

House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

July 11, 2023

Committee Chairs McHenry and Thompson, Ranking Member Waters and Scott, Subcommittee Chairs Hill and Johnson, and Subcommittee Ranking Members Lynch and Caraveo,

We, the undersigned organizations, write to you today to express our opposition to the discussion draft bill, "[H.R. _____, Digital Asset Market Structure Discussion Draft.](#)"

Consumers have lost trillions due to the crypto collapse¹, in addition to the billions also lost directly to widespread scams, fraud and theft found throughout the industry.² Public opinion has soured on these speculative investments.³ Venture capital funding, which pumped crypto hype for years, often for their own firms' benefit, has plummeted, and is now migrating to the next shiny thing - AI.⁴ Most of the industry's wounds are self-inflicted, and are a result of either failure to adhere to the most basic financial management principles, rampant fraud, or both.⁵ Many industry players large and small are facing civil and criminal enforcement actions at the state, national and international level,⁶ as well as class-action lawsuits from defrauded customers.⁷ After 14 years, crypto still struggles to demonstrate viable use cases outside of speculative investment.⁸ While other tech has proven its usefulness many times over, crypto's big moment is always just over the horizon.

Yet, a concentrated lobbying effort by the crypto industry has moved this Committee to advance a potentially radical proposal – and pass it through committee before August recess – that would, in the name of “crypto innovation,” weaken consumer and investor protections for both traditional and crypto investors. It would also broadly reshape financial regulatory agencies’ jurisdictions and weaken regulatory oversight of financial products and services writ large.

¹ <https://www.cnbc.com/2022/11/11/crypto-peaked-in-nov-2021-investors-lost-more-than-2-trillion-since.html>

² <https://www.cnn.com/2023/03/13/politics/fbi-online-fraud-report/index.html>

³

<https://www.pewresearch.org/short-reads/2023/04/10/majority-of-americans-arent-confident-in-the-safety-and-reliability-of-cryptocurrency/>

⁴ <https://qz.com/venture-capital-funding-crypto-firms-plunge-in-2023-1850506521>

⁵ <https://www.wsj.com/articles/accounting-red-flags-are-common-among-public-crypto-companies-11670395681>;
<https://web3isgoinggreat.com/>

⁶ <https://cointelegraph.com/news/crypto-related-enforcement-actions-by-us-states-rose-sharply-in-2022-report>;
<https://www.soliduslabs.com/research/2023-crypto-enforcement-trends>;

<https://www.soliduslabs.com/research/asia-pacific-crypto-enforcement-trends-2023>

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<https://www.dechert.com/knowledge/onpoint/2023/3/cryptocurrency-securities-class-action-litigation-2022-year-review.html>

⁸ <https://blog.mollywhite.net/its-not-still-the-early-days/>

We have numerous concerns about the bill; we discuss a set of crucial problems below.

A rewrite of the SEC’s mission and mandate. Perhaps the most damaging aspect of this bill is that it would change how the SEC evaluates all regulatory rulemakings for all securities markets by requiring the agency to evaluate new rules using “innovation” as a criterion. This is a dangerous approach. Not all innovation is “good” (synthetic CDOs were a form of financial innovation that helped spur the global financial crisis); defining what innovation is or what it serves is complex and subjective; and requiring the SEC to incorporate “innovation” into its criteria for developing regulatory standards amounts to a fundamental change in the SEC’s 100-year mandate to protect investors, promote fair markets and facilitate capital formation. This provision would likely be weaponized (much like cost-benefit analyses are now) to hamstring SEC rulemaking processes and weaken the agency’s authority over all securities investors and markets.

A blueprint for unregistered stock offerings. This bill creates a blueprint for crypto asset issuers to effectively issue ‘unregistered stock,’⁹ by enacting a decentralized network definition that would allow crypto asset issuers and traders to qualify as decentralized when certain conditions are met, and therefore be exempt from most meaningful securities regulatory oversight. This approach also effectively codifies existing crypto business models that are all too often used to exploit retail investors for the benefit of a smaller group of initial investors.

A roadmap for traditional financial firms to use ‘decentralized networks’ to evade more rigorous oversight. Not only could the decentralization framework named above allow crypto firms to largely continue with business as usual - it could also enable traditional financial firms to evade more robust regulatory oversight by claiming their products and platforms meet this decentralization rubric (e.g. “slap a blockchain on it”)¹⁰, and thus become exempt from conventional regulatory requirements for securities issuers and actors. This would create huge potential risks for consumers, investors and markets due to less rigorous oversight.

A rubber-stamp certification scheme for crypto ‘commodities.’ The bill’s self-certification process for crypto industry actors makes it very easy for anyone to declare they fall under CFTC jurisdiction (as crypto commodity issuers, brokers, etc.) The SEC is given nominal authority to intervene in these certifications, but the bill sets a 30-day time limit for such interventions, requires the agency to do extensive legal analysis, and allows the CFTC to intervene and applicants to file appeals. This process and unreasonable timeline stacks the deck against the appropriate securities regulation of crypto assets that should fall under the SEC’s jurisdiction, and all but guarantees many asset issuers and traders will flood the system seeking registration under the CFTC. This also flies in the face of arguments that this bill is intended to address the gap in crypto spot market regulation when it’s clear the scope of assets and actors that would be implicated is far greater.

⁹ <https://www.bloomberg.com/opinion/articles/2023-06-07/when-is-a-token-not-a-security?sref=f7rH2jWS>

¹⁰

<https://ourfinancialsecurity.org/2023/06/statement-statement-for-the-record-to-the-house-financial-service-s-committee-in-response-to-the-hfsc-recent-hearing-on-digital-assets/>

A vague mandate for CFTC that lacks clarity or sufficient investor and consumer protections. The bill grants the CFTC new regulatory authority over crypto commodities and crypto commodity traders, but the language regarding consumer and investor protection provisions in the bill is vague, narrowly cast, or left up to rulemakings, and not commensurate with investor protection provisions found in the securities regulatory framework. Such language, even if it were strengthened, could face litigation if and when enacted as it puts the agency in conflict with its current statutory mandate, which is largely focused on anti-fraud and market manipulation measures meant to address activity by large, sophisticated trading firms, not retail crypto investors buying crypto from their phone on an app. The legal wrangling that would likely ensue could take years, if not decades, to resolve – leaving crypto investors without adequate regulatory protections in the interim. Lastly, it’s possible the regulatory authority given to the CFTC under this bill could undermine the authority of agencies such as the CFPB to regulate and oversee crypto consumer financial products and services as well.

An unfunded mandate for the CFTC, granting more responsibility with no new resources. Additionally, the bill provides no additional funding for the CFTC to oversee this new class of assets and actors, despite the likelihood that, if the bill passed, the agency would be flooded with crypto commodity self-certifications, making it even more likely that risky assets and bad actors would get ‘rubber-stamped’ approval. The CFTC itself has said publicly that it would need additional resources and capacity to manage this regime. Yet, the authors of this bill are moving forward with the full knowledge that they have no plans to expand CFTC funding to meet this new regime.

Weaker regulatory requirements for many crypto securities. The bill’s regulatory provisions for those crypto assets that are deemed ‘securities’ allow for major exemptions for crypto asset issuers whose sales are under \$75 million a year - a threshold that would exclude thousands of tokens currently on the market. This exemption would allow crypto securities issuers to issue what amount to private offerings to the broader investor public, without adequate regulatory oversight. Numerous crypto scams and pump and dump schemes have successfully fleeced crypto consumers with sales volumes of far less.

An expansive temporary safe harbor that tacitly rewards non-compliance. Finally, this bill creates an expansive ‘safe harbor’ for crypto platforms and crypto asset issuers, by allowing them to seek “provisional registration” with the SEC or CFTC while these agencies enact rules. The bill gives scant information on what the registration and disclosure requirements might be during this safe harbor period, but given many crypto firms’ struggle to provide even basic information about governance, financial statements and controls, business models, and more, it seems unlikely that investors would be provided with adequate information. Yet, by giving such safe harbor (which given rulemaking timelines, could last for years) crypto firms currently out of compliance with financial regulatory laws would be sheltered from current or future legal action, and would be free to continue with business as usual and would have a patina of legitimacy that could draw unwary consumers back to crypto, exposing them to more risk and harm.

All told, we believe this bill as written introduces a policy “cure” that would be far worse than the disease and create significant harm within and far beyond the crypto industry. Regulators

already have extensive existing powers to regulate this industry, the same way other financial products and services are regulated. What regulatory gaps may exist would require a targeted, narrow and measured approach, but this bill is sweeping in scope, and should it become law it would profoundly undermine the SEC's ability to support orderly markets and protect investors from harm.

Instead of pursuing this ill-advised proposal, the best immediate step Congress could take to protect consumers who choose to participate in crypto markets would be to support regulators' ongoing efforts to enforce existing rules – the very basic elements of securities and banking regulation which provide the foundation for consumer and investor protections in the financial regulatory realm.

Thank you.

Signed,

(in alphabetical order)

Action Center on Race and the Economy

American Economic Liberties Project

Americans for Financial Reform

Center for American Progress

Center for Responsible Lending

Communications Workers of America

Consumer Action

Consumer Federation of America

Consumer Reports

Demand Progress

Institute for Agriculture and Trade Policy

National Consumer Law Center (on behalf of its low-income clients)

National Community Reinvestment Coalition

Public Citizen

Revolving Door Project

Rise Economy (formerly California Reinvestment Coalition)

Strong Economy for All Coalition

Texas Appleseed

U.S PIRG

20/20 Vision

Woodstock Institute