



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

OFFICE OF THE CHAIR

August 5, 2021

The Honorable Elizabeth Warren  
United States Senate  
309 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Warren:

Thank you for your July 7, 2021, letter regarding the sufficiency of the Securities and Exchange Commission's authority to regulate crypto platforms. I appreciate and share your interest in ensuring investors are protected on these platforms. I recently spoke about these issues publicly.<sup>1</sup>

Right now, I believe investors using these platforms are not adequately protected.

The world of crypto finance now has platforms where people can trade tokens and other venues where people can lend tokens. The American public is buying, selling, and lending crypto on these venues, both centralized and decentralized finance ("DeFi") platforms. I believe these various platforms not only can implicate the securities laws; some platforms can also implicate the commodities laws and the banking laws. This raises a number of issues related to protecting investors and consumers, guarding against illicit activity, and ensuring financial stability.

A typical trading platform has more than 50 tokens on it. In fact, many have well in excess of 100 tokens. While each token's legal status depends on its own facts and circumstances, the probability is quite remote that, with 50 or 100 tokens, any given platform has zero securities. I believe we have a crypto market now where many tokens may be unregistered securities, without required disclosures or market oversight.

Certain rules related to crypto assets are well-settled. 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.

Over the years, the SEC has brought dozens of actions in this area,<sup>2</sup> prioritizing token-related cases involving fraud or other significant harm to investors. We haven't yet lost a case.

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<sup>1</sup> See Gary Gensler, "Remarks Before the Aspen Security Forum" (Aug. 3, 2021), available at <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03>.

<sup>2</sup> See Cornerstone Research, "Cornerstone Research Report Shows SEC Establishes Itself as a Key U.S. Cryptocurrency Regulator" (May 11, 2021), available at <https://www.cornerstone.com/Publications/Press-Releases/Cornerstone-Research-Report-Shows-SEC-Establishes-Itself-as-a-Key-U-S-Cryptocurrency-Regulator>.

To the extent that there are securities on these trading platforms, under our laws they have to register with the Commission unless they meet an exemption. If a lending platform is offering securities, it also falls into SEC jurisdiction.

Moreover, there are initiatives by a number of platforms to offer crypto tokens or other products that are priced off of the value of securities and operate like derivatives.

It doesn't matter whether it's a stock token, a stable value token backed by securities, or any other virtual product that provides synthetic exposure to underlying securities. These products are subject to the securities laws and must work within our securities regime.

I've urged staff to continue to protect investors in the case of unregistered sales of securities.

Another issue has to do with stablecoins, which are crypto tokens pegged or linked to the value of fiat currencies. There is an existing stablecoin market worth \$113 billion,<sup>3</sup> including four large stablecoins — some of which have been around for seven years. These stablecoins are embedded in crypto trading and lending platforms. To trade crypto-to-crypto, usually, somebody uses stablecoins. In July, nearly three-quarters of trading on all crypto trading platforms occurred between a stablecoin and some other token.<sup>4</sup>

The use of stablecoins on these platforms may facilitate those seeking to sidestep a host of public policy goals connected to our traditional banking and financial system: anti-money laundering, tax compliance, sanctions, and the like.

Further, while many overseas platforms state they don't allow U.S. investors, there are allegations that some unregulated foreign exchanges facilitate trading by U.S. traders who are using virtual private networks, or VPNs.<sup>5</sup>

Further, you asked how assets traded on these platforms differ from those of assets traded on traditional securities exchanges, and which investor and consumer protections are warranted.

Unlike other trading markets, where investors go through an intermediary, people can trade on crypto trading platforms without a broker — 24 hours a day, 7 days a week, from around the globe.

I believe we need additional authorities to prevent transactions, products, and platforms from falling between regulatory cracks. We also need more resources to protect investors in this growing and volatile sector.

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<sup>3</sup> Numbers as of Aug. 1. See The Block, "Total Stablecoin Supply," available at <https://www.theblockcrypto.com/data/decentralized-finance/stablecoins>.

<sup>4</sup> See The Block, "Share of Trade Volume by Pair Denomination," available at <https://www.theblockcrypto.com/data/crypto-markets/spot>.

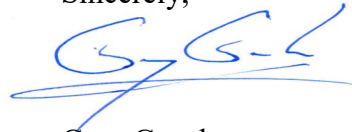
<sup>5</sup> See Alexander Osipovich, "U.S. Crypto Traders Evade Offshore Exchange Bans" (July 30, 2021), available at <https://www.wsj.com/articles/u-s-crypto-traders-evade-offshore-exchange-bans-11627637401>.

In my view, the legislative priority should center on crypto trading, lending, and DeFi platforms. Regulators would benefit from additional plenary authority to write rules for and attach guardrails to crypto trading and lending.

We stand ready to work closely with Congress, the Administration, our fellow regulators, and our partners around the world to close some of these gaps.

Please do not hesitate to contact me or have a member of your staff contact Kevin Burris, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Gensler", with a horizontal line underneath.

Gary Gensler  
Chair