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Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005

U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Toomey,

The Competitive Enterprise Institute (CEI) responds to your request for legislative proposals to clarify rules around cryptocurrencies and blockchain technology (collectively distributed ledger technology, 'DLT' projects).[1] CEI proposes two actions that would clarify rules and encourage innovation in this emerging and increasingly important field. The first proposal excludes DLT projects from the definition of 'investment contract' in the Securities Act of 1933, thereby removing them from Securities and Exchange Commission (SEC or Commission) jurisdiction. Alternatively, the second proposal eases access to private-capital markets for crypto entrepreneurs via modifications to Regulation A and Regulation Crowdfunding. CEI stands ready to assist staff in implementing these proposals.

I. Proposal 1: Exclude DLT Projects from the Definition of Investment Contract in the Securities Act of 1933.

Congress included 'investment contract' as one of the enumerated instruments deemed a security in the Securities Act of 1933.[2] Congress did not define this term in either the statute or its legislative history.[3] The state-level securities laws, known as 'Blue Sky laws,' from which the term apparently derived also did not define it.[4] Nonetheless, through judicial interpretation it came to mean "the placing of capital or laying out of money in a way intended to secure income or profit from its employment."[5]

In *SEC v. W.J. Howey Co.*,[6] the Supreme Court interpreted investment contracts. This case involved a company selling orange grove acreage in divided parcels. A subsidiary company cultivated, harvested, and marketed the citrus crops.

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[1] Toomey Requests Feedback on Clarifying Laws Around Cryptocurrency and Blockchain Technologies, U.S. Senate Committee on Banking, Housing, and Urban Affairs, August 26, 2021, https://www.banking.senate.gov/newsroom/minority/toomey-requests-feedback-on-clarifying-laws-around-cryptocurrency-and-blockchain-technologies.
[2] § 2(1) of the Securities Act [15 U.S.C. § 77b(a)(1)].
[3] *SEC v. Howey Co.*, 328 U.S. 293, 298 (1946).
[4] *Id.*
[5] *See e.g., State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 56 (1920).
[6] 328 U.S. 293 (1946).

In the now familiar *Howey* Test, the Court created the three-pronged test (sometimes separated to four prongs) for when an instrument's offer and sale creates an investment contract and thus implicates the federal securities laws. These are: (i.) an investment of money in a common enterprise; (ii) with a reasonable expectation of profits, (iii.) based solely on the efforts of others. The Court designed the test to capture "economic reality" and disregard form for substance.[7]

Courts and the Commission still analyze unconventional offerings for potential violations through the *Howey* test. But decades hence, they have stretched its prongs beyond any limiting principle. Moreover, additional prongs and escape hatches have been added to fit uncontemplated scenarios. As explained *infra*, the test now only serves power-hungry bureaucrats seeking to extend control over economic interactions unfathomable in the original decision.

1. *Howey* Prong One: An Investment of Money in a Common Enterprise

Courts have discarded *Howey's* requirement for monetary investments to now include goods, services, or any possible consideration. "[I]n spite of *Howey's* reference to an 'investment of money,' it is well established that cash is not the only form of contribution or investment that will create an investment contract."[8] For DLT projects, the SEC includes so-called 'bounty programs' where people receive tokens for finding potential software bugs or posting positive social-media posts.[9] It has even extended the prong to 'air drops' where participants may receive tokens based on ownership of a separate token, placed in their crypto wallets possibly without their knowledge or consent, on the basis that promoting circulation may provide an economic benefit to project creators.[10]

Thus, in the decades since *Howey*, the SEC has rewritten "an investment of money" to include an unsolicited gift of tokens that vest no equity, and that the receiver may never utilize. This interpretation demonstrates the test's incongruity with blockchain economics or DLT project business models. As SEC Commissioner Hester Peirce, stated, "The SEC's approach . . . has made it extremely difficult for a company to distribute a token—a process that typically includes planning for a future in which people use the network and talking positively about its prospects for success—without running into a charge that the company is engaged in a securities offering."[11]

2. *Howey* Prong Three: Based Solely on the Efforts of Others

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[7] *Howey*, 328 U.S. at 298.
[8] *Uselton v. Comm. Lovelace Motor Freight, Inc*., 940 F.2d 564, 574 (10th Cir. 1991).
[9] *In re Tomahawk Exploration LLC*, Securities Act Rel. 10530 (Aug. 14, 2018) (issuance of tokens under a so-called "bounty program" constituted an offer and sale of securities because the issuer provided tokens to investors in exchange for services designed to advance the issuer's economic interests and foster a trading market for its securities).
[10] The Commission justifies this position via *SEC v. Sierra Brokerage Servs., Inc*., 608 F. Supp. 2d 923, 940–43 (S.D. Ohio 2009), *aff'd,* 712 F.3d 321 (6th Cir. 2013). See *In re Tomahawk*, at 7, citing *Sierra Brokerage*, "[A] 'gift' of a security is a 'sale' within the meaning of the Securities Act when the donor receives some real benefit."
[11] Comm. Hester Peirce, *Running on Empty: A Proposal to Fill the Gap Between Regulation and Decentralization*, February 6, 2020, https://www.sec.gov/news/speech/peirce-remarks-blockress-2020-02-06.

A second *Howey* prong the Commission and judiciary has expanded beyond limit is that investors be passive and rely solely on third-party managers to realize gains. In 1973, the Ninth Circuit diluted this prong to "undeniably significant" efforts.[12] Later the Fifth Circuit merely required "essential efforts."[13] Indeed, judicial precedent now holds this *Howey* prong is satisfied even if the investors are "general partners" with voting rights,[14] or if the investors put forth most of the labor to make the enterprise successful.[15] For its part, the SEC now asserts anything more than "ministerial" or "routine tasks"[16] satisfies this prong.

Again, the Commission fails to grasp the realities of creating and growing DLT projects. No matter how essential or undeniably significant the original entrepreneurs and programmers are to creating a new DLT project, early adopters, whether token purchasers, transaction validators, or simply bloggers and tweeters are no less essential or significant. Unlike orange-grove stakes, DLT projects cannot succeed without many and varying groups performing different roles. No one is passive.

3. Invented *Howey* Prong: Secondary Trading

Not only have the courts and Commission expanded the *Howey* prongs beyond its original limits, but the Commission has *sua sponte* added factors the original case never considered. One is secondary trading. As CEI Senior Fellow John Berlau states, "Whether the oranges from the Howey groves could be sold in different markets was never at issue in the 1946 Supreme Court case. The Court deemed the interests in the groves to be securities because of participants' right to a share of the profits and provisions in the specific service contracts that obligated the original owner to maintain the groves for the participants' benefit."[17] Yet the SEC's most prominent guidance mentions secondary markets seven times. The Commission seems to derive this prong from a 1985 case about non-security Certificates of Deposit, which became investment contracts because Defendant Merrill Lynch's economic power allowed it to provide a secondary market for Plaintiff-purchased CDs.[18] Whatever the merits of that case, its application to DLT projects is inapt. Liquidity is not a tangential factor to DLT project success, it is crucial.

4. Invented *Howey* Test Escape Clause: Decentralization

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[12] *SEC v. Glenn W. Turner Enters., Inc*., 474 F.2d 476, 482 (9th Cir. 1973).
[13] *Long v. Shultz*, 881 F.2d 129, 137 (5th Cir. 1989).
[14] *SEC v. Merchant Capital, LLC*, 483 F.3d 747 (11th Cir. 2007).
[15] *Glenn W. Turner*, 474 F.2d at 482.
[16] Framework for 'Investment Contract' Analysis of Digital Assets, Securities and Exchange Commission, Division of Corporation Finance, April 3, 2019, https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.
[17] John Berlau, *Cryptocurrency and the SEC's Limitless Power Grab*, April 11, 2019, CEI ON POINT, No. 253, https://cei.org/sites/default/files/John_Berlau_-_Cryptocurrency_and_the_SEC_s_Limitless_Power_Grab.pdf.
[18] *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230, 240-241 (2d Cir. 1985).

A second concept absent from *Howey* analysis is decentralization. This newer concept arrived at the Commission via a 2018 speech by former Corporation Finance Director William Hinman.[19] Since Mr. Hinman's departure, the Commission has disavowed his remarks in the ongoing *SEC v. Ripple* litigation.[20] Nonetheless, the reversal and resulting confusion in itself shows how unhinged current Commission efforts to place DLT projects into the *Howey* framework have become—a fact only Commissioner Peirce seems willing to admit.[21]

5. The SEC's Botched Guidance

The Commission's DLT disarray emerged in its only substantive try at clarity. In 2019, Commission staff, led by Senior Advisor for Digital Assets and Innovation, Valerie Szczepanik, published a 13-page 'Framework for "Investment Contract" Analysis of Digital Assets.'[22] The document attempted to apply the *Howey* prongs for DLT projects. It was widely panned as only creating more confusion. As Commissioner Peirce aptly described:

> While *Howey* has four factors to consider, the framework lists 38 separate considerations, many of which include several sub-points. A seasoned securities lawyer *might* be able to infer which of these considerations will likely be controlling and might therefore be able to provide the appropriate weight to each. Whether the framework gives anything new to the seasoned securities lawyer used to operating in the facts and circumstances world of *Howey* is an open question. I worry that non-lawyers and lawyers not steeped in securities law and its attendant lore will not know what to make of the guidance.[23]

The document uses the word "may" 22 times. And for all its factors and sub-factors, ends by stating it only identifies "some" of the factors, is not "exhaustive," and entrepreneurs should engage with Commission staff (perhaps to receive the exhaustive list). As previously mentioned, it also discusses non-*Howey* factors like secondary trading. In perhaps the most telling indication of its futility, a search for the Framework at the Commission's website yielded only six citations in 2020 and 2021, despite the influx of attention surrounding the SEC's role in regulating DLT projects.[24]

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[19] William Hinman, SEC Director of Corporation Finance, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, Remarks at the Yahoo Finance All Markets Summit, June 14, 2018, https://www.sec.gov/news/speech/speech-hinman-061418.

[20] Jossey PLLC, *SEC Ether Comments Invite Crypto Armageddon*, April 13, 2021, https://www.thecrowdfundinglawyers.com/sec-ether-comments-invite-crypto-armageddon/.

[21] "Blockchain-based networks offer a new way of coordinating human action that does not fit as neatly within our securities framework." Comm. Hester M. Peirce, *Regulation: A View from Inside the Machine*, Feb. 8, 2019, https://www.sec.gov/news/speech/peirce-regulation-view-inside-machine.

[22] Framework for 'Investment Contract' Analysis of Digital Assets, Securities and Exchange Commission, Division of Corporation Finance, April 3, 2019, https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

[23] Commissioner Hester M. Peirce, *How We Howey*, May 9, 2019, https://www.sec.gov/news/speech/peirce-how-we-howey-050911.

[24] https://secsearch.sec.gov/search?affiliate=secsearch&page=1&query=%22Framework+for+%E2%80%9CInvestment+Contract%E2%80%9D+Analysis+of+Digital+Assets%22&sort_by=&utf8=%E2%9C%93.

The SEC's scattershot approach has caused mass confusion. As you stated in a recent hearing in regard to stablecoins, "My whole point is there needs to be clarity on this . . . And we certainly shouldn't be taking enforcement actions against somebody without having first provided that clarity."[25] SEC Commissioners Peirce and Elad Roisman, stated, "There is a decided lack of clarity for market participants around the application of the securities laws to digital assets and their trading, as is evidenced by the requests each of us receives for clarity and the consistent outreach to the Commission staff for no-action and other relief."[26] Former SEC Chair Mary Jo White, now representing Ripple Labs Inc. in the closely watched SEC enforcement litigation stated there is a "crying need for clarity" for crypto rules.[27]

Yet instead of acknowledging the confusion, new SEC Chair Gary Gensler claims the crypto rules are clear[28] whilst plowing ahead with endless enforcement actions.[29] Indeed, Mr. Gensler's view is Congress should provide the Commission "plenary" authority[30] to regulate DLT projects and increase its budget so it can hire scores more attorneys to probe each new project through the *Howey* lens.[31] As Mr. Gensler explains, "The test to determine whether a crypto asset is a security is clear. The SEC has taken and will continue to take our authorities as far as they go."[32]

While the SEC has provided clouded guidance, the folly of Mr. Gensler's approach is clear. A system where regulation comes via an activist Commission bringing endless investigations and enforcement actions will kill the future economy. The *Howey* test, with its 1930s investor protection rationales and disclosures regimes, benefit only regulators. In fact, taken as a whole, the massive bureaucracy surrounding securities has done little to protect investors or stop fraud.[33]

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[25] Thomas Franck, *Senators demand cryptocurrency regulation guidance from SEC Chair Gary Gensler*, CNBC, September 14, 2021, https://www.cnbc.com/2021/09/14/cryptocurrency-regulation-sec-chair-gary-gensler-grilled-by-senators.html?__source=sharebar|twitter&par=sharebar.

[26] Comms. Hester Peirce and Elad Roisman, *In the Matter of Coinschedule*, Public Statement, July 14, 2021, https://www.sec.gov/news/public-statement/peirce-roisman-coinschedule.

[27] Omar Faridi, *Former SEC Chair Mary Jo White, who's Now Representing Ripple in SEC Lawsuit, Shares Views on XRP Sale and Court Case*, CROWDFUND INSIDER, February 21, 2021, https://www.crowdfundinsider.com/2021/02/172439-former-sec-chair-mary-jo-white-whos-now-representing-ripple-in-sec-lawsuit-shares-views-on-xrp-sale-and-court-case/.

[28] Kevin Helms, *SEC Chairman Says Satoshi Nakamoto's Innovation Is Real, Crypto Rules Are Clear*, BITCOIN.COM, August 8, 2021, https://news.bitcoin.com/sec-chairman-satoshi-nakamotos-innovation-real-crypto-rules-clear/.

[29] SEC Chair Gary Gensler, *Remarks Before the Aspen Security Forum*, August 3, 2021, https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03.

[30] Ltr. from SEC Chair Gary Gensler to Sen. Elizabeth Warren (D-Ma), August 5, 2021, https://www.warren.senate.gov/imo/media/doc/gensler_response_to_warren_-_cryptocurrency_exchanges.pdf.

[31] Thomas Franck, *Senators demand cryptocurrency regulation guidance from SEC Chair Gary Gensler*, CNBC, September 14, 2021, https://www.cnbc.com/2021/09/14/cryptocurrency-regulation-sec-chair-gary-gensler-grilled-by-senators.html?__source=sharebar|twitter&par=sharebar. *Cf.* Paul H. Jossey, *Gary Gensler's Insane Crypto Policy*, COINDESK, August 9, 2021, https://www.coindesk.com/markets/2021/08/09/gary-genslers-insane-crypto-policy/.

[32] Ltr. from SEC Chair Gary Gensler to Sen. Elizabeth Warren (D-Ma), August 5, 2021, https://www.warren.senate.gov/imo/media/doc/gensler_response_to_warren_-_cryptocurrency_exchanges.pdf.

[33] Stuart R. Cohn & Gregory C. Yadley, *Capital Offense: The SEC's Continuing Failure to Address Small Business Financing Concerns*, 4 N.Y.U. J. L. & Bus. 1, 72 (2007), http://scholarship.law.ufl.edu/faculty/pub/248, ("[Ex]amination of the securities violations . . . reveals that no amount of technical exemption requirements will hinder the fraud artists from their endeavors. . . . Fraudulent and deceptive schemes have unfortunately continued unabated and independent of formal registration or exemption requirements.").

The economic transactions possible in the approaching internet age known loosely as Web 3.0 have no relation to decades-old judicial interpretations of investment contracts or even the "economic realities" courts and Commission cite as their guiding principle. DLT projects have created unprecedented wealth opportunities for average people despite (or because of) the lack draconian rules designed to protect them.

As prominent crypto podcaster Nathaniel Whittemore stated:

> [W]e need to be a lot more careful about who we view as someone who needs protection. In the [Elizabeth] Warren-Gensler mindset, anyone who is not an institutional investor needs to be protected. That may make sense to Gary who made $120 million off his time at Goldman and in other parts of the very, very walled gardens of traditional finance, but it simply isn't the case, when "retail" spent the last decade kicking the ever-loving s**t out of institutional investors in one of the biggest wealth creation moments in history. Maybe we think a little bit before we lump all retail investors into some paternalistic bucket of little guys who need protection. In fact, it is the first time in history that this was possible because crypto's permissionless nature inherently obliterates barriers to entry. In other words, the first time in history that retail investors weren't structurally pushed out or denied access to an investment opportunity. They completely beat nearly every professional investor to it.[34]

Congress should exclude DLT projects from the definition of investment contract.[35] This does not mean a Wild West would emerge. State and federal anti-fraud statutes could cover criminal activity as could private rights of action without the draconian investor protection and registration regimes, which have done little to stem fraud anyway.

II. Proposal II: Preempt All State Authority over Regulation A and Regulation Crowdfunding and Allow Issuers to Declare DLT Projects Fully Decentralized After a Defined Period.

If Congress insists on keeping DLT projects cabined in securities law, it should at least allow these projects to function within its confines. Congress' expansion of private exemptions with the Jumpstart Our Business Startup (JOBS) Act of 2012 provides a ready vehicle. But Congress must modify these exemptions to accommodate the unique characteristics of DLT projects.

1. Reg A+

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[34] Nathaniel Whittemore, The Breakdown, With NLW, *Free Markets vs. Investor Protections: The Latest From Warren and Gensler on Crypto*, COINDESK, September 15, 2021, https://www.coindesk.com/podcasts/the-breakdown-with-nlw/free-markets-vs-investor-protections-the-latest-from-warren-and-gensler-on-crypto/.

[35] Although a suitable definition of DLT projects is necessary, the Commission has already defined digital assets. See, Framework for 'Investment Contract' Analysis of Digital Assets, Securities and Exchange Commission, Division of Corporation Finance, April 3, 2019, https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

As part of the JOBS Act of 2012 in which you played a key role, Congress reworked long-dormant Regulation A (known as Reg A+) to expand use. The exemption has many features that could attract potential DLT projects, including instantly tradable financial instruments, an annual offer limit of $75 million, and retail-investor access.

On the downside, Reg A+ is hampered by available financial instruments, a sometimes-lengthy qualification process, onerous ongoing reporting, and state-level interference via discordant fee and notice structures, and no federal preemption for secondary trading. Congress must address these issues for Reg A+ to become viable for DLT projects.

The JOBS Act limits Reg A+ to the following security types: equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.[36] This limitation is unnecessary, does not exist in other private exemptions, and invites ambiguities that could cause DLT projects legal friction. Congress should remove this provision.

Reg A+ has qualification and reporting requirements akin to a 'Mini-IPO.' These processes will stop many worthy projects from getting past concept stage. For instance, Blockstack, the first DLT project qualified through Reg A+, reportedly waited ten months and spent $2.9 million in legal fees.[37] As regulators adjust to DLT projects, these numbers should fall. But issuers whose projects become so decentralized that ongoing reporting produces little value[38] should be able to declare as much after a certain period, perhaps three years. If the Commission disagrees, the onus should be on it to prove before a federal court, why continued reporting serves the public interest.

Congress should also fully preempt DLT projects from Blue Sky laws. State filing and notice fees serve no cognizable purpose. They do not protect investors, facilitate capital, or improve markets. They are regressive, expensive, and disproportionately hurt smaller issuers. Reg A+ fees are littered with waste, inconsistencies, and timing issues, with no related benefit.[39] This model departs from the more popular Regulation D 506(b), where issuers invoke state filing

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[36] 15 U.S.C. 77c(b)(3).

[37] Paul Vigna, *SEC Clears Blockstack to Hold First Regulated Token Offering*, WALL ST. J., July 10, 2019, https://www.wsj.com/articles/sec-clears-blockstack-to-hold-first-regulated-token-offering-11562794848.

[38] Former SEC Corporation Finance Director William Hinman discussed such a scenario, *see Digital Asset Transactions: When Howey Met Gary (Plastic)*, Remarks at the Yahoo Finance All Markets Summit: Crypto, June 14, 2018, https://www.sec.gov/news/speech/speech-hinman-061418.

[39] Ltr. from Mark Schonberger, Goodwin Proctor LLP, to the SEC on the Concept Release (Sept. 24, 2019), https://www.sec.gov/comments/s7-08-19/s70819-6193382-192525.pdf, ("[Reg A+] Tier 2 issuers, some issuers pay upwards of $25,000 per year in notice and filing fees to the 50 states – and, because this fee is paid before sales take place, it is a cost that issuers must incur regardless of whether an offering ultimately has a single investor in a given state in which the fee is paid."); *Cf.* Ltr. from Sara Hanks, CEO Crowdcheck, to the SEC on the Concept Release (Oct. 30, 2019) at 6, https://www.sec.gov/comments/s7-08-19/s70819-6368811-196431.pdf, ("[T]he states have differing requirements with respect to the timing of notice filings ranging from requiring filing 21 days prior to 'offers' (which is not consistent with the ability to test the waters under Rule 255) to requiring filing prior to qualification, to not accepting filings before qualification."); Ltr. from Robert E. Buckholz Chair, Federal Regulation of Securities Committee ABA Business Law Section to the SEC on the Concept Release, (Oct. 16, 2019), https://www.sec.gov/comments/s7-08-19/s70819-6297110-193413.pdf ("State advance notice and filing fee requirements for [Reg A+] Tier 2 offerings impose a substantial burden on the issuers without any corresponding benefit.").

costs only after local sales. Reg A+ and Reg CF issuers place all offer documents on EDGAR[40] making them publicly available for fraud investigations.

Finally, and most importantly, Congress must preempt secondary sales from Blue Sky laws. Impairing investor liquidity does not protect investors.[41] Nor does it bear any relation to the economic realities of creating and growing a DLT project.

Although it has made some overtures, waiting on the Commission to preempt secondary trading is foolhardy. As University of Kentucky professor Rutherford Campbell states:

> Even before the JOBS Act, Section 18(b)(3) of the 1933 Act (National Securities Markets Improvement Act of 1996 (NSMIA) authorized the Commission to expand the definition of covered [preempted] securities to include securities sold to "qualified purchasers" and delegated to the Commission the broad authority to define "qualified purchasers," limited only by consistency to "public interest and protection of investors." Section 2(b) of the 1933 Act was also amended to require the Commission in such cases to "consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation." The Commission never to any material extent used its delegated authority in NSMIA to preempt state registration authority, even in the face of evidence that state registration authority was at times undermining federal exemptions from registration.[42]

2. Reg CF

Less ambitious DLT projects can rely on Regulation Crowdfunding (Reg CF). This exemption benefits from lower disclosure thresholds, access to any security type, less onerous ongoing reporting, a recently raised 12-month offer limit to $5 million and other improvements resulting from the Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release No. 33-10844 (Nov. 2, 2020).[43]

But for DLT projects, this exemption still has several deficiencies. First, issuers must also pay fees, though at most to only two jurisdictions. Issuers are subject to the same lack of federal preemption for secondary sales that harms Reg A+. Purchasers must generally wait one year before the securities become federally freely tradable. Issuers must also sell through FINRA-regulated intermediary portals, or broker dealers.

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[40] EDGAR, the SEC public database, is an acronym for Electronic Data Gathering, Analysis, and Retrieval, https://www.sec.gov/edgar/about.

[41] Ltr. from Hon. Patrick McHenry (R-NC), Vice Chair on H. Comm. on Fin. Serv. to the SEC on the Concept Release (Oct. 15, 2019), https://www.sec.gov/comments/s7-08-19/s70819-6293559-193383.pdf, ("The liquidity provided by a secondary market is an investor protection in and of itself, because it would allow individuals whose financial situation has changed to exit these investments in times of need.").

[42] Ltr. from Rutherford B. Campbell Jr. to the SEC on the Concept Release, September 30, 2019, https://www.sec.gov/comments/s7-08-19/s70819-6240706-192714.pdf.

[43] https://www.sec.gov/rules/final/2020/33-10844.pdf.

Like Reg A+, Congress should fully preempt Reg CF DLT project issuers from Blue Sky laws and allow them to declare decentralization after a certain period. Successful Reg CF DLT issuers would likely move to Reg A+ with its higher offer limits for subsequent raises.

Conclusion

For too long Congress has failed to provide the clarity DLT projects and entrepreneurs desperately need. The situation has grown more ominous under Mr. Gensler's leadership. The next few years will be crucial for the tokenized economy and Web 3.0. Congress cannot leave that future to bureaucrats that hold dated concepts of investor protection as their lodestar. Congress must provide leadership to allow innovation to flourish without the constant threat of enforcement actions based on inapposite decades-old Supreme Court precedent. CEI hopes this letter provides Congress some workable guidelines for nurturing the crypto future that awaits.

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