March 12, 2026

The Honorable Tim Scott (R-SC)
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, DC 20510

The Honorable Elizabeth Warren (D-MA)
Ranking Member
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, DC 20510

RE: Thirty-one State Regulators Urge Congress to Preserve their Role as Fraud Fighters in the Federal Market Structure Proposals

Dear Senators Scott and Warren:

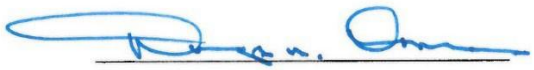
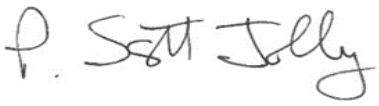
With thanks to the Senate Committees on Banking and Agriculture and your respective staffs, we, the undersigned state securities administrators, write to make one simple but urgent request – revise the current versions of the Digital Asset Market Clarity Act (the "CLARITY Act") and the Digital Commodity Intermediaries Act ("DCIA") to preserve state authority consistent with the approach used by Congress in the National Securities Markets Improvement Act of 1996 and the Commodity Exchange Act of 1936, as amended ("NSMIA").

We know that drafting these bills has already been a Herculean task, so we do not make this request lightly. Over the past several weeks, we have taken the time to hone our request into a short set of mission-critical line edits. These edits will not expand state authority or re-write the jurisdictional lines that Congress is carving between federal securities and commodities regulators in these bills. The edits will simply preserve the authority that we have today to protect our residents and your constituents from investment fraud, deceit, and abuse. In both traditional and digital asset frauds, states are frequently the first to respond and are sometimes the only enforcement mechanism available. We invest significant time and resources in these cases because we are committed to holding bad actors accountable and understand that we might be our residents' only shot at getting any recovery or justice.

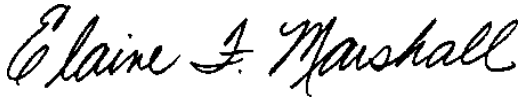
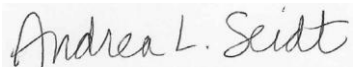
As it stands now, the CLARITY Act and the DCIA contain provisions that need to be clarified, provisions that fraudsters could seek to exploit to evade enforcement under existing state securities and commodities anti-fraud laws. Some provisions risk being stretched to nullify state securities regulation entirely. Examples include provisions in Titles I and III that are silent or vague as to state authority over "digital asset activities." This is problematic because state anti-fraud jurisdiction *and funding* are predicated on the regulation of securities products and services that are predicted to move on-chain in the near future. As Section 505 of the CLARITY Act makes clear, a security does not stop being a security simply because it is issued, recorded, represented, or transferred using distributed ledger technology. Digital or traditional, on-chain or off-chain, a financial instrument that meets the definition of a security under state or federal law is a security that should be regulated as such. Any language that could be read to create doubt is a drafting loophole that needs to be closed now.

Fortunately, the fixes are straight-forward and spelled out in the discrete set of revisions advanced in the February 23, 2026 letter of the North American Securities Administrators Association, which we attach for reference. We respectfully urge you to undertake those revisions before advancing the CLARITY Act and DCIA any further. Please do not hesitate to reach out to us if you have any questions or would like to discuss this request further.

Sincerely,

 KC Mohseni *Commissioner* California Department of Financial Protection & Innovation	 Jillian Lazar *Director of Investor Protection* Delaware Department of Justice, Investor Protection Unit
 Noula Zaharis *Assistant Commissioner of Securities* Office of the Georgia Secretary of State	 Ty Y. Nohara *Commissioner of Securities* State of Hawaii – DCCA, Business Registration Division
 Kris Kolky *Acting Director,* Securities Department Illinois Secretary of State	 Marie Castetter *Securities Commissioner* Office of the Indiana Secretary of State
 Doug Ommen *Commissioner* Iowa Department of Insurance and Financial Services	 Marni Rock Gibson *Commissioner/Securities Administrator* Kentucky Department of Financial Institutions
 P. Scott Jolly *Commissioner* Louisiana Office of Financial Institutions	 Jesse A. Devine *Securities Administrator* Maine Office of Securities

Melanie Senter Lubin *Securities Commissioner* Maryland Division of Securities	Michael Crow *Deputy Commissioner,* Financial Institutions Division Minnesota Department of Commerce
Eric Slee *Assistant Secretary of State - Securities* Mississippi Secretary of State	Michael A. O'Donnell *Securities Commissioner* Missouri Securities Division
James Brown *State Auditor* Office of the Montana State Auditor, Commissioner of Securities & Insurance	Claire McHenry *Deputy Director – Securities Bureau* Nebraska Department of Banking and Finance
Erin M. Houston *Deputy Secretary of State for Securities* Nevada Office of the Secretary of State Francisco V. Aguilar	Keith Alt *Acting Bureau Chief* New Jersey Bureau of Securities
Benjamin R. Schrope *Acting Director* New Mexico Regulation and Licensing Department Securities Division	Shamiso Maswoswe *Chief, Investor Protection Bureau* New York State Office of the Attorney General

 Hon. Elaine F. Marshall *North Carolina Secretary of State*	 Cody Schmidt *Chief Director of Securities Regulation* North Dakota Insurance & Securities Department
 Andrea L. Seidt *Securities Commissioner* Ohio Division of Securities	 Melanie Hall *Administrator* Oklahoma Department of Securities
 TK Keen *Insurance Commissioner/Administrator* Oregon Department of Financial Regulation	 Eric Pistilli *Deputy Secretary of Securities* Pennsylvania Department of Banking and Securities
 Mónica Rodríguez Villa *Comisionada / Commissioner* Puerto Rico Oficina del Comisionado de Instituciones Financieras	 Amanda Smith *Securities Deputy Commissioner* Vermont Department of Financial Regulation
 Charlie Clark *Director* Washington Department of Financial Institutions	 Leslie M. Van Buskirk *Securities Administrator* Wisconsin Department of Financial Institutions
 Michael Nusbaum *Deputy Commissioner of Securities* West Virginia Securities Commission	

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February 23, 2026

The Honorable Tim Scott (R-SC)
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, DC 20510

The Honorable Elizabeth Warren (D-MA)
Ranking Member
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, DC 20510

RE: NASAA Urges Congress to Preserve Essential Regulatory Jurisdiction and Make Targeted Improvements to Preserve Cooperative Federalism and State Authority in Federal Market Structure Proposals

Dear Chairman Scott and Ranking Member Warren:

On behalf of the U.S. members of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to respectfully request that Congress (1) maintains language in the Digital Asset Market Clarity Act ("CLARITY Act") and the Digital Commodity Intermediaries Act ("DCIA") that ensures parity in regulatory treatment of tokenized and non-tokenized securities;[2] (2) makes targeted changes to the CLARITY Act and the DCIA to preserve investment contract law and state authority consistent with the National Securities Markets Improvement Act of 1996, as amended ("NSMIA"); and (3) strikes language from the CLARITY Act that would give a federal agency the ability to change foundational federal securities laws without legislation or even notice-and-comment rulemaking. See the Appendix herein.

I. Regulatory Treatment of Tokenized Securities

To begin, we strongly urge Congress to retain Section 505 of the CLARITY Act as drafted. Of note, Sections 505(e)(1) and (h)(1) make clear that "a tokenized financial instrument shall be treated for all regulatory purposes as the financial instrument it represents," and more specifically that a security "issued, recorded, represented, or transferred using distributed ledger technology" remains a security under the securities laws. These provisions would codify a foundational principle: tokenized securities are still securities.[3]

[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.
[2] Throughout this letter, where we refer to "market structure legislation," we refer to a presumed forthcoming package that contains both the texts of the CLARITY Act and the DCIA. Further, we also refer to the registration of various securities intermediaries as a shorthand for the various registration and licensing authorities that exist.
[3] *See, e.g.,* U.S. Senate Committee on Banking, Housing, and Urban Affairs, Oversight of the Securities and Exchange Commission (Feb. 12, 2026) (Chair Paul Atkins of the U.S. Securities and Exchange Commission ("SEC"), responding to Senator Angela Alsobrooks (D-MD), noted, "…I think it goes without saying that under current law, that tokenized securities are securities, and we'll treat them as such… [T]hat's been our firm position at the SEC… I think our authority under that is clear, no matter how securities are recorded… or whether they're

Preserving Section 505 is critical to capital formation, orderly markets, and investor protection. It ensures that critical protections governing the offer and sale of securities to investors, along with rules that are essential to a well-functioning market, remain in place regardless of the technological platform on which the security is issued and sold.

Section 505 does not, as some suggest, impede innovation. To the contrary, recent efforts demonstrate that serious work is already underway to tokenize securities and allow tokenized assets to be traded in a well-regulated manner.[4]

Without Section 505, the investor protections embedded in the federal and state securities laws would risk becoming hollow as securities move on-chain—potentially to evade federal and state oversight. In that deregulated environment, scammers and other bad actors would face fewer constraints and the reforms discussed below would do little to prevent investor harm. Retaining Section 505 ensures that innovation strengthens, rather than undermines, the regulatory foundations of our securities markets.

II. Preserve Cooperative Federalism and State Anti-Fraud Authority While Limiting Agency Discretion

Assuming that Congress preserves the principles outlined in Part I above, NASAA further recommends the following commonsense changes to the CLARITY Act, described below and in the Appendix. These changes would close gaps that bad actors will inevitably exploit, while preserving the cooperative federalism framework that Congress incorporated into federal market structure legislation consistent with the approach in NSMIA.

A. Four Core Principles Guide NASAA's Targeted Improvements

First, Congress should explicitly maintain the authorities preserved to states pursuant to NSMIA and the Commodity Exchange Act of 1936, as amended ("CEA").[5] These federal laws

traded on chain… as tokenized securities."). *See also* U.S. House Committee on Financial Services, Oversight of the Securities and Exchange Commission (Feb. 11, 2026) (Chair Paul Atkins of the SEC, responding to Representative Ritchie Torres (D-NY), noted in reference to promoting innovation among issuers of tokenized securities that, "[The SEC] will make sure that issuers…have insight into where their securities are, and that tokenized securities are securities and will be treated as such…".). *See also* SEC Commissioner Hester M. Peirce, Enchanting, but Not Magical: A Statement on the Tokenization of Securities (Jul. 9, 2025).

[4] *See, e.g.*, Depository Trust and Clearing Corporation, DTCC Authorized to Offer New Tokenization Service, Paving the Way to Tokenized DTC-Custodied Assets (Dec. 11, 2025). *See also* SEC, Response to No-Action Letter Request Related to The Depository Trust Company's Development of the DTCC Tokenization Services (Dec. 11, 2025). *See also* SEC, The NASDAQ Stock Market LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Exchange's Rules to Enable the Trading of Securities on the Exchange in Tokenized Form, SEC Rel. No. 34-104384 (Dec. 12, 2025).

[5] In response to earlier iterations of the CLARITY Act, *i.e.*, discussion drafts entitled the Responsible Financial Innovation Act first released in September of 2025, NASAA was joined by other stakeholders who urged Congress to preserve these crucial state authorities. *See* NASAA, NAPSA Calls on Congress to Preserve the States' Ability to

strike a deliberate and careful balance where state securities registration and rulemaking are constrained only as necessary to achieve a workable state-federal regulatory regime for the capital markets.

Together, these two (2) federal laws preserve the states' role as the boots-on-the-ground partners of the SEC and the Commodity Futures Trading Commission ("CFTC"). Notably, the federal securities laws preserve regulatory authorities for state securities regulators, including: (1) the authority to require state notice filings for the states with respect to federally-covered securities (for example, for SEC Regulation D, Rule 506 offerings); (2) the authority to require state notice filings for the states with respect to federally-registered investment advisory firms; (3) the authority to register investment advisory firms that, with few exceptions, are not registered with the SEC; (4) the authority to register all investment adviser representatives who have a place of business in the state, regardless of whether those professionals are associated with a federally-registered or state-registered firm; and (5) the authority to register broker-dealer firms transacting business in the state and their associated persons (often called registered representatives). These laws preserve the jurisdiction and funding the states (and investors) rely upon to respond to, and investigate, complaints of investment fraud. These authorities must not be weakened or eliminated through the CLARITY Act and the DCIA whether by statute or through expanded SEC exemptive authority.[6]

While NASAA sees progress in several provisions in the CLARITY Act and the DCIA that preserve, in part, the authorities state securities and commodities regulators use to enforce the laws against scammers, other provisions in these bills create the potential for gaps and ambiguity. NASAA therefore urges the insertion of clear catch-all savings clauses confirming that neither the CLARITY Act nor the DCIA limits existing state securities and commodities anti-fraud authorities, including with respect to assets that are not "digital assets."

Protect Older Americans (Dec. 8, 2025) (urging Congress to preserve state report-and-hold laws that industry and regulators developed collaboratively during the last 15 years to mitigate financial exploitation of vulnerable Americans in all corners of the United States; separately noting how state securities commissions are key contributors to state general funds that sustain Adult Protective Services programs across the country). *See also* NASAA, NCSL Calls for the Preservation of the State Fraud-Fighting Role in Our Securities Markets (Nov. 18, 2025) (noting the important role that states play to protect the welfare of their citizens and urging Congress to include explicit language in any digital asset legislation that preserves consumer protection laws and enforcement authority) ("States must continue to pay a central role in protecting consumers, deterring fraud and holding bad actors accountable. Preserving this role is essential to ensuring that residents of our states remain protected in the face of emerging technologies and evolving markets."). *See also* NASAA, Twenty-Eight Scholars Call for the Preservation of the State Fraud-Fighting Role in Our Securities Markets (Oct. 7, 2025) (noting how state registration and licensing laws for securities firms and professionals set professional conduct and knowledge standards and facilitate an important gatekeeping function; separately urging Congress to "explicitly preserve state anti-fraud authority as it exists today"). *See also* NASAA, PIABA Calls for the Preservation of the State Fraud-Fighting Role in Our Securities Markets (Nov. 4, 2025) (likewise urging for preservation of critical guardrails of state registration and licensing laws and preservation of state anti-fraud authority) ("To protect the thousands of fraud victims across the country who are being helped by states currently and to let scammers across the globe know that states are and will remain an integral part of the U.S. response to online scams moving forward, Congress should explicitly preserve state anti-fraud enforcement authority as it exists today.").

[6] See Appendix at Part I, D (Prevent Unnecessary Delegations to the SEC of Preemption Power and Regulation by Order Without Notice-and-Comment).

Second, Congress should clarify the treatment of network tokens as federally-covered securities while preserving state anti-fraud authority. While the CLARITY Act treats network tokens as federally-covered securities, related provisions describing when digital assets are not securities omit express recognition of covered-security status and the associated state enforcement role. Conforming edits would enhance clarity for market participants and regulators alike, reduce litigation risk, and reinforce the cooperative federalism model rather than invite frivolous preemption arguments.

Third, Congress should not allow the displacement or narrowing in this legislation of the well-established *Howey* test or investment contract analysis, whether directly or indirectly through SEC rulemaking or otherwise. The *Howey* test has proven to be one of the most effective and flexible tools for combating evolving forms of investment fraud, including digital-asset schemes without traditional corporate form. To the extent Congress anticipates that the definition of "investment contract" could be affected by a rulemaking directive, *e.g.*, in the "disqualifying financial rights" rulemaking directed in Section 2 of the CLARITY Act, Congress should explicitly cabin that directive, as recommended in the Appendix.

Last, Congress should not risk upending the foundations of securities regulation by granting the SEC wide-ranging exemptive authority that can be exercised by order. Specifically, the SEC's current exemptive authority in the Securities Act of 1933 appropriately limits this authority to regulation and rulemaking. This ensures that stakeholders will have an opportunity to weigh in on proposed exemptions through a notice-and-comment process, and through this process ensures that the agency receives the benefit of divergent views and data.

B. The Stakes for Investor Protection Could Not Be Higher

We recognize that Congress understands the stakes for investor protection could not be higher.[7] We applaud the targeted use of savings clauses and the removal, during this Congress, of language from the CLARITY Act that could have been used to disarm state fraud fighters by circumventing state registration and licensing requirements that exist today for certain intermediaries and securities offerings as well as language that would have weakened investment contract law – a key fraud-fighting tool for regulators.

NASAA's additional edits, proposed in the Appendix, build on this important work by emphasizing that state registration and licensing laws remain intact for firms and professionals engaged in securities transactions, in keeping with NSMIA's careful preemptive framework. The edits we suggest also reinforce Congress's nonpartisan commitment to keep states on the front lines of fraud prevention and mitigation.

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[7] In 2023 alone, scammers stole an estimated $158 billion from Americans. As Senator Chuck Grassley (R-IA) observed in 2025, criminals have used stolen American dollars to traffic arms, drugs, and humans, creating a "national security crisis hiding in plain sight." *See* U.S. Senate Committee on the Judiciary, Grassley Opens Judiciary Hearing on Threats Posed by Scammers and Transnational Crime Networks (Jun. 17, 2025). *See also, e.g.*, Bipartisan Letter from Representative Jefferson Shreve (R-IN) and 23 Members of the U.S. House of Representatives to the Honorable Secretary of State Marco Rubio (Jun. 27, 2025) (urging additional action regarding the "new and fast-growing threat to Americans' safety and security posed by online scam centers").

The importance of adopting NASAA's proposed edits is underscored by the states' enforcement record. In summer 2025, NASAA members documented hundreds of anti-fraud actions they have taken in the digital asset marketplace since 2017, most of which relied on state investment contract law. The new network token framework in this legislation, coupled with SEC rulemaking directives that might affect investment contract law, could inadvertently sideline regulators, including states. If this occurs, states may be forced to redirect fraud claims to federal agencies, thereby reversing the recent trend of federal referrals to states. This outcome would leave harmed investors, especially those with smaller losses, with limited or no recourse. The targeted amendments we propose are designed to avoid this outcome and are essential to mitigate the loss of authorities that states use to fight fraud and help victims in a cooperative federalism model.[8]

Thank you again for the time and attention you and your staff have devoted to NASAA's concerns, both in this Congress and prior sessions. We stand ready to work with you to refine these bills in a manner that promotes innovation, delivers regulatory clarity, and preserves robust investor protections. Should you or your colleagues have any questions or other feedback, 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 Committee on Agriculture, Nutrition, and Forestry and the U.S. Senate Committee on Banking, Housing, and Urban Affairs

[8] *See* NASAA, 2025 Enforcement Report (Oct. 2025). ("In 2024, state and provincial securities regulators continued their mission to protect investors from financial harm through robust enforcement efforts. Regulators in the United States received 8,309 tips and complaints from the public, reflecting a year-over-year increase, along with 1,685 referrals from external agencies. The largest sources of referrals included the Financial Industry Regulatory Authority ("FINRA") (559), state and local law enforcement and prosecutorial agencies (241), and the [SEC] (163)."). This is key because federal regulators need state support. *See, e.g.*, NASAA, NCSL Calls for the Preservation of the State Fraud-Fighting Role in Our Securities Markets (Nov. 18, 2025) ("Federal agencies alone cannot bear the full burden of regulating and policing a rapidly evolving digital asset industry. In an environment of constrained federal resources, it is more important than ever to preserve the authority of states to act swiftly and effectively against fraud and misconduct. We urge Congress to ensure that any federal digital asset legislation explicitly preserves states' authority to combat fraud and protect investors.").

Appendix: NASAA's Requested Line-Edits to the Digital Asset Market Clarity Act ("CLARITY Act")[9] and the Digital Commodity Intermediaries Act ("DCIA")[10]

Overview

NASAA urges Congress to maintain Section 505 of the CLARITY Act as drafted. Assuming Congress makes no changes to the principles outlined in Section 505 of the CLARITY Act, NASAA's requested amendments are narrowly tailored to:

1. Preserve state securities and commodities authorities consistent with the National Securities Markets Improvement Act of 1996, as amended ("NSMIA") and the Commodity Exchange Act of 1936, as amended ("CEA");
2. Clarify the treatment of network tokens as federally-covered securities to avoid unintended preemption;
3. Prevent unintended narrowing of the investment contract analysis or erosion of state authority through expansive U.S. Securities and Exchange Commission ("SEC") rulemaking or exemptive orders; and
4. Ensure that foundational changes to securities registration, offering and sales, disclosures and exemptions cannot be made by order alone.

Part I - Requested Edits to the CLARITY Act

A. Clarify That Network Tokens Are Federally-Covered Securities While Preserving State Authority

Both the Senate and House versions of the CLARITY Act would treat network tokens as federally-covered securities to ensure the continuation of state anti-fraud authority in the digital asset marketplace. See, for example, page 105 of the Senate's CLARITY Act (amending Section 18(b) of the Securities Act of 1933) and pages 118 to 119 of the House's CLARITY Act (treating digital commodities as covered securities).[11]

Elsewhere, however, the Senate's CLARITY Act describes circumstances in which network tokens and other digital assets are not securities without expressly recognizing the authority that is preserved to states. These drafting inconsistencies could create ambiguity and invite unnecessary litigation.

Requested edits:

Page 24 — after line 22, insert:

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[9] *See* U.S. Senate Committee on Banking, Housing, and Urban Affairs, S. Amdt. ___ to H.R. 3633, the Digital Asset Market Clarity Act (accessed Feb. 17, 2026).
[10] *See* Congress.gov, S. 3755, the Digital Commodity Intermediaries Act (accessed Feb. 17, 2026).
[11] *See* Congress.gov, H.R. 3633, the Digital Asset Market Clarity Act of 2025 (accessed Feb. 23, 2026).

"(ii) inconsistent with the authority preserved to States with respect to covered securities."

Renumber existing subparagraph (ii) as (iii).

Page 26 — after line 7, insert:

"(ii) inconsistent with the authority preserved to States with respect to covered securities."

Renumber existing subparagraph (ii) as (iii).

B. Clearly and Completely Preserve State Securities and Commodities Anti-Fraud, Investigative, and Enforcement Laws

Although the CLARITY Act includes several savings clauses, it lacks a comprehensive, catch-all savings clause that clearly preserves state anti-fraud, investigative, and enforcement authority. The same is true for the DCIA (see Part II herein). Congress should remove any and all ambiguity by expressly preserving this state authority, as recommended below.[12]

1. Insert a Catch-All State Enforcement Savings Clause

NASAA urges Congress to insert language into Title I of the CLARITY Act that is modeled on equivalent language set forth in Section 501 (CFTC-SEC Micro-Innovation Sandbox) of the CLARITY Act.

Requested edits:

Page 106 — after line 25, insert:

"Sec. xxx. State Enforcement Preserved.

> Nothing in this Act may be construed to prohibit or limit any State securities or commodities regulator, any State bank regulator, or any State law enforcement agency from conducting an investigation or bringing an administrative, civil, or criminal enforcement action under—
>
> (A) a State law prohibiting fraud or deceit, or fraudulent, deceptive, manipulative, unethical, dishonest, or other unlawful conduct or practices, in connection with securities or securities transactions;
> (B) the anti-fraud provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.) or State commodities laws; or

[12] NASAA's request here is similar to requests made by NASAA and other stakeholders based on analogous text presented in an earlier iteration of the CLARITY Act, *i.e.*, the discussion draft entitled the Responsible Financial Innovation Act released first in September of 2025.

(C) any State law of general applicability, including such a law relating to banking, consumer protection, contracts, property, or criminal conduct."

2. Preserve State Authority Consistent with the NSMIA Framework

One of the chief concerns that NASAA had regarding an earlier iteration of the CLARITY Act was text that could have been read to eliminate state registration and licensing authority of securities firms and associated persons by virtue of their participation in "digital asset business." That text was wisely removed, signaling the Senate's clear intent to preserve the authorities the states have used for decades to protect their residents from investment fraud and other unlawful conduct.

At the same time, Title III of the CLARITY Act now requires changes given use of similar terminology in the definition of "digital asset intermediaries." A "digital asset intermediary" is a new intermediary classification that expressly includes Securities Exchange Act of 1934 ("Exchange Act") firms that engage in "digital asset activities." States currently regulate these firms subject to NSMIA restrictions. The text in new Section 308 (Risk Management Standards for Digital Asset Intermediaries) addresses examinations. Presently, this section requires that compliance with the section be reviewed during routine examinations of digital asset intermediaries by the SEC, the Commodity Futures Trading Commission ("CFTC"), or an appropriate self-regulatory organization, under existing legal and regulatory frameworks. It also clarifies that nothing in the section limits the independent authority of the Financial Crimes Enforcement Network or the Office of Foreign Assets Control to conduct examinations, investigations, or enforcement actions as permitted by law. States are not mentioned—yet.

To avoid any misunderstanding of Congress's intent to preserve state securities regulators' limited—but well-used and mission-critical—authorities that are preserved in the Exchange Act pursuant to NSMIA, NASAA urges Congress to insert the below.

Requested edits:

Page 169 — after line 19, insert:

"(3) PRESERVATION OF AUTHORITY.—

(i) State securities commissions (or any agency or office performing like functions) shall retain the jurisdiction preserved in the National Securities Markets Improvement Act of 1996, as applicable to digital asset intermediaries engaged in securities transactions; and

(ii) Any State or local law enforcement agency shall retain the ability to inspect, investigate, and bring enforcement actions regarding fraud, deceit, or unfair or deceptive acts or practices involving a security by a digital asset intermediary."

Failure to make this change could result in confusion and frivolous assertions that seek to expand the "digital asset" terminology far beyond its intended reach. Congress clearly never

intended for this terminology to be used to displace federal or state securities law over securities transactions or securities intermediaries, yet as drafted the definitional construct could inadvertently bleed over in unintended ways to (a) tokenized securities and (b) digital asset intermediaries that trade in securities and other digital assets. For example, securities clearing and brokerage are predicted to move on-chain in the coming years. If the courts were to conclude that this new category of "digital asset intermediary" is carved out of state jurisdiction because the current CLARITY Act text is silent as to state authority as noted above, states could lose their core licensing authority and revenue. Without licensing fees over Exchange Act firms, many state securities commissions would not have sufficient funding to operate, harming if not eliminating the unique work that states perform in the areas of financial literacy and fraud and scam mitigation. The savings clause proposed above is the clean fix that ensures regulatory parity without unintended consequence.

3. Broaden an Existing Savings Clause

Page 26 of the CLARITY Act includes a provision for gratuitous distributions, establishing that a gratuitous distribution, on its own, is presumed not to be an offer or sale of a security. At the same time, it makes clear that this presumption does not limit or affect the anti-fraud or anti-manipulation authority of the SEC, the CFTC, or state regulators.

While NASAA applauds the attention to state fraud-fighting tools, we respectfully believe this savings clause should be moved and rescoped so that it is consistent with the Senate's intent of maintaining the states' robust fraud-fighting tools for initial and secondary transactions in addition to gratuitous distributions. Specifically, NASAA requests that Congress relocate the clause by moving it via the below edits.

Requested edits:

Page 26 — from lines 14 to 19, strike:

> "(B) Savings Clause.—Nothing in this paragraph may be construed to limit, impair, or otherwise affect the anti-fraud or anti-manipulation authorities of the Commission, the Commodity Futures Trading Commission, or a State regulator."

Page 26 — in place of the text struck from lines 14 to 19, insert as a new subparagraph:

> "(4) Savings Clause.—Nothing in this section may be construed to limit, impair, or otherwise affect the anti-fraud or anti-manipulation authorities of the Commission, the Commodity Futures Trading Commission, or a State regulator."

Renumber existing subparagraph (3)(A) as (3) and then renumber existing subparagraph (4) as (5).

4. Clarify State Authority Alongside the SEC

Section 301 directs regulators to conduct rulemaking to clarify how existing securities intermediary requirements and Bank Secrecy Act obligations apply to non-decentralized finance (non-DeFi) trading protocols. Section 301 further clarifies that nothing in the section limits the SEC's authority under the securities laws to investigate violations, bring enforcement actions, or issue subpoenas against persons who, through rulemaking, are determined to be subject to the securities laws under the section.

NASAA urges Congress to clarify that nothing in the section limits the states' authority under state securities laws to investigate violations, bring enforcement actions, or issue subpoenas against persons who, through rulemaking, are determined to be subject to the securities laws under the section.

Requested edits:

Page 144 — in line 25, insert the bolded text such that the line reads as follows:

"the Commission **or any State securities commission (or any agency or office performing like functions)** under the securities laws".

C. Prevent Unintended Narrowing by Congress of the Investment Contract (*Howey*) Analysis Through Delegation to the SEC

The CLARITY Act mentions investment contracts as part of the SEC rulemaking directive to delineate disqualifying financial interests for the purpose of defining an "ancillary asset."[13] The directive needs to be more carefully framed to avoid weakening the *Howey* test as used in both federal and state anti-fraud enforcement.

To emphasize, the well-established investment contract test is not just a powerful weapon to fight the online scam epidemic[14] but also other common investment frauds like pyramid schemes, "investment certificate offerings," and Ponzi schemes. The flexibility that is embodied in the investment contract test allows state and federal regulators to respond to the ever-changing types of frauds aimed at investors and the fraudsters who are adept at attempting to evade securities laws. This flexibility has allowed us to respond to schemes offered as "trading strategies" and "projects" that do not involve an identifiable "business entity." Upending decades of securities law – through SEC regulations, rules, and/or orders that would or may narrow the *Howey* regime – would have devastating effects on anti-fraud efforts by adding so many

[13] See pages 21-22 ("An investment contract or a certificate of interest or participation in any profit-sharing agreement that represents, gives the holder, or is substantially economically or functionally equivalent to, any of the following, as the [SEC] shall establish by rule…").

[14] As recently as 2025, the SEC continued to rely on investment contract analysis to pursue crypto asset frauds. *See* *SEC v. Ramil Ventura Palafox et al.*, Case No. 25-cv-681 (E.D. Va. Apr. 22, 2025) (complaint alleging defendant solicited $198 million in fraudulent investments in crypto asset and foreign exchange company through "membership packages" that constituted investment contracts per *Howey*); *SEC v. Morocoin Tech Corp. et al.*, Case No. 1:25-cv-04102 (D. Colo. Dec. 12, 2025) (complaint alleging defendants misappropriated at least $14 million through the sale of multiple "Security Token Offerings" that constituted investment contracts).

elements and conditions to the investment contract analysis that form, not substance, would determine whether regulators could act.[15]

Requested edits:

Page 21 — in lines 13-14, insert the bolded text such that the lines read as follows:

", as the Commission shall establish by rule**making that is limited to ancillary assets and addresses**"

This insertion, coupled with a continued focus on regulatory clarification for the definition of a "network token" in the CLARITY Act,[16] would strike the more appropriate balance between delivering clarity to the markets and protecting investment contract law.

D. Prevent Unnecessary Delegations to the SEC of Preemption Power and Regulation by Order Without Notice-and-Comment

Separately, but relatedly, NASAA categorically opposes any effort to delegate to any federal administrative agency, including the SEC and the CFTC, the authority to strip state securities and commodities regulators of their police powers. While we oppose such administrative action of any kind, we are especially opposed to any administrative action without notice-and-comment.

To begin, on page 105, the CLARITY Act would upend the longstanding cooperative federalism established by the NSMIA by granting the SEC new discretionary authority to designate, through rulemaking, additional federally-covered securities and securities transactions that would preempt associated state registration authorities.[17] Notably, this new authority is not restricted or otherwise tailored to digital assets, meaning the SEC could use it broadly across on-chain and off-chain securities markets.

This sweeping preemptive power is unnecessary. This legislation already provides the SEC with targeted rulemaking authority, and the SEC retains significant exemptive authority under existing law. Granting more unilateral discretion to the SEC—to reset the scope of federal

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[15] *See* NASAA, Congress Must Preserve State Anti-Fraud Enforcement Authority in Digital Assets Market Structure Legislation (Sep. 5, 2025)**.** *See also* NASAA, Twenty-Eight Scholars Call for the Preservation of the State Fraud-Fighting Role in Our Securities Markets (Oct. 7, 2025) (opposing earlier iteration of the CLARITY Act that sought to redefine investment contract law, stating "Given the epidemic of fraud being perpetrated against American investors, especially older investors, Congress should not be pursuing policies that will make it easier for scam artists to get away with their crimes and harder for law enforcement and regulators to act."). *See also* NASAA, PIABA Calls for the Preservation of the State Fraud-Fighting Role in Our Securities Markets (Nov. 4, 2025).

[16] See page 10 ("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 Commission by regulation."). See also page 67 ("Not later than 360 days after the date of enactment of this Act, the [SEC] shall conduct a notice and comment rulemaking as necessary or appropriate to carry out section 4B of the Securities Act of 1933, as added by subsection (a).").

[17] See page 99 (expanding SEC's exemptive authority under the Securities Act of 1933 to include "orders").

preemption—would risk upsetting the carefully calibrated balance between state securities regulators and the SEC.

Further, on page 99, the CLARITY Act would permit the SEC to "exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions" from the requirements of the Securities Act of 1933 and its implementing rules. This authority could be exercised without an explicit legislative mandate or the procedural safeguards of notice-and-comment rulemaking.

In NASAA's view, that level of discretion for the SEC is excessive. The Securities Act of 1933 and its related rules form the bedrock of federal and state securities regulation. They define what offerings must be registered, what disclosures are necessary to inform and protect investors, which investors are capable of participating in exempt offerings, and what constitutes fraud in the offer and sale of securities. These are foundational questions of investor protection and market integrity. They are too important to be altered by administrative order, especially without notice-and-comment.

In sum, federal law recognizes a presumption against preemption rooted in constitutional federalism. Congress should, therefore, be reluctant to delegate additional preemptive authority—authority that effectively reallocates sovereign power from the states to the federal government—to a federal administrative agency. Decisions that alter the federal-state balance more appropriately belong to Congress.

That concern is heightened where the authority may be exercised by order without notice-and-comment. SEC policies may shift from one administration to the next, and orders are inherently temporary. Regulation by order lacks the transparency and durability of notice-and-comment rulemaking. Capital markets depend on stability. Foundational questions of securities regulation should be resolved by Congress or, where delegated, through rigorous public rulemaking—not unilateral federal administrative action.

Requested edits:

Page 99 — from lines 1 to 13, strike:

"(b) GENERAL EXEMPTIVE AUTHORITY.—Section 28 of the Securities Act of 1933 (15 U.S.C. 77z-3) is amended, in the matter preceding to the matter relating to Schedule A—

(1) By striking "by rule or regulation" and inserting "by rule, regulation, or order"; and
(2) By adding at the end the following: "The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in the sole discretion of the Commission, decline to entertain any application for an order of exemption under this section."

Page 105 — from lines 7 to 11, strike:

"(H) Commission rules or regulations issued under section 28, except that this subparagraph does not apply to rules or regulations adopted before the date of enactment of this subparagraph."

Part II – Requested Edit to the DCIA

The DCIA currently lacks a comprehensive savings clause explicitly preserving state anti-fraud authority. While some provisions reference state powers in limited contexts, there is no overarching savings clause or rule of construction ensuring that nothing in the DCIA preempts state commodities regulators from investigating or taking enforcement action against fraud, manipulation, or other unlawful conduct. This gap creates uncertainty for regulators, market participants, and courts, and could be exploited by bad actors to challenge state enforcement.

Requested edits:

Page 51 — after line 14, insert:

"Sec. xxx. Preservation of Authority.—Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit or limit any State or local agency to investigate and bring enforcement actions regarding fraud, deceit, or unfair and deceptive acts or practices."

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