Written Testimony of

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"American Innovation and the Future of Digital Assets:
From Blueprint to a Functional Framework"

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Good morning. Thank you, Chairman Thompson, Ranking Member Craig, and Members of the Committee, for inviting me to testify today.

My name is Mike Piwowar, and I am the executive vice president of the Milken Institute's Finance Pillar and president of our newly announced Economic Mobility Alliance.[1] The Milken Institute is committed to supporting legislation that will build a workable regulatory framework to bring clarity and confidence to the digital assets market. The Digital Asset Market Clarity Act of 2025 ("CLARITY Act") crafts a framework that addresses market structure gaps, jurisdictional boundaries, and pathways for responsible innovation, thereby reinforcing the US financial system's growth, competitiveness, and resilience. As you consider next steps in the legislative process, we look forward to continuing to work on this bipartisan issue with this Committee and the US House Committee on Financial Services.

Today, my testimony will focus on the critical role that the US Securities and Exchange Commission ("SEC") plays in the regulation of our capital markets and how that expertise can be applied to digital asset markets. I have had the pleasure of serving as a visiting academic scholar, senior financial economist, commissioner, and acting chairman of the SEC. I am testifying today on my own behalf.

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The US capital markets are the envy of the world. Well-regulated competition among stock exchanges, alternative trading systems, and market makers has led to the best market quality environment for publicly traded securities in history. Transaction costs are low, market depth is high, and execution speeds are fast. Well-regulated competition among investment

[1] The Milken Institute is a nonprofit, nonpartisan think tank that promotes evidence-based research that serves as a platform for policymakers, industry practitioners, and community members to come together in catalyzing practical solutions to challenges we face both here in the US and globally. The Milken Institute's Finance Pillar conducts research and constructs programs designed to facilitate the smooth and efficient operation of financial markets—to help ensure that they are fair and available to those who need them when they need them. The Milken Institute's Economic Ability Alliance aims to foster greater collaboration and maximize our impact, increasing economic mobility for individuals of all backgrounds throughout every stage of their financial lives.

professionals—broker-dealers and investment advisers—has led to the highest standards for investor protections and the lowest costs for trading, diversification, advice, and professional management in history. Companies that issue securities benefit from the liquidity provided by the US public capital markets at a low cost of capital.

The SEC's role in fostering the historical success of our capital markets and the resulting positive effects on jobs, economic growth, and the lives of everyday Americans cannot be overstated. As we look to future innovations and capital-raising activities in digital asset markets, the critical role played by the SEC will become even more important for the United States to maintain its economic competitiveness.

I commend all the Members of this Committee, working with the US House Committee on Financial Services, as you continue to find bipartisan solutions and build bicameral consensus with the Senate to create a clear and workable regulatory framework for digital assets.

The remainder of my testimony is organized into three sections:

I. The SEC's Mission
II. Applying the SEC's Mission to Digital Asset Markets
III. Key Provisions of the CLARITY Act and Additional Recommendations

I. The SEC's Mission

The SEC's threefold mission is to protect investors; maintain fair, orderly, and efficient markets; and promote capital formation. In accordance with the explicit authorities granted by Congress, the SEC accomplishes its mission by promulgating regulations under the federal securities laws, monitoring compliance with the laws and regulations, and enforcing securities law and regulation violations.

Protecting Investors

The federal securities laws and regulations administered by the SEC contain several provisions to protect investors. Statutory and regulatory language, by their nature, are highly legalistic, but they basically boil down to this simple phrase, "Don't lie, don't cheat, don't steal."

Don't Lie

The backbone of the SEC's investor protection mandate is disclosure. The SEC requires public companies and key market participants such as brokers, dealers, investment advisers, and investment companies to disclose meaningful, accurate, and timely information to the public. Access to this information provides investors with a common pool of basic facts that allows them to determine whether to buy, sell, or hold securities and how to vote their shares.

Unlike merit-based regimes where regulators have the power to deem securities offerings "too risky" or "unsuitable" to be approved, our disclosure system comports well with American traditions of self-reliance, pioneering spirit, and rugged individualism. As former Supreme Court Justice Louis Brandeis famously wrote, "sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[2] By arming investors with information, they can evaluate and

[2] Louis D. Brandeis, "What Publicity Can Do," Harper's Weekly, Dec. 20, 1913, reprinted in Louis D. Brandeis, Other People's Money and How the Bankers Use It, (Frederick A. Stokes Co., 1914).

make informed investment decisions that support more accurate securities valuations and a more efficient allocation of capital.

Don't Cheat

The SEC requires market participants to deal fairly with their customers. For example, brokers must comply with a best-interest standard when they provide recommendations to Main Street investors. This standard requires brokers to act in the best interest of their customers and not place their own interests ahead of the customer's.

Similarly, investment advisers owe a fiduciary duty to their customers when providing investment advice. This duty is comprised of both a duty of care and a duty of loyalty. The duty of care requires an investment adviser to provide investment advice in the best interest of its client, based on the client's objectives, and to provide advice and monitoring over the course of the relationship. The duty of loyalty requires an investment adviser to disclose or address all conflicts of interest between the adviser and its client.

When executing customer orders to buy or sell securities, the SEC allows brokers to choose which trading venue to direct the orders. The broker may direct the order to the exchange where the stock is listed, a different exchange, an alternative trading system, or a market maker.

The SEC also allows brokers to enter into payment for order flow arrangements. Market makers may pay brokers for routing orders to them so long as they fulfill their best execution obligations. A broker must consider multiple factors when seeking the best execution of customers' orders, including the opportunity to get a better price than what is currently quoted (price improvement), the speed of execution, and the likelihood that the trade will be executed.[3]

Payment for order flow arrangements could represent a conflict of interest between their broker and their customer. Brokers may choose to route customer orders to the market maker that offers the highest payment to the broker rather than to the trading venue that offers the best execution for the customer. However, the SEC's best execution requirements mitigate this conflict of interest.

Don't Steal

The SEC protects customers' property (securities and cash) held at broker-dealers from being misappropriated (i.e., stolen) through a rigorous financial responsibility framework. Two SEC rules form the foundation of this framework. The SEC's customer protection rule (Rule 15c3-3) is designed to ensure that customer property in the custody of broker-dealers is adequately safeguarded and not used by the broker-dealer in their business. The SEC's uniform net capital rule (Rule 15c3-1) requires all broker-dealers to always have sufficient liquid resources on hand to satisfy customer and creditor claims promptly in the event the firm fails.

Maintaining Fair, Orderly, and Efficient Markets

The SEC's regulatory framework for the US equity markets is complicated. It reflects a complex system of legal and regulatory decisions made over decades, and the markets have evolved within this framework into a highly interconnected system.

[3] See Fast Answers – Best Execution, (May 9, 2011), available at https://www.sec.gov/fast-answers/answersbestexhtm.html

I like to say that the underlying US equity market structure represents the gears that turn the clock of the capital markets.[4] From the moment we get up in the morning until the moment we turn out the lights at night, we rely on clocks to order our days. Yet most people will never open a clock to inspect the gears that make it work, much less comprehend the operation of the complex and interrelated system sitting behind it. In the same way, most Main Street investors and business owners who rely on the capital markets will never dig into the details of market structure. They may never understand the way that SEC regulations on things like tick sizes, the order protection rule, or maker-taker pricing function. But they rely on them every day to raise capital, invest in securities, and save for retirement.

Thus, the details of market structure matter, not just because industry participants, regulators, and academics like to debate them, but because they ensure the fair and orderly operation of our complex financial markets. Ultimately, the efficiency of these markets is what allows our capital markets to drive the economy in ways that benefit all Americans. The SEC recognizes that the appropriate market structure for equity markets is not the same as it is for the markets of other securities they oversee, such as corporate bonds, municipal bonds, and security-based swaps.

The SEC also recognizes that changes to existing market structure policy always involve tradeoffs. When the SEC operates at its best, it makes use of two tools to evaluate whether, and if so, how to make changes as the markets evolve.

The first is economic analysis. The lens of economic analysis is well-suited for evaluating tradeoffs. In 2012, the Commission recognized the importance of going beyond statutory obligations and mere quantitative exercises to incorporate comprehensive economic analysis in the rulemaking process by adopting "Current Guidance on Economic Analysis in SEC Rulemaking" ("Current Guidance").[5]

The second is retrospective reviews of existing rules. The only constant in financial markets is change. Markets and technologies are continually evolving. The SEC recognizes that if we want our capital markets to remain the envy of the world, our regulatory framework needs to evolve with them. Retrospective reviews of market structure and rules by the SEC ensure that they are not outdated, obsolete, or overly burdensome.

Promoting Capital Formation

The oft-forgotten third part of the SEC's mission is to promote capital formation. The Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 require the SEC to "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and *capital formation*" when it is engaged in rulemaking.[6]

Just as the disclosure of meaningful, accurate, and timely information to the public protects investors, it also improves capital formation. False and misleading information not only can cost investors' money *ex post*, but it also impedes capital formation by discouraging investment *ex*

[4] See Remarks at FINRA and Columbia University Market Structure Conference, Speech by Commissioner Michael S. Piwowar (Oct. 26, 2017), available at https://www.sec.gov/newsroom/speeches-statements/speech-piwowar-2017-10-26.
[5] Current Guidance on Economic Analysis in SEC Rulemaking, (Mar. 16, 2012), available at http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.
[6] See, e.g., 15 U.S.C. § 77b(b); 15 U.S.C. § 78c(f); 15 U.S.C. § 80a-3(c)(1)(B) (emphasis added).

ante. It contributes to increased volatility in the markets and leads to the inefficient distribution of capital.

However, the SEC must guard against requiring too much information that is burdensome for public companies to provide. Thankfully, the Supreme Court has provided guidance on the legal standard of materiality. Former Supreme Court Justice Thurgood Marshall, writing for a unanimous Supreme Court in the seminal case of *TSC Industries v. Northway*, stated, "[t]he question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor."[7] Justice Marshall expressed his concern that an unnecessarily low standard of materiality and the resulting fear of exposure to substantial liability might cause issuers to "simply bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decision making."[8]

II. Applying the SEC's Mission to Digital Asset Markets

The SEC's traditional mission of protecting investors, maintaining fair, orderly, and efficient markets, and promoting capital formation for the capital markets is easily applied to digital asset markets. The CLARITY Act provides the foundational authority for a regulatory framework that aligns the mission with the functional application to these markets.

Protecting Investors

Digital asset investors should have the same investor protections as securities investors. For too long, US investors in digital assets have not had adequate protections under the federal securities laws. The SEC's investor protection framework of "Don't lie, don't cheat, don't steal" fits perfectly with digital asset markets.

The SEC's disclosure regime can be effectively tailored to digital assets, as it already has been tailored for a diverse range of securities offerings that have evolved over time, such as public companies, open-end mutual funds, closed-end funds, money market funds, exchange traded funds, business development companies, security-based swaps, etc. I am pleased to see the CLARITY Act directs the SEC to provide disclosure of specific information unique to digital assets.

The SEC's fair dealing requirements should be applied to digital asset markets, where appropriate. Brokers and investment advisers should be subject to the same best interest standards and fiduciary duties when providing recommendations or advice or facilitating customer orders for digital assets as they do for securities. In other words, digital asset investors working with intermediaries expect to have the same protections.

The SEC's rigorous financial responsibility framework should be applied and adapted to protect customers' digital assets held at broker-dealers. The SEC's customer protection rule and uniform net capital rule can easily be amended to safeguard digital assets held in custody and protect customer claims in the event of the firm's failure.

[7] 426 U.S. 438, 445 (1976).
[8] Ibid, at 448-49.

Maintaining Fair, Orderly, and Efficient Markets

The appropriate regulatory framework for digital asset market structure will require the SEC to use economic analysis to determine the costs and benefits of various alternatives. The SEC's experience overseeing markets for a diverse set of securities—equities, corporate bonds, municipal bonds, and security-based swaps—will serve it well as it establishes a regulatory framework for the trading of digital assets.

As the digital asset markets evolve, the SEC must keep pace with changes in market conditions and technologies and conduct retrospective reviews of existing rules to determine any necessary changes in regulatory policy.

The CLARITY Act restricts insider sales of digital assets following a primary offering to protect retail investors, in a manner similar to the SEC's insider lockup periods following an initial public offering (IPO). A lockup period helps stabilize the market price following a public offering by preventing a flood of additional sales in the early days of trading.

Promoting Capital Formation

The SEC's experience striking the right balance of disclosures for investors, giving them just what they need—not too much, not too little—to make informed investment decisions to buy, sell, or hold securities, is exactly what is needed in the digital asset markets. A similar consideration for striking the right balance for issuers of securities— not too burdensome, not too sparse—is also what is needed for capital-raising issuers of digital assets that fall under the SEC's jurisdiction.

The CLARITY Act establishes a critical role for the SEC to provide transparency for new digital commodity issuances. Like primary offerings of public companies, the SEC will ensure that investors have helpful information about primary offerings of digital assets to make informed decisions. The CLARITY Act also recognizes that meaningful information about the digital commodity issuer changes over the maturation of the blockchain system. It provides for a ratcheting down of disclosure requirements as the digital commodity issuer is no longer in control of the blockchain system and eventually no longer a meaningful part of the development process.

Recent SEC Actions Involving Digital Assets

The day after being designated as Acting Chairman of the SEC on January 20, 2025, Commissioner Mark Uyeda created the SEC's Crypto Task Force, dedicated to developing a comprehensive and clear regulatory framework for crypto assets, and designated Commissioner Hester Peirce to lead it.[9] The Task Force has been busy over the past four months. Here are a few examples of their public-facing activities:

- Hosting four public roundtables on the topics of defining security status, tailoring SEC regulation for crypto trading, key considerations for crypto custody, and the intersection of traditional finance ("TradFi") and decentralized finance ("DeFi").[10] The Task Force will hold their fifth public roundtable next week on the topic of DeFi and the American Spirit.

[9] See https://www.sec.gov/newsroom/press-releases/2025-30.
[10] See https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables.

- Inviting public comment on 48 detailed questions to help the Task Force work through several crypto regulatory questions on topics such as security status, public offerings, safe harbors from registration, trading, custody, crypto lending, crypto exchange-traded products (ETPs), tokenized securities, and cross-border challenges.[11]
- Meeting with more than 100 organizations and firms involved with digital assets.[12]

The SEC's Crypto Task Force has also been coordinating with other SEC Divisions and Offices, resulting in several notable public releases, including:

- Acting Chairman Mark Uyeda announced the creation of a new Cyber and Emerging Technologies Unit, consisting of 30 fraud specialists and attorneys, to focus on combating cyber- and crypto-related misconduct and to protect retail investors from bad actors.[13]
- The Office of Investor Education and Advocacy has published several online resources for retail investors considering investments involving crypto assets.[14]
- The Division of Corporation Finance issued staff statements on Meme Coins, Proof-of-Work Mining Activities, Stablecoins, Offerings and Registrations of Securities in the Crypto Asset Markets, and Proof-of-State Protocol Staking Activities.[15]
- The Division of Trading and Markets issued a list of frequently asked questions (FAQs) relating to crypto asset activities and distributed ledger technology.[16]
- The Office of the Chief Accountant rescinded Staff Accounting Bulletin 121 ("SAB 121").[17]

III. Key Provisions of the CLARITY Act and Additional Recommendations

The recently introduced CLARITY Act represents a comprehensive, clear, and commonsense approach to establish a regulatory framework for digital assets in the United States. I commend the Members of this Committee and your staff for your diligent work and your engagement with the public.[18]

The CLARITY Act contains several provisions that authorize the SEC to do its part in establishing the US digital asset markets as the best in the world. These include the following:

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[11] See https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125.
[12] See https://www.sec.gov/about/crypto-task-force/crypto-task-force-meetings.
[13] See https://www.sec.gov/newsroom/press-releases/2025-42.
[14] See https://www.investor.gov/additional-resources/spotlight/crypto-assets.
[15] See https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins, https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025, https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425, https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025, https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.
[16] See https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology.
[17] See https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122.
[18] I want to specifically thank you for your responsiveness to the comment letter that my colleagues Nicole Valentine and Max DeGregorio and I submitted on the Discussion Draft. See https://milkeninstitute.org/content-hub/government-affairs/comment-letters/2025-digital-assets-market-structure-discussion-draft.

- Providing clear guidelines to digital commodity issuers and the SEC on which activities fall under SEC jurisdiction.
- Requiring the SEC (and CFTC) to coordinate with foreign regulators to promote consistent international standards for digital asset market regulations and permitting them to enter into information-sharing arrangements to protect investors.
- Prohibiting certain sales by project insiders that would harm retail investors.
- Providing the SEC with anti-fraud enforcement authority over SEC-registered entities involving transactions with stablecoins and digital commodities.
- Providing the SEC with anti-fraud and anti-manipulation enforcement authorities over exempted decentralized finance activities.
- Modernizing books and records requirements for broker-dealers and exchanges by allowing them to use blockchain technology.
- Providing additional flexibility for the SEC to use its exemptive authority.
- Adding "innovation" to the SEC's mission and establishing offices of innovation within each division of the SEC.
- Requiring the SEC, CFTC, and GAO to conduct studies on decentralized finance, non-fungible tokens (NFTs), market infrastructure improvements needed to facilitate the development of tokenized securities and derivatives, and improving financial literacy for digital asset investors.

As this Committee, working with the US House Committee on Financial Services, considers next steps in the legislative process, I would like to offer a few recommendations to consider.

Continue to Rely on SEC and CFTC Member and Staff Expertise

The CLARITY Act is appropriately detailed and technical. It is clear to me that you have incorporated feedback from the highly capable Members and staff experts at the SEC and CFTC. As you consider next steps in the legislative process, I urge you to continue to rely on their expertise.

The SEC's Crypto Task Force is an all-star team of incredibly smart people, some of whom I know personally and others by reputation.[19] They are increasing their already high level of expertise on digital asset markets by engaging with members of the public through meetings, information requests, and roundtable discussions.[20]

The Crypto Task Force is led by Commissioner Hester Peirce. I can think of no better person to lead this august group. A few years ago, Commissioner Peirce was nicknamed "Crypto Mom" by the crypto community due to her dedication to providing clarity on the application of the federal securities laws to digital asset markets and for adopting practical and workable policies to protect investors and foster innovation.

I will offer one cautionary example of what happens when SEC staff expertise is not incorporated into highly technical legislation that grants authorities and requires rulemakings under their jurisdiction. Title VII of the 2010 Dodd-Frank Act created a new regulatory framework for over-the-counter derivatives and divided jurisdiction between the CFTC (for

[19] While I am not as familiar with many of the CFTC staff working on these issues, I have always been impressed with their expertise on issues under their jurisdiction.
[20] See https://www.sec.gov/about/crypto-task-force.

"swaps") and the SEC (for "security-based swaps").[21] The legislative language, which was written with substantial input from then-CFTC Chairman Gary Gensler, did not incorporate any feedback from the SEC. As a result, SEC rulemakings were unnecessarily delayed for years, and limited SEC resources were diverted from their core mission to fix problems that could have easily been avoided.

Maximize Self-Effectuating Statutes and Minimize Joint Rulemaking

As a former Senate staffer who worked on legislative text and a former regulator who had to implement complex legislation, I think there is both a "science" and an "art" to drafting legislation. The science involves getting the technical definitions and legal language correct, addressing conforming amendments to existing legislation, etc. The art of legislation involves identifying alternative language that makes implementation more efficient and effective.

The use of self-effectuating statutes that do not require any rulemaking is a great tool. Wherever possible, I urge the Committee to consider using self-effectuating statutory language. For example, if the Committee decides that the SEC should use its exemptive authority on a particular issue, one way to draft the language is to say, "The SEC shall exempt *XYZ*…" But that would require the SEC to act—i.e., issue a rule, regulation, or order—and use scarce resources that could be better deployed elsewhere. A better way to draft the language would be to say, "*XYZ* is exempt…" The language would be effective upon enactment, and the SEC would not need to do any additional work.

Title I of the Jumpstart Our Business Startups Act ("JOBS Act") of 2012 provides an excellent example of self-effectuating language.[22] Title I created a new "emerging growth company" ("EGC") designation for smaller companies going public and provided them with temporary scaled disclosures (a regulatory "on-ramp") and other benefits. It directly amended the Securities Act of 1933 and the Securities Exchange Act of 1934 and did not require any SEC rulemaking. Academic research finds that Title I immediately increased IPO volumes.[23]

Provide New Statutory Clarity on Investment Contracts

The CLARITY Act creates a new definition of "investment contract assets" to exclude digital commodities sold pursuant to an investment contract from being considered investment contracts themselves. I believe this is a clever way to provide much-needed clarity in the context of digital commodities.

The bill carefully excludes only specific types of investment contracts from the definition of "digital commodity," recognizing that the definition of "investment contract" in the Securities Act of 1933 and the Securities Exchange Act of 1934 is very broad.[24] I suggest this Committee work with the US House Committee on Financial Services to go one step further and narrow the statutory definition of "investment contract" itself.

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[21] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).
[22] Jumpstart Our Business Startups Act, Pub. L. No. 112-106 (2012).
[23] See, e.g., The JOBS Act and IPO Volume: Evidence that Disclosure Costs Affect the IPO Decision, Michael Dambra, Laura Field, and Matthew Gustafson, Journal of Financial Economics, Vol. 116, No. 1 (2015).
[24] See 15 U.S.C. §§ 77b-77c.

When the SEC has been faced with the determination of whether an investment contract exists under certain facts and circumstances, it has had to rely on prior Court cases. The most well-known example is the "Howey Test" from the 1946 Supreme Court case *SEC v. W.J. Howey Co.*[25] The Supreme Court's opinion states that the Howey Test embodies a "flexible rather than a static principle."[26] While a flexible approach has the benefit of being adaptable to new situations, decades of regulatory experience and several subsequent court cases show that it would be helpful if Congress could narrow the statutory definition of investment contract.

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Thank you for moving forward on the critical issue of providing a clear and workable regulatory framework for digital asset markets in the United States. And thank you for the opportunity to testify on the critical role that the SEC, working with the CFTC, will provide in promulgating, administering, and enforcing regulations that protect investors, establish and maintain market integrity, and foster responsible innovation. I am happy to answer any questions you may have.

[25] 328 U.S. 293, 301 (1946).
[26] 328 U.S. at 299 (emphasis added).