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January 13, 2026

The Honorable Tim Scott (R-SC)
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, DC 20515

The Honorable Elizabeth Warren (D-MA)
Ranking Member
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, DC 20515

RE: NASAA Expresses Concerns Regarding the Digital Asset Market Clarity Act

Dear Chairman Scott and Ranking Member Warren:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to express our concerns with the current version of the Digital Asset Market Clarity Act (the "CLARITY Act"). NASAA supports responsible innovation and remains committed to working constructively with Congress to develop an effective regulatory framework for digital assets that preserves state authority consistent with the balanced, cooperative federalism approach that Congress adopted in the National Securities Markets Improvement Act of 1996 ("NSMIA").

We appreciate the consideration given to NASAA's feedback on the September 5, 2025, draft, as well as the interim working texts for the CFTC-SEC Micro-Innovation Sandbox provisions and Title I. However, we are unable to support the CLARITY Act in its current form as provisions contained in Title I will weaken existing state authority to combat investor harm stemming from cases of fraud and abuse in digital assets transactions. Our prior input was expressly conditioned on, among other things, a review of the definitions and structure underlying the CLARITY Act Title I and ongoing discussions in the U.S. Senate Committee on Agriculture, Nutrition, and Forestry. We have now had an opportunity to review the CLARITY Act and raise for your consideration the following comments and proposed changes.

I. Congress Should Address the Fundamental Inconsistencies in the CLARITY Act's Asset Definitions and Protect Investment Contract Law.

At the outset, the CLARITY Act contains fundamental internal inconsistencies that will undermine its stated goal of providing clear, administrable standards for industry and regulators. For example, the CLARITY Act assigns the U.S. Securities and Exchange Commission ("SEC") primary authority over "ancillary assets," yet defines this term as a subcategory of "network token," which is a digital *commodity* and treated as a *non-security* under the CLARITY Act for purposes of federal securities law. Similarly, the CLARITY Act states that an ancillary asset must derive its value from the entrepreneurial or managerial efforts of others, yet prevents the

[1] NASAA's membership includes state securities and commodities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam, as well as regulators from Canada and México.

underlying "network token," as defined, from providing the types of financial rights that arise from those efforts.[2]

To be clear, NASAA appreciates that writing the asset definitions is challenging and we commend Senate offices for their thoughtful work to date. We remain committed to working with Senate offices to develop an alternative approach that will address the unworkable separation, and mutually exclusive treatment, of these two (2) concepts (reliance on entrepreneurial or managerial efforts and the existence of meaningful financial rights). For example, from an economic and legal perspective, it is unusual for the reliance on entrepreneurial or managerial efforts that produce an expectation of profit to be relevant in the absence of meaningful underlying financial rights that distribute those profits.

Another overarching area of concern for NASAA is the preservation of the current formulation of an investment contract. The law of investment contracts is the primary tool that securities regulators use to combat digital asset scams, which are typically orchestrated in the secondary market by unlicensed third-party promoters. In earlier advocacy, NASAA shared the enforcement work states have contributed to combatting digital asset schemes, which take many varied forms. That work depends on a robust and flexible investment contract definition.

While former Section 105 on investment contracting rulemaking has been removed from the draft, the current version of the CLARITY Act directs the SEC to promulgate regulations on "entrepreneurial or managerial efforts" as they relate to the definition of an "ancillary asset."[3] Fraudsters will exploit any new conditions and limits to these concepts. Given the epidemic of fraud being perpetrated against American investors, especially older investors, Congress should not pursue policies that will make it easier for scam artists to get away with their crimes and harder for law enforcement and regulators to act. The effectiveness of the current investment contract framework helps all regulators protect investors and should not be altered.

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[2] This contradiction is embedded in the CLARITY Act's definitional framework. The legislation would define a "network token" as "a digital commodity that is intrinsically linked to a distributed ledger system and that derives, or is reasonably expected to derive, its value from the use of such distributed ledger system, and that, pursuant to [the CLARITY Act] and the amendments made by [the CLARITY Act], is treated as a non-security solely for purposes of the Federal securities laws." The CLARITY Act then enumerates various financial rights that would disqualify a token from treatment as a "network token," including economic rights analogous to debt or equity interests. At the same time, the statute defines an "ancillary asset" as "a *network token*, the value of which is dependent upon the *entrepreneurial or managerial efforts* of an ancillary asset originator or a related person, as those concepts are further specified by the [SEC] by regulation" (emphasis added).

[3] The CLARITY Act specifies that the term network token does not include, among other items, "…(ii) An investment contract or a certificate of interest or participation in any profit-sharing agreement that represent, gives the holder, or is substantially economically or functionally equivalent to, any of the following, as the [SEC] shall establish by rule; (I) A debt or equity interest, or an option on a debt or equity interest, in a person. (II) Liquidation rights with respect to a person. (III) An entitlement to or reasonable expectation of an interest, dividend, or other payment, or direct or indirect transfer of value, from a person (other than a decentralized governance system). (IV) An express or implied financial interest in (including a limited partnership interest or interest in intellectual property of), or provided by, a person (other than a decentralized governance system)." The definition of "ancillary asset" as added by the CLARITY Act also addresses this rulemaking. "The term 'ancillary asset' means a network token, the value of which is dependent upon the entrepreneurial or managerial efforts of an ancillary asset originator or a related person, as those concepts are further specified by the [SEC] by regulation."

II. Congress Should Narrow the Scope of Preemption to That Set Forth in NSMIA.

State securities and commodities regulators play a vital fraud-fighting role in protecting investors and consumers, strengthening the U.S. financial ecosystem, and promoting responsible innovation. The Senate's improvements to the CLARITY Act so far recognize this important role. At the same time, failure to make additional necessary improvements would undermine the Senate's goal of ensuring that states maintain NSMIA's carefully calibrated compromise regarding state enforcement, securities registration, notice filings, and fees.

A. Improvements to the Legislation to Date

NASAA appreciates Congress's efforts to refine the CLARITY Act to better preserve state authority consistent with NSMIA. Notably, NASAA is grateful that lawmakers removed language from prior drafts that could have been used to limit state regulators' authority to enforce registration and licensing requirements for securities firms and professionals. These state registration and licensing regimes provide essential investor protections by establishing professional standards, screening out bad actors, and ensuring public access to regulatory histories before individuals entrust their savings to others.

NASAA also appreciates Congress's decision to revise the draft legislation to rely on Section 18 of the Securities Act of 1933 (the "Securities Act") to clarify the state-federal framework governing the registration of securities and securities transactions. Since September 2025, Congress has further amended the legislation to preserve certain state investigatory, enforcement, and regulatory authorities—such as notice filings and fees—for products treated as covered securities, and to fulsomely and appropriately preserve state anti-fraud authority in the CFTC–SEC Micro-Innovation Sandbox provisions.

B. More Necessary Improvements to the CLARITY Act

While the above steps represent meaningful progress, further revisions are needed, particularly given the continued importance of fully preserving state authorities as we work to combat a rapidly growing online scam epidemic.

As emphasized in earlier NASAA advocacy, the cleanest way for Congress to import the NSMIA model into the CLARITY Act is to *treat* digital assets and related transactions—no matter what label is used to define them—as federally covered securities under Section 18 of the Securities Act and then enact a complementary savings clause for those new covered securities that explicitly preserves state authorities for anti-fraud, notice filings, and fees. The Senate should revise the "Treatment of Network Tokens and Transactions" provisions set forth in subsection (b) of proposed Section 4B of the Securities Act to be clear that only state registration laws are preempted and that states otherwise preserve their other authority, most critically, their anti-fraud enforcement authority, in both primary and secondary market transactions. Elsewhere, the Senate should add clear, robust anti-fraud savings clauses, including but not limited to Section 108, to reinforce that state anti-fraud authority is explicitly preserved across the board, including in the enforcement of proposed Section 4B and Regulation Crypto.

To achieve the above outcomes, Congress should make the following changes:

1. **Amend the definitions of "network token" and "ancillary asset" to address the fundamental inconsistencies outlined above.** We remain committed to working with Senate offices to address the unworkable separation, and mutually exclusive treatment, of these two (2) concepts (reliance on entrepreneurial or managerial efforts and the existence of meaningful financial rights).

2. **Preserve State Anti-Fraud Powers Retained Under NSMIA.** As noted above, the first area requiring correction would be the "Treatment of Network Tokens and Transactions" provisions set forth in subsection (b) of proposed Section 4B of the Securities Act. Under both subsections (b)(1)(F) and (b)(2)(F), the Senate should insert a new subsection (ii) that reads: "consistent with the authority preserved to States with respect to covered securities."

3. **Amend Section 108(d) ("Preemption for Exemptions and Digital Asset Activities Under the Securities Act") to (a) strike any references to subsequent SEC rulemakings that go beyond either "network tokens" or "ancillary assets" that are securities and (b) remove proposed paragraph (H) to Section 18(b)(4) of the Securities Act in its entirety.** In our view, the construction of Section 108 would create an inherent contradiction: the CLARITY Act purports to preserve NSMIA-style state authority, yet at the same time would grant the SEC expansive and unpredictable preemption powers—for both traditional securities and digital assets—that are inconsistent with the current NSMIA framework governing state registration authorities for securities offerings and transactions and associated state notice filings, fees, and anti-fraud powers. Restricting future SEC rulemakings to "network tokens" and "ancillary assets" that are securities and removing proposed paragraph (H) to Section 18(b)(4) of the Securities Act are necessary and appropriate fixes to prevent the erosion of NSMIA's state-federal compromise. Doing so would also prevent unsettling policy shifts from federal administration to administration that would create unwelcome challenges for industry and regulators alike. These fixes also are consistent with the rule of construction in Section 108(e)(2), which states that nothing in the section may be construed to limit the existing authority of state securities regulators with respect to a covered security or any other security.[4]

4. **Amend Title I to include a robust anti-fraud savings clause.** NASAA urges Congress to ensure that a robust preservation of state investigatory, enforcement, and regulatory authority—comparable to that included in the CLARITY Act's CFTC–SEC Micro-Innovation Sandbox provisions and inclusive of primary and

[4] Given that the well-documented intent of this legislation is to provide clarity while maintaining the *status quo* of regulation for the securities industry, we read the CLARITY Act's silence on the state-federal regulation of the investment advisory industry in this new market structure, as well as the limited treatment of state-federal regulation of the brokerage industry, to be nothing more than the Senate's efforts to preserve the *status quo* of state-federal regulation over these industries—absent later, clear legislation specifically addressing the present approach that the CLARITY Act would extend to this new market structure.

secondary network token transactions—appears in and applies to the entirety of Title I.

5. **Amend proposed Section 4B of the Securities Act to include a robust anti-fraud savings clause.** In addition to including a robust savings clause that applies to the provisions of Title I generally, NASAA urges Congress to amend Section 102 so that an explicit anti-fraud savings clause applies to the provisions of proposed Section 4B of the Securities Act as well. At present, the savings clause language in proposed Section 4B applies only to the gratuitous distribution provisions of the new exemption. This improvement can be made by relabeling the existing antifraud savings clause, which appears as section (b)(3)(B) of proposed Securities Act Section 4B, as section (b)(4) and rewording the language to state that "Nothing in this **section** may be construed to...." (emphasis added). Doing so would apply the saving clause to the entirety of proposed Section 4B of the Securities Act, and would in turn assure that Regulation Crypto was developed in accord with the appropriate preservation of state authority.

6. **Strike or amend any text that empowers the SEC to use its rulemaking and similar authorities to narrow or otherwise weaken the scope of an "investment contract."** As noted earlier, the CLARITY Act as written empowers or directs the SEC to adopt regulations and rules expanding on the statutory text describing the entrepreneurial and managerial efforts supporting an ancillary asset, as well as the "disqualifying financial rights" associated with network tokens.

In closing, NASAA stands ready to work with Congress to ensure that any legislation strikes a balanced, clear, and effective approach to digital asset regulation that protects investors, preserves state authority, and promotes responsible innovation. Should you or your colleagues have any questions, 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,

Marni Rock Gibson
NASAA President

CC: Members of the U.S. Senate