

January 24, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
2129 Rayburn HOB
Washington D.C. 20515

Dear Chairwoman Waters:

I write to commend you on last month's hearing titled: "*Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.*" I appreciated the opportunity to work together and believe the hearing struck the right tone for members to better understand this nascent industry and the issues raised by digital assets. It also reaffirmed the complexity of digital assets, only scratching the surface on the breadth of issues that the Financial Services Committee must examine to ensure the policies Congress pursues will nurture innovation in the United States. As you look to schedule additional hearings, I believe it is critical that we thoroughly review the current environment and prioritize the issues that must be addressed.

Digital Assets Hold Promise

Digital assets hold great promise. Over the last several years, advanced technology has moved digital asset activities from the periphery to the mainstream. Digital assets have great potential to address wealth gaps in new and innovative ways. They have the potential to revolutionize our payment system. This is positive for all Americans. Recent interest by other Committees, the Department of Treasury, and other federal agencies only underscores this industry's importance not only to the financial system but to the broader economy. Thus, neither this Committee's nor Congress' oversight and response should be ad hoc. There should be broad, bipartisan consensus among policymakers as to the appropriate policy solution on several important issues as outlined below.

Treatment of Digital Assets

Central to this discussion is the treatment of certain digital assets. While both Chairmen Benham and Gensler have been extremely vocal, neither the Commodity Futures Trading Commission (CFTC) nor the Securities and Exchange Commission (SEC) positions on digital assets is based in statute. In fact, their competing perspectives have only exacerbated confusion in the marketplace. For example, in 2015, the CFTC determined that virtual currencies, such as Bitcoin, met the definition of "commodity" under the Commodity Exchange Act (CEA). This viewpoint was reaffirmed in 2018 by the then-SEC Director of the Division of Corporate Finance who reiterated the view that both Bitcoin and Ether are not securities.

In October, Chair Behnam testified "the total size of the digital asset market was \$2.7 trillion. And among that \$2.7 trillion, nearly 60% were commodities." In fact, Chair Gensler, prior to his

time at the SEC, took this view. Chair Gensler previously testified, “[CFTC authority] is critical for cryptocurrencies referenced in the derivatives markets but may be increasingly important as well for retail investors in crypto cash commodities.” He further highlighted the need for such authority and emphasized, “there may be a gap Congress considers filling related to cryptocurrencies not subject to securities laws, such as Bitcoin.”

Now, as Chair of the SEC, Gensler has reversed his view. Gensler recently opined that, “it’s really, really a small number, [that] may not be securities and be under commodities rules.” Further stating that, “we have a crypto market now where many tokens may be unregistered securities.”

The inconsistent treatment and jurisdictional uncertainty have only exacerbated confusion in the marketplace. As a result, market participants will look outside the United States. We should not cede these important issues to regulators such as SEC or CFTC, or to the judicial branch, to determine. This Committee should do its work to appropriately categorize these assets and determine the rules that will govern their use. Additionally, as discussed in the hearing, U.S.-based trading platforms are not currently under the direct jurisdiction of either the SEC or CFTC. The Committee should further examine whether increased federal regulation of cryptocurrency trading platforms is necessary or appropriate. We should ensure there is transparency, accountability, and appropriate compliance with anti-money laundering regulations in the marketplace.

Relatedly, the President’s Working Group on Financial Markets (PWG) released a report last November raising the profile of stablecoins, including the benefits and risks associated with their use. We should hear from the drafters of the report on the issues they examined, including but not limited to the composition of stablecoin reserve assets and information provided to the public about the reserve assets, redemption rights as well as other risk management and governance issues. It is also worth noting that one important perspective not included in the report is the role state regulators currently play in regulating these assets. Many states, such as New York, have strong regulatory frameworks in place. These frameworks provide effective oversight of stablecoins. We should hear from states regarding lessons learned and best practices.

Furthermore, we must closely examine the Federal Reserve and its anticipated next steps regarding Central Bank Digital Currencies (CBDCs). As noted in the Fed’s policy paper, a Fed-issued CBDC raises several questions – including at a fundamental level – whether the Fed has the authority to issue a CBDC absent action by Congress. In evaluating the Fed’s policy paper, we should seek to understand the Fed’s authority, the impact such authority would have on its dual mandate, implications on the retail banking industry and private sector, and the international implications of a US CBDC.

Clarity Will Bolster Innovation

Chairwoman Waters, the issues raised above are not exhaustive. Moreover, we both understand that uncertainty in this industry will only hurt innovation. We must work together to create opportunities that allow these technologies to flourish without stifling them in their infancy. At the same time, we must ensure that both consumers and investors have the information they need to make good decisions. These are not decisions that should be made by regulators but by policymakers.

I look forward to working with you on the hearing schedule over the next several months and legislation to address these issues.

Sincerely,

A handwritten signature in blue ink, reading "Patrick T. McHenry". The signature is fluid and cursive, with the first name "Patrick" being the most prominent.

Patrick T. McHenry