



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
STATION PLACE  
100 F STREET, NE  
WASHINGTON, DC 20549-2465

Office of FOIA Services

June 14, 2022

Mr. John E. Deaton  
The Deaton Law Firm  
450 North Broadway  
East Providence, RI 02914

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552  
Request No. **22-00003-CONG**

Dear Mr. Deaton:

This letter is in response to your request, dated December 20, 2021 and received in this office on December 20, 2021, for any correspondence from any member of U.S. Congress addressed to former SEC Chairman Walter J. Clayton or any other SEC commissioner and/or senior official related to the need of the SEC to provide regulatory clarity regarding cryptocurrencies and/or digital assets between 2017 and 2020.

The search for responsive records has resulted in the retrieval of eleven (11) pages of records that may be responsive to your request. They are being provided to you with this letter. Please be advised that we have considered the foreseeable harm standard in preparing this response.

If you have any questions, please contact me at [jacksonw@sec.gov](mailto:jacksonw@sec.gov) or (202) 551-8312. You may also contact me at [foiapa@sec.gov](mailto:foiapa@sec.gov) or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at [foiapa@sec.gov](mailto:foiapa@sec.gov) or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in cursive script that reads "Warren E. Jackson".

Warren E. Jackson  
Lead FOIA Research Specialist

Enclosure

## ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at [ogis@nara.gov](mailto:ogis@nara.gov). Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

**Congress of the United States**  
**Washington, DC 20515**

October 1, 2018

The Honorable Jay Clayton  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Dear Chairman Clayton:

We write to express our appreciation of the thoughtful and deliberate approach exhibited by the Securities and Exchange Commission (SEC) to the application of the securities laws to digital tokens and cryptocurrencies. In particular, we were pleased with the approach articulated by Director of the Division of Corporate Finance William Hinman in a speech on June 14<sup>th</sup>. We also appreciate the proactive views expressed by Commissioner Peirce on September 12<sup>th</sup> regarding the appropriate regulation of this technology. Because the use of this technology is important to growth across many sectors of the American economy, we would like to solicit your answers to several questions related to this topic.

We share your view that digital assets that are offered and sold in a manner properly determined to cause the offers and sales to involve securities or investment contracts must comply with securities laws. We also agree that not all digital tokens are securities, and we believe that treating *all* digital tokens as securities would harm American innovation and leadership in the cryptocurrency and financial technology space.<sup>1</sup> Therefore, we believe it is important that all policy makers work toward developing clearer guidelines between those digital tokens that are securities, and those that are not, through better articulation of SEC policy, and, ultimately, through formal guidance or legislation.<sup>2</sup> Current uncertainty surrounding the treatment of offers and sales of digital tokens is hindering innovation in the United States and will ultimately drive business elsewhere.

We believe that the SEC could do more to clarify its position. Additionally, we are concerned about the use of enforcement actions *alone* to clarify policy and believe that formal guidance may be an appropriate approach to clearing up legal uncertainties which are causing the environment for the development of innovative technologies in the United States to be unnecessarily fraught.

Recognizing that such guidance will, reasonably, take time, caution, and deep consideration, we request your views on the following foundational issues with respect to digital tokens to further a longer-term goal of developing formal guidance.

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<sup>1</sup> See Token Alliance, Chamber of Dig. Commerce, Understanding Digital Tokens: Market Overviews & Guidelines for Policymakers (2018).

<sup>2</sup> <https://coincenter.org/entry/principles-for-clarifying-sec-jurisdiction-over-cryptocurrencies-and-icos>.

1. The SEC should clarify the criteria used to determine when offers and sales of digital tokens should properly be considered “investment contracts” and therefore offerings of securities.

The public statements made by yourself, Commissioner Peirce, and Director Hinman are helpful indicia of the evolution of the SEC’s views of digital token platforms. Please expand on what criteria the SEC is currently using – specific to digital tokens - to determine under what circumstances the offer and sale of a digital token should properly be considered an “investment contract” and, therefore, an offer or sale of “securities” under the Securities Acts and the *Howey* Test. The various criteria set out at the end of Director Hinman’s speech are helpful; nevertheless, specific FAQ-type examples illustrating how these factors may be applied in practice could aid market participants in better understanding how these factors should be applied.

An example of a digital token that is not considered to be a security is Bitcoin, whose value, functionality, and transferability is determined by a permissionless blockchain maintained by unaffiliated miners, code contributors, and spot-markets for trading. Nevertheless, the marketplace for digital tokens is expanding. Other digital tokens in existence today should also be deemed to fall outside the parameters used to define an investment contract under the securities laws. In the current environment, it is unclear which other unique characteristics of digital tokens are also considered by the SEC when making this determination.

2. Do you agree that a token originally sold in an investment contract can, nonetheless, be a non-security as Mr. Hinman stated? Can the resultant token be analyzed separately from the original purchase agreement, which may clearly be an investment contract? And, if so, could the resultant token, nonetheless be a non-security?
3. Please describe the tools available to the SEC to offer more concrete guidance to innovators on these topics.

When considering these topics, we caution that any agency should be mindful of the speed at which the industry is developing, and that new and dynamic circumstances could render stringent guidance obsolete. As a result, any response should strive to endure future evolution of the technology.

Thank you for your attention to this important matter.

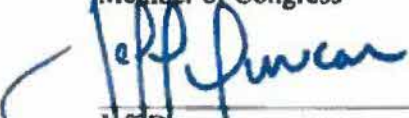


Sincerely,

  
 Ted Budd  
 Member of Congress

  
 Warren Davidson  
 Member of Congress

  
 Sean Duffy  
 Member of Congress

  
 Jeff Duncan  
 Member of Congress

  
 Mark Meadows  
 Member of Congress

  
 David Schweikert  
 Member of Congress

  
 Ralph Norman  
 Member of Congress

  
 Brett Guthrie  
 Member of Congress



Tom Emmer  
 Member of Congress

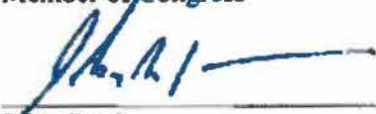
  
 Darren Soto  
 Member of Congress

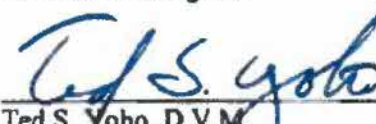
  
 Alex Mooney  
 Member of Congress

  
 Andy Biggs  
 Member of Congress

  
 Derek Kilmer  
 Member of Congress

  
 Greg Gianforte  
 Member of Congress

  
 John Curtis  
 Member of Congress

  
 Ted S. Yoho, D.V.M.  
 Member of Congress

December 18, 2018

The Honorable Jay Clayton  
Chairman  
U.S. Securities and Exchange Commission  
1600 Pennsylvania Ave., NW  
Washington, DC 20220

Dear Chairman Clayton,

I believe it is imperative that the Commission, other Federal regulators, and Congress work collaboratively to develop a clearer articulation of policy and, ultimately, formal Commission guidance addressing digital currencies. Whatever may ultimately become of blockchain and digital currencies, the Commission's guidance is essential to achieve the certainty that will best protect U.S. economic and national security interests and allow U.S. companies to lead the world in these new technologies.

In a recent speech, President Xi Jinping heralded blockchain as part of the "*new industrial revolution*," emphasizing its importance to China's future. A recent study demonstrated China's abilities and motives to perform attacks against a leading digital currency, including the potential ability to control validation of transactions. Whatever ultimately comes of digital currencies and blockchain technology, it's important that American companies are at the forefront of the latest developments. None of us here in the U.S. want a situation where 1) these new technologies are important for national security reasons, and yet 2) the top companies in this space are located outside the United States.

Recent statements from SEC officials about some digital currencies may have had the unintended effect of tilting the playing field in favor of platforms heavily influenced by China. This approach can leave similar U.S.-developed technologies at a disadvantage. I believe a level playing field is necessary for U.S.-based blockchain and digital currency companies to compete fairly.

The current state of blockchain and digital currency adoption is similar, in some respects, to the early days of the internet-based economy. As was the case in the mid-1990s, regulators are working to determine the most efficient way to negotiate existing rules and innovative technologies. In the 1990s, U.S. policymakers made a choice to allow new technologies to develop with a clear national regulatory structure. We were rewarded country with world-beating tech companies that are still creating jobs in the U.S., driving economic growth, and amplifying our international influence. Now, the Commission has a chance to help Americans lead in blockchain and digital currencies.

Indeed, many of our allies have already recognized the power of these technologies. Matt Hancock MP, UK Secretary of State for Health and Social Care, noted that "*There are now more people working in UK Fintech than in New York - or in Singapore, Hong Kong and Australia combined.*" While "fintech" encompasses a lot of things, the fact remains that regulatory regimes can help or inhibit the development of new, above-board commercial innovations. Elsewhere, Japan, Switzerland and others have already issued comprehensive frameworks for digital currency and related technology. The U.S. obviously doesn't need to copy policy from other countries, but our regulators should always be cognizant if our regulatory regime causes opportunity to develop elsewhere.

I would greatly appreciate your time and candor in providing answers, both for the sake of enhanced clarity and to further the goal of developing formal guidance:

1. What efforts can the Commission take to remove the uncertainty surrounding U.S.-developed digital currencies?
2. Is there anything Congress can do, with regards to our securities laws, that would help the Commission ensure the U.S. leads the world in legitimate, tax-paying blockchain and digital currency companies?

Thank you for your attention on this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Tom Cottle". The signature is written in a cursive, flowing style.



December 9, 2020

The Honorable Jay Clayton  
Chairman, Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Clayton:

We write to encourage the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) to address the issue of broker-dealer custody of digital securities.<sup>1</sup> On July 22, 2020, the Office of the Comptroller of the Currency (OCC) issued an interpretive letter clarifying that national banks may provide custody services for cryptographic assets. In light of this development, we encourage the SEC to develop requirements necessary to custody digital securities and enable FINRA to approve broker dealer applications that meet these requirements.

The United States benefits greatly from its vibrant, transparent, and liquid securities markets. Strong financial markets attract investment, facilitate capital formation, and serve as the foundation for a healthy economy. The adoption of innovative technologies, including the issuance of securities via distributed ledgers, would improve the functioning of securities markets by making them more efficient, accessible, and transparent, which should be welcomed and encouraged.

Following the OCC's lead, the SEC and FINRA should address the need for regulated safekeeping services for cryptographic assets. Both agencies acknowledged the issue in their joint statement on July 8, 2019; and yet, to date, the SEC has not provided any guidance that would allow for FINRA to grant broker-dealer applications involving the custody of digital securities, a position that threatens to stymie the progress of the digital security industry in the United States. Failing to approve broker-dealer applications involving the custody of digital securities leaves the industry without the infrastructure to operate in a regulated way.

Additionally, in the absence of guidance from the SEC, FINRA has not outright denied any broker-dealer applications that involve the custody of digital securities, which would render the applications eligible for appeal. Rather, FINRA has allowed the applications to languish—often for years—or asked the applicants to withdraw such applications.

To address this unsustainable situation, the SEC should take the following three actions: First, explicitly confirm that banks may act as good control locations for the custody of digital

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<sup>1</sup> The term “digital securities” refers to both securities issued on a blockchain or distributed ledger (referred to as “blockchain” for purposes of this letter) and distributed ledger-based representations of traditional securities.



securities. Second, advise FINRA on the requirements for broker-dealers to be able to custody digital securities for their customers as well as for their own account. Third, instruct FINRA to approve broker-dealer applications that meet the requirements necessary to custody digital securities. Doing so would greatly increase the uniformity and efficiency of safekeeping mechanisms for all security types, resolving uncertainty and creating an environment for the digital securities industry to flourish.

Sincerely,



Tom Emmer, Member of Congress



David Schweikert, Member of Congress



Bill Foster, Member of Congress



Ted Budd, Member of Congress



Darren Soto, Member of Congress



Ralph Norman, Member of Congress



Dan Crenshaw, Member of Congress



Ro Khanna, Member of Congress



Warren Davidson, Member of Congress

CC: Commissioner Hester M. Peirce  
 Commissioner Elad L. Roisman  
 Commissioner Allison Herren Lee  
 Commissioner Caroline A. Crenshaw  
 Robert W. Cook

**Congress of the United States**  
**Washington, DC 20515**

February 21, 2018

The Honorable Jay Clayton  
Chairman

U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

The Honorable J. Christopher Giancarlo  
Chairman

U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Dear Chairman Clayton and Chairman Giancarlo,

We appreciate the measured, light touch to regulation approach the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have taken to date in regard to cryptocurrencies, new financial technologies, token issuances, and initial coin offerings (ICOs). The emergence of blockchain-based technologies and cryptocurrency networks is similar to the early days of the internet, which ushered in the first digital revolution and flourished in an environment in which minimal government involvement encouraged innovation.

We also applaud the efforts by the SEC and the CFTC to utilize your existing enforcement tools to go after bad actors who engage in fraud, abusive sales practices, price manipulation, and other disruptions to market integrity that harm consumers. However, we also want to ensure that your statements are measured so as to avoid unnecessary concern and uncertainty by legitimate market actors, which may result in the flight of innovation and capital to overseas markets.

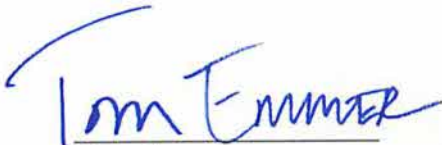
At a recent Senate Banking hearing you said you “may be back with our friends from Treasury and the Federal Reserve to ask for additional legislation.” Collaboration across government is an important step to supporting this industry, and we encourage it. As you develop your approach, we encourage you to think not only about the fluctuations of cryptocurrency prices today, but to focus on the future potential of this groundbreaking technology and its role in maintaining our leadership role in technological innovations. Any legislation or regulation should be simple, clear, and narrowly tailored to specific applications of the technology that raise policy concerns, thus allowing innovation in this space to be guided by consistent and predictable guard rails without imposing undue burdens.

We also appreciate your distinctions between virtual currencies and tokens, some of which may be ICO securities offerings. We encourage you to allow continued innovation in this market, and devote more creative analysis into the ways cryptocurrencies can be utilized. Cryptocurrency networks are much more than alternatives to the dollar or payment mechanisms, and their applications go beyond payments, such as notary and record services, identity systems, insurance, and prediction markets. These networks go beyond financial services, and are open platforms running on open protocols, much like the internet, and deserve to be treated differently.

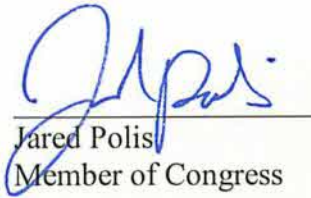
**Congress of the United States**  
**Washington, DC 20515**

The United States should be the home to this innovation, and should embrace these new technologies. In order for these efforts to be successful, it is imperative that we adopt a deliberate, flexible, and unified approach to regulation. A sensible, light-touch, federal approach can keep investors safe, consumers protected, and financial markets secure without stifling the dynamism of this exciting ecosystem. It's time for America to embrace the next digital revolution.

We look forward to discussing this matter further.



Tom Emmer  
Member of Congress



Jared Polis  
Member of Congress



David Schweikert  
Member of Congress



December 7, 2017

The Honorable Jay Clayton  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Dear Chairman Clayton,

I write to you to urge the Securities and Exchange Commission (SEC) to publish clear and consistent guidance on the regulatory treatment of issuing non-cash tokens as a method for raising capital, often referred to as Initial Coin Offerings (ICOs). The SEC's ad-hoc enforcement approach is irresponsible for a fundraising vehicle that raised more than \$3 billion in capital for blockchain startups in 2017 alone. While the SEC stalls, consumers are vulnerable to fraudsters, and investors and innovators absorb avoidable risk.

ICO-funded blockchain startups are disrupting industries such as finance, cloud computing and real estate. They raise funds by issuing tokens or coins on a blockchain such as Ethereum in exchange for virtual currency, like Ether or Bitcoin. Tokens may represent utility, value, or both in varying proportions. Unlike an Initial Public Offering, it is rare for ICO investors to receive equity in the company. These features of tokens and ICOs complicate their classification in existing securities law, but their fundraising function retains a conceptual similarity to traditional capital markets. However, without a clear regulatory framework, this new blockchain-based capital market lacks discipline and legitimacy.

The consequence of the SEC's failure to act is not a free-market utopia, but rather a playground for criminals and cons to continue defrauding genuine investors. Speculative money has flooded into digital tokens in a few short months. Celebrities are hyping ICOs without disclosing their financial interests. Heavy-weight investors are manipulating markets with big trades and insider knowledge. And most recently, a cybertheft on November 20 wiped out \$31 million of value instantaneously, with few, if any, recourse for investors. Understandably, foreign token issuers are shutting U.S. investors out of their blockchain ventures because they are wary of the SEC's long arm, should it finally decide how to use its reach.

In this lemons market, it is impossible for the U.S. to realize the benefits of disruptive blockchain technology because the bad actors will crowd out the good. ICOs present an opportunity to extend to all Americans the benefits of new tech ventures, sharing the profits far beyond only wealthy investors. Common-sense regulation of the ICO market levels the playing field and fosters the growth of new technologies here, instead of driving it to other countries offering



clearer rules. While the SEC stalls, foreign jurisdictions are taking the lead in setting standards for blockchain innovation, and attracting the capital and talent that follows it.

In July, you said that the SEC should “seek to foster innovation and beneficial ways to raise capital, while ensuring first and foremost – that investors and our markets are protected.” I agree with your statement. Given your own position and the glaring irresponsibility of continuing in this state of uncertainty, please respond to the following questions by December 29, 2017:

1. When will the SEC publish clear and consistent guidance on the status of digital tokens and coins? How will forthcoming guidance be applied to past ICOs?
2. How will the SEC apply existing security tests to digital tokens and coins? Does registration with the SEC trigger existing disclosure requirements?
3. How will the SEC ensure that investors are protected in the event of a cyber incident in which funds and/or digital tokens are stolen?
4. When does a centralized exchange qualify as a securities exchange? How will the SEC oversee “distributed” token offerings that are not offered on regulated exchanges, but qualify as securities?

Thank you for responding to this request. I look forward to your reply.

Sincerely,



Ron Wyden  
United States Senator