

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
The Capitol, H-232
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Rayburn House Office Building, 2433
Washington, DC 20515

May 20, 2024

Dear Speaker Johnson and Minority Leader Jeffries,

We, the undersigned organizations and individuals, write to you today to express our opposition to [H.R. 4763, the Financial Innovation and Technology for the 21st Century Act \(The "FIT" Act\)](#). We urge you and Members of Congress to vote against this bill when it comes to floor this week. Many signatories of this letter also wrote to the House Financial Services and Agriculture Committees last year expressing their opposition to this bill when it was marked up in Committee.¹ We see little in the new version of this bill (despite format and cosmetic changes) to assuage our concerns.

Consumers have lost trillions due to the 2022-2023 crypto collapse,² in addition to the billions lost directly to widespread scams, fraud and theft found throughout the industry.³ Public opinion has largely soured on these speculative investments.⁴ Venture capital funding, which pumped crypto hype for years, often for their own firms' benefit, plummeted during the crash, migrating to the next shiny object of discussion- AI.⁵ 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.⁶ Even now, after the prosecutions of Sam Bankman-Fried, Changpeng Zhao, and other seminal crypto players, many industry players large and small are still facing civil and criminal enforcement actions at the state, national and international level,⁷ as well as

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<https://ourfinancialsecurity.org/2023/07/letter-to-congress-consumer-advocacy-organizations-oppose-h-r-4763-the-financial-innovation-and-technology-for-the-21st-century-act/>

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

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

4

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

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

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

7 <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>

class-action lawsuits from defrauded customers.⁸ After 15 years, crypto still struggles to demonstrate viable use cases outside of speculative investment.⁹ While other tech has proven its usefulness many times over, crypto's big moment is always just over the horizon. The industry has superficially recovered this year, in part due to controversial approval of spot BTC ETPs by the Securities Exchange Commission.¹⁰ Yet, the scams, hacks, theft, instability, reckless promotional activities, and regulatory evasion that were present during the last crypto bull market remain endemic in the industry today.¹¹

In the midst of this new bubble, a concentrated lobbying effort by the crypto industry, backed primarily by wealthy venture capital investors seeking short-term returns on risky investments,¹² has moved lawmakers to advance this proposal with potentially radical implications that would, in the name of “crypto innovation” and so-called “regulatory clarity,” complicate and 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. All this could result in real harm to consumers and investors, whether they invest in crypto or not.

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

A potential backdoor path to undermine the Howey Test. For decades, the Howey Test – a legal framework outlined by a Supreme Court ruling that is used to determine whether certain transactions qualify as investment contracts, and thus must adhere to robust investor safeguards – has been a vetted and reliable formula used by the courts and regulators to determine whether certain investment activities, assets and actors should be subject to investor protection standards under securities law.¹³ The crypto industry’s efforts to contest the notion that crypto assets aren’t securities under Howey have had a rocky trajectory – a few wins, many more losses and settlements in court.¹⁴ As described further below, much of this bill seeks to circumvent these standards, in part by creating a fast-track, rubber stamp process to designate crypto assets as “commodities,” thus narrowing application of securities regulation to those assets and related actors.

But, leaving nothing to chance, Title II of the FIT Act also declares that, if enacted, all “investment contracts assets” – which are defined in the bill as digital assets – are **not** securities, full stop. This would likely not only undermine application of the Howey Test to crypto

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

⁹ <https://blog.mollywhite.net/its-not-still-the-early-days/>

¹⁰ <https://www.sec.gov/news/statement/gensler-statement-spot-bitcoin-011023>

¹¹ <https://www.chainalysis.com/blog/crypto-hacking-stolen-funds-2024/>;
<https://www.coolwallet.io/blog/crypto-hacks-2024/>

¹²

<https://www.marketwatch.com/story/crypto-industrys-lobbying-hit-a-record-in-2023-and-is-off-to-a-strong-start-in-2024-fa740b43>;

<https://www.coindesk.com/business/2022/05/02/crypto-venture-capitals-rejection-of-venture-capital-and-the-box/>

¹³ <https://www.findlaw.com/consumer/securities-law/what-is-the-howey-test.html>;

<https://www.sec.gov/files/dlt-framework.pdf>

¹⁴ <https://www.cornerstone.com/insights/press-releases/sec-enforcement-of-cryptocurrency-reaches-a-new-high/>

assets and activities writ large (even when evidently appropriate) but would also invite non-crypto actors to use this new terminology to evade coverage of the Howey Test for their investment products and activities as well. Instead of applying the principles of “same activities, same risks, same rules” which helps create consistent regulatory standards, this bill seeks to re-write large swathes of securities law to create special exceptions and lighter regulations for crypto. And it does so in ways that are likely to undermine consistent regulation and investor protection more broadly. That means even investors who never touch crypto may be harmed by this bill if enacted.

A blueprint for unregistered stock offerings. This bill creates a blueprint for crypto asset issuers to effectively issue “unregistered stock,”¹⁵ by enacting a static decentralized system 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 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 dangerous business practices 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”),¹⁶ and thus are 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 than they would otherwise see with traditional regulatory approaches.

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 60-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 a targeted gap in crypto spot market regulation, when it’s clear the scope of assets and actors that can and would likely seek registration with the CFTC is far greater.

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 fully

¹⁵ <https://www.bloomberg.com/opinion/articles/2023-06-07/when-is-a-token-not-a-security?sref=f7rH2jWS>

¹⁶

<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/>

commensurate with investor protection provisions found in the securities regulatory framework. If and when the agency sought to further define these elements – especially if they were to do so in a robust way – they would likely face significant litigation from crypto and non-crypto entities alike, as the bill's proposals are not fully supported by or consistent 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. All told, instead of the so-called “regulatory clarity” the crypto industry claims it needs to be compliant with basic investor protection safeguards, this bill is more likely to introduce **regulatory chaos** for crypto and non-crypto actors alike.

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 fleeced crypto consumers with sales volumes of far less.

An expansive temporary safe harbor that tacitly rewards non-compliance. Finally, this bill, via a “notice of intent to file” provision, creates an expansive safe harbor for crypto platforms and crypto asset issuers, whereby firms can offer nominal information about their business regulators and “provisionally” register with the SEC or CFTC while these agencies enact more formal rules. By giving such safe harbor (which given rulemaking timelines, could potentially last for years) crypto firms currently out of compliance with existing financial regulatory laws would be sheltered from current or future legal action, and would be free to continue with business as usual. We fear this would give such firms a patina of legitimacy which could draw unwary consumers back to crypto, exposing them to more risk and harm.

A lack of action to protect the right to private action for consumers and investors. The recent collapse or bankruptcy of multiple crypto firms - Terraform Labs, 3AC, Voyager Digital, Celsius Network, BlockFi, Genesis Global Capital, Gemini Trust, FTX, and many others – has illustrated how important it is to preserve investor rights that provide to access US courts, help hold bad actors accountable and enable investors to recover their losses. Yet, this bill fails to create such protections within this framework, does nothing to preserve existing investor rights and does not include a savings clause to retain these rights under state law as well. The bill also fails to address the widespread use by crypto firms of forced arbitration clauses and other onerous limitations on consumers' and investors' rights.

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. Those regulatory gaps that may exist require a targeted, narrow, and measured approach, but this bill is sweeping and broad 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 regulatory standards that apply to crypto actors, assets and activities – the very basic elements of securities, banking and consumer finance regulation which provide the foundation for consumer and investor protections in the financial regulatory realm.

Thank you.

Signed,

(in alphabetical order)

Organizations

American Federation of State, County and Municipal Employees (AFSCME)

American Association for Justice

American Economic Liberties Project

AFL-CIO

Americans for Financial Reform

Center for American Progress

Center for Economic Integrity

Center for Responsible Lending

Clean Energy Action

Communication Workers of America

Consumer Federation of America

Consumer Federation of California

Consumer Reports

DC Consumer Rights Coalition

Demand Progress

Democracy for America Advocacy Fund

Economic Action Maryland

Empower Our Future

Food and Water Watch

Groundwork Data

ISAIAH (MN)

Institute for Agriculture and Trade Policy

Maine People's Alliance

National Community Reinvestment Coalition

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

P Street

Public Citizen

RAISE Texas

Revolving Door Project

Rise Economy

US PIRG

Take On Wall Street

Texas Appleseed

THIS! Is What We Did

Virginia Poverty Law Center

Woodstock Institute

20/20 Vision

350Hawaii

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