AMERICAN CONSUMER & INVESTOR INSTITUTE

May 14, 2025

Commissioner Hester M. Peirce
Chair, SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Recommendations on Crypto Reforms and Agenda

The American Consumer and Investor Institute (ACII) writes in support of the Securities and Exchange Commission's ("SEC" or "Commission") efforts since President Trump's election to provide greater transparency and concrete regulatory guidance regarding U.S. cryptocurrency markets. ACII's mission is to fight for increased consumer and investor choice and access to U.S. financial markets, including consumer banking, securities, and crypto, while also promoting robust financial education. ACII is the leading voice for the next generation of retail consumer and investor in our rapidly evolving financial markets.[1]

The Biden Administration's heavy-handed policies exacerbated our nation's wealth and investing gaps. Today, too many Americans remain underbanked or unbanked,[2] and the majority of stock market wealth remains concentrated among the wealthiest households.[3] In addition, the Biden Administration stymied Americans' access to cryptocurrency markets and hindered the development of digital asset innovation in the U.S., incentivizing developers to move overseas.

Fortunately, President Trump has worked quickly to reverse the damage. The President has correctly recognized that America needs to lead the world in crypto and blockchain technology. Indeed, the technology underlying the crypto markets has the potential to revolutionize our financial markets. More specifically, digital asset technology has already begun to transform financial markets by making them faster, more efficient, lower cost, and, in the case of crypto, available 24/7 worldwide.

Under former Chair Gary Gensler, the SEC hindered the development of crypto innovation in the U.S. by refusing to provide market participants with the clarity and regulatory relief they needed to operate lawfully under the SEC's oversight. Instead of providing this relief or adopting rules that would allow market participants to grow their businesses while complying with applicable SEC rules, the Commission pursued the backwards approach of "regulation by enforcement."[4] During Gensler's tenure, the SEC initiated 125 crypto-related enforcement actions, 66% of

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[1] American Consumer and Investor Institute, About Us, https://aciinstitute.org/about-us/

[2] *FDIC Survey Finds 96 Percent US Households Were Banked in 2023*, FDIC, https://www.fdic.gov/news/press-releases/2024/fdic-survey-finds-96-percent-us-households-were-banked-2023#:~:text=The%202023%20FDIC%20National%20Survey,bank%20or%20credit%20union%20account.

[3] *Survey of Consumer Finances 2023*, Federal Reserve, https://www.federalreserve.gov/publications/files/scf23.pdf

[4] Sarah Hay, *Regulating Blockchain and Crypto Technology Enforcement*, George Washington University, June 18, 2024, https://regulatorystudies.columbian.gwu.edu/regulating-blockchain-and-crypto-technology-enforcement

which included fraud allegations, and 63% of which included allegations of unregistered securities offerings.[5] Gensler's SEC attacked the entire industry, initiating a broad array of investigations and enforcement actions against crypto trading platforms, lending and staking programs, and decentralized finance platforms.

Following Gensler's resignation as SEC Chair in January 2025, the SEC under Acting Chairman Mark Uyeda and Commissioner Hester Peirce took immediate action to reverse Gensler's harmful approach. For example, they rescinded Staff Accounting Bulletin 121, dismissed several ongoing crypto-related enforcement actions, and released clarifying guidance on memecoins[6] and covered stablecoins,[7] among other actions.[8] Acting Chairman Uyeda also directed the SEC staff to review existing staff statements,[9] including the "Framework for "Investment Contract" Analysis of Digital Assets,"[10] "Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets,"[11] and "Division of Examinations' Continued Focus on Digital Asset Securities."[12]

While former Chair Gensler regularly criticized the crypto industry's purported failure to comply with the existing federal securities laws, it is widely accepted that crypto does not neatly fit the existing rule set.[13] For example, a lack of clarity remains with respect to whether, when, and why the SEC may conclude that a particular token is a security, how transactions in such tokens should be cleared and settled, and how such assets should be custodied in a manner the SEC deems compliant with the federal securities laws. Relief is also needed for firms to list digital asset securities and non-securities side-by-side on the same platform, as well as for firms to tokenize U.S. equities, private securities, and other real world assets. As described in more detail

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[5] Cornerstone Research, *SEC Cryptocurrency Enforcement, 2024 Update*, Jan. 2025, https://www.cornerstone.com/wp-content/uploads/2025/01/SEC-Cryptocurrency-Enforcement-2024-Update.pdf

[6] Securities and Exchange Commission, Division of Corporation Finance, *Staff Statement on Meme Coins*, Feb. 27, 2025, https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins

[7] Securities and Exchange Commission, Division of Corporation Finance, *Statement on Stablecoins*, Apr. 4, 2025, https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425

[8] H. Gregory Baker & Cassandra Deskus, *The First Two Months of the SEC Under President Trump*, Securities Enforcement & Litigation Insider (Patterson Belknap), Mar. 27, 2025, https://www.pbwt.com/securities-enforcement-litigation-insider/the-first-two-months-of-the-sec-under-president-trump

[9] U.S. Securities and Exchange Commission (@SECGov), "Statement from Acting Chairman Mark Uyeda: Pursuant to Executive Order 14192, Unleashing Prosperity Through Deregulation...," X, Apr. 5, 2025, https://x.com/SECGov/status/1908546943686492633

[10] *Framework for Investment Contract Analysis of Digital Assets*, U.S. Securities and Exchange Commission, https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets

[11] Securities and Exchange Commission, *Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets*, June 26, 2024, https://www.sec.gov/rules-regulations/staff-guidance/disclosure-guidance/sample-letter-companies-regarding-recent

[12] Securities and Exchange Commission, Division of Examinations' Continued Focus on Digital Asset Securities, Feb. 26, 2021, https://www.sec.gov/newsroom/whats-new/division-examinations-continued-focus-digital-asset-securities

[13] Gary Gensler, Getting crypto firms to do their work within the bounds of the law, The Hill, March 9, 2023, https://thehill.com/opinion/congress-blog/3891970-getting-crypto-firms-to-do-their-work-within-the-bounds-of-the-law/.

below, these are just a few of the areas the Commission and the SEC's Crypto Task Force must quickly address to jump start the crypto industry in the U.S.

As Commissioner Peirce has stated, "in regulating financial crypto, we ought not be bound by the way we have long regulated existing financial markets. We should welcome the opportunity to reevaluate existing regulation . . . to ensure its appropriateness for both traditional and new markets."[14] We appreciate the SEC's invitation for broad, thoughtful public dialogue and the agency's new emphasis on tailored approaches to regulating the crypto markets.

Tokenization: Tokenization of real-world assets (RWA) has the potential to transform U.S. public and private markets by enhancing liquidity, efficiency, transparency, and financial inclusion.[15] By digitizing traditionally illiquid assets like real estate and fine art, as well as financial instruments (including private market securities and public equities), tokenization enables more efficient markets and broader market participation, and unlocks new investment opportunities. Blockchain technology further enhances transparency by providing an immutable transaction record, reducing fraud, and improving auditability. Additionally, smart contracts automate transactions, cutting out unnecessary intermediation and lowering costs. Tokenized assets also facilitate fractional ownership, allowing retail investors to access asset classes previously reserved for institutions and high-net-worth individuals. These benefits position tokenization as a key driver of capital formation, consumer and investor access, and economic growth in the future.

Unfortunately, the U.S. has fallen behind foreign competitors, as the E.U. and jurisdictions in Asia, for example, have implemented workable regulatory regimes that allow for tokenization. In this case, the SEC does not necessarily need to wait for Congress to adjust its rule set to allow for broad tokenization of public and private debt and equity securities to proceed in the U.S. For example, the SEC should, among other things:

- *Enable blockchain-based clearance and settlement (e.g., Paxos pilot)*: The SEC should expand support for blockchain-based clearance and settlement systems by building on the Paxos pilot – which granted Paxos Trust Company limited no-action relief to operate a blockchain-based settlement platform for U.S.-listed equities outside of traditional clearinghouses like DTCC – and allowing broader industry participation. These systems have demonstrated the potential to reduce counterparty risk, speed up settlement times, and lower costs — goals squarely aligned with the SEC's investor protection and market efficiency mandates. By providing clear guidance and a streamlined no-action path for new pilots, the SEC can facilitate innovation without compromising regulatory oversight.

- *Eliminate any requirement to register the token itself, just the underlying asset*: When a token represents an already-registered or exempt security, the SEC should clarify that the

[14] Commissioner Hester M. Peirce, *Miles To Go: Remarks before The Digital Chamber's 8th Annual DC Blockchain Summit*, Washington D.C., March 26, 2025, Securities and Exchange Commission, https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-dc-blockchain-summit-032625

[15] Anutosh Banerjee, Julian Sevillano, and Matt Higginson, "From ripples to waves: The transformational power of tokenizing assets," https://www.mckinsey.com/industries/financial-services/ourinsights/from-ripples-to-waves-the-transformational-power-of-tokenizing-assets.

token, as a digital representation, does not require separate SEC registration. This distinction would reduce regulatory friction while maintaining oversight over the underlying financial instrument. In private markets, this could foster the use of tokenized securities under existing exemptions like Regulation D.

- *Allow trading platforms and broker-dealers to list and/or trade tokenized securities and non-securities side-by-side*: Today's retail consumer and investor prefers the ability to access the financial markets with as little friction as possible. Crypto exchanges and broker-dealers should be permitted to list and/or trade both tokenized securities and non-securities in a unified market structure, with appropriate disclosures and safeguards. The SEC can modernize its exchange and broker-dealer rules or issue specific exemptive orders to accommodate these hybrid markets, enabling investors to access diversified asset classes on a single platform.

- *Support a variety of digital asset custody models*: Outdated interpretations of custody and transfer agent rules may form a barrier to tokenization. The SEC should issue updated guidance to clarify how blockchain-based recordkeeping and asset control mechanisms comply with Rule 15c3-3 and other custody regulations, allowing for compliant digital asset handling by traditional and new market participants. In so doing, the SEC should allow flexibility in custody arrangements for tokenized assets, including use of smart contract-based custody, third-party custodians, and wallet-based systems, as long as adequate safeguards are in place.

- *Allow digital asset platforms to register under existing ATS rules with modified requirements*: Alternative Trading Systems (ATSs) should be allowed to support tokenized securities with tailored requirements that reflect their operational realities. The SEC can modify Form ATS and related obligations to accommodate digital infrastructure, thus streamlining the path for compliant tokenized exchanges.

Token Status and Listing: The current lack of clarity from the SEC surrounding the regulatory status of tokens continues to pose challenges for token issuers, trading platforms, consumers, investors, and other market participants. Former Chair Gensler repeatedly and irresponsibly alleged that the vast majority, if not almost all, tokens are securities and that the existing rules apply across the board without the need for any accommodations. Federal courts have disagreed, causing significant confusion and uncertainty in the marketplace. This has caused market activity to shift overseas and has limited opportunities for American consumers and investors. ACII recommends that, if necessary, the SEC immediately implement a temporary safe harbor similar to the Digital Trading Clarity Act of 2022 and/or provisional Rule 195 allowing responsible market participants (*i.e.*, those with real compliance policies and procedures and core customer protection measures in place) to issue and list tokens they believe in good faith are not securities while the agency simultaneously engages in rulemaking and works with Congress to provide practical, long-term clarity regarding which digital assets the SEC deems to be securities. As noted above, a key component of any workable regulatory regime will be the ability of trading platforms to list both digital asset securities and non-securities on the same platform without fear of arbitrary SEC enforcement actions.

Staking: Staking is an important tool to ensure that underlying blockchain networks function efficiently and securely while also allowing consumers to obtain more of the cryptocurrencies they choose to stake. In many cases, individuals work collaboratively by pooling their crypto together, which helps them distribute the costs and benefits of staking. Under former Chair Gensler, the SEC articulated the view that most, if not all, staking programs are securities transactions, but the agency did nothing to give staking providers the certainty they needed to operate their programs in compliance with the federal securities laws.

While ACII disagrees with Chair Gensler's allegations that staking programs generally qualify as securities transactions, the SEC nevertheless should provide clarity and, if necessary, specific relief or rule changes to allow staking providers to confidently offer these programs outside of or consistent with SEC rules for the benefit of blockchain networks, as well as consumers and investors who wish to benefit from the rewards of participating in staking programs. For example, the SEC should:

- *Develop a dual-track approach that incorporates SEC rules or exemptive relief for securities-based staking and a safe harbor for compliant alternatives*: The SEC should adopt rules or provide exemptive relief allowing staking programs to operate lawfully even when they are deemed to involve securities. At the same time, the SEC should acknowledge that not all staking programs are securities offerings – many can be structured in ways that mitigate *Howey* concerns, such as by ensuring users retain control over their assets, eliminating profit expectation from the efforts of others, or avoiding pooled reward mechanisms. While some programs may fall within the securities regime, others can and should be designed to operate outside it. A safe harbor – modeled after Commissioner Peirce's Token Safe Harbor proposal – should be available in the interim for responsible firms with developed compliance programs that adopt these mitigating features for staking programs that are not securities, offering legal certainty while encouraging good-faith innovation.

- *Issue clear guidance on staking models*: The SEC should issue formal guidance that clearly distinguishes between different types of staking arrangements, particularly custodial and non-custodial staking models. In custodial staking, where a provider takes possession of customer tokens, additional regulatory concerns may arise under the Howey test. In contrast, non-custodial or delegated staking, where users retain control of their assets, may fall outside the scope of securities laws. Clear guidance would help providers understand how to structure their offerings to avoid triggering securities regulations and reduce legal uncertainty in the market.

- *Establish a formal registration pathway for staking services*: If the SEC determines certain staking models or arrangements qualify as securities transactions, the SEC should create a specialized registration category designed specifically for staking services that do not fit neatly within existing securities frameworks. Current registration requirements developed for traditional securities are often ill-suited for blockchain-based staking operations, imposing unnecessary compliance burdens that do not address the unique characteristics of these activities. This pathway should include modified reporting

requirements that address staking-specific concerns such as validator performance, consensus participation, and technical risk management.

- *Provide guidance on disclosure requirements for staking providers*: The SEC should establish standardized disclosure requirements specifically tailored to staking providers. These requirements should mandate transparent communication of information about features such as yield calculation methodologies, slashing risks, unbonding periods, validator commission structures, and protocol-specific risks. By creating uniform disclosure standards, the SEC would empower users to make informed decisions while allowing staking providers to compete on a level playing field.

- *Address standards for custody of staked assets*: The commission should establish clear standards governing the custody of staked assets. These standards should address key concerns, including segregation of customer assets, minimum security requirements for staking providers, and transparent policies for handling slashing events or technical failures. By creating a comprehensive custody framework specific to staked assets, the SEC would protect consumers from misappropriation risks while providing staking services with clear compliance guidelines.

- *Issue guidance on marketing staking rewards*: The SEC should issue clear guidance on how staking rewards can be communicated and marketed to prevent misleading claims. This guidance should address representations about expected yields, risk disclosures, and historical performance metrics. The guidance should specifically address common misleading practices such as advertising temporary promotional rates as sustainable yields or failing to account for protocol inflation when calculating returns.

Custody: The SEC has approved a small number of so-called "Special Purpose Broker Dealers" (SPBDs) to transact and custody digital asset securities.[16] However, the significant limitations associated with the current SPBD designation – particularly the restriction preventing SPBDs from custodying non-security digital assets – greatly diminish its practical effectiveness. Since the issuance of the SPBD release in December 2020, only two firms have received approval from the SEC and FINRA to custody digital asset securities under the SPBD framework, underscoring that unfortunately, the SPBD framework did not create a valid path to registration for the industry. While the SPBD framework was a well-intentioned effort to create a pathway for digital asset custody within the existing regulatory structure, it has ultimately fallen short of its objective. Rather than maintaining a siloed and impractical model, the SEC should abandon the SPBD construct and instead provide clear, inclusive guidance or rulemaking that would allow all broker-dealers – not just those with a narrow SPBD designation – to transact in and custody both digital asset securities and non-securities in a compliant and supervised manner. This approach would encourage more robust market development while maintaining investor protections and regulatory oversight.

[16] Securities and Exchange Commission, Custody of Digital Asset Securities by Special Purpose Broker-Dealers, 17 C.F.R. Part 240, Release No. 34-90788, File No. S7-25-20, Dec. 23, 2020, https://www.sec.gov/files/rules/policy/2020/34-90788.pdf

As the Commission assesses the path forward on custody, it is critical to bear in mind that simply applying all existing custody requirements, which were designed for traditional finance, could unfairly advantage large, established institutions that already have the infrastructure in place to implement legacy custodial frameworks, thereby limiting innovation and competition from smaller or newer custodians with novel, yet equally secure, methods for managing digital assets. This could result in a less diverse market, ultimately reducing options for managing customers' digital assets safely and efficiently. Instead of trying to repurpose existing custody rules that are not fit for purpose, it is vital that the SEC develop new, tailored custody requirements to accommodate the unique features of crypto custodians.

During March 2022, the SEC's issuance of Staff Accounting Bulletin 121 "Accounting for Obligations to Safeguard Crypto-Assets an Entity Holds for its Platform Users" issued accounting guidance mandating that custodians of crypto assets book such assets as a liability on their balance sheet. It also directed disclosure of the risks associated with custodying crypto assets. SAB 121 was overly prohibitive and created accounting and compliance protocols that were inconsistent with custodial asset principles in other industries.[17] Congress took up the fight against SAB 121, with both the House and Senate passing a congressional review act resolution disapproving of the bulletin. This resolution was the first crypto-specific legislation to pass both the House and Senate, and was irresponsibly vetoed by President Biden in May 2024.[18]

In January 2025, SEC released Staff Accounting Bulletin 122, which rescinded the interpretive guidance of SAB 121. Under SAB 122, "an entity that has an obligation to safeguard crypto-assets for others should determine whether to recognize a liability related to the risk of loss under such an obligation, and if so, the measurement of such a liability, by applying the recognition and measurement requirements for liabilities arising from contingencies" under U.S. or international accounting standards.[19] This is a strong starting point for clarity for crypto asset custody.

The SEC should develop rules or provide Commission-level guidance that specifically address custody requirements for crypto assets. A practical and clear regulatory framework will provide certainty in this space and will ensure that consumers are protected. Entities that custody tokens and crypto assets should be required to meet custodial safeguarding requirements, but new SEC rules should respond to the unique complexities of crypto, including the ability to self-custody, third-party custodial solutions, and maintenance issues regarding private keys. Rules should consider embracing adaptive custody standards that are technology-neutral and allow for scalability, supporting smaller institutions without compromising on security. And, as noted above, the SEC should allow flexibility in custody arrangements for digital assets, as long as adequate safeguards are in place.

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[17] Jorge deNeve et al., SEC Rescinds Prior Accounting Guidance for Crypto Assets, O'Melveny, February 3, 2025, https://www.omm.com/insights/alerts-publications/sec-rescinds-prior-accounting-guidance-for-crypto-assets/

[18] David Stier, Eric Forni & Eric Hall, The Saga of SAB 121, DLA Piper, July 31, 2024, https://www.dlapiper.com/en-ae/insights/publications/blockchain-and-digital-assets-news-and-trends/2024/the-saga-of-sab-121

[19] Staff Accounting Bulletin No. 122, U.S. Securities and Exchange Commission, Jan. 23, 2025, https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122

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As an organization dedicated to advocating for choice and access for American consumers in U.S. financial markets, ACII urges the SEC to take much-needed action to bolster clarity in the crypto space. We are encouraged by the SEC's creation of the Crypto Task Force, and we believe that modernizing the legal and regulatory landscape to reflect the rapid evolution in financial technology is essential to help American investors prosper. We appreciate the opportunity to comment on the SEC's efforts in this space, and we offer ourselves as a resource to help the SEC's endeavors that promote retail investor access, opportunity, and protection.

Sincerely,

Blaine Luetkemeyer
Chief Executive Officer
The American Consumer and Investor Institute