



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 990
Washington, D.C. 20002
202-737-0900
www.nasaa.org

April 11, 2023

The Honorable Sherrod Brown
Chairman
U.S. Senate Committee on Banking, Housing
and Urban Affairs (D)
534 Dirksen Senate Office Building
Washington, D.C. 20515

The Honorable Tim Scott
Ranking Member
U.S. Senate Committee on Banking, Housing
and Urban Affairs (R)
534 Dirksen Senate Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Chairman
House Committee on Financial Services (R)
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services (D)
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Debbie Stabenow
Chairwoman
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry (D)
328A Russell Senate Office Building
Washington, D.C. 20510

The Honorable John Boozman
Ranking Member
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry (R)
328A Russell Senate Office Building
Washington, D.C. 20510

The Honorable Glenn Thompson
Chairman
House Committee on Agriculture (R)
1301 Longworth House Office Building
Washington, D.C. 20515

The Honorable David Scott
Ranking Member
House Committee on Agriculture (D)
1301 Longworth House Office Building
Washington, D.C. 20515

Re: NASAA Calls on Congress to Preserve the Well-Established Securities Regulatory Framework Consistent with NASAA's Core Principles for Evaluating Federal Legislation Relating to Digital Assets

Dear Chairmen Brown, McHenry, and Thompson, Chairwoman Stabenow, and Ranking Members Scott, Waters, Boozman, and Scott:

The North American Securities Administrators Association ("NASAA")¹ developed a set of principles designed to guide policy makers when considering potential legislation for the

¹ 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 grassroots investor protection and responsible capital formation.

regulation of digital assets (“NASAA’s Core Principles”) (enclosed). I write to urge you and your colleagues to adhere to the concepts embodied in NASAA’s Core Principles as you prepare federal legislation related to digital assets and associated technologies. Our Core Principles set forth an approach that recognizes the importance of not advancing legislation that would undermine existing securities laws and the important investors those laws were enacted to protect. To that end, I also urge you and your colleagues to reject four proposals that were noticed in connection with the March 9, 2023, hearing in the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion and support one proposal noticed for that same hearing as well as the Eliminate Barriers to Innovation Act of 2021.

I. The Well-Established Securities Regulatory Framework in the United States Applies to Digital Assets That Are Securities

For over a century, state securities regulators have been on the frontlines of innovations that have made our capital markets safer, more efficient, and more inclusive. Today, securities regulators continue to work hard to ensure that the latest innovations in our securities markets occur within the well-established securities regulatory framework, which supports investor protection and responsible capital formation.

As part of these efforts, NASAA published its Core Principles in January 2022 for evaluating federal legislation relating to digital assets. In short, NASAA’s Core Principles are a tool for ensuring that we all continue to regulate digital assets and associated technologies in a way that protects investors, promotes responsible capital formation, and supports inclusion and innovation in our capital markets. They reflect NASAA’s efforts since the early 2010s to engage with stakeholders in this newer asset class, including academics, industry representatives, investors, and other regulators. Specifically, the Core Principles call on Congress to **(i)** protect investors by encouraging compliance within the well-established securities regulatory framework; **(ii)** protect investors and support lasting use of innovations by encouraging registration with regulators; **(iii)** protect investors and support innovation by fostering better regulatory coordination between state and federal regulators; and **(iv)** support inclusion and protect investors by encouraging informed, goal-oriented investment decisions.

As background, in the United States, the federal and state governments have long used our elastic framework to maintain markets that are fair not only to veteran securities market participants but also new or newer market entrants. As a general matter, to the extent regulators observe the same activities and same risks to our markets presented by new practices, products or professionals, they will use the elasticity of existing regulations and rules whenever possible to regulate those new elements of our markets. This approach promotes fairness and often can minimize the overall costs of regulation that ultimately are borne by investors and taxpayers.

With respect to digital assets, the U.S. Securities and Exchange Commission (“SEC”) has interpreted its existing authority to extend to the offer, sale, and trading of, and other financial services and conduct relating to, digital assets to the extent they are securities. Platforms on which digital assets that are securities are traded in the secondary market generally must register

as national securities exchanges or operate pursuant to an exemption from registration, such as the exemption under SEC requirements for alternative trading systems (*i.e.*, SEC Regulation ATS), and report information about their operations and trading to the SEC. Meanwhile, certain digital assets-related activities involving a “security” may trigger registration and other obligations with the SEC and a national securities association, primarily the Financial Industry Regulatory Authority (“FINRA”), under the federal securities laws. For example, the laws would require an institution to register with the SEC as a broker if it were in the regular business of effecting transactions in digital assets that are securities at key points in the distribution chain. Such key points could include the solicitation and recruitment of investors, the regular advertisement of the securities, and the receipt of transaction-based compensation for the trading of the securities.²

State regulators similarly have interpreted their existing authorities to extend to the offer, sale, and trading of, and other financial services and conduct relating to, digital assets to the extent they are securities. By way of example, a person that facilitates the exchange of a digital asset security between persons or between a person and a platform, provides trade execution, and engages in the private placement of digital asset securities is a broker-dealer. State governments, the SEC, and FINRA regulate broker-dealers. Moreover, a person who, for compensation, advises others as to whether they should invest in digital asset securities or issues reports concerning digital asset securities must register as an investment adviser. Investment advisers are regulated by the SEC or the state, depending on the assets under management (if less than \$100 million, the adviser is regulated by the state).³ The SEC and state regulators have used this authority to protect investors in digital asset securities and play an important role in fostering trust in this emerging market.

II. NASAA Opposes Legislative Proposals That Would Undermine Or Weaken Laws That Promote Responsible Innovation and Effective Regulation Of Securities Markets

As stated above, the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion noticed five proposals in connection with a March 9 subcommittee hearing. While NASAA commends Chairman French Hill (R-AR) and his staff for their thoughtful leadership of this subcommittee and in this area generally, NASAA respectfully opposes many of the proposals, as outlined below.

² See, e.g., [SEC Charges Crypto Trading Platform Beaxy and Its Executives for Operating an Unregistered Exchange, Broker, and Clearing Agency](#), Litigation Release No. 25687 (Apr. 3, 2023); [Leaders of CFTC, FinCEN, and SEC Issue Joint Statement on Activities Involving Digital Assets](#) (Oct. 11, 2019); and Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 25, 2017). In the *Beaxy* complaint, the SEC defined “crypto asset security” as “an asset that is issued and/or transferred using distributed ledger or blockchain technology – including, but not limited to, so-called ‘digital assets,’ ‘virtual currencies,’ ‘coins,’ and ‘tokens’ – and that meets the definition of ‘security’ under the federal securities laws.”

“Security” includes any “investment contract,” “security-based swap,” or “receipt for” a security

³ See, e.g., Washington State Department of Financial Institutions, [Virtual Currency, Cryptocurrency, and Digital Assets Primer](#).

1. NASAA opposes [H.R. 1747](#), the Blockchain Regulatory Certainty Act.

Introduced by Representative Tom Emmer (R-MN) and Representative Darren Soto (D-FL), H.R. 1747 would establish a state-level and federal-level safe harbor for certain non-controlling blockchain developers and providers of blockchain services from licensing and registration requirements under state and federal money transmission laws.⁴ The safe harbor would no longer apply if the institutions and persons in question assumed control over the digital assets. The legislation defines “blockchain developer” as “any person or business that creates, maintains, or disseminates software facilitating the creation or maintenance of a blockchain network or a blockchain service.” Under the bill, “blockchain service” means “any information, transaction, or computing service or system that provides or enables access to a blockchain network by multiple users, including specifically a service or system that enables users to send, receive, exchange, or store digital assets described by blockchain networks.” Notably, the concept of control in this legislation is not the concept of control that exists under the securities laws. Rather, this bill defines “control” as “the legal right, authority, or ability to obtain upon demand data sufficient to initiate transactions spending an amount of digital assets,” which the bill then defines as “any form of intangible personal property that can be exclusively possessed and transferred person to person without necessary reliance on an intermediary.”

We offer our views on this legislation because it can be construed in ways that would or may affect the interpretation of state and federal securities laws. Respectfully, this legislation is contrary to the fundamental principle that the best way to protect investors and promote innovation is to urge unregistered market participants to come into compliance. This means that they must register themselves and their activities, products, and professionals promptly. Registration triggers processes whereby investors receive important information and regulators can examine activities, entities, products, and professionals for compliance. These processes foster trust, which in turn attracts capital and customers. Eroding registration requirements in the securities regulatory framework or associated regulatory frameworks only serves to harm investors and markets, not foster financial innovation and inclusion.

Notably, this legislation could be construed to make it more difficult for state and federal securities regulators to use their existing authority. Specifically, depending on whether the digital assets are securities and the type of activities in which these blockchain developers and providers of blockchain services are engaging, such entities and individuals presently are subject to securities laws and are required to be registered (or licensed) under them. If this legislation were to become federal law, such market participants looking to avoid registration or licensing requirements under the securities laws would likely take the position that the safe harbor under the money transmissions laws should be construed as a *de facto* safe harbor under the securities laws as well given the similar purposes of these respective laws.

⁴ As a general matter, NASAA defers to the Money Transmitter Regulators Association with respect to money transmission policy matters.

Importantly, preempting securities regulators would only foster additional distrust of our traditional, regulated capital markets. In a survey conducted in March 2023 by Morning Consult, the percentages of Gen Z, Millennial, Gen X, and Baby Boomer respondents who expressed trust in Wall Street were 25%, 40%, 36%, and 40%, respectively.⁵ In a survey conducted in March 2021 by Bankrate, 56% of investors either strongly agreed or somewhat agreed with the statement “The stock market is rigged against individual investors,” compared to just 41% of non-investors.⁶ In the same March 2023 Morning Consult survey, approximately 52% and 53% of respondents expressed trust in their state and local governments, respectively, while only 41% and 45% expressed trust in Congress and the U.S. government, respectively. Taking state and local governments off the regulatory field is a catalyst for further distrust and skepticism of our capital markets.

2. NASAA opposes [H.R. 1414](#), the Keep Innovation in America Act.

Introduced by Chairman Patrick McHenry (R-NC) and Representative Ritchie Torres (D-NY), H.R. 1414 would change federal tax reporting laws applicable to brokers as defined for federal taxes purposes. More specifically, the bill would **(i)** amend the Internal Revenue Code to clarify the definition of broker with respect to digital assets; **(ii)** direct the U.S. Department of the Treasury to produce a study on the effect of expanding the definition of cash to include any digital asset; and **(iii)** make findings of Congress that among other things carves miners, validators, hardware and software developers, and protocol developers out of the definition of brokers for federal tax purposes. Of note, the Keep Innovation in America Act, or the KIAA for short, would update the present definition of a broker for tax purposes from “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person” to “any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers.” Similarly, the proposed law would update the definition of digital asset from “Except as otherwise provided by the Secretary, the term ‘digital asset’ means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary” to “The term ‘digital asset’ means any digital representation of value which is recorded on a cryptographically secured distributed ledger.”

As written, the KIAA runs counter to our principles aimed at preserving the well-established securities regulatory framework. This is again true not because the legislation directly or squarely addresses state and federal securities laws. Rather, the KIAA would become a tool that some would try to use to avoid registration, licensing, and other requirements set forth in our nation’s well-established, time-tested securities regulatory framework. Indeed, while the bill is written to apply to tax law, market participants wishing to avoid or minimize registration requirements under state or federal securities laws, or both, would try to use this definition of broker to restrict future interpretations of securities laws. Such behavior would create a *de facto*

⁵ Learn more at <https://morningconsult.com/tracking-trust-in-institutions/>.

⁶ Learn more at <https://www.bankrate.com/investing/>.

preemption of state and federal regulators who would require registration to the extent such market participants are doing the same thing as traditional broker-dealers and investment advisers, or broker-dealer agents and investment adviser representatives, but with these newer types of assets.

3. NASAA opposes the discussion draft of the [Keep Your Coins Act](#).

In March 2023, the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion noticed a discussion draft of the Keep Your Coins Act. Last Congress, Representative Warren Davidson (R-OH) introduced a similar version of this legislation, joined by Representatives Bryon Donalds (R-FL), Nancy Mace (R-SC), Lauren Boebert (R-CO), and Ted Budd (R-NC) as original cosponsors.⁷

In short, the present version of the Keep Your Coins Act would prohibit federal agencies from prohibiting, restricting, or otherwise impairing the ability of people to use so-called “self-hosted wallets” for effectively two purposes. First, federal agencies could not impair the ability of people to “hold convertible virtual currency on a self-hosted wallet.” Second, they could not impair the ability of people to “conduct transactions through a self-hosted wallet” including transactions that “use convertible virtual currency or its equivalent for such user’s own purposes, such as to purchase real or virtual goods and services for the user’s own use.” The legislation defines “convertible virtual currencies” as “[a] medium of exchange that has an equivalent value as currency” as defined in 31 C.F.R. § 1010.100, “or acts as a substitute for currency but may not possess all the attributes (including legal tender status) as specified under” 31 C.F.R. § 1010.100.⁸ A “covered user” is defined as someone “that obtains convertible virtual currency to purchase goods or services on that person’s behalf,” regardless of how that person obtained the virtual currency. And a “self-hosted wallet” is defined to “mean[] an interface used to secure and transfer virtual currency, and under which the owner of convertible virtual currency retains independent control over such convertible virtual currency that is secured by such digital interface.”⁹

Respectfully, NASAA presently opposes this legislation. Generally, we believe the use of self-directed wallets is an area of policy where we all need additional information and analysis. A government-directed study regarding the pros and cons of self-hosted wallets for investors and our capital markets more generally would be a useful next step.

⁷ View the text of H.R. 6727, <https://www.congress.gov/bill/117th-congress/house-bill/6727/text>.

⁸ See 31 CFR § 1010.100(m) (“Currency. The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.”)

⁹ The legislation does not define “retains independent control,” thus leaving it to regulators to define the term to refer to the ability to determine the value of the virtual currency in the wallet or the ability to access the wallet, or both.

By way of background, NASAA’s experience with self-directed individual retirement accounts, commonly known as SDIRAs, suggests we should be cautious with respect to self-hosted wallets. In short, the government has long divided the responsibility for overseeing SDIRAs among several federal, state, and independent entities, including in ways that inhibit transparency that ultimately protects investors. The specific mix of regulators varies depending on the type of financial institution that provides the account, the state in which the financial institution conducts the business, and the type of plan offered. Meanwhile, state securities regulators have long observed that bad actors deliberately target SDIRA owners because there are fewer gatekeepers between the bad actor and the investor’s assets. Moreover, the bad actors know that SDIRA owners can be easier to harm because the owners frequently do not read or understand the underlying agreements and then incorrectly believe the SDIRA custodians are performing gatekeeping functions, which in fact they are not.¹⁰

4. **NASAA opposes the discussion draft of the [Resolution Expressing Support for Blockchain Technology and Digital Assets](#).**

Noticed in March 2023, this resolution calls on Congress to make certain commitments to the development and use of blockchain technology and digital assets. Specifically, the resolution calls on the United States to **(i)** seek to prioritize understanding the potential opportunities of the next generation of the Internet; **(ii)** seek to foster advances in technology to improve our financial system and create more fair and equitable access to financial services for everyday Americans; and **(iii)** support the development of digital assets and the underlying technology in the United States or risk the shifting of the development of such assets and technology outside of the United States to less regulated countries. NASAA supports the calls in this resolution for the United States to support innovation. However, the resolution also posits that “Americans would benefit from a framework for digital assets tailored to the unique risks and benefits of the digital asset ecosystem” and that Congress should establish that framework.

NASAA strongly opposes text in this resolution that can be read to suggest that we should use limited state and federal governmental resources to prepare and implement a bespoke regulatory framework for practices, products, and professionals associated with digital assets. Consistent with NASAA’s Core Principles, we believe the best path forward is to encourage

¹⁰ For a summary of the regulatory framework to SDIRAs and representative examples of NASAA’s concerns, see SEC Investor Advisory Committee, Recommendation of the Investor as Purchaser Subcommittee Regarding Individual Retirement Accounts (Dec. 2, 2021), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20211202-ira-recommendation.pdf>. SDIRAs are individual retirement accounts held by a custodian that allow investment in a broader set of assets than is permitted by other types of IRAs. The broader set of options may include real estate, promissory notes, tax lien certificates, private placement securities, and so-called “digital assets” such as cryptocurrencies, coins, and tokens. Generally, the SDIRA custodians do not **(1)** research, investigate, or recommend investments to accountholders; **(2)** verify the accuracy of information on the investor’s statement; **(3)** ensure a full and accurate disclosure of all details regarding the investment; or **(4)** hold the investment funds or assets. Moreover, in most cases, the so-called “alternative” or “unconventional” investments permitted in SDIRAs are subject to fewer disclosure requirements than conventional IRA investments such as stocks and bonds. Further, these SDIRA custodians expressly disclaim a role in the evaluation of investments and rely on the issuer to provide all valuation information.

compliance with existing securities laws and, if needed, engagement with regulators on requests for limited relief. Such engagement is a fraction of the cost, ultimately borne by taxpayers and investors, of legislation that would force regulators to develop new rules, forms, and similar resources exclusively for digital assets.

State securities regulators strongly believe that the well-established securities regulatory framework in the United States already applies to the extent firms and individuals are conducting activity that is the same activity long undertaken by broker-dealers, investment advisers, or other securities markets participants but with products in this newer asset class that emerged over a decade ago. Indeed, we urge Congress to join us and others in focusing our limited resources on the improvement of existing laws and empowering regulators to work directly with market participants to make appropriate, pro-investor changes to regulations, rules, forms, and investor education resources.

5. NASAA supports the discussion draft of the [Financial Technology Protection Act](#) and similar legislation introduced last Congress, H.R. 1602, the [Eliminate Barriers to Innovation Act of 2021](#).

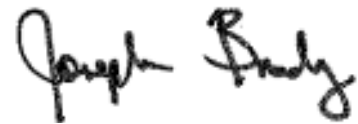
As stated in our Core Principles, NASAA supports the protection of investors and the fostering of innovation through better regulatory coordination between government agencies. Establishing working groups or similar bodies to discuss and make decisions related to the regulation of digital assets would be a step toward better communication and coordination. A representative from state securities commissions should be invited to work on these bodies to ensure regulatory coordination is not just across the federal agencies but also between state and federal stakeholders.

For the above reasons, NASAA supports the spirit and much of the substance of the [Financial Technology Protection Act](#) and the [H.R. 1602, the Eliminate Barriers to Innovation Act of 2021](#). The first bill would **(i)** establish an Independent Financial Technology Working Group to Combat Terrorism and Illicit Financing (“the Working Group”) consisting of the U.S. Department of the Treasury Under Secretary for Terrorism and Financial Intelligence as the Chair; senior representatives from the U.S. Department of Justice, U.S. Secret Service, Financial Crimes Enforcement Network, Federal Bureau of Investigations, and U.S. Department of State; and five representatives appointed by the Chair from FinTech companies, financial institutions, and research organizations or institutions; **(ii)** task the Working Group to conduct research on terrorist and illicit use of new fintech, including digital assets, and develop legislative and regulatory proposals to improve anti-money laundering, counter-terrorist, and other counter-illicit financing efforts; and **(iii)** direct the White House to produce a report on the potential uses of digital assets to evade sanctions, finance terrorism, launder money instruments, and threaten U.S. national security. The second bill would direct the SEC and Commodity Futures Trading Commission (“CFTC”) to jointly establish a working group on digital assets. The working group would be required to **(i)** report on the impact of the U.S. legal and regulatory framework of the digital asset market; and **(ii)** provide recommendations regarding digital asset market fairness and integrity, cybersecurity standards, and the reduction of fraud and manipulation.

NASAA respectfully requests that lawmakers amend both proposals to require the invitation of a representative of state securities commissions to serve on these bodies. With respect to the Eliminate Barriers to Innovation Act, NASAA further requests that the text be changed **(i)** to add consideration for U.S. investors' exposure to unregulated and illegal overseas conduct, including manipulative trading, to the analysis in section (2)(c)(1)(A)¹¹; and **(ii)** to direct the SEC to establish a task force, in consultation with NASAA, for a period of three years to strengthen coordination between state and federal securities regulators, review trends, develop reasonable associated protocols for future coordination, and identify areas where the securities regulatory framework may require modifications.

Thank you for your time and consideration. Should you have any questions regarding NASAA's Core Principles or wish to seek NASAA's technical feedback on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Joseph Brady
NASAA Executive Director

Enclosure

¹¹ Section (2)(c)(1)(A) of the Eliminate Barriers to Innovation Act of 2021 requires an analysis of **(i)** the legal regulatory framework and related developing in the United States relating to digital assets, including **(I)** the impact that the lack of clarity in such framework has on primary and secondary markets in digital assets; and **(II)** how the domestic legal and regulatory regimes relating to digital assets impact the competitive position of the United States; and **(ii)** developments in other countries related to digital assets and identification of how these developments impact the competitive position of the United States.



NASAA'S CORE PRINCIPLES FOR EVALUATING FEDERAL LEGISLATION RELATING TO DIGITAL ASSETS

Introduction: For over a century, state securities regulators have been on the frontlines of innovations that have made our capital markets safer, more efficient, and more inclusive. Today, securities regulators continue to work hard to ensure that the latest innovations occur within the well-established regulatory framework for supporting investor protection and responsible capital formation. NASAA, the voice of state securities regulators, is publishing its core principles for evaluating proposed federal legislation relating to digital assets and associated technologies. The principles reflect input from academics, industry representatives, investors, and other stakeholders. NASAA opposes federal legislation that is inconsistent with these principles and urges Congress to do the same.

NASAA's Principles: NASAA supports investor protection, innovation, and inclusion. In our view, policymakers must:

- **Protect investors by encouraging compliance within the existing regulatory framework.** The best path forward is to encourage compliance with existing securities laws and, if needed, engagement with regulators on requests for limited relief. Such engagement would be a fraction of the cost, ultimately born by taxpayers and investors, of legislation that would force regulators to develop new rules, forms, and similar resources exclusively for digital assets.
- **Protect investors and support lasting use of innovations by encouraging registration.** The best way to protect investors and promote innovation is to urge unregistered participants to register themselves and their activities, products, and professionals promptly. Registration triggers processes whereby investors receive important information and regulators can examine activities, entities, products, and professionals for compliance. These processes foster trust, which in turn attracts capital and customers.
- **Protect investors and support innovation by fostering better regulatory coordination.** Regulators, particularly state securities regulators, the SEC, and the CFTC, communicate about and agree on many issues. However, more can be done on that front. Federal agencies, including the SEC, CFTC, and GAO, must seek input from state securities regulators before issuing reports, especially reports to Congress. Working groups, task forces, and similar bodies must include state securities regulators.
- **Support inclusion and protect investors by encouraging informed, goal-oriented investment decision-making.** Regulators must continue to expand awareness of our capital markets, ensure disclosures and educational resources are available, and encourage investors to take the time to understand investments and their risks. Speculative or impulse investing, particularly when it poses excessive financial risk to the investor in the short term, can have devastating consequences.

NASAA 2022-2023

Board of Directors:

Andrew Hartnett, IA
Claire McHenry, NE
Melanie Senter Lubin, MD
Tom Cotter, Alberta
Diane Young-Spitzer, MA
Eric Pistilli, PA
Marni Rock Gibson, KY
Andrea Seidt, OH
Leslie Van Buskirk, WI
Joseph Brady, NASAA Ex Officio

Federal Legislation Committee:

Claire McHenry, NE
Justin Burse, KY
Elyse Alexander, MA
William Beatty, WA
Lilah Blackstone, DC
Drew Compton, MS
Erin Houston, NV
Travis Iles, TX
Kelly Janes, WY
Jon Kelly, MN
Amy Kopleton, NJ
Melanie Senter Lubin, MD
Lynn Mckeel, GA
Greg Melchior, FL
Leslie Van Buskirk, WI
John Yaros, ID

Contact Us

Kristen Hutchens
NASAA Policy & Government Affairs
khutchens@nasaa.org

NASAA's Core Principles for Evaluating Federal Legislation Relating to Digital Assets

Protect investors by encouraging compliance within the existing regulatory framework.

- The securities regulatory framework in the United States has long facilitated innovation. Our capital markets have produced all kinds of practices, products, and professionals that governments, businesses, and people have used and, in many cases, still use.
- The best path forward is to encourage compliance with existing securities laws and, if needed, engagement with regulators on requests for limited relief. Regulators, who have long recognized that compliance and innovation are not mutually exclusive, carefully consider requests for relief and support an even playing field for all market participants.
- No reason exists that would justify Congress injecting more complexity into the regulatory compliance and examination processes, particularly when existing legal terms (for example, investment contract) are applicable. Ultimately, taxpayers and investors would bear the costs of unnecessary changes.
- Adopting legislation with new legal terms exclusively for digital assets and associated activities, platforms, and professionals would necessitate the preparation of new rules, forms, and other resources, which in turn would necessitate the preparation of new policies and procedures by regulated entities and professionals. Additionally, new statutory terms would trigger significant work for professionals focused on investor education.
- Regulators are skilled at making appropriate adjustments to the securities regulatory framework by, for example, creating or updating existing rules and forms.



Protect investors and support lasting use of innovations by encouraging registration.

- Encouraging registration is the single most effective way for Congress to protect investors and promote innovation. Unregistered participants must register themselves and their activities, products, and professionals as promptly as possible with the appropriate state and federal regulators. Registration triggers two important processes. First, as a result of registration, investors receive important disclosure information, including conflicts, fees, and risks. Second, regulators can examine activities, entities, products, and professionals for compliance. These processes foster trust, which in turn attracts capital and consumers.
- New regulatory bodies, such as a self-regulatory organization (SRO) exclusive to digital assets and digital assets participants, are unnecessary. The existing regulatory framework includes state and federal agencies and other organizations with significant experience and expertise relevant to digital assets. In the case of state securities regulators, NASAA and many of its members have made considerable investments in investor, industry, and regulator resources that account for the emergence and growth of the digital assets industry.
- SROs typically fund themselves through income sources such as membership fees and data subscriptions. Inevitably, the SRO and its members would share or pass on their expenses to third parties such as peer regulators and investors.



Protect investors and support innovation by fostering better regulatory coordination.

- Regulators, particularly state securities regulators, the SEC, and the CFTC, communicate about and agree on many issues. However, more can be done on that front.
- Federal agencies, including the SEC, CFTC, and GAO, must seek input from state securities regulators before issuing reports, especially reports to Congress. Working groups, task forces, and similar bodies working on digital assets and related issues must include representation from state securities regulators. The insights and opinions of state securities regulators reflect their positions on the frontlines of protecting Main Street investors and engaging with small business owners.
- Congress must act swiftly to pass the [Empowering States to Protect Seniors from Bad Actors Act](#). This bicameral, bipartisan legislation would establish a grant program, administered by the SEC, that would enhance existing efforts by state securities regulators to protect older investors. Among other benefits, this program would strengthen state-federal coordination and allow state securities regulators to seek funds that could be used to protect investors from frauds associated with digital assets.
- NASAA releases an annual list of top investor threats based on the results of a survey that invites North American state and provincial securities regulators to identify the most problematic products, practices, or schemes. Investments tied to digital assets are the [top threat to investors for 2022](#).

Support inclusion and protect investors by encouraging informed, goal-oriented investment decision-making.

- Regulators must continue to expand awareness of our capital markets among people of all ages and backgrounds. Regulators must be strategic, agile, and creative when engaging with a society that communicates and learns differently than in the past.
- Regulators must continue to ensure disclosures and educational resources are available. Educational resources must encourage investors to understand how an investment works and evaluate the risks associated with buying, selling, or holding it.
- Speculative or impulse investing in any type of investment, particularly ones that pose excessive financial risks to the investor in the short term, can have devastating consequences for individuals, families, businesses, and the capital markets.

NASAA Resources for Federal Lawmakers and Their Constituents

- | | | |
|--------------------------|---------------------------|-----------------------------|
| ➤ <u>Enforcement</u> | ➤ <u>Policy Center</u> | ➤ <u>Investor Education</u> |
| ○ Operation Cryptosweep | ○ Legislative Agenda | ○ DeFi and Digital Assets |
| ○ Enforcement Statistics | ○ Congressional Testimony | ○ Online Trading |
| ○ Top Investor Threats | ○ Letters | ○ Millennial Money |

About NASAA. In the United States, NASAA is the voice of state securities regulators responsible for efficient capital formation and grass-roots investor protection. Their fundamental mission is protecting investors who purchase securities or investment advice, and their jurisdiction extends to a wide variety of issuers and intermediaries who offer and sell securities to the public. NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud. Visit [nasaa.org](https://www.nasaa.org).