European Union, Switzerland and Singapore, that have enacted comprehensive regimes focusing on activity involving digital assets. It has also limited growth of the blockchain sector in the United States, driving high-tech jobs and investment overseas.

II. The Historical Context and Lessons Learned

It is instructive to reflect on how our current federal securities regulatory framework came into being. Following the market abuses exposed during the Great Depression, the Senate Banking committee investigated through what came to be called the Pecora Commission. The Pecora Commission uncovered rampant use of incomplete or affirmatively false information being provided to investors in securities which led to the creation of disclosure-based regulatory framework, ultimately embodied in the Securities Act and the Exchange Act, among other critical bi-partisan Congressional legislation. These reforms were rooted in the idea that transparency and accountability would restore trust in capital markets. For decades, the system worked effectively to protect investors in traditional markets. However, digital assets pose fundamentally different challenges.

Unlike the paper-based securities of the past, many digital assets are encoded on immutable public blockchains. Creating a thousand, a million, or even a billion fungible digital assets is as simple writing a few lines of code and uploading that code to a public blockchain network.[1] A development team may initially offer these assets for sale in fundraising transactions appropriately characterized as "investment contract" *transactions*—a type of securities activity. When acting as *sellers* of these digital assets, these development teams may appropriately be subject to our federal securities laws. However, unlike securities, the digital assets themselves generally lack a legal relationship with the development team or any other company that could be considered the "*issuer*"—an entity necessarily connected to the asset through a legal relationship, such as an issuer of shares of stock, or an obligor on a series of bonds.[2]

This necessary legal relationship with an issuer forms the bedrock of our federal securities law framework and allows the law to hold these issuers accountable for ongoing disclosures. As my colleagues and I demonstrated in our paper—*The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are Not Securities*[3]—the application of the traditional federal securities framework to all activity involving digital assets without an "issuer" (regardless of the nature of transactions involved) is not supported by the federal case law on investment contracts and would be neither technologically nor economically sensible to implement in new legislation.

Moreover, the bifurcated financial markets regulatory structure in the United States—wherein the SEC regulates securities and securities activity and the CFTC oversees markets in commodity interests—has no natural analog in the digital asset sector. Most digital assets do not neatly conform to the characteristics of either category. The Supreme Court's *Howey* decision provided a test to determine what constitutes an "investment contract,"[4] yet that test was crafted in 1946, an era when the concept of something as fluid in nature as digital assets was unimaginable. As we have seen that in recent cases such as *SEC* v. *Coinbase* and *SEC* v. *Payward*, the attempted application of *Howey* to third-party activity involving digital assets in secondary markets has led to significant legal uncertainty. I was heartened by the recent

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[1] In this testimony I use the broad term "digital assets" to refer specifically to fungible assets, the ownership of which is recorded on a cryptographically protected public blockchain ledger, like those maintained by the Ethereum network or the Solana network. There are many other types of digital assets, such as non-fungible tokens (NFTs) which may raise similar issues but which our out of scope of this testimony.

[2] Note that the "legal relationship" need not be contractual in nature, as courts interpreting the *Howey* precedent have repeatedly found in recent years.

[3] Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4282385.

[4] As defined by the Supreme Court, an "investment contract" is a contract, transaction or scheme involving (1) an investment of money (2) in a common enterprise (3) with an expectation of profits (4) to come solely from the efforts of the promoter or a third party, although the last prong is generally regarded as having been modified by subsequent case law to require an expectation of profits derived from the essential entrepreneurial or managerial efforts of others. See *SEC* v. *W.J. Howey Co*., 328 U.S. 293 (1946) ("*Howey*"). Because Congress chose not to define the term "investment contract" in either the Securities Act or the Exchange Act, it was left to the courts to define the parameters of this term. In *Howey*, the Supreme Court first articulated the test used to determine whether an investment contact is present. Although this standard has been subject to considerable interpretation since 1946, its basic elements continue are applied to this day.

announcement made by Coinbase that the SEC has agreed to dismiss the case against them brought under the prior Administration based on these unfounded theories.

Other leading industry voices have decried this regulatory uncertainty, noting that enforcement-first approaches have pushed innovation offshore and exposed American market participants to unnecessary and unjustified litigation risk. It is time, therefore, for Congress to step in and create a clear, adaptable framework for digital assets that reflects the realities of modern technology and the needs of American consumers.

III. The Regulatory Challenge: Securities *Versus* Commodities

Given our bifurcated market regulatory structure, a critical issue at the heart of the digital asset debate is the question of classification. When should activity involving a particular digital asset be regulated as a securities transaction, subject to extensive disclosure and registration requirements, or as a non-securities transaction? This question is not merely academic—it has dramatic real-world consequences both for market participants and for the development of blockchain technology in general in the United States.

On the one hand, if virtually all activity involving digital assets is considered to be some type of securities transaction, then all of this activity becomes subject to the full gamut of federal securities regulation. This includes registration requirements applicable to companies deemed to be acting as “brokers”, “dealers”, “exchanges” or “clearing agencies” in connection with that activity. The question to be asked then is not whether these regulations are “too onerous” for participants in digital asset markets. Rather, the correct question is whether these regulations have *any relevance* to activity involving digital assets that are not themselves securities.

As seen in numerous enforcement actions, even platforms that operate with robust compliance programs can be caught in the crosshairs of litigation for facilitating transactions in assets that may not possess the traditional characteristics of a security. It is akin to asking why the federal securities laws should not also apply to all transactions in concert, sports and other event tickets (an area in which there is also a mix of speculative and consumptive use)—it is not that the securities laws are too onerous for a ticket trading platform—they simply do not apply to brokers, dealers, or marketplaces in the event ticket space.[5] Worse yet, suggesting that the federal securities law framework should apply to secondary transactions in digital assets has led to numerous civil actions for alleged registration violations. On the other hand, if digital assets are not viewed as securities, then no federal supervisory regulation would apply to marketplaces that facilitate “spot” exchanges of these assets.[6] Given the current and rapidly growing size of this market in the U.S. alone, creating an appropriate federal regulatory environment for this activity makes sense and, in my experience, is supported by many in the digital asset sector.

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[5] *See* The Ticket Reserve, SEC No-Action Letter dated September 11, 2003, available at https://www.sec.gov/divisions/corpfin/cf-noaction/ticketreserve091103.htm.

[6] Facilitating the spot exchange of digital assets (considered “convertible virtual currencies” by the Treasury Department’s Financial Crime Enforcement Network (FinCEN)) is subject to licensure and varying levels of regulatory oversight in 49 of the 50 states.

Federal courts have consistently recognized that *certain* transactions involving digital assets are appropriately characterized as securities activity.[7] Specifically, courts have found most sales of existing or promised future digital assets by a company to raise funds to be used either to build or develop technologies used to support or grow the utility or functionality of the digital asset or, in some cases, to promote awareness of the benefits of the digital asset and its associated network or application, are appropriately considered "investment contract" transactions subject to the federal securities laws. Accordingly, it is critical that any regulatory scheme adopted by Congress take this dichotomy into account.

The RFIA, as introduced by Senators Lummis and Gillibrand, offers a technology-neutral way to reconcile these competing considerations. Under its approach, any intangible, commercially fungible asset (which may include an asset characterized under other law as a "digital commodity") that is offered and sold as part of an investment contract transaction would be considered an asset *ancillary* to the securities transaction (or an "ancillary asset") and be definitively recognized as not itself a security unless the asset provides the owner of the asset with equity, debt, liquidation, cash flow or another financial interest in a business entity, such as a corporation. In this framework, a fundraising scheme involving a digital asset offered to the general public in the U.S. would be required to be registered with the SEC (or benefit from a valid exemption from registration). However, a digital asset that is sold in an investment contract transaction would not itself be subject to separate SEC registration if it does not confer traditional investor rights (such as equity or debt claims).[8] Instead, such tokens would be treated more like commodities, with the regulatory oversight of secondary market activity given to the CFTC. This approach preserves the benefits of blockchain technology for everyday transactions while still imposing necessary disclosure obligations on primary market offerings.

IV. The Ancillary Asset Framework: A Legislative Proposal

At the core of my testimony today is the belief that the technology-neutral ancillary asset framework offers the best path forward for determining when transactions involving digital assets should be regulated as securities activity and when transactions involving digital assets

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[7] *See, e.g., SEC* v. *Ripple Labs, Inc. et al*. 682 F. Supp. 3d 308 (S.D.N.Y. 2023).

[8] As elaborated on in *Ineluctable Modality*:

> [T]he 70-plus year history of *Howey* jurisprudence … reveals a long line of cases in which courts distinguish transactions involving the sale of real estate, oil drilling rights, animals and sundry other objects of a purported commercial arrangement from the business arrangements and other facts and circumstances that gave rise to a finding that there exists an investment contract. Indeed, in those transactions a sales agreement was almost always accompanied by an expectation of profit on the part of the purchaser, based on the seller or an affiliated entity performing post-purchase functions (such as picking, bundling and selling oranges, husbanding cattle and their embryos, or maturing whiskey in casks). And, in each of these cases, the investment package (*i.e*., the set of formal or informal agreements or understandings between the seller and the purchaser) is clearly distinguishable from the object of the scheme itself. Moreover, there is no suggestion in any of the appellate cases that the transfer of the relevant object to another "investor" without an assignment or transfer of the benefit of the underlying promises, would result in another securities transaction.

Ineluctable Modality, *supra* note 3, at pp. 57-58.

should be regulated under other law (such as under a separate framework for digital commodities overseen by the CFTC).

A. The Implementation of Clear, Technology-Neutral Definitions

Under the ancillary asset framework, Congress would not need to attempt to reframe the Supreme Court's 1946 definition of the term "investment contract" in the *Howey* case, which has served to protect consumers from a wide range of investment swindles long pre-dating the advent of digital assets. While many observers would agree that this definition could use a refresh, the current definition serves many needs outside of the digital asset sector and I would not recommend delaying the process of passing critical legislation that provides clarity to the digital asset sector while a range of stakeholders debate alternative definitions for the term "investment contract".

In addition, the ancillary asset framework does not require Congress to make technology-specific amendments to the Securities Act or the Exchange Act (such as defining hard-to-pin-down concepts like "blockchain technology" and "digital asset"), which means that the work done by this Committee now will not need to be revisited each time new technological developments are adopted in the blockchain sector.

Most importantly, the ancillary asset framework provides a clear, bright-line test for when market participants using, trading or investing in digital assets in secondary transactions are engaging in securities activity—a test appropriately based on the nature of the assets themselves. This allows each market participant to readily determine for themselves whether they are dealing with a security or not without retaining a law firm to provide a lengthy and highly caveated analysis interpreting facts and circumstances that are *extrinsic* to the asset. Such extrinsic circumstances may be difficult or impossible as a practical matter for market participants to determine and may change from time to time. It is also a definition that is much less susceptible to being "gamed" by persons creating the relevant digital assets, since either a given asset confers traditional investor rights (such as equity or debt claims), or it does not.

B. Creation of an "Ancillary Asset" Category

The ancillary asset framework posits that in many transactions involving the use of digital assets (such as when an end user seeks to acquire a digital asset to pay "gas" to network validators or when a company seeks to accumulate a given digital asset anticipating greater demand for that asset in the future), the asset itself—although it may have initially been sold in a transaction appropriately characterized as an investment contract—should not be treated as a security solely as a result of that initial sale. In other words, while the transaction in which the asset is initially sold might be a securities transaction (and thus require comprehensive disclosure of material information concerning the transaction by the seller functioning as the "issuer" in the context of that transaction), the asset, once in the hands of secondary market participants, should be regarded as an ancillary asset.

Such assets would be treated similarly to more traditional commodities. This approach would shield third-party market participants, such as exchanges, wallet providers, development companies, dealers, market makers, and custodians from the threat of liability for *inadvertent* unregistered securities activity, provided these entities do not otherwise engage in activity with respect to a digital asset that independently meets the four prongs of the *Howey* test. In my experience, the number one complaint of market participants when it comes to digital asset activity is the need to be able to clearly and efficiently determine when they are dealing with an asset that is itself a security without needing to consider information extrinsic to the asset; given the quantity of case law interpreting *Howey*, market participants are able to manage the potential risk that *their own activity* results in investment contract transactions.

C. Tailored Disclosure Requirements

While the ancillary asset framework would shift the regulatory burden on participants in secondary market transactions to a new framework to be implemented by the CFTC, it would not reduce investor protection with regard to actual securities activity. To the contrary, for primary offerings of digital assets sold as part of an investment contract, the framework would mandate tailored disclosure requirements where, post primary sale, the relevant digital asset achieves a minimum threshold of trading and distribution. Where this is the case, the party that engaged in the original fundraising would need to provide—under penalty of the anti-fraud provisions in the Exchange Act—comprehensive periodic information about the nature of the asset, the extent of the promoter's involvement, and any other information material to users of, and investors in, the asset.

These disclosures would be required to be made available to the public to reduce information asymmetries between the development team and users of, and investors in, the asset who may be buying, selling, and otherwise engaging with the digital assets (*e.g.*, staking the asset to secure a blockchain network or using the asset to pay network validators to add a proposed transaction to a "block" added to the relevant blockchain network). These disclosures should be designed to give both investors and day-to-day users of the digital assets sufficient insight into the risks and benefits of the assets and the related network or application, without imposing upon the fundraising development team the full-scale reporting burdens, such as GAAP-based audited financial statements, required of traditional public companies.

Although the version of the RFIA introduced in 2023 contains a thoughtful list of disclosure information that would need to be provided to the market, this Committee may wish to undertake further study to ensure that required disclosures appropriately balance the need for transparency to purchasers of digital assets without overburdening development companies seeking to innovate in a rapidly changing business environment.

Finally, although the ancillary asset framework does not create new mechanisms for development companies to raise funds through sales of new digital assets in circumstances that would be considered securities transactions under the *Howey* test, the current regulatory framework under the Securities Act that allows for both exemptions and registered offerings for this activity would not be altered by the adoption of this framework and thus would continue to be available to parties seeking to engage in this activity. Nevertheless, Congress may want to make clear to the SEC its support for flexibility in applying our existing disclosure frameworks for fundraising to take into account the unique additional informational requirements applicable to investment contract-based sales of digital assets while at the same time making accommodations for the omission of information from the SEC's traditional disclosure forms where the information called for is not material to an investment decision in a purchase of the digital assets.

D. Bipartisan and Flexible Legislative Authority

Finally, the ancillary asset framework discussed above is designed to be flexible and garner bipartisan support. It respects longstanding legal principles established under the *Howey* test while adding new elements, such as ongoing disclosures, to account for the unique features of digital assets. By creating bright-line rules that allow market participants to differentiate between digital assets that are, or are not, securities, the framework would allow federal regulators to focus on eliminating fraud and protecting investors without stifling innovation. It would also harmonize the roles of the SEC and CFTC by drawing a clear line between transactions that require comprehensive securities regulation and those that can be efficiently overseen by a commodities regulator. This dual approach not only promotes investor protection but also ensures that the United States remains at the forefront of digital asset innovation.

V. The Impact of the Current Regulatory Chaos

The current regulatory uncertainty has far-reaching consequences. As demonstrated through a lengthy record of Congressional testimony of industry leaders[9] and observed in enforcement actions, American entrepreneurs face a constant threat of litigation arising from ambiguous applications of our federal securities laws. For instance, cases have been brought against major platforms for facilitating secondary market trading in tokens that some plaintiffs allege are unregistered securities—even when there is no "issuer" with which the asset holders

[9] *See, e.g.*, The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure, Hearing Before the Subcomm. on Digit. Assets, Fin. Tech., and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2023), https://tinyurl.com/2yp22fwm; The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem, Hearing Before the H. Comm. on Fin. Servs., 118th Cong. (2023), https://tinyurl.com/4ar5vxsj; Dazed and Confused: Breaking Down the SEC's Politicized Approach to Digital Assets, Hearing Before the Subcomm. On Digit. Assets, Fin. Tech., and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2024), https://tinyurl.com/2jzsf3by; Crypto Crash: Why Financial System Safeguards are Needed for Digital Assets Before the S. Comm. on Banking, Hous., and Urb. Affs., 118th Cong. (2023), https://tinyurl.com/uphtw2nk; Crypto Crash: Why the FTX Bubble Burst and the Harm to Consumers Before the S. Comm. On Banking, Hous., and Urban Affs., 117th Cong. (2022), https://tinyurl.com/56hc2chw; Investigating the Collapse of FTX, Part I Before the H. Comm. on Fin. Servs., 117th Cong. (2022), https://tinyurl.com/56hc2chw; Protecting Investors and Savers: Understanding Scams and Risks in Crypto and Securities Markets Before the S. Comm. on Banking, Hous., and Urb. Affs., 117th Cong. (2022), https://tinyurl.com/3ku4b4y5; Putting the 'Stable' in 'Stablecoins:' How Legislation Will Help Stablecoins Achieve Their Promise Before the H. Subcomm. on Digit. Assets, Fin. Tech. and Inclusion of the H. Comm. on Fin. Serv., 118th Cong. (2023), https://tinyurl.com/cbhpnc62; The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets Before the H. Comm. on Fin. Servs. & H. Comm. on Agric. Joint Subcomm., 118th Cong. (2023), https://tinyurl.com/3z482ech; The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure Before the H. Comm. on Financial Services & H. Comm. on Agric. Joint Subcomm., 118th Cong. (2023), https://tinyurl.com/muedwru9; Understanding Stablecoins' Role in Payments and the Need for Legislation Before the H. Subcomm. On Digit. Assets, Fin. Tech. and Inclusion of the H. Comm. on Fin. Servs., 118th Cong. (2023), https://tinyurl.com/59zwum75; Coincidence or Coordinated? The Administration's Attack on the Digital Asset Ecosystem Before the H. Subcomm. on Digit. Assets, Fin. Tech. and Inclusion of the H. Comm. on Fin. Serv., 118th Cong. (2023), https://tinyurl.com/mr2ea497.

have any legal relationship. This regulation-by-enforcement approach creates a chilling effect on innovation—I have observed this firsthand. Companies that might otherwise invest in developing robust digital asset products are currently forced to spend millions of dollars on vague and uncertain attempts at legal compliance or risk punitive litigation that drains resources and stifles growth.

VI. Policy Recommendations

To address these issues, I respectfully offer the following policy recommendations:

A. Adopt a Technology-Neutral Statutory Approach

Congress should enact legislation that implements the ancillary asset framework along the broad lines set out above. The RFIA provides an excellent starting point for this work. This technology-neutral approach would allow participants in secondary markets in digital assets to have certainty about the regulatory requirements applicable to their activity while ensuring high levels of investor protection when digital assets are used in connection with fundraising transactions. This clarity will help prevent divergent interpretations among regulators and courts.

B. Establish a Dual Regulatory Framework

Legislation should explicitly divide regulatory authority between securities and commodities regulators. Fundraising activity involving digital assets that would be considered investment contract transactions, generally involving a primary offering of the asset, should be subject to securities regulation overseen by the SEC, including ongoing reporting by the asset seller through a publicly accessible website if the digital assets achieve some minimum level of trading in markets open to the U.S. public. However, this reporting would continue only until the value of the relevant asset is no longer dependent on the entrepreneurial efforts of the fundraising party and its affiliates. This determination would be made by the fundraising development team—the entity in the best position to evaluate the level of dependency users of the network or application, or owners of the asset, have on that fundraising party and its affiliates at any given time.

At the same time, once sold to purchasers, digital assets that do not provide the asset owner with equity, debt or other rights in the fundraising party or any other business entity would be freely transferrable, including through spot markets overseen by the CFTC (created through other law) without risk that, at some unknowable point in the future, the assets either "morph" into, or out of, being treated as a security (or some other similar regulatory status by a different name) that would result in dramatic limits on the transferability (and thus liquidity) of these assets—a burden that would fall on third parties holding and using these assets who are unaffiliated with the original fundraising party.

One important matter to be addressed in such a framework would be mechanism to ensure that early funders, insiders or similarly situated others are not able to facilitate a "workaround" of our traditional securities law precepts by purchasing ancillary assets from an initial seller in investment contract transactions that are exempt from registration as transactions not involving a public offering based on Section 4(a)(2) of the Securities Act and then subsequently acting as an effective distribution party (broadly akin to a "statutory underwriter" in a traditional securities law setting) by reselling the ancillary assets to the general public without satisfying a minimum holding or cooling off period.[10]

C. Implement a Tailored Disclosure Regime

Issuers of investment contract transactions involving sales of digital assets should be required to provide tailored disclosures that focus on the unique risks of the digital asset offered and the related blockchain network or application as and when those digital assets become widely available to the general public in the United States. These disclosures should include information on the network or application's governance, the role of the development team, any related foundation or similar entity, and the types and level of dependencies on centralized parties needed to support the usability of the network or application and the value of the digital asset. Regulators should work with industry stakeholders to develop disclosure standards that are both robust and practicable. This approach places the regulatory burden of achieving "sufficient decentralization" (*i.e.*, termination of the statutory requirement to provide ongoing disclosures about the relevant network or application) on the party best able to evaluate and control that process—that is, the burden of compliance is placed on the original fundraising entity.

D. Appropriate Oversight of Secondary Market Activities

To protect exchanges, custodians, dealers, market makers, wallet providers and other secondary market participants, this framework would effectively establish a safe harbor that shields these entities from inappropriate *securities law* liability for the sale or transfer of ancillary assets that are not themselves securities. Nevertheless, there already exist significant anti-fraud and anti-manipulation protections in current federal law (including the CFTC's Rule 180.1 as well as protections against unfair and deceptive acts and practices in consumer markets overseen by the Federal Trade Commission). These protections may be further enhanced by other market structure legislation which can provide for surveillance by companies operating secondary market platforms for non-security digital assets, along with federal oversight to address the potential for abuses in these markets.

E. Encourage Coordination with International Regulators

Finally, the key U.S. regulators for activity involving digital assets (*i.e.*, the SEC and the CFTC) should be encouraged to work with international regulatory bodies to promote consistency and interoperability in digital asset regulation. Global digital asset markets are as interconnected as the Internet itself, and divergent regulatory regimes only serve to create arbitrage opportunities and regulatory gaps. International coordination can help establish

[10] *See, e.g., SEC* v. *Telegram Group, Inc.,* 448 F.Supp. 3d 352 (S.D.N.Y. 2020).

common standards and promote best practices that benefit investors and market participants worldwide.

VII. Anticipated Benefits of a Bipartisan Legislative Framework

The adoption of a bipartisan legislative approach based on the ancillary asset framework would yield numerous benefits:

A. Enhanced Investor Protection

This framework would impose tailored disclosure requirements on fundraising parties applicable only when a given digital asset becomes widely available to the general public in the United States. These disclosures would be subject to the antifraud provisions of the Securities Act and the Exchange Act. As a result, the proposed framework ensures that investors in, and users of, digital assets receive the necessary information to make informed decisions without fundraising parties being overburdened by an unnecessary regulatory apparatus. At the same time, the framework would protect secondary market participants not affiliated or working in concert with the fundraising party through clarifications that ancillary assets they hold are not securities and are not subject to having the transferability of these assets otherwise limited at some point in the future as a result of events that extrinsic to the asset itself.

B. Reduced Litigation Risk

Clear statutory definitions and bright-line rules will reduce the incidence of extractive civil litigation based on ambiguous interpretations of what constitutes a security. This will lower compliance costs and free up resources for innovation rather than legal defense while leaving critical anti-fraud provisions in place.

C. Increased Market Liquidity

A framework that distinguishes between securities and ancillary assets will promote a vibrant secondary market in digital assets. With lower regulatory uncertainty, exchanges and other market participants will be more willing to facilitate trading, thereby enhancing liquidity and price discovery. Liquidity would also be enhanced through the implementation of a CFTC-led framework for oversight of secondary markets in digital assets that fall within the category of ancillary assets.

D. Promotion of U.S. Leadership in Innovation

By establishing a clear, stable and technology-neutral securities law framework, Congress can help ensure that American firms remain competitive in the global digital asset market. A predictable regulatory environment will attract capital, foster innovation, and prevent the offshoring of technology and talent.

E. *Dynamic Adaptability*

The proposed framework's focus on reduced dependency on fundraising teams as a trigger for winding down securities law reporting allows projects to adapt at their own pace over time. The approach avoids creating artificial deadline for decentralization and substitutes for this clear disclosures about dependencies on project teams as well as, potentially, other incentives that do not penalize third party users of the digital assets.

F. *Bipartisan Consensus*

It has been frequently remarked that technological innovation should not be a partisan matter. The framework is intended to be flexible enough to gain support from members on a bi-partisan basis. By balancing investor protections with the facilitation of innovation, the ancillary asset approach addresses the concerns of regulators, industry participants, and consumer advocates alike. Being able to achieve a bipartisan consensus is essential for passing durable legislation that can stand the test of time and technological change.

VIII. Addressing Potential Concerns and Criticism

I appreciate that any legislative proposal of this significance will be subject to scrutiny and debate. Some critics may argue that drawing a sharp distinction between securities and commodities in the digital asset space is overly simplistic. However, it is important to note that our existing regulatory framework for traditional assets is itself built on clear statutory definitions and judicial interpretations that distinguish between fundamentally different types of financial instruments and other assets. The ancillary asset framework does not abandon these principles—it extends them to a new and rapidly evolving asset class.

Although this approach does not adopt the idea of the potential for a "morphing" of assets into and out of "securities" status and instead focuses on the *inherent nature* of the assets themselves, through a requirement for robust disclosures, the framework does create significant incentives for fundraising parties to reduce the extent and degree of dependencies in the related network or application, thus strongly aligning with the digital asset community's concerns about avoiding so-called "decentralization theater" and the paradoxical result in the current environment in which projects seem to be gravitating more closely toward centralized structures, rather than in the opposite direction.

Finally, there is concern that increased regulatory clarity might inadvertently stifle innovation by imposing burdensome requirements on startups and early-stage projects. On the contrary, a well-calibrated framework that distinguishes between primary and secondary market activities involving digital assets and provides clarity for intermediaries will lower the cost of compliance and reduce the risk of litigation. By doing so, it will encourage innovation rather than deter it, allowing new projects to thrive under a predictable regulatory regime.

IX. Conclusion

In closing, the United States stands at a critical juncture in the evolution of blockchain technology and digital assets. The explosive growth of interest in digital assets and dependency minimized networks and applications has the potential to transform our financial system, expand economic opportunity, and solidify our nation's position as a global leader in innovation. However, this potential will remain unrealized if we continue to operate under a patchwork of conflicting regulatory approaches that impede market development and expose American businesses to unnecessary risks.

A bipartisan legislative framework for digital assets—built on the ancillary asset concept and grounded in the principles of transparency, accountability, and flexibility—is not only necessary, it is imperative. By clearly distinguishing between transactions that should be subject to securities regulation and those that do not involve investment contract or other securities characteristics under current law, Congress can provide the legal certainty that participants in the digital asset sector need. Such a framework would protect investors, reduce litigation risk, foster innovation, and ultimately enhance the competitiveness of the United States in the global digital asset market.

I urge you, as policymakers entrusted with shaping the future of our financial system, to act decisively. Let us build on the lessons of the past, learn from our international counterparts, and craft legislation that embraces the transformative potential of blockchain technology while safeguarding the interests of consumers and investors. The time for ambiguity is over; it is now time for clear, forward-thinking regulation that paves the way for a robust, innovative, and competitive digital asset ecosystem.

Thank you for your attention, and I look forward to answering your questions.

This testimony is intended to contribute to a constructive discussion on developing a bipartisan legislative framework for activity involving the use of digital assets. The views expressed herein are my own and are informed by extensive experience in both traditional securities law and emerging blockchain technologies.