



NASAA

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NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street, NE, Suite 1140

Washington, DC 20002

202/737-0900

[www.nasaa.org](http://www.nasaa.org)

August 8, 2022

By upload to (<https://www.regulations.gov/document/TREAS-DO-2022-0014-0001>)

Natalia Li  
Deputy Director  
Office of Financial Institutions Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue  
Washington, DC 20220

Re: **Request for Comment Regarding Executive Order No. 14067,  
Ensuring Responsible Development of Digital Assets**

Dear Ms. Li:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I am writing in response to the U.S. Department of the Treasury’s July 8, 2022, request for input regarding President Biden’s Executive Order No. 14067, *Ensuring Responsible Development of Digital Assets* (the “Request”).<sup>2</sup> Innovations in investment products and services can often benefit market participants, including retail investors. However, in the absence of appropriate regulatory guardrails and oversight, some innovations can directly harm investors and the broader financial markets.

For several years, NASAA has identified investments tied to digital assets<sup>3</sup> as one of the top threats facing retail investors. As the adoption of digital assets grows, and as the variety of digital asset offerings increases, the potential for fraud and other harms likewise increases. Indeed, NASAA members have seen the nature of these threats evolve over time. In 2018, NASAA members acted to combat frauds and regulatory violations involving initial coin offerings (“ICOs”)

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<sup>1</sup> Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

<sup>2</sup> The Request is available at <https://www.regulations.gov/document/TREAS-DO-2022-0014-0001>. The Request pertains to a report required under Section 5(b) of Executive Order No. 14067.

<sup>3</sup> For purposes of this response, NASAA uses the term “digital assets” generally to refer to cryptocurrencies and digital assets that satisfy statutory and case law definitions of securities under federal and state law.

and other cryptocurrency-related investment products. Since the onset of COVID-19 in early 2020, bad actors have started to prey on victims through digital initiatives related to the pandemic.<sup>4</sup> Further, a persistent problem over the last five years has been the promotion of digital asset investments offered with false or misleading promises of high, safe investment returns that drew in retail investors.<sup>5</sup> Unfortunately, the emptiness of these promises has been aptly demonstrated in recent months by the collapse of cryptocurrency prices followed by numerous digital asset businesses that have suspended redemptions and filed for bankruptcy.

The Request asks for input, *inter alia*, “pertaining to the implication of development and adoption of digital assets ....” NASAA’s perspective is that the inroads made by digital assets businesses – both legitimate and not – to reach retail investors are already well-developed, and they are proliferating as quickly as new products or ideas emerge. On the other hand, what has not developed at the same pace has been the effort to bring these businesses into registration and compliance. The implication of that shortcoming is clear; NASAA members have had to step into the gap repeatedly through coordinated enforcement actions.

In a recent three-year period, NASAA’s U.S. member securities regulators initiated over 480 investigations and brought more than 145 enforcement actions involving digital assets. For instance, in early 2018 NASAA members engaged in a series of coordinated investigations and enforcement actions, dubbed “Operation Cryptosweep,” in part to address concerns with unregistered ICOs.<sup>6</sup> Last year, a multi-state working group conducted a comprehensive review and investigation of BlockFi Lending LLC (“BlockFi”) focused on the sale of unregistered securities to retail investors through BlockFi Interest Accounts. What began as a series of inquiries into whether BlockFi’s products were unregistered securities led to a nationwide \$100 million settlement for those failures.<sup>7</sup> This April, the Alabama Securities Commission and the Texas State Securities Board entered cease-and-desist orders against Sand Vegas Casino Club and its cofounders for illegally offering unregistered securities in the form of non-fungible tokens in the

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<sup>4</sup> See NASAA COVID-19 Enforcement Task Force (identifying NASAA member enforcement actions related to COVID-19; last visited August 8, 2022), <https://www.nasaa.org/policy/enforcement/covid-19-enforcement-task-force/>.

<sup>5</sup> See Kristopher J. Brooks, *Feds Tell Crypto Broker Voyager to Stop Claiming Its FDIC-Insured – Because It’s Not*, CBS News (July 29, 2022) (identifying disclosures attributed to Voyager that federal banking regulators directed Voyager to desist from using), <https://www.cbsnews.com/news/voyager-fdic-insurance-federal-reserve/>.

<sup>6</sup> See Operation Cryptosweep, <https://www.nasaa.org/policy/enforcement/operation-cryptosweep>.

<sup>7</sup> See NASAA and SEC Announce \$100 Million Settlement with BlockFi Lending LLC, <https://www.nasaa.org/62000/nasaa-and-sec-announce-100-million-settlement-with-blockfi-lending-llc/?qoid=newsroom>.

metaverse.<sup>8</sup> More recently, state securities regulators opened investigations into Voyager Digital<sup>9</sup> and Celsius Networks.<sup>10</sup> Unfortunately, a common theme – even among digital asset businesses not intending to defraud – is that they have gone to the investing public without first determining their regulatory obligations. While NASAA members are responding through enforcement actions and investor education,<sup>11</sup> the dynamic of digital asset businesses ignoring their regulatory obligations needs to change.

The ubiquity of digital asset offerings has also led to them being accepted into investment settings where they are wholly inappropriate, particularly into retirement investing which should center around conservative investments while avoiding speculation. Fortunately, digital assets are not frequently recommended by intermediaries who act either in the best interests of their clients, or in accord with fiduciary duties to clients.

Yet, digital assets are still finding their way into retirement portfolios. One area of particular concern to NASAA members is the placement of digital assets into self-directed individual retirement accounts (“SDIRAs”). SDIRAs allow individuals to invest their own tax-deferred retirement funds in various types of “alternative” investments (such as real estate or privately held stock) that cannot be held in more traditional retirement accounts. Some SDIRAs permit investments in cryptocurrencies and other types of digital assets. Moreover, SDIRA custodians generally do not perform the same services or have the same legal duties and responsibilities as traditional custodians, which puts investors at still greater risk. SDIRAs are thus one discrete area in which current regulatory guardrails could be strengthened to better protect investors with respect to digital asset investments.

There are many areas of federal and state financial regulation that will need to strengthen to keep pace with the rapidly evolving state of digital assets technologies and offerings. It is NASAA’s position that current federal and state securities law frameworks can meet most of these needs, and that any future legislation or regulation should be limited to reinforcing those frameworks as the result of a full policymaking process that takes into account the work being conducted under the Executive Order. NASAA accordingly supports the work of federal

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<sup>8</sup> See Press Release, *Sand Vegas Casino Club Located in the Metaverse is Soliciting Investors to Invest Real Money in Un-Registered Investments*, Alabama Securities Commission (April 13, 2022), [https://asc.alabama.gov/News/2022%20News/4-13-2022\\_Sand\\_Vegas.pdf](https://asc.alabama.gov/News/2022%20News/4-13-2022_Sand_Vegas.pdf).

<sup>9</sup> E.g., Notice of Hearing Filed Against Voyager Digital *et al.*, Texas State Securities Board (Apr. 12, 2022), <https://www.ssb.texas.gov/news-publications/notice-hearing-filed-against-voyager-digital-ltd-voyager-digital-holdings-inc-and>.

<sup>10</sup> See Hannah Lang, *State Securities Regulators Investigating Celsius Accounts Freeze*, Reuters (June 16, 2022), <https://www.reuters.com/article/fintech-crypto-celsius-probe-exclusive-idCAKBN2NX1IE>.

<sup>11</sup> E.g., NASAA Reminds Investors to Approach Cryptocurrencies, Initial Coin Offerings and Other Cryptocurrency-Related Investment Products with Caution, <https://www.nasaa.org/44073/nasaa-reminds-investors-approach-cryptocurrencies-initial-coin-offerings-cryptocurrency-related-investment-products-caution/?qoid=newsroom>.

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regulators to respond to Executive Order No. 14067, including through NASAA's participation on the Financial Stability Oversight Council. NASAA also will be advocating for appropriate federal legislation relating to digital assets before Congress.

Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in cursive script that reads "Melanie Senter Lubin". The signature is written in black ink on a white background.

Melanie Senter Lubin  
NASAA President and  
Maryland Securities Commissioner