

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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August 30, 2022

The Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chairman Gensler:

I write to request information and documents about the work that the Securities and Exchange Commission (SEC) is doing to combat cryptocurrency-related fraud. Cryptocurrencies have become scammers' favored means of payment as well as their preferred bait for unsuspecting victims. The annual amount of cryptocurrency lost to fraud is on track to surpass \$1 billion in 2022.¹ Multimillion-dollar cryptocurrency scams have become a regular occurrence.² As shown by recent Department of Justice indictments, these scams take many forms, including as commodity scams, fraudulent coin offerings, and sham investment platforms.³ Given the growing popularity of cryptocurrencies both as a form of payment and as an investment, I am concerned by the rapid growth of fraud and consumer abuse. I am also concerned by the apparent lack of a consensus or coordinated action from executive branch agencies to classify and regulate cryptocurrencies in order to prevent fraud and abuse.

Cryptocurrency is a form of digital currency based on an immutable digital ledger technology called blockchain. Cryptocurrency is kept in an anonymous digital wallet and can be bought, sold, or traded. These transactions occur on cryptocurrency exchanges and cannot be reversed once made. Bitcoin, one of the most popular cryptocurrencies, launched in 2009, and there are now thousands of cryptocurrencies available. To take advantage of public interest in

¹ Federal Trade Commission, *Data Spotlight: Reports Show Scammers Cashing in on Crypto Craze* (June 3, 2022) (online at www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze).

² See, e.g., Commodity Futures Trading Commission, *Press Release: CFTC Charges South African Pool Operator and CEO with \$1.7 Billion Fraud Involving Bitcoin* (June 30, 2022) (online at www.cftc.gov/PressRoom/PressReleases/8549-22). See also Department of Justice, *Press Release: BitConnect Founder Indicted in Global \$2.4 Billion Cryptocurrency Scheme* (Feb. 25, 2022) (online at www.justice.gov/opa/pr/bitconnect-founder-indicted-global-24-billion-cryptocurrency-scheme).

³ See, e.g., Department of Justice, *Press Release: Justice Department Announces Enforcement Action Charging Six Individuals with Cryptocurrency Fraud Offenses in Cases Involving Over \$100 Million in Intended Losses* (June 30, 2022) (online at www.justice.gov/opa/pr/justice-department-announces-enforcement-action-charging-six-individuals-cryptocurrency-fraud).

cryptocurrency, developers use initial coin offerings (ICOs) to secure investments in new cryptocurrencies prior to launch. Despite recent heavy losses to the value of many digital assets, cryptocurrencies continue to have a global market cap in excess of \$1 trillion.

As stories of skyrocketing prices and overnight riches have attracted both professional and amateur investors to cryptocurrencies, scammers have cashed in. The lack of a central authority to flag suspicious transactions in many situations, the irreversibility of transactions, and the limited understanding many consumers and investors have of the underlying technology make cryptocurrency a preferred transaction method for scammers.⁴ Consumer interest has also driven the creation of fraudulent cryptocurrencies, in which developers create tokens, list them on exchanges, and generate investments before absconding with investors' dollars. Chainalysis, a blockchain data platform, noted that these so-called "rug pulls" accounted for roughly 37% of cryptocurrency scam revenue in 2021, compared to 1% in 2020.⁵

The private sector has taken some steps to protect consumers and investors and curb cryptocurrency fraud. Code audits, where a third-party evaluates the terms of a digital asset, can identify and warn consumers of the vulnerabilities that make fraud schemes possible.⁶ Open-source investigators and organizations such as RugDocs conduct audits and warn potential investors of the risks of certain digital assets.⁷ Some exchanges also maintain insurance policies to cover consumer losses from criminal activity.⁸ However, significant risk remains. Consumers are often unaware of the current patchwork of resources available to inform their investing decisions, and insurance companies are wary to provide insurance to individual consumers given the lack of regulation of digital assets.

⁴ Federal Trade Commission, *Data Spotlight: Reports Show Scammers Cashing in on Crypto Craze* (June 3, 2022) (online at www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze). Although FinCEN has released guidance discussing how the Bank Secrecy Act applies to virtual currencies, questions remain as to how well this law can regulate decentralized exchanges that use an automated program to facilitate transactions among a network of users. FinCEN's 2019 guidance notes that a "trading platform [that] only provides a forum where buyers and sellers ... post their bids and offers..., and [where] the parties themselves settle any matched transactions through an outside venue, ... does not qualify as a money transmitter under FinCEN regulations." Department of the Treasury, Financial Crimes Enforcement Network, *Guidance: Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies* (FIN-2019-G001) (May 9, 2019) (online at www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf). Such decentralized exchanges pose significantly greater risks to investors, making regulation particularly important. See, e.g., *6 Common Crypto Scams, and How Investors Can Protect Their Coins*, Next Advisor (May 16, 2022) (online at <https://time.com/nextadvisor/investing/cryptocurrency/common-crypto-scams/>).

⁵ Chainalysis, *The 2022 Crypto Crime Report* (Feb. 2022) (online at <https://go.chainalysis.com/rs/503-FAP-074/images/Crypto-Crime-Report-2022.pdf>).

⁶ *Id.*

⁷ *The "Rug Doctor" Who Advises Crypto Investors Against "Horrible" DeFi Scams*, Yahoo Finance (Mar. 5, 2022) (online at <https://finance.yahoo.com/news/this-rug-doctor-has-a-message-for-crypto-investors-hungry-for-de-fi-returns-162804016.html>); *Twitter Vigilantes Are Hunting Down Crypto Scammers*, Wired (Nov. 15, 2021) (online at www.wired.com/story/twitters-crypto-vigilantes-are-just-getting-started/).

⁸ *Can You Insure Bitcoin? Here's What You Need to Know*, CNET (Feb. 23, 2022) (online at www.cnet.com/personal-finance/crypto/can-you-insure-bitcoin/).

Despite these vulnerabilities, the federal government has been slow to curb cryptocurrency scams and fraud. Existing federal regulations do not comprehensively or clearly cover cryptocurrencies under all circumstances. Holdings in cryptocurrency and other digital assets are not held by traditional deposit insurance institutions, which are subject to a broad array of federal regulations.⁹ Debates continue among U.S. government authorities as to whether cryptocurrencies should be treated as securities, commodities, or both in various circumstances.¹⁰ For example, the SEC is currently in a protracted legal battle with Ripple, a cryptocurrency firm, on this issue, the result of which threatens to hinder the Commission's ability to regulate cryptocurrency going forward.¹¹ Likewise, the SEC's first cryptocurrency-related insider trading action drew criticism from a commissioner of the Commodity Futures Trading Commission (CFTC), who called the SEC's filing "regulation by enforcement" and suggested that the CFTC, through the Commodity Exchange Act, was better situated to combat crypto-related fraud.¹² Without clear definitions and guidance, agencies will continue their infighting and will be unable effectively to implement consumer and investor protections related to cryptocurrencies and the exchanges on which they are traded.¹³

For all these reasons, I am concerned about the growth of fraud and consumer abuse linked to cryptocurrencies. Congress may need to pass legislation to help bring stability to the digital asset industry and protect consumers from investment fraud and abuse, but more information is needed to understand what the relevant federal agencies are already doing, both individually and through the interagency process.

To assist the Subcommittee in its review of this matter, by September 12, 2022, please produce the following documents dated from January 1, 2009, to the present:

1. All policies, guidance, or other official documents regarding SEC's efforts to combat crypto-related scams and fraud and inform consumers about the risks related to investments in cryptocurrencies, excluding documents related to specific investigations or enforcement actions conducted by the agency;

⁹ *Now Might Be a Good Time to Think About Crypto Insurance*, Vox (June 17, 2022) (online at www.vox.com/recode/23171782/crypto-terra-ust-celsius-meltdown-crash-insurance).

¹⁰ *Bipartisan Crypto Regulatory Overhaul Would Treat Most Digital Assets as Commodities Under CFTC Oversight*, CNBC (June 7, 2022) (online at www.cnbc.com/2022/06/07/bipartisan-crypto-bill-lummis-and-gillibrand-want-to-empower-cftc-treat-digital-assets-like-commodities.html); *Bitcoin Is the Only Coin the SEC Chair Will Call a Commodity*, Axios (June 28, 2022) (online at www.axios.com/2022/06/28/bitcoin-is-the-only-coin-the-sec-chair-will-call-a-commodity).

¹¹ *See SEC's Crypto Crusade at Risk in Looming Legal Battle*, Politico (Jan. 29, 2022) (online at www.politico.com/news/2022/01/29/crypto-industry-lawsuits-sec-00002580). See also *SEC Slapdown Is a Wake-Up Call to Congress*, Forbes (July 17, 2022) (online at www.forbes.com/sites/roslynlayton/2022/07/17/sec-slapdown-is-a-wake-up-call-to-congress/?sh=2d30d7f02fbd).

¹² Commodity Futures Trading Commission, *Statement of Commissioner Caroline D. Pham on SEC v. Wahi* (July 21, 2022) (online at www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072122).

¹³ *Urgency Builds Around Crypto's Regulatory Clarity in the U.S.*, Axios (June 14, 2022) (online at www.axios.com/2022/06/14/crypto-regulation).

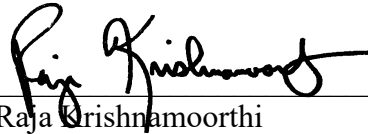
2. All policies, guidance, or other official documents regarding SEC's authority to identify and investigate potentially fraudulent digital assets or accounts used on cryptocurrency exchanges associated with illicit activities;
3. All policies, guidance, or other official documents setting out SEC's regulatory authority concerning cryptocurrencies, cryptocurrency exchanges, or crypto-related fraud and abuse; and
4. All policies, guidance, or other official documents setting out the existing framework for interagency cooperation on the regulation of cryptocurrencies, cryptocurrency exchanges, and other digital assets.

The Subcommittee also requests answers to the following questions by September 12, 2022:

1. What tools, including but not limited to code audits, disclosure requirements, or consumer alerts, could provide consumers with additional information to better assess the risks associated with a digital asset?
2. What regulatory processes could be put in place to ensure that digital assets made available for sale or investment contain sufficient consumer and investor protections? Does SEC have existing plans to put those regulatory processes in place? If yes, what is the timeline for implementing them?
3. Should cryptocurrency holdings be treated as commodities, securities, or both? Please explain.
4. Besides SEC, which other executive branch agencies or institutions play a role to play in regulating cryptocurrencies and addressing cryptocurrency-related scams and frauds? Please explain.
5. What is the existing framework for interagency cooperation on the regulation of cryptocurrencies, cryptocurrency exchanges, and other digital assets? What formal policies, guidance, or other documents coordinating such cooperation?

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Subcommittee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,

A handwritten signature in black ink, appearing to read "Raja Krishnamoorthi", written over a horizontal line.

Raja Krishnamoorthi
Chairman

Subcommittee on Economic and Consumer Policy

Enclosure

cc: The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.