



July 27, 2023

The Honorable Patrick McHenry (R-NC)
Chairman
U.S. House Committee on Financial Services
Washington, D.C. 20515

The Honorable Maxine Waters (D-CA)
Ranking Member
U.S. House Committee on Financial Services
Washington, D.C. 20515

The Honorable French Hill (R-AR)
Chairman
U.S. House Committee on Financial Services
Subcommittee on Digital Assets, Financial
Technology and Inclusion
Washington, D.C. 20515

The Honorable Stephen Lynch (D-MA)
Ranking Member
U.S. House Committee on Financial Services
Subcommittee on Digital Assets, Financial
Technology and Inclusion
Washington, D.C. 20515

Re: H.R. 4766, Clarity for Payment Stablecoins Act of 2023

Dear Chairmen McHenry and Hill and Ranking Members Waters and Lynch:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I write to urge the U.S. House Committee on Financial Services (“Committee or “HFSC”) to withdraw H.R. 4766, Clarity for Payment Stablecoins Act of 2023, which provides for the regulation of payment stablecoins.² Respectfully, while we commend lawmakers for working on a bipartisan basis, we believe this legislation would be a net-negative for our capital markets and its participants. Importantly, the payment stablecoins contemplated by this legislation appear to be money market funds (“MMFs”) by another name but for the newer technology they use to operate. This difference is not sufficient to warrant a regulatory approach that deprives investors of the protection afforded under securities laws.

A. This Legislation Would Prevent the Application of Federal Securities Laws to Payment Stablecoins Issued by a Permitted Payment Stablecoin Issuer.

H.R. 4766 would establish a bespoke regulatory regime for so-called “payment stablecoins.” Specifically, among other requirements, the legislation would specify (i) the types of issuers that would qualify as payment stablecoin issuers, (ii) the primary state or federal regulator for each issuer type, (iii) the requirements applicable to reserves, including reserve

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, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

² See H.R. 4766, [Clarity for Payment Stablecoins Act of 2023](#), 118th Congress, 1st Session.

disclosures, (iv) redemption requirements, (v) the priority (or not) of payment stablecoin holders over other creditors, and (vi) the regulation of custodians and wallet providers.

In addition, H.R. 4766 would create a federal definition for these products. A “payment stablecoin” would be a product (A) that is, or is designed to be, used as a means of payment or settlement; (B) the issuer of which (i) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; and (ii) represents will maintain or creates the reasonable expectation it will maintain a stable value relative to the value of a fixed amount of monetary value; and (C) that is not a (i) national currency or (ii) a security issued by a registered investment company registered under section 8(a) of the Investment Company Act of 1940.³

Separately but relatedly, H.R. 4766 would carve qualifying payment stablecoins out from the federal definition of a security. To that end, the legislation would amend the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Securities Investor Protection Act of 1970 to add the following: “The term ‘security’ does not include a payment stablecoin issued by a permitted payment stablecoin issuer, as such terms are defined, respectively, in section 2 of the Clarity for Payment Stablecoins Act of 2023.”⁴

Notably, H.R. 4766 includes a section entitled “Moratorium on Endogenously Collateralized Stablecoins.” The section has two parts. First, the section would establish a 2-year moratorium on new endogenously collateralized stablecoins. Second, it would require the Secretary of the U.S. Department of the Treasury (“Treasury Department”), in consultation with the U.S. Securities and Exchange Commission (“SEC”), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, to carry out a study of endogenously collateralized stablecoins and transmit a report within a year to HFSC and the U.S. Senate Committee on Banking, Housing, and Urban Affairs that contains all findings from the study, including analyses of topics enumerated in the legislation such as “the participants in non-payment stablecoin arrangements.” In support of these provisions, the legislation would define “endogenously collateralized stablecoins” as “any digital asset (1) in which its originator has represented will be converted, redeemed, or repurchased for a fixed amount of monetary value; and (2) that relies solely on the value of another digital asset created or maintained by the same originator to maintain the fixed price.”⁵

B. Stablecoins Appear to Be Money Market Funds by Another Name.

Developed in the 1970s, MMFs are a type of mutual fund. They are an option for investors to manage their cash and other short-term funding needs and generally earn higher returns than federally insured depository interest-bearing accounts. Many MMFs try to keep their net asset value at a stable \$1.00 per share.

The federal securities framework in the United States has long regulated financial services products, known as MMFs, that invest in short-term corporate, government, or

³ See Section 2(13) of H.R. 4766.

⁴ See Section 13 of H.R. 4766.

⁵ See Section 10 of H.R. 4766.

municipal debt securities while offering investors a stable value of exchange. Often, investors look to these funds to provide liquidity and help diversify the investment portfolio. To strengthen the regulation, the SEC adopted a new rule in 1983 to impose specific requirements on MMFs designed to prevent investor harm in the event of a systemic collapse of such funds. The SEC, often at the direction or urging of Congress, has amended SEC Rule 2a-7 and relevant guidance several times to address market and fund vulnerabilities highlighted by significant market events and mitigate risk to investors.⁶

Today, different types of MMFs are subject to different requirements under SEC Rule 2a-7. Generally, MMFs are subject to risk limits, stress testing, and disclosure to investors and the SEC regarding the portfolio holdings.⁷ However, they do not require these funds to maintain capital reserves. Also, investors who lose money in MMFs cannot seek to reclaim those losses through federal deposit insurance.

Developed more recently, stablecoins, like MMFs, come in different types, often differentiated by the underlying assets. Typically, the term stablecoin refers to (1) products with fiat-based, securities-based, or commodities-based collateral created or maintained by an entity other than the stablecoin issuer, or (2) products with collateral that is also created or maintained by the issuer of the stablecoin. Sometimes, the terms ‘endogenously collateralized stablecoins’ or ‘algorithmic stablecoins’ are used to refer to the second category of stablecoin.⁸

Stablecoins share many features that are common in MMFs. First, stablecoins purport to try to maintain a stable value, hence the use of “stable” in the marketing name.⁹ Second and relatedly, stablecoins aim to help users manage their short-term funding needs particularly for making payments.

One difference between MMFs and stablecoins appears to be with respect to interest. Indeed, some prominent stablecoins such as Tether are not interest-bearing. Rather, investors can open stablecoin interest accounts on self-titled ‘platforms,’ deposit their stablecoins, and earn interest on those deposits from the platforms. However, some stablecoins are interest-bearing. For example, eUSD is described as “an interest-bearing, over-collateralized stablecoin that ensures safety and stability.”¹⁰

⁶ See generally SEC, [Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A](#) (July 12, 2023) (“2023 SEC Rule for Money Market Funds”), at 12-13.

⁷ See generally U.S. Government Accountability Office, [MONEY MARKET MUTUAL FUNDS: Pandemic Revealed Unresolved Vulnerabilities](#) (Feb. 2023).

⁸ See generally The Board of Governors of the Federal Reserve System, FEDS Notes, [The Stable in Stablecoins](#) (Dec. 16, 2022).

⁹ See, e.g., Gemini, Cryptopedia Staff, [What Are Stablecoins?](#) (last updated June 28, 2022) (“The most immediately apparent advantage of stablecoin technology is its utility as a medium of exchange, effectively bridging the gap between fiat and cryptocurrency. By minimizing price volatility, stablecoins can achieve a utility wholly separate from the ownership of legacy cryptocurrencies. As their name suggests, stablecoins are inherently stable assets, making them a suitable store of value, which encourages their use in everyday transactions. Further, stablecoins improve the mobility of crypto assets throughout the ecosystem.”).

¹⁰ See CoinMarket Cap, [eUSD](#) (last accessed July 18, 2023). Unfortunately, NASAA is unable to produce a comprehensive list of interest-bearing stablecoins. If Congress were to urge compliance with federal securities laws by stablecoin issuers, disclosures would be available that make such lists easier to generate.

As a point of context, the size of the MMF market is much larger than the size of the stablecoin market. As of March 2023, there were approximately 294 MMFs registered with the SEC that collectively held over \$5.7 trillion of assets.¹¹ While there is no source of comparable regulatory data for stablecoins, it is clear from available sources that the number of products and the overall value of the products is much smaller. As of July 17, 2023, there were approximately 14 significant stablecoins that collectively held approximately \$124 billion in assets. At its peak on April 5, 2022, the stablecoin market held approximately \$182 billion in assets.¹²

C. NASAA Opposes Efforts to Prevent the Application of Federal Securities Laws to Stablecoins Where Applicable.

As noted earlier, NASAA opposes efforts such as H.R. 4766 to exclude payment stablecoins from the benefits of securities regulation. In this particular effort, lawmakers effectively would handcuff the SEC from protecting investors in these products by (1) carving securities issued by registered investment companies out of the definition of a payment stablecoin¹³ and (2) carving permitted payment stablecoins out of the definitions of security used in federal securities laws.¹⁴ Different proposals have used other approaches with varying consequences for regulators and regulated entities.¹⁵

NASAA has two primary concerns. First, excluding these products from federal securities regulation would undermine longstanding efforts by securities regulators to regulate investment products that present the same or similar use cases and risks in the same or similar way. Giving an advantage to certain market participants over others can distort business and investor behavior in ways that undermine competition and investor choice in our markets. Second, forgoing the benefits of securities regulation likely would prove more expensive for all involved particularly over the long term. Normally, it is far less expensive for regulators and regulated entities to make additional improvements to an existing regulatory regime than establish a new one and then have to make changes to related or affected laws, regulations, rules, forms, education resources, and other communications. In addition, compliance with regulations normally reduces the risk of market disruptions to the products themselves, prevents or minimizes financial and other harms to investors and the general public, and reduces the overall cost of compliance by avoiding expensive enforcement penalties and fines.¹⁶

¹¹ See generally 2023 SEC Rule for Money Market Funds at 12-13 (explaining the role of MMFs and the existing regulatory framework).

¹² See The Block, [Total Stablecoin Supply](#) (last accessed July 18, 2023).

¹³ See Section 2(13) of H.R. 4766.

¹⁴ See Section 13 of H.R. 4766.

¹⁵ See, e.g., H.R. 4741, [Digital Asset Market Structure and Investor Protection Act](#), 117th Congress, 1st Session; S. ____, [Stablecoin Transparency of Reserve and Uniform Transactions Act of 2022](#), 117th Congress, 2nd Session; and H.R. ____, [To provide requirements for stablecoin issuers, research on a digital dollar, and for other purposes](#), 118th Congress, 1st Session.

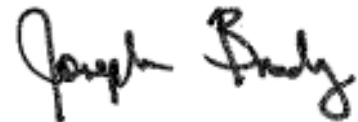
¹⁶ See [NASAA and SEC Announce \\$45 Million Settlement with Nexo Capital Over Interest-Bearing Accounts](#) (Jan. 19, 2023), [NASAA and SEC Announce \\$100 Million Settlement with BlockFi Lending, LLC](#) (Feb. 14, 2022), and [Operation Cryptosweep](#). Tens of millions of dollars could have been saved, particularly with respect to interest-bearing digital asset products, had the respective issuers of these products registered as securities.

Notably, to some extent, H.R. 4766 acknowledges the important role that securities regulation can play in the stablecoin market. Specifically, the bill would direct the Treasury Department to study endogenously collateralized stablecoins and issue a report to Congress that covers the study's findings. The Treasury Department would have to consult with the SEC on this study and report.¹⁷

NASAA commends lawmakers for encouraging more study. In our view, withdrawing H.R. 4766 and using Congressional oversight tools to require the SEC to study and propose policy recommendations for the stablecoin market would be an appropriate next step. While we too have concerns with delay, we would err on the side of taking additional time to hear from SEC staff in writing on whether and how the agency may be able to proactively adapt the securities regulatory regime for MMFs to stablecoins rather than waiting for market participants to submit reasonable requests for relief.

Thank you for your time and consideration of the preliminary concerns we have expressed above. Should you have any questions 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,

A handwritten signature in black ink that reads "Joseph Brady". The signature is written in a cursive, slightly slanted style.

Joseph Brady
NASAA Executive Director

¹⁷ See Section 10 of H.R. 4766.