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May 29, 2025

The Honorable French Hill (R-AR)
Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters (D-CA)
Ranking Member
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Glenn Thomspon (R-PA)
Chairman
House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

The Honorable Angie Craig (D-MN)
Ranking Member
House Committee on Agriculture
1010 Longworth House Office Building
Washington, DC 20515

RE: NASAA Calls on the Federal Government to Leverage the State-Federal Partnership that Fosters Innovation and Mitigates Fraud in Our Capital Markets

Dear Chairmen Hill and Thompson and Ranking Members Waters and Craig:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to urge Congress to make changes to the discussion draft dated May 5, 2025, ("Discussion Draft")[2] that are critical for the continued success of the dual system of securities regulation in the United States. Respectfully, our state-federal regulatory partnership has long benefited from the human capital, physical infrastructure, and statutory authorities of state governments. Congress should use the many benefits that these state tools offer our local economies, including fraud prevention and mitigation.

As explained below, we strongly urge Congress to enter the amendments set forth in Appendices A and B. These changes would make it clear that the intent of Congress is to preserve the basic, essential tools that state governments use to prevent and mitigate fraud. In short, these tools are (1) our general anti-fraud authorities and associated investigative powers, (2) our regular examination and enforcement authorities over state-registered entities, and (3) our

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

[2] *See* U.S. House Committee on Financial Services, Discussion Draft (May 5, 2025).

registration, licensing, and regulation authorities over entities and individuals registered with one or more state securities regulators.[3]

In addition, we respectfully encourage Congress to make the changes set forth in Appendix C and then make corresponding changes throughout the Discussion Draft. In short, these critical changes would enact an exemptive regulatory framework under the securities laws for products that presently are described in the Discussion Draft as investment contract assets.[4] This approach would (1) render moot the multi-year debate over the advisability of investing in brand-new cash and spot market authorities and infrastructure at the U.S. Commodity Futures Trading Commission ("CFTC") while avoiding the more drastic step urged by some to merge the U.S. Securities and Exchange Commission ("SEC") and the CFTC, (2) limit future jurisdictional disputes between securities and commodities regulators, including during the joint rulemaking exercises contemplated by the Discussion Draft, and (3) otherwise preserve the scarce resources currently in place and necessary to foster innovation and address fraud.

A. At Minimum, Congress Must Preserve the Basic, Essential Tools that State Governments Use to Prevent and Mitigate Fraud

We are concerned that the Discussion Draft is largely silent regarding the consequences of the new market structure for the ability of state securities regulators to continue protecting the investing public from financial harm.[5] This approach to legislating potentially would deny Americans the many resources that state governments presently provide, both as direct contacts

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[3] This letter is not, and should not be construed as, a complete summary of NASAA's comments regarding the Discussion Draft. NASAA would be pleased to prepare and offer our additional comments.

[4] For a definition of "investment contract asset," see pages 47-48 of the Discussion Draft ("The term 'investment contract asset' means a digital commodity—(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; and (B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract issued in an offering either registered under section 6 or conducted in reliance on an available exemption from the registration requirements of this Act."). Notably, at pages 47-48, the Discussion Draft would also amend the federal securities laws to state "The term 'investment contract' does not include an investment contract asset." For "digital commodity," see page 5 of the Discussion Draft ("The term 'digital commodity' has the meaning given that term under section 1a of the Commodity Exchange Act (7 U.S.C. 1a)."). Notably, the Commodity Exchange Act ("CEA") is written broadly to include all "goods and articles, … and all services, rights, and interests … in which contracts for future delivery are presently or in the future dealt in." *See* 7 U.S.C. § 1a(9). Section 105 of the Discussion Draft would direct the SEC and the CFTC to jointly issue rules further defining "digital commodity."

[5] State securities regulators have a strong record of protecting and educating investors in matters involving digital assets. Over a decade ago, NASAA began informing investors about scams tied to digital assets. *See* NASAA, Informed Investor Advisory: Virtual Currency (Apr. 2014). The first state enforcement actions against a fraudulent digital asset scheme occurred soon thereafter when state regulators issued orders to stop an initial coin offering by BitConnect. This work evolved into Operation Cryptosweep, which was a task force comprised of U.S. and Canadian NASAA members who produced significant enforcement results related to initial coin offerings and other cryptocurrency-related investment products. As of August 2019, Operation Cryptosweep had resulted in 85 pending or completed enforcement actions involving initial coin offerings or cryptocurrency-related investment products and approximately 330 inquiries or investigations by securities regulators from U.S. states and Canadian provinces. *See, e.g.,* NASAA, NASAA Updates Coordinated Crypto Crackdown (Aug. 7, 2019). In early 2020, NASAA continued the work of Operation Cryptosweep but rebranded and supplemented it as the COVID-19 Enforcement Task Force. *See* NASAA, NASAA Forms COVID-19 Enforcement Task Force (Apr. 28, 2020). *See also* NASAA, NASAA Letter to Committee Leadership Regarding Lessons from the FTX Bankruptcy (Nov. 30, 2022).

for harmed business owners and investors and as contacts for federal financial regulators who want to refer a case because they cannot or will not take the case.

1. The High Stakes of Congress' Decision

Failing to include the states as fraud fighters in this new market structure would be a decision with net-negative, significant consequences for Americans in all corners of this great country. Respectfully, these consequences are evident.

A core purpose of the state securities laws is to establish mechanisms for enforcement, particularly to prevent and address fraud and similar misconduct. The Uniform Securities Acts provide for administrative enforcement as well as the filing of civil or criminal court actions by state regulators and law enforcement authorities. The Uniform Securities Acts also encourage cooperation among law enforcement authorities in different states. States can, and often do, bring multijurisdictional enforcement actions.[6]

The majority of our enforcement work originates from complaints submitted by the public or referrals made by other agencies, including the SEC, the Financial Industry Regulatory Authority ("FINRA"), and the CFTC. In 2023, we received approximately 8,000 tips and complaints, a significant increase from the numbers reported in 2022 and 2021. We also received approximately 1,500 referrals from other agencies and institutions. The largest source of these referrals (608) came from the SEC or FINRA, an increase of more than 40% from the prior year. State and local law enforcement agencies made approximately 190 referrals to us.[7]

As state securities regulators, we play a crucial role in the successful prosecution of securities offenses. We often prosecute securities law violations, either through inherent prosecutorial authority or appointments from district attorneys or attorneys general. We also work in parallel with local, state, and federal law enforcement agencies to investigate complex schemes, refer cases for criminal prosecution, and testify in criminal proceedings as fact and expert witnesses. Based on the reported data, in 2023, securities regulators helped convict white-collar criminals collectively sentenced or ordered to serve approximately 5,500 months (approximately 460 years) in prison and approximately 2,700 months (approximately 230 years) of probation and deferred adjudication. These actions show that we are committed to the pursuit of justice for victims of financial fraud.[8]

Using data to inform our view, we conclude that the states' work in fraud prevention and mitigation will increase in the coming years in part due to scams related to both artificial intelligence ("AI") and distributed ledger technologies ("DLTs"). Indeed, there is myriad data indicating that AI can be used, and is actively used, to facilitate scams. A 2024 report from the Stop Scams Alliance warned that AI can "turbocharge" fraud by facilitating phishing attacks and

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[6] *See* Zachary T. Knepper and A. Valerie Mirko, Securities Regulation, in State Attorneys General Powers and Responsibilities, 4th ed. (2019) at 12.

[7] *See* NASAA, NASAA 2024 Enforcement Report (Oct. 22, 2024), at 3.

[8] *See id.* at 6.

deepfakes.[9] Similarly, in 2024, the Federal Bureau of Investigation ("FBI") Internet Crime Complaint Center issued a public service announcement that criminals are using AI-generated text, images, audio, and video to perpetrate financial fraud, contributing to the $50.5 billion lost to online scams over the past five (5) years.[10] Further, as NASAA's 2024 Enforcement Report and recent Top Investor Threats Survey make clear, DLT-facilitated frauds have become one of the leading threats to retail investors.[11]

NASAA tentatively expects to publish its 2025 Enforcement Report in or about Fall 2025. In the meantime, illustrative examples of recent fraud cases are set forth in Appendix D.

2. Anti-fraud, Investigation, and Examination Authorities

Consistent with these high stakes, Congress must address the Discussion Draft's failure to leverage and carry forward the critical role that state governments play in fraud prevention and mitigation. To fix the Discussion Draft, Congress should make the changes set forth in Appendix A. In short, the changes would:

a. Add a provision into Title II to make clear that the anti-fraud and examination authorities enjoyed by the states through Section 18(c) of the Securities Act of 1933 extend to exempted transactions in digital commodities and specifically the fraud or deceit of any person involved, including any issuer, broker, dealer, alternative trading system, or national securities exchange.

b. Insert a new section into Title III that sets forth a "Relationship to State Law" provision and a "Preservation of State Authority" provision.

c. Amend "Section 309. Exclusion for Decentralized Finance Activities" to extend the carveout provided to the SEC for anti-fraud and anti-manipulation to state securities regulators as well.

3. Authorities Relating to the Brokerage Industry

Building on the improvements described above, Congress must also fix the Discussion Draft's silence on the role of state governments in the licensing, registration, and regulation of the brokerage industry. The silence could be construed as a decision to take away from state governments certain basic, essential tools they use to prevent and mitigate fraud.

At present, the Discussion Draft would require a person acting as an intermediary in connection with the offer or sale of an investment contract involving units of a digital

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[9] *See* Stop Scams Alliance, As Scams by Foreign Organized Crime Soar, Here's How America Must Respond (Dec. 2024).

[10] *See* FBI Internet Crime Complaint Center, Criminals Use Generative Artificial Intelligence to Facilitate Financial Fraud (Dec. 3, 2024). *See also* FBI Internet Crime Complaint Center, 2024 Internet Crime Report (Apr. 2025).

[11] *See* NASAA, NASAA Highlights Top Investor Threats for 2025 (Mar. 6, 2025). *See also* NASAA *supra* note 7 at 4-6, 11-14.

commodity in reliance on the new Section 4(a)(8) of the Securities Act of 1933 to be registered with the SEC as a broker or dealer and be a member of a registered national securities association.[12] Presently, FINRA is the only registered national securities association. Notably, the Discussion Draft is silent on whether brokers and dealers and their associated persons (also known as broker-dealer agents) must register with the states, consistent with present law.

An immediate consequence of this above approach is evident in the text of the Discussion Draft. In part because of this silence, it sets up a situation where the CFTC would receive notices of intent to register as digital commodity exchanges, digital commodity brokers, and digital commodity dealers pursuant to Section 106 that would not factor in the compliance record of the registrant, if any, at the state level.[13] Similarly, the streamlined "notice registration" process set forth in "Section 411. Digital Commodity Activities by SEC-Registered Entities" that would allow SEC-registered broker-dealers and alternative trading systems to also register with the CFTC as digital commodity brokers, dealers, or exchanges would not factor in the compliance record of the securities broker or dealer, if any, at the state level.[14]

Congress should correct the omission by making the changes set forth in Appendix B. In short, the changes would add a section to Title III entitled, "Registration Requirements for Brokers, Dealers, and Investment Advisers." The section would simply carry forward the existing state-federal partnership for regulating the brokerage industry, thus making it evident that any firms and individuals recommending or trading products in this new asset class will be on a level playing field with firms and individuals that are dedicated to other asset classes.

Upon inserting the new section under Title III, Congress would need to make corresponding changes throughout the Discussion Draft. For example, Congress would strike "(b) Requirements for Intermediaries" on page 59. Congress also would adapt Sections 106 and 411, accordingly.

In seeking these critical textual changes, we are in no way seeking to expand the authorities and related responsibilities that state securities regulators have vis-à-vis the brokerage industry. That said, we remain open as always to requests from the federal government for the states to take on a larger role in fraud prevention and mitigation.

Presently, a state can require an SEC-registered broker or dealer doing business in the state to register with it. Separately, states register and regulate broker-dealers that are exempt from SEC registration such as where a broker's business is conducted entirely within a single state. Regardless of the entity's registration with the SEC versus the state or both, states require the associated persons of the entity to register with the state.[15] Passing one or more uniform

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[12] *See* "Section 203. Exempted Transactions in Digital Commodities" of the Discussion Draft at pages 50-51.

[13] *See* "Section 106. Notice of Intent to Register for Digital Commodity Exchanges, Brokers, and Dealers" of the Discussion Draft at pages 29-41.

[14] *See* "Section 411. Digital Commodity Activities by SEC-Registered Entities" of the Discussion Draft at pages 185-192.

[15] *See* Knepper and Mirko, *supra* note 6, at 11.

qualification examinations is normally a prerequisite for being licensed by a state before the broker-dealer agent can work with investors.[16]

States also have authority to regulate conduct. Generally, states can regulate the conduct of SEC-registered brokers-dealers so long as the state's regulations do not conflict with the regulatory standards set by the SEC or FINRA. Separately, states regulate broker-dealers that are exempt from SEC registration. To foster uniformity, many states incorporate FINRA rules, thereby making FINRA rule violations actionable by the state.[17]

Last and as emphasized earlier, states have related authorities for investigations, examinations, and enforcement actions. Notably, states bring administrative, civil, and criminal enforcement cases against broker-dealers and their associated persons for fraud and other violations of state law, including violations for failing to register with the state.[18]

4. Authorities Relating to the Investment Advisory Industry

Building again on the improvements described above, we strongly encourage Congress to fix the Discussion Draft's complete silence on the consequences of this new market structure for the state-federal regulation of investment advisers and their associated persons called investment adviser representatives. Among other significant consequences for state-federal securities regulation, the silence in this Discussion Draft on this point could be construed as a decision to take away from state governments the basic, essential tools they use to prevent and mitigate fraud.

Congress should correct this omission by making the changes set forth in Appendix B. In short, the text NASAA prepared – to function as a new insert for Title III – would cover both the brokerage industry and the investment advisory industry insofar as the preservation of state regulation thereof is concerned. Again, Congress would need to make corresponding changes elsewhere in the Discussion Draft.

Importantly, in seeking these changes, we are in no way seeking to expand the authorities and related responsibilities that state securities regulators have. That said, we remain open as always to requests from the federal government for the states to take on a larger role.

Presently, the regulation of investment advisory firms is divided between the SEC and state securities regulators. Initially, the states received authority to oversee investment advisers with up to $25 million in assets under management ("AUM"). The SEC received authority over investment advisers with more than $25 million in AUM, with some exceptions.[19] In 2010, Congress increased the states' responsibility, transferring to them oversight of mid-sized investment advisers—those with AUM between $25 million and $100 million. The legislative record stated, "[Congress] expects that the SEC, by concentrating its examination and enforcement resources on the largest investment advisers, will improve its record in uncovering

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[16] *See* NASAA, Exams.

[17] *See* Knepper and Mirko, *supra* note 6, at 11.

[18] *See ibid*.

[19] *See* NASAA, NASAA Releases Final IA Switch Report (May 20, 2013).

major cases of investment fraud, and that the States will provide more effective surveillance of smaller funds."[20]

Today, the states collectively register or license and regulate approximately 17,000 state-registered investment advisers that, with very limited exceptions, are not dual-registered with the federal government. The states with the most state-registered investment advisers as of December 31, 2023, are California, Texas, Florida, New York, and Illinois. Collectively, these state-registered investment advisers have approximately $362 billion in AUM. The Uniform Securities Acts include provisions for state investment adviser regulation. States also establish their own rules and guidance, including rules relating to dishonest or unethical business practices and compliance programs.[21]

By contrast, the SEC supervises fewer investment adviser registrants than the states. Today, the SEC regulates approximately 13,000 investment advisers.[22] As recently as April 2025, then Acting Chairman Mark Uyeda of the SEC seemed to signal that he would be open to changes that would give more of the investment adviser population to the states.[23]

Presently, the regulation of investment advisory professionals is not divided between the SEC and state securities regulators. Rather, the states alone license or register and regulate supervised persons of both SEC-registered and state-registered investment advisers. Passing one or more uniform qualification examinations is normally a prerequisite for being licensed by a state before an investment adviser representative can work with investors.[24]

Last and as emphasized earlier, states have related authorities for investigations, examinations, and enforcement actions. Notably, states bring administrative, civil, and criminal cases against state-registered investment advisers and investment adviser representatives for violations of state securities laws.[25]

B. Additionally, Congress Could End the SEC-CFTC Jurisdictional Debates by Placing Investment Contract Assets Under the Oversight of Securities Regulators

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[20] *See* Congress.gov, S. Rept. 111-176 (2010), at 76.

[21] *See* Knepper and Mirko, *supra* note 6, at 10.

[22] *See* NASAA, NASAA Investment Adviser Section 2024 Annual Report (Sept. 2024).

[23] *See* Commissioner Mark Uyeda, Remarks to the Annual Conference on Federal and State Securities Cooperation (Apr. 8, 2025) ("Good regulatory practice includes periodically reviewing our rules to ensure they remain fit for purpose given changes over time. It has now been 15 years since the Dodd-Frank Act. In my view, it is time to re-examine the mid-size adviser regulatory split and consider whether it should be adjusted. Doing so could help to ensure Congress's intent that the SEC focus on the larger, more complex investment advisers while the states concentrate their resources on the smaller firms. In this regard, I have asked the SEC staff [to] conduct such a periodic evaluation on whether the current split between the SEC and the states remains optimal. We value the perspective of our state regulatory partners and encourage you to engage with Division of Investment Management staff on this topic.").

[24] *See* NASAA, *supra* note 16.

[25] *See* Knepper and Mirko, *supra* note 6, at 11.

Since 2013,[26] Congress, the SEC, state securities regulators, and the CFTC have devoted enormous resources on questions surrounding the regulatory jurisdictional lines for products, entities, professionals, and practices associated with selected new uses of DLTs. Respectfully and with sincere appreciation for Congress' many efforts to facilitate dialogue between the SEC and the CFTC, the Discussion Draft would offer limited new clarity with respect to the classification of products and, derivatively, the associated roles and responsibilities of intermediaries and regulators.

For the most part and by way of illustration, the Discussion Draft would shift the jurisdictional debates from the halls of Congress to the SEC and the CFTC. While NASAA commends Congress for directing joint rulemakings, we have no reason to believe, particularly given the extremely thoughtful discussions we have observed during the roundtables hosted by the SEC's Crypto Task Force, that it will be easy for the SEC and the CFTC to draw and maintain clean lines. Instead, such efforts during joint rulemakings on definitions and other matters would be severely hampered by Congress' decision to split a product in half and give the SEC one part of it (specifically, the exempted Section 4(a)(8) securities transactions[27]) and the CFTC the other part of it (the investment contract assets[28]).

In our view, Congress could – and should – end or at least limit these time-consuming debates by giving the exclusive federal oversight of investment contract assets to the SEC and leveraging the existing SEC- and state-registered intermediaries and systems, which can already accommodate products without an underlying physical or tangible asset. To give the SEC oversight, investment contract assets would be defined as "a security that (A) can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; (B) can be sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract issued in an offering either registered under section 6 or conducted in reliance on an available exemption from the registration requirements of this Act; and (C) is not a permitted payment stablecoin." The SEC would have authority to define "investment contract asset" further and maintain that definition as may be supportive to industry seeking to comply with this new form of a federal covered exempt security.

Uniting regulations of both the initial offering (sometimes called an initial coin offering) and the cash and spot markets[29] for investment contract assets under a single federal agency (here, the SEC) would have many benefits. The following are illustrative:

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[26] *See* former SEC Chair Mary Jo White, Letter to Senate Committee on Homeland Security and Government Affairs, (Aug. 30, 2013) ("Whether a virtual currency is a security under the federal securities laws, and therefore subject to our regulation, is dependent on the particular facts and circumstances at issue. Regardless of whether an underlying virtual currency is itself a security, interests issued by entities owning virtual currencies or providing returns based on assets such as virtual currencies likely would be securities and therefore subject to our regulation.").

[27] *See* "Section 203. Exempted Transactions in Digital Commodities" of the Discussion Draft at pages 50-51.

[28] *See* "Section 201. Treatment of Investment Contract Assets" of the Discussion Draft at pages 47-48.

[29] Under securities law, these markets would be similar to secondary markets.

1. **The federal government would keep up more easily with technological developments in our securities markets.** Having two (2) federal market regulators has its benefits. However, this setup can hamper the ability of the federal government to adapt for innovation, particularly when Congress uses separate congressional committees to oversee the SEC and the CFTC.

2. **The federal government would conserve market and regulatory resources and minimize confusion by using the regulatory infrastructure of the SEC and state securities regulators rather than creating new infrastructure at the CFTC.** Setting up new cash and spot markets at the CFTC would necessitate new regulations, rules, forms, and data systems that in many significant ways are duplicative of existing ones administered by securities regulators. The SEC and state securities regulators have the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system and the Electronic Filing Depository ("EFD"), respectively. It would be wasteful, confusing to the general public, and probably confusing to industry, to create comparable systems at the CFTC and then integrate them with EDGAR and EFD.[30]

3. **The CFTC would still play a well-earned, critical role in innovation.** Extending the federal securities laws to treat investment contract assets as exempted securities in no way would prejudice Congress and the CFTC from pursuing changes to federal commodities laws that foster tokenization of swaps, futures, and options. While there may be value long-term in bringing all aspects of this particular asset class under the SEC's and the states' supervision (meaning, the spot markets, initial offerings, secondary transactions, derivatives, investment funds, and so forth associated with this non-tangible-asset class), centralizing at minimum all of these products except derivatives at the SEC and with the states would be a big win for innovation.

Adapting the Discussion Draft to place investment contract assets under the authority of the SEC and directing the SEC to treat them as exempted federal covered securities would require significant changes to the Discussion Draft. However, this approach is very likely to result in less regulatory restructuring, time, and expense as compared to the far-reaching changes contemplated in the Discussion Draft. Further, this new form of exemption would impose only limited disclosure requirements specified by the SEC through rulemaking.

As noted in Appendix C hereto, some of the changes to the Discussion Draft would be easier to make. For example, Congress would strike all of "Title IV—Registration for Intermediaries at the [CFTC]" and corresponding provisions in other titles.[31]

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[30] *See* NASAA, EFD, and SEC, EDGAR. *See also* NASAA, NASAA Announces Important Updates to the EFD and Guidance for Filings Submitted on December 31, 2024 (Jan. 3, 2025).

[31] We should emphasize that, in stating that Title IV would be deleted for these purposes, we are not suggesting that Congress and the CFTC should cease review of the federal commodities laws. As noted earlier, Congress and the CFTC should examine the federal commodities laws to make adaptations necessary for the tokenization of any

Other changes would take more time. For example, Congress would amend provisions such as "Title II—Offers and Sales of Digital Commodities, Section 201. Treatment of Investment Contract Assets" and create a new "Section 202. Exempted Securities" to capture this concept, as illustrated in Appendix C.

On request by Congress, NASAA would prepare a complete set of technical comments.

C. Congress Must Empower the States

In closing, I want to take a step back and offer some perspective. I have been a state securities regulator for 23 years. In that time, my colleagues across America and I have protected investors, promoted responsible capital formation, and supported access and innovation in our capital markets. Our record demonstrates the good work we have done and the value we bring to the state-federal regulation of the capital markets. We ask that the federal government, at minimum, keep the states in the business of fraud prevention and mitigation. I have no reason to believe our federal partners would come close to making up the difference if my state colleagues and I were denied the opportunity to help harmed investors.

Should you or your colleagues have any questions, please do not hesitate to contact Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

Leslie M. Van Buskirk

Leslie M. Van Buskirk
NASAA President and
Administrator, Division of Securities
Wisconsin Department of Financial Institutions

products regulated under federal commodities laws. Completing this holistic examination before Congress adopts the term "digital commodities" probably would result in Congress selecting a term other than "digital commodities" that has broader application and usage. Relatedly, this examination probably would result in Congress selecting different terms for the intermediaries that have broader application and usage that the term "digital commodity exchange," for example.

Appendix A – Preserve State Securities Enforcement Against Fraud

Examples of Illustrative Textual Changes:

1. Incorporate the following text into Title II at the end and before the Effective Date section, presently numbered Section 206:

> **"Sec. 2xx. Clarification of State Anti-fraud Authority**
>
> (a) Securities Act of 1933.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended—
>
> (1) by striking the "and" at the end of (c)(1)(A)(ii);
> (2) by striking the period at the end of (c)(1)(B)(ii); and
> (3) by adding the following subparagraph (C):
>
> "(C) with respect to exempted transactions in digital commodities,
> (i) fraud or deceit of any person involved, including the issuer, broker, dealer, alternative trading system, or national securities exchange; or
> (ii) unlawful conduct by a broker or dealer."."

2. Insert the following text in Title III as a new section before the Effective Date; Administration section, presently numbered Section 312:

> **"Sec. 3XX Anti-fraud, Investigation, and Examination Authorities under State Law**
>
> (a) Relationship to State Law.—This Act shall preempt State securities laws, regulations, or rules only to the extent such State laws, regulations, or rules conflict with this Act.
>
> (b) Preservation of State Authority.—Other than the prohibition in section 302(a) of this Act on Federal rules imposing or specifying Federal reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against, fraud, manipulation, or insider trading, nothing in this Act shall be construed to prohibit a State from retaining or enacting a State law, regulation, or rule that provides greater protection to residents of the State than the protection provided by this Act, including such State laws, regulations, or rules involving permitted payment stablecoins and digital commodities that occur on or with a person registered with the Commission.
>
> (c) Memorandum of Understanding.—On request, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall enter into good faith discussions with the North American Securities Administrators Association to enter into memoranda of understanding between Federal and State authorities that are necessary to facilitate the implementation of the authorities of the States."

3. Amend the draft Sec. 15H(b) set forth in Section 309 as follows:

"(b) Exceptions.—Subsection (a) shall not apply to the anti-fraud and anti-manipulation authorities of the Commission or, as applicable, the States."

Appendix B – Make Evident the Role of State Securities Regulation in the Registration and Regulation of Brokers, Dealers, Investment Advisers and Their Associated Persons

Examples of Illustrative Textual Changes:

1. Strike the following text from page 59:

(b) Requirements for Intermediaries.—A person acting as an intermediary in connection with the offer or sale of an investment contract involving units of a digital commodity in reliance on section 4(a)(8) shall—

(1) register with the Commission as a broker or dealer; and

(2) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

2. Insert the following text in Title III after Section 301 and renumber the sections:

"Sec. 3XX Registration Requirements for Brokers, Dealers, Investment Advisers, and Their Associated Persons.

(a) In General.—This Act shall be interpreted to maintain a state-federal system in the United States for the qualification, registration, licensing, regulation, examination, and enforcement of brokers, dealers, investment advisers, and their associated persons.

(b) Brokers or Dealers of Securities.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding [insert location][32] the following:

"(insert letter). Registration of Brokers or Dealers and Associated Persons.

(1) In General.—The technology used to issue or trade a security or provide services to customers shall have no effect on whether a broker or dealer or an associated person of a broker or dealer must register with the Commission or the States.

(2) Registration Requirement for Brokers or Dealers.—Unless an exemption under Federal or State law applies, a person acting as a broker or dealer for securities, including securities recorded and traded on a cryptographically-secured distributed ledger, shall—

(A) register with the Commission and each State in which the person is conducting such activities; and

(B) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934.

(3) Registration Requirement for Persons Associated with Brokers or Dealers.—Unless an exemption under Federal or State law applies, a person associated with a broker or dealer for securities, including

[32] We recommend making it a new subsection in Section 15, Registration and Regulation of Brokers and Dealers. See 15 U.S.C. 78o.

securities recorded and traded on a cryptographically-secured distributed ledger, shall—

(A) register in each State in which the person is conducting such activities; and

(B) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934.

(4) Preservation of State Authority for Alternative Trading Systems.—Nothing in this Act shall be construed to inhibit a State's authority to pursue fraud, deceit, or unlawful conduct with respect to the operations of an alternative trading system."

(c) Investment Advisers for Securities.—The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by adding [insert location][33] the following:

"(insert letter). Registration of Investment Advisers and Associated Persons.

(1) In General.—The technology used to issue or trade a security or provide services to clients shall have no effect on whether an investment adviser or an associated person of an investment adviser must register with the Commission or the States.

(2) Registration Requirement for Investment Advisers.—Unless an exemption under Federal or State law applies, a person acting as an investment adviser for securities, including securities recorded on a cryptographically-secured distributed ledger, shall register with the Commission or the State or States pursuant to the requirements under Federal or State securities laws, or both.

(3) Registration Requirement for Persons Associated with Investment Advisers.—Unless an exemption under Federal or State law applies, a person associated with an investment adviser for securities, including securities recorded and traded on a cryptographically-secured distributed ledger, shall register with the State or States pursuant to the requirements under Federal and State securities laws."

[33] We recommend making it a new subsection in Section 203, Registration of Investment Advisers. See 15 U.S.C. 80b-3.

Appendix C – Establish a Single Federal Regulator for Investment Contract Assets

Examples of Illustrative Textual Changes:

1. Strike all of Title IV, Registration for Digital Commodity Intermediaries at the Commodity Futures Trading Commission.

2. Replace Title II, Section 201, with the following text:

"Sec. 201. Treatment of Investment Contract Assets.

(a) Securities Act of 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)), as amended by section 101, is further amended—

(1) in paragraph (1), by adding at the end the following: "The term 'investment contract' includes an investment contract asset."; and

(2) by adding at the end the following:

"(36) The term 'investment contract asset' means a security—

(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; and

(B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract issued in an offering either registered under section 6 or conducted in reliance on an available exemption from the registration requirements of this Act.".

(b) Investment Advisers Act of 1940.—Section 202(a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(18)) is amended by adding at the end the following: "The term 'investment contract' includes an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

(c) Investment Company Act of 1940.—Section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(36)) is amended by adding at the end the following: "The term 'investment contract' includes an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

(d) Securities Exchange Act of 1934.—Section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)) is amended by adding at the end the following: "The term 'investment contract' includes an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

(e) Securities Investor Protection Act of 1970.—Section 16(14) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll(14)) is amended by adding at the end the following: "The term 'investment contract' includes an 'investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933."."

3. Strike Section 202, Treatment of Secondary Transactions in Digital Commodities. Insert a new Title II, Section 202, using the following text:

“Sec. 202. Exempted Securities.

(a) Securities Act of 1933.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following:

> “(15) Any investment contract asset as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).”.”

Appendix D – Illustrative, Recent State Enforcement Actions Combatting Unregistered and Fraudulent Activities

State	Brief Description of the State Enforcement Action	Learn More
AL	On March 30, 2025, the Alabama Securities Commission issued a cease and desist order against, inter alia, Commaex.com, an online entity that purported to be an online cryptocurrency trading platform that offered access to liquidity pools and cryptocurrency trading, and Kan Nima, the owner of Commaex.com. A pig butchering scam occurred whereby an Alabama resident grew their Commaex account to approximately $990,000. The respondents never registered with the state nor registered or perfected an exemption from registration for the investments offered and sold.	Cease and Desist Order
AR	On December 2, 2024, the Arkansas Securities Commissioner issued a cease and desist order against Golden Mine, a company that never registered with the Arkansas Securities Department in any capacity, including as a broker-dealer or investment adviser, and never made any registration or exemption filings with the state as an issuer for the offer and sale of securities in the state. Golden Mine operated a website, https://goldenminecrypto.com. The website promised investors a steady return on their investments and made a number of other statements that regulators were unable to verify. The respondents never registered with the state nor registered or perfected an exemption from registration for the investments offered and sold.	Cease and Desist Order
WI	On May 6, 2025, the Wisconsin Department of Financial Institutions, Division of Securities issued a summary order to cease and desist and revoke exemptions against Ascendancy Investment Education Foundation (a provider of several financial services including personalized investment advice), Coinbearer Inc. (the operating company of Bitcoin Bears), and Bitcoinbears.com (an online cryptocurrency trading platform). The respondents never registered with the state nor registered or perfected an exemption from registration for the investments offered and sold. Respondents defrauded one WI resident out of $64,000 in principal, affirmatively misrepresenting to him that he would be able to withdraw his funds after he reached 120% profit on his investment.	Cease and Desist Order