

September 27, 2021

United States Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

Re: Request for Proposals for Clarifying Laws Concerning Cryptocurrency and Blockchain Technologies

We appreciate the recent request from Committee members seeking ideas and legislative proposals to ensure federal law supports the development of decentralized technology and blockchain networks, while continuing to protect consumers, investors, and innovators. As the largest investor in the ecosystem, we recognize the need for and importance of thoughtful legislative action to cement U.S. leadership in the next generation of technological innovation.

The recent call for legislative proposals provides an opportunity to begin a dialogue on the role we want technology to play in an open society. This is a policy choice: what laws can we adopt that not only protect against the potential risks inherent in a new technology, but that amplify its positive impact? From where we stand today, at the beginning of the third decade of the 21st century, it has become clear that 20th century regulatory models are poorly suited to the risks, challenges, and opportunities we face with respect to decentralized technology. It's time to try something different.

With this in mind, we are submitting four proposals for the Committee's consideration. We think bipartisan legislation is the only viable path forward, so we are simultaneously submitting this to the office of each Senator on the Committee so that they can review the proposals in tandem. We also want to offer ourselves as a resource: we are available to answer any questions about the proposals, or to discuss anything else in this fast-moving industry.

We chose these proposals because they are discrete, actionable, and narrowly targeted at achieving specific policy objectives, such as consumer protection, revenue realization, and financial inclusion. The proposals are as follows:

**Definition and Entity Status for DAOs.** Decentralized autonomous organizations (“DAOs”) have the potential to revolutionize how people organize, collaborate, and coordinate. However, their legal status in the United States remains unclear, stymieing progress. We propose to provide DAOs with a recognized entity status under the Internal Revenue Code, giving them a pathway to legally establish themselves in the United States and the tools they need to continue to grow here, and allowing for more efficient taxation as appropriate. This proposal also begins to harmonize regulatory treatment of such DAOs under the Bank Secrecy Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Commodity Enforcement Act.

**Disclosure-Based Supervision for Decentralized Networks and Protocols.** Policymakers have rightly focused on consumer protection as a key area in need of regulatory clarity. This proposal authorizes the Consumer Financial Protection Bureau to administer a disclosure-based supervision program for decentralized networks and protocols involved in consumer financial products and services. First and foremost, such a regime ensures that individuals are furnished with the information that they need to make informed decisions as consumers of such products and services. Second, this proposal ensures that individuals have the information they need to participate in the governance and evolution of these projects on a level playing field. In short, we imagine this to be the prototype for a new kind of disclosure-based regime that leverages the benefits of blockchain technology to protect consumers and promote participatory, inclusive governance models for 21st century organizations.

**Tax Reporting and Related Issues.** The bipartisan infrastructure bill catalyzed a long overdue conversation about the taxation of digital assets. However, it did not do enough in terms of differentiating between the roles various players have in the ecosystem, and their differential access to information relevant to tax authorities. The infrastructure bill language also made room for data collection practices that present severe privacy and security risks for Americans. This proposal clarifies several elements of tax reporting as it applies to digital assets, ensuring the same level of revenue recognition without the burdens and risks associated with the existing version of the tax reporting provision.

**Comparing Jurisdictional Harmonization with Federally Chartered Self-Regulatory Organization or Nonprofit Corporation.** The Government Accountability Office (“GAO”) has found that financial regulation faces inefficiencies and inconsistencies due to fragmentation and overlapping authorities. This proposal asks the GAO to assess the current state of regulatory jurisdiction over cryptocurrency, digital assets, and

decentralized technology, and to compare the costs and benefits of harmonizing jurisdiction among agencies against vesting supervision and oversight with a federally chartered self-regulatory organization or one or more nonprofit corporations.

Each of these legislative proposals is designed to stand on its own; taken together, they represent a framework for promoting decentralization and taking a big first step on the road to regulatory clarity for decentralized technology.

We look forward to engaging with Members of the Senate Banking Committee and other Members of the House and Senate to help the U.S. reassert its leadership role in the next generation of technological innovation.

Sincerely,

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## Proposal to Provide Definition and Entity Status for DAOs

### Background

One of the most promising features of blockchain technology is its potential to be used to effectively coordinate large, distributed groups of unaffiliated individuals in a safe and trustless manner. This use case is just beginning to emerge with the creation of Decentralized Autonomous Organizations (“**DAOs**”), which are member-governed organizational structures that operate absent a centralized authority. The operation and rules of a DAO are typically set forth in a governance protocol, which is a collection of governance-related smart contracts that have been deployed to a blockchain, and that disintermediate transactions between counterparties by automating the decision-making and administrative processes typically performed by traditional management structures.

DAOs have become the default governance structure for decentralized blockchains and smart-contract-based protocols deployed to such blockchains. For example, when a smart contract-based protocol is first deployed, the developer typically retains control over certain aspects of the smart contracts of such protocol in order to oversee its operation while it gains an initial user base and to enable the developer to test and add new features. Following this initial period, the developer will typically simultaneously deploy a governance protocol that has specified control rights with respect to the smart contracts making up the underlying protocol, and issue governance tokens. These actions effectively transfer control of the underlying protocol from the developer to a DAO.

Typically, the membership of DAOs is comprised of the holders of governance tokens, which are distributed freely to users of a given blockchain or protocol and community participants as well as to employees, advisors, and stockholders of the company or group that developed the technology. The governance tokens enable the members to participate in the operation of the DAO by suggesting and voting on proposals through the operation of the governance protocol. For example, members of a DAO may vote to accept a new form of collateral on the protocol or to change the interest rates on the protocol.

In addition to the distribution of governance tokens to the various constituents described above, a significant portion of governance tokens are often retained by a treasury that is controlled by the DAO. The purpose of the governance tokens contained in the treasury is to foster the development and growth of the decentralized ecosystem surrounding the

blockchain or protocol. For example, such DAO treasury tokens are often used to incentivize and reward protocol user activity (most often through staking or liquidity mining) and by funding ongoing decentralized development efforts, such as the creation of applications to run on top of the blockchain or data analytics tools and new front-end websites for the protocol. DAOs can generate taxable income with respect to their treasuries through the receipt of fees, the diversification of their treasury assets, or other activities.

### Reason for Proposal

For corporate law purposes, when two or more persons engage in an endeavor, the imputed structure is that of a general partnership or an unincorporated association. Similarly, for federal tax purposes, DAOs that are considered to be operating in the United States would generally be classified as partnerships for tax purposes unless they elect to be classified as a corporation by filing a Form 8832, *Entity Classification Election*. However, while DAOs may be analogous to partnerships, they are not partnerships. For instance, DAOs can be comprised of hundreds of thousands of pseudo-anonymous persons and are not necessarily operated with for-profit intent. Similarly, they may be analogous to corporations, and yet are not corporations; they may be analogous to joint tenancies, and yet are not joint tenancies; and they may be analogous to mutual agencies, and yet are not mutual agencies.

Regulatory restrictions limiting the number and accreditation of investors, size restrictions, the observance of corporate formalities, and a lack of intent from governance token holders to form an incorporated entity all contribute to the ambiguity of what entity structure is appropriate for a DAO. Additionally, the fact that the operations of most DAOs occur exclusively in cyberspace with no physical nexus established in the United States beyond a potential connection through the citizenship of its developers or members, further clouds the picture. As a result of this uncertainty, many DAOs have elected to utilize entityless/regimeless structures or offshore structures in jurisdictions that provide more clarity on DAO entity existence and recognition.

Entityless and regimeless DAOs face a number of legal questions and issues, including with respect to filing and paying taxes, opening bank accounts, signing legal agreements, limiting liability for DAO members, observance of corporate formalities and compliance with securities laws. As a result, there is a significant need for a viable U.S. legal structure to be made available for DAOs seeking to operate in the United States. Not only could this be a significant benefit to such DAOs and U.S. blockchain users by providing

decentralized ecosystems with many of the tools they need, but it would bring these organizations under the direct supervision of U.S. regulators, increase U.S. tax revenues, and foster further development of this emerging technology in the United States.

Providing a legislative definition of a DAO will provide certainty regarding the structure of the entity. From a regulatory perspective, DAOs would benefit from being treated as distinct legal entities, analogous to unincorporated associations. Incorporating the definition in the Internal Revenue Code (the “**Code**”) will provide greater certainty regarding the specific tax status of a DAOs operating in the United States, and result in additional tax revenues for the United States.<sup>i</sup> Moreover, establishing this definition for federal tax purposes will have additional benefits for other regulatory regimes, as the definition can be referenced to provide consistent regulatory treatment across applicable regulators and influence harmonization at the state level.

#### Description of Proposal

The proposal would provide a legislative definition of a DAO in the Code. Specifically, DAOs would be defined as an organization operating as an unincorporated association that meets certain requirements (i) the governance is primarily determined via a decentralized consensus mechanism that may be facilitated by a set of governance-related smart contracts deployed to a blockchain, (ii) whose primary purpose relates to the operation of a blockchain network and/or protocols or applications integrated with a blockchain network, and (iii) that is not, and is not reasonably likely to be, economically or operationally controlled by any single person, entity or group of persons or entities under common control.

The proposal would also reverse the default entity classification for DAOs, so that they would be taxable as corporations unless they affirmatively elect to be taxed as a partnership. In addition, the proposal would clarify that member dues collected by DAOs are tax-exempt under section 501(c)(7) of the Code.

Finally, the proposal would harmonize the regulatory approach to DAOs by the Internal Revenue Service, the Financial Crimes Enforcement Network, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

## Effective Date

The proposal would be effective for taxable years beginning after December 31, 2022. The proposal would provide a transition rule for DAOs already operating to permit sufficient time to re-program their protocols to come into alignment with legislation.

## Proposed Legislative Language – IRC Section 7701(a)

SEC. XX. DECENTRALIZED AUTONOMOUS ORGANIZATIONS.—The following language is inserted after Section 7701(a)(50) of the Internal Revenue Code:

“(51) DECENTRALIZED AUTONOMOUS ORGANIZATION —

(A) The term “qualified decentralized autonomous organization” means an organization that is operating as an unincorporated association—

(i) the governance of which is primarily determined via a decentralized consensus mechanism that may be facilitated by a set of governance-related smart contracts deployed to a blockchain;

(ii) whose primary purpose relates to the operation of a blockchain network and/or protocols or applications integrated with a blockchain network; and

(iii) that is not economically or operationally controlled and is not reasonably likely to be economically or operationally controlled by any single person, entity, or group of persons or entities under common control.

(B) The term “blockchain” means a digital ledger or database which is chronological, consensus-based, decentralized, and mathematically verified in nature.

(C) The term “protocol” means a collection of smart contracts that have been deployed to a blockchain.

(D) The term “smart contract” means self-executing code, script or programming language deployed to a blockchain that executes the terms of an

agreement, which may include taking custody of and transferring an asset, administering membership interest votes with respect to a decentralized autonomous organization or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

(E) The default classification for federal tax purposes for a qualified decentralized autonomous organization shall be a corporation.

(F) The management of a treasury of a qualified decentralized autonomous organization is not considered a business activity of such qualified decentralized autonomous organization otherwise described in section 501(c)(7).

#### Proposed Legislative Language – Harmonization

#### SEC. XX. HARMONIZATION OF TREATMENT OF QUALIFIED DECENTRALIZED AUTONOMOUS ORGANIZATIONS

##### (a) BANK SECRECY ACT.

(1) Section 5312 of Title 31 is amended by adding the following after subsection (c)(1)(A)—

“(2) The term “financial institution” (as defined in subsection (a)) does not include the following:

“(A) A qualified decentralized autonomous organization as defined in Section 7701(a)(51) of the Internal Revenue Code.”.

(2) Section 5336(a)(11)(B)(2) of Title 31 is amended by renumbering subsection (xxv) as subsection (xxvi), and adding the following as subsection (xxv)—

“(xxv) A qualified decentralized autonomous organization as defined in Section 7701(a)(51) of the Internal Revenue Code; and”.

(b) **RULE OF CONSTRUCTION.**—Nothing in this section or the amendments made by this section shall be construed to create any inference that any blockchain-based token associated with a qualified decentralized autonomous organization as defined in Section 7701(a)(51) of the Internal Revenue Code is an “investment contract” under Section

77b(a)(1) of Title 15, or Section 78c(a)(10) of Title 15 because the qualified decentralized autonomous organization engages by smart contract or otherwise in any efforts to comply with any law.

(c) INVESTMENT COMPANY ACT.—Section 80a-3 of Title 15 is amended by adding the following after subsection (c)(14)—

“(15) A qualified decentralized autonomous organization as defined in Section 7701(a)(51) of the Internal Revenue Code solely by reason of holding blockchain-based tokens in treasury or when managing its own treasury of resources.”.

(d) COMMODITY ENFORCEMENT ACT.—Section 1a of Title 7 is amended by adding the following at the end of subsection (6)—

“The term ‘board of trade’ does not include a qualified decentralized autonomous organization as defined in Section 7701(a)(51) of the Internal Revenue Code.”.

#### Proposed Legislative Language – Effective Date and Transition Rule

#### SEC. XX. EFFECTIVE DATE AND TRANSITION RULE

(a) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2022.

(b) TRANSITION RULE.—

(1) In the case of an eligible qualified decentralized autonomous organization, the amendments made by this section shall apply to taxable years beginning after December 31, 2023.

(2) An eligible decentralized autonomous organization means any decentralized autonomous organization which meets the requirements of section 7701(a)(51) of the Internal Revenue Code on the day before the date of enactment of this Act.

(3) If the eligible qualified decentralized autonomous organization had previously elected its entity classification status by filing Form 8832, *Entity Classification Election*, such entity may file a new election effective on or before the first day of its

taxable year beginning after December 31, 2023 without regard to the limitation in Treasury Regulation section 301.7701-3(c)(1)(iv).

Proposed Legislative Language – UUNAA

SEC. XX. SENSE OF CONGRESS REGARDING THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

(a) It is the sense of Congress that States should consider enacting the Uniform Unincorporated Nonprofit Association Act in such a way as to give recognition to qualified decentralized autonomous organizations as described in Section 7701(a)(51) a recognized legal existence separate from the participants in the organization.

(b) It is the sense of Congress that the Uniform Law Commission should consider revising the Uniform Unincorporated Nonprofit Association Act to clarify that qualified decentralized autonomous organizations may receive revenues from activities in furtherance of their organizational purposes, and that members of qualified decentralized autonomous organizations may benefit from the qualified decentralized autonomous organization's receipt of those revenues, as part of their non-profit activities.

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<sup>1</sup> With respect to DAOs that collect dues from their members, such dues should be tax-exempt, similar to organizations described in section 501(c)(7) of the Code. Although there are examples of DAOs that could meet tax-exempt requirements of other subsections under section 501, this proposal makes no change in that determination. If a DAO, based on its activities, can meet the criteria under section 501 for various types of tax-exempt status, this proposal does not prohibit that; alternately, nothing in this proposal would convert otherwise taxable activity by a DAO into tax-exempt activity.

## Proposal for Disclosure-Based Supervision of Decentralized Blockchain Networks and Protocols

### Issue

As the number of decentralized blockchain networks and protocols and the services they make available to consumers grows, and as such projects become increasingly integral to our economy, policymakers must have a cohesive strategy for advancing policy objectives such as consumer protection. To date, ad hoc enforcement actions have created regulatory uncertainty with real costs, stifling innovation that can have a profoundly positive impact on our society and economy by depriving innovators of certainty concerning regulatory expectations. Equally as important, the lack of standardization of disclosures about projects deprives consumers of the information they need to safely and responsibly participate in the ecosystem of decentralized networks and protocols.

### Reason for Change

A robust consumer protection regime will standardize the existing disclosures that many decentralized projects already provide, to ensure that consumers are getting the information that they need to participate in such projects on a level playing field. Specifically, a program in which decentralized projects disclose information publicly on a periodic basis and then conduct self-compliance and self-audit in the regular course of business promises to be a regulatory framework that equips consumers with relevant knowledge and background on projects. The need for such a framework becomes particularly acute at the point of decentralization, when the developers cede control of such projects and their mechanisms to a decentralized autonomous organization (“**DAO**”), generally made up of pseudonymous governance token holders. By providing a framework for DAOs to furnish disclosures to consumers and make conspicuous certain information already available on blockchains, regulators can encourage DAO contributors to codify and automate disclosures consistent with consumer financial protection.

A disclosure-based program will benefit users of decentralized networks and protocols governed by DAOs or not governed at all. A disclosure-based program will also enable regulators to better understand DAOs, decentralized networks and protocols, blockchain-based tokens, and to gain deeper insight into the nature of different networks and protocols to ensure that policy objectives are proactively being advanced. Clear

disclosure-based standards are aligned with the strengths of blockchain technology to programmatically audit and disclose the information most likely to be relevant to users and supporters of these projects, thereby enabling transparency without jeopardizing decentralization. Clear and tailored standards will encourage network and protocol developers to incorporate automated mechanisms into the code that governs projects, to ensure ongoing compliance. Nothing in this approach interferes with any regulatory agency's ability to investigate non-compliance, and this approach also encourages greater communication between regulators and industry participants.

### Description of Proposal

The proposal creates a disclosure-based supervision regime under the Consumer Financial Protection Act (the “**CFPA**”) for decentralized blockchain networks and protocols that are governed by DAOs utilizing blockchain-based tokens or other decentralized consensus mechanisms, or not governed at all. This proposal is consistent with the Congressional direction to the Consumer Financial Protection Bureau (“**CFPB**”) to ensure that “consumers are provided with timely and understandable information to make responsible decisions about financial transactions” (12 U.S.C. Section 5511(b)(1)) and that “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation” (12 U.S.C. Section 5511(b)(5)). The proposal creates an information disclosure regime that accommodates the unique characteristics of DAOs and blockchain networks and protocols, along with the many forms of governance mechanisms they utilize, and provides adjusted reporting and auditing requirements to accommodate that type of governance and those types of networks and protocols. Compliance with this provision constitutes compliance under the supervision and information disclosure requirements of the CFPA, and DAOs governing blockchain networks and protocols that comply with this provision are presumed not to be engaged in unfair, deceptive, or abusive practices under the CFPA. Adding this provision to the CFPA facilitates interagency collaboration around key policy objectives by creating concurrent, rather than exclusive, jurisdiction for the CFPB. DAO-governed blockchain networks and protocols, and other blockchain networks and protocols, remain subject to supervision and oversight as appropriate.

### Proposed Legislative Language

#### SEC. XX. SUPERVISION OF DECENTRALIZED NETWORKS AND PROTOCOLS

The following provision is added to Title 12, Chapter 53, Subchapter 5—

“12 USC SEC. 5520. SUPERVISION OF DECENTRALIZED NETWORKS AND PROTOCOLS

(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply—

(1) INITIAL DEVELOPMENT TEAM.—Any person, group of persons, or entity that provides the essential development efforts for a Token, Protocol, or Network prior to reaching Maturity and makes the disclosures under section (c) until a qualified decentralized autonomous organization or other person or entity designated as responsible for disclosures under section (c)(4).

(2) NETWORK.—A blockchain network launched by the Initial Development Team.

(3) MATURITY.

(A) Maturity of a Network or Protocol is the status of a Network or Protocol that is achieved when such Network or Protocol is:

(i) Governed by a qualified decentralized autonomous organization, or not otherwise economically or operationally controlled and is not reasonably likely to be economically or operationally controlled or unilaterally changed by any single person, entity, or group of persons or entities under common control; and

(ii) Functional, as demonstrated by—

(a) in the case of a Network, the holders' use of Tokens for the transmission and storage of value on such Network, the operability of an application running on such Network, or otherwise in a manner consistent with the utility of such Network; or

(b) in the case of a Protocol, the operability of such Protocol for its intended purpose.

(B) This definition is not meant to preclude—

- (i) Network or Protocol alterations achieved through a predetermined, whether or not modifiable, procedure in the source code that uses a consensus mechanism or approval of Network or Protocol participants, as applicable;
  - (ii) The development of applications that utilize a Token, Protocol, or Network; or
  - (iii) Actions taken to comply with the Bank Secrecy Act, the USA PATRIOT Act, the Internal Revenue Code, or requirements under other laws.
- (4) TOKEN.—A Token is a representation of value or rights that:
  - (A) Is programmed with rules that govern its creation, supply, ownership, use, and transfer;
  - (B) Has a transaction history that:
    - (i) Is recorded on a blockchain or other digital data structure through which consensus is achieved through a mathematically verifiable process;
    - (ii) Is updated programmatically in accordance with the consensus rules of such blockchain or other digital data structure; and
    - (iii) After consensus is reached, is designed to resist modification or tampering without changes to the consensus rules of such blockchain or other digital data structure.
  - (C) Provides the holder of such Token with any of the following:
    - (i) Voting rights with respect to changes related to a Network or Protocol;
    - (ii) Any similar governance rights over a project, unincorporated association, or organization that are programmatically tied to the holding of such Token; or

(iii) The functional ability to participate in or develop projects on a Network or Protocol; and

(D) Constitutes, or is involved in the governance of or participation in, a consumer financial product or service, including a Network or Protocol that programmatically provides a consumer financial product or service.

(5) **PROTOCOL.**—A collection of one or more smart contracts developed by the Initial Development Team that have been deployed to a Network, including any subsequent modifications to such smart contracts.

(6) **QUALIFIED DECENTRALIZED AUTONOMOUS ORGANIZATION.**—An entity meeting the definition set forth in Section 7714(a)(51) of the Internal Revenue Code.

(b) **SUPERVISION AND PARTIAL EXEMPTION.**

(1) **SUPERVISION.**—The requirements of 12 U.S.C. Sections 5514, 5532, and 5533 shall be satisfied with respect to a Network or Protocol if the following conditions are satisfied no later than the date of Maturity of the Network or Protocol—

(A) Disclosures required under paragraph (c) of this section are made available on a freely accessible public website; and

(B) Exclusively for the purposes of paragraphs (c)(1) and (c)(2) of this section, Tokens associated with the Network or Protocol are offered, sold, or distributed for the purpose of facilitating access to, participation on, use of, or development of the Network or Protocol, as applicable.

(2) **PARTIAL EXEMPTION.**—There shall be a presumption of compliance with Section 5531 with respect to a Network or Protocol, as applicable, and related Token if the conditions set forth in subsection (b)(1) are satisfied.

(c) **DISCLOSURES.**—The following information must be disclosed on a freely accessible public website.

(1) **NETWORK OR PROTOCOL DISCLOSURES.**— As soon as practicable following the public availability of a Network or Protocol, disclose the following information.—

(A) SOURCE CODE.—A text listing of commands to be compiled or assembled into an executable computer program used by participants to access the Network or Protocol, amend the code, and confirm transactions, as applicable.

(B) TRANSACTION HISTORY.—A narrative description of the steps necessary to independently access, search, and verify the transaction history of the Network or Protocol, as applicable. This paragraph (B) may be satisfied by providing a hyperlink to a block explorer containing data for the Network or Protocol or by disclosing sufficient information for a third party to create a tool for verifying the transaction history of the Token.

(C) INITIAL DEVELOPMENT TEAM.—The names and relevant experience, qualifications, attributes, and skills of each key person who is a member of the Initial Development Team;

(D) MODIFICATIONS.—An explanation of modifications that the Initial Development Team or any member thereof may make to the Network or Protocol, including the effect of those changes on users, any required time delays when making those changes, and the manner in which those changes may be made.

(E) EARNINGS.—An explanation of the potential earnings of a user, including through mining, staking, liquidity provision, liquidations, funding rates, or any other way in which a user may earn Tokens in the Network or Protocol. Such an explanation shall specify the circumstances that could result in such user not receiving those earnings. This paragraph (E) may be satisfied by providing a conspicuous hyperlink to such explanation.

(F) FEES.—An explanation of the potential fees a user may incur, including through mining, staking, borrowing, liquidity provision, effecting liquidations, being liquidated, or any other way in which taking an action on the Network or Protocol may result in a user receiving less value than a typical user would otherwise expect to receive, and specify the circumstances that could result in such user incurring those fees. This paragraph (F) will be satisfied by providing a conspicuous hyperlink to such explanation.

(G) THIRD-PARTY NETWORKS AND PROTOCOLS.—A list of all third-party Networks or Protocols on which the Network or Protocol relies to function as

disclosed to users and a link, if available, to information regarding that third-party Network or Protocol.

(H) COMMUNICATIONS.—Hyperlinks to any official communication channels or fora for discussion of technical matters related to the Network or Protocol.

(2) DISCLOSURES UPON MATURITY.—No later than the date of Maturity of the Network or Protocol, disclose the following information.

(A) TOKEN AND GOVERNANCE DESCRIPTION.—A narrative description of the purpose of the Network or the Protocol, as applicable, and its operation. At a minimum, such disclosures must include the following, as applicable—

(i) A narrative description of the steps necessary to independently access, search, and verify the transaction history of the Token, which may be satisfied by providing a hyperlink to a block explorer containing data for the Network on which the Token exists or by disclosing sufficient information for a third party to create a tool for verifying the transaction history of the Token.

(ii) Information explaining the launch and supply process, including the number of any Tokens to be issued in an initial allocation, the total number of Tokens to be created, the release schedule for the Tokens, and the total number of Tokens outstanding;

(iii) Information detailing the method of generating or mining Tokens, the process for burning Tokens, the process for validating transactions, and the consensus mechanism;

(iv) An explanation of governance mechanisms for implementing changes to the Network or Protocol, such as voting thresholds and quorum requirements; and

(v) Hyperlinks to any official communication channels or fora for discussion of governance matters.

(B) DISTRIBUTION OF VOTING POWER.—Disclose the following information—

(i) The identity of any person or entity, or group of persons or entities under common control, holding more than 1 percent of the voting power of the governance entity, a description of any limitations or restrictions on the transferability of the Tokens held by such persons, and a description of any rights held by such persons to obtain Tokens in the future in a manner that is distinct from how any third party could obtain Tokens;

(ii) A list of delegates registered with the Network or Protocol, to the extent known;

(iii) A list of any committees or subcommittees that have been delegated with authority by the qualified decentralized autonomous organization or otherwise; and

(iv) A historical list of governance proposals and the tally of votes on each proposal.

(C) TRADING PLATFORMS.—If applicable, identify one or more secondary trading platforms on which the Token trades, including the Token symbol or acronym, to the extent known.

(D) WARNING TO TOKEN PURCHASERS.—A statement that the acquisition of Tokens involves a high degree of risk and the potential loss of money.

(3) MATERIAL CHANGES AND CERTAIN TOKEN SALES.

(A) Any material changes to the information required under paragraph (c)(1)-(2) of this section must be provided on the same freely accessible public website as soon as practicable after the change.

(B) Each time a member of the Initial Development Team identified pursuant to paragraph (c)(1)(C) of this section sells five percent or more of his or her initial allocation of Tokens, state the date(s) of the sale, the number of Tokens sold, and the identity of the seller.

(4) RESPONSIBLE PERSON.—No later than the date of Maturity of the Network or Protocol, the qualified decentralized autonomous organization or other person or entity designated as responsible for disclosures under paragraphs (c)(1)-(3) of this section must be disclosed on the same freely accessible website.

#### SEC. XX. TECHNICAL AND CONFORMING AMENDMENTS

(a) 12 U.S.C. Section 5517(h) is amended to include the following after Section 5517(h)(2)—

“(3) DIGITAL TOKENS.—Paragraph (1) shall not apply to any person to the extent such person is an Initial Development Team, or an entity to whom an Initial Development Team has transferred responsibility, as set forth in Section 5520 of this Subchapter.”

(b) 12 U.S.C. Section 5517(i)(1) is amended to add the clause “except as set forth in Section 5520 of this Subchapter” at the conclusion of the sentence stating, “The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.”

(c) 12 U.S.C. Section 5517(j)(1) is amended to add the clause “except as set forth in Section 5520 of this Subchapter” at the conclusion of the sentence stating, “The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.”

## Proposal to Address Tax Reporting and Related Issues of Digital Assets and Blockchain Networks

### Issue

The United States tax and regulatory environments are designed for centralized operations. As a result, blockchain networks and smart contract-based protocols present an extraordinary challenge for both regulators and industry participants. In the absence of comprehensive legislation addressing the complexities of this developing technology, individual regulatory agencies have been forced to provide their own interpretations of how regulations should be applied to situations and technologies well beyond what was contemplated when the current laws and regulations were enacted. The development of decentralized alternatives to traditional financial service offerings is one example of this emerging technology that highlights how difficult it is to apply laws designed for centralized operations.

On August 10, 2021, the United States Senate passed a bipartisan infrastructure bill (the “**Bill**”), which contains several provisions relating to digital assets that could have far reaching consequences for the burgeoning industry. In particular, the application of reporting obligations to actors that will be unable to comply could significantly curtail the growth of the technology in the United States, and ultimately lead to lower tax revenue for the federal government. In addition, the application of reporting requirements to such actors will create significant privacy concerns for blockchain users. The goal of any legislative proposal seeking to apply tax reporting obligations to blockchain ecosystems should be to maximize tax compliance while minimizing compliance burden and risks to privacy.

There will be a number of questions on how to apply substantive tax law to the requirement in the Bill for brokers to report the basis for digital assets. One such issue concerns the application of the so-called “wash-sale rule” to digital assets. Existing tax guidance provides that convertible virtual currency is treated as property for tax purposes, but it does not specify what type of property. Taxpayers and their advisors generally take the position that most convertible virtual currencies do not constitute securities for tax purposes. As a result, they are not subject to the wash sale rule, which defers a loss claimed by a taxpayer with respect to any sale or other disposition of shares of stock or securities if, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer acquires substantially identical stock or securities.

## Reason for Change

The escalating number of data breaches and security incidents such as ransomware attacks in recent years can be directly attributed to the increasing amount of consumer data collected by organizations. Since the most commonly used blockchains today have transparent ledgers, which enable anyone to view all of the transactions that have ever taken place on such a blockchain (including all transactions executed by an individual user), legislation needs to carefully balance the need for tax reporting compliance against the risks of having too many touchpoints for collecting and storing consumer data.

In order to accomplish this, reporting obligations should be limited to the fewest number of actors with the most pertinent information that could be utilized to support tax compliance. Within a given blockchain ecosystem that includes smart-contract based protocols, there are a number of layers where tax reporting obligations could potentially apply: (1) the miner/validator layer,<sup>ii</sup> (2) the smart-contract based protocol layer,<sup>iii</sup> (3) the application layer,<sup>iv</sup> (4) the wallet layer,<sup>v</sup> and (5) the fiat to on-chain onboarding and offboarding service provider (referred to herein as “virtual asset service providers” or “**VASPs**”) layer<sup>vi</sup>. All of these layers face inherent difficulties with respect to tax reporting given their lack of insight into the underlying transactions that a user engages in and their inability to accurately calculate a user’s basis with respect to digital assets that are being transacted. In order to resolve these issues, reporting persons would be required to centralize information collection (including personally identifiable information), which is at odds with the operation of the decentralized layers within the ecosystem, and to build incredibly complex and cumbersome on-chain and off-chain analytics platforms to track transaction data from the point of origination. Such projects would likely be incapable of building such analytics, as even the best publicly available tax products for digital assets (e.g., TaxBits, CoinTracker, TokenTax) currently struggle to achieve complete accuracy.

In addition, other than with respect to VASPs, each of the above-referenced layers typically only facilitates on-chain transactions for blockchains and is therefore no better positioned to file tax reports relating to user activity than any third party with access to such blockchains. Furthermore, requiring any of such non-VASP layers to identify users for tax reporting would result in a substantial increase in the number of vendors that would possess personally identifiable information of users, which raises significant privacy concerns. As a result, the application of such obligations on the non-VASP layers would likely push development of this technology offshore and outside the reach of U.S.

regulators. On the other hand, VASPs already collect personally identifiable information of their users as well as the wallet addresses associated with such users. Although VASPs typically effect transfers on behalf of their customers off-chain, due to their on- and off-ramp activity, VASPs are involved in a vast majority of transactions occurring on the blockchain. According to Chainalysis, 92% of bitcoin involved in peer-to-peer transactions between unhosted wallets is sourced from regulated VASPs.

The Bill would also expand information reporting by brokers of digital assets beyond what is required of other types of brokers. Specifically, it would amend section 6045A of the Internal Revenue Code (the “**Code**”) to require brokers to report information regarding a transfer of a digital asset (that is not part of a sale or exchange executed by such broker) from an account maintained by the broker to a non-broker account or wallet. The specific information required to be reported is left to the discretion of the IRS. As a result, if this proposal is approved, the broker may have to collect additional information from its customers regarding the movement of the digital asset to another account, including the owner of the transferee account and possibly other downstream transactional information. In many instances, the customer will not have such information or be capable of acquiring it. This will drive users away from the technology or to service providers who circumvent such restrictions, which could put them at risk. In addition, the broker may have no way to verify the information and will be forced to rely on information provided by the customer, making it potentially unreliable (and subjecting the broker to penalties). Given the inherent problems with detailed transferee information, the information to be collected should be limited to that needed to permit the IRS to compare on-chain transactions against the transferor’s self-reported tax events.

Finally, the Bill would extend section 6050I of the Code, which requires reporting by persons engaged in a trade or business receiving at least \$10,000 of cash, to receipts of digital assets. This provision would greatly expand the number of actors in a blockchain ecosystem required to collect personally identifiable information, even reaching artists selling non-fungible tokens (“**NFTs**”). As described above, this type of identification and reporting is not currently possible with blockchain technology without raising significant privacy concerns. In addition, if trades or businesses are interpreted to include completely decentralized protocols, compliance with this provision would be impracticable and drive development outside the United States. Such reporting is ultimately unnecessary, as the reportable transactions all occur on-chain and will be sourced from regulated VASPs and, thus, are subject to IRS review without imposing significant compliance burdens or privacy risks. Moreover, these digital assets often will eventually be reportable by VASPs under the proposed broker reporting provision, as

traders of tokens on DeFi platforms and artists seeking to utilize the funds they receive from sales of NFTs in the real world would need to utilize a VASP to offboard such funds.

With respect to wash sale rules, given that digital assets are often held for investment and can be traded on exchanges similar to stock or securities, similar rules should apply to the two asset classes. Thus, the ability to recognize losses while, at the same time, maintaining one's investment in the digital asset should be subject to the same limitations on wash sales as currently applies to stock and securities.

### Description of Proposal

With respect to tax reporting and compliance, the proposal would build on a proposal approved by the Senate in the Bill to require information reporting by brokers. Specifically, the proposal would clarify the definition of broker to ensure that actors in blockchain ecosystem who do not act as brokers in the traditional sense (i.e., a principal, agent or other intermediary effecting transfers on behalf of customers) and who are only privy to publicly available on-chain information would be excluded from the definition. Specifically, VASPs would be the primary actors subject to the reporting requirements, while the potential application to miners/validators, the developers of blockchain networks, on-chain protocols and applications, and wallet providers would be limited.

The proposal would also modify the language in section 6045A of the Code to limit the information that brokers must report regarding transfers of digital assets to a non-broker account or wallet. Because the transfer to a non-broker account or wallet is an on-chain transaction, the identity of the transferor, the amount transferred and the transferee wallet address should provide sufficient information for the IRS to check the on-chain transactions engaged in from such wallet against an individual's self-reported tax events, thereby adding a necessary checkpoint that does not currently exist. This proposal would also reduce the security and privacy risks associated with the collection of additional information from customers, given that VASPs already collect this information. For similar reasons, the proposal would eliminate the reporting requirement for digital assets under section 6050I of the Code. The proposal also contains a requirement that the Secretary study the use of blockchain technology to obtain information on blockchain transactions in order to maximize tax compliance without the burden of third-party information reporting.

Finally, the proposal would extend the wash sale rules, which are intended to prevent tax deferral in the context of traditional financial securities, to digital assets.

## Effective Date

Given the inherent difficulties in collecting and reporting information on the basis of digital assets, the effective date of the provision is extended another year, and authority is granted to the Secretary to further extend it if necessary to implement the provision. Therefore, the amendments to the broker reporting rules apply to returns required to be filed, and statements required to be furnished, after December 31, 2024.

The amendments to the wash sale rules apply to sales and other dispositions after December 31, 2021.

## Proposed Legislative Language – Information Reporting for Brokers and Digital Assets

### SEC. XX. INFORMATION REPORTING FOR BROKERS AND DIGITAL ASSETS

(a) CLARIFICATION OF DEFINITION OF BROKER.—Section 6045(c)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking “and” at the end of subparagraph (B),

(2) in subparagraph (C)—

(A) by striking “any other person who (for a consideration)” and inserting “any person who (for consideration)”, and

(B) by striking the period at the end and inserting “, and”, and

(3) by inserting after subparagraph (C) the following new subparagraph:

“(D) any person who (for consideration) regularly effectuates transfers of digital assets on behalf of another person.”.

(b) REPORTING OF DIGITAL ASSETS.—

(1) BROKERS.—

(A) TREATMENT AS SPECIFIED SECURITY.—Section 6045(g)(3)(B) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

“(iv) any digital asset, and”.

(B) DEFINITION OF DIGITAL ASSET.—Section 6045(g)(3) of such Code is amended by adding at the end the following new subparagraph:

“(D) DIGITAL ASSET.—Except as otherwise provided by the Secretary, the term ‘digital asset’ means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.”.

(C) APPLICABLE DATE.—Section 6045(g)(3)(C) of such Code is amended—

(i) in clause (ii), by striking “and” at the end,

(ii) by redesignating clause (iii) as clause (iv), and

(iii) by inserting after clause (ii) the following:

“(iii) January 1, 2024, in the case of any specified security which is a digital asset, and”.

(2) FURNISHING OF INFORMATION.—

(A) IN GENERAL.—Section 6045A of such Code is amended—

(i) in subsection (a), by striking “a security which is”, and

(ii) by adding at the end the following:

“(d) RETURN REQUIREMENT FOR CERTAIN TRANSFERS OF DIGITAL ASSETS NOT OTHERWISE SUBJECT TO REPORTING.—Any broker, with respect to any transfer (which is not part of a sale or exchange executed by such broker) during a calendar year of a covered security which is a digital asset from an account maintained by such broker to an account which is

not maintained by, or an address not associated with, a person that such broker knows or has reason to know is also a broker, shall make a return for such calendar year, in such form as determined by the Secretary. Such return shall include the following information—

- (1) the identity of the transferor,
- (2) the type and amount of digital assets transferred, and
- (3) the wallet address to which such digital assets are transferred.”.

(B) REPORTING PENALTIES.—Section 6724(d)(1)(B) of such Code is amended by striking “or” at the end of clause (xxv), by striking “and” at the end of clause (xxvi), and by inserting after clause (xxvi) the following new clause:

“(xxvii) section 6045A(d) (relating to returns for certain digital assets),”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed, and statements required to be furnished, after December 31, 2024, unless otherwise extended by the Secretary.

(d) RULE OF CONSTRUCTION.—

(1) DEFINITION OF BROKER.—Nothing in this section or the amendments made by this section shall be construed to create any inference that a person described in section 6045(c)(1)(D) of the Internal Revenue Code of 1986, as added by this section, includes any person solely engaged in the business of—

(A) validating distributed ledger transactions,

(B) selling hardware or software for which the sole function is to permit a person to control private keys which are used for accessing digital assets on a distributed ledger, or

(C) developing digital assets, blockchain networks or protocols, or related applications for accessing such networks or protocols, in each case, for use by other persons, so long as the effectuation of any transfers of digital assets

using such technology are recorded on a publicly-viewable blockchain ledger and do not involve fiat currency.

(2) **BROKERS AND TREATMENT OF DIGITAL ASSETS.**—Nothing in this section or the amendments made by this section shall be construed to create any inference, for any period prior to the effective date of such amendments, with respect to—

(A) whether any person is a broker under section 6045(c)(1) of the Internal Revenue Code of 1986, or

(B) whether any digital asset is property which is a specified security under section 6045(g)(3)(B) of such Code.

(e) Any revision to sections 6045A and 6050I of the Internal Revenue Code of 1986 enacted after January 1, 2021, are rescinded.

Proposed Legislative Language—Wash Sales of Specified Assets

SEC. XX. WASH SALES OF SPECIFIED ASSETS

(a) **WASH SALE RULES TO APPLY WITH RESPECT TO SPECIFIED ASSETS.**—

(1) **SPECIFIED ASSETS.**—Section 1091 is amended by adding at the end the following new subsection:

“(h) **SPECIFIED ASSET.**—For purposes of this section, the term ‘specified asset’ means any of the following:

“(1) Any security described in subparagraph (A), (B), (C), (D), or (E) of section 475(c)(2).

“(2) Any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. Such term shall, except as provided in regulations, include contracts or options to acquire or sell any specified assets.”.

(2) **CONFORMING AMENDMENTS.**—Section 1091 is amended—

(A) by striking the last sentence of subsection (a),

(B) by striking “stock or securities” each place it appears and inserting “specified assets”, and

(C) by striking “shares of” each place it appears in subsections (a), (b), and (c).

(b) EXCEPTION FOR BUSINESS NEEDS AND HEDGING TRANSACTIONS.—Section 1091, as amended by the preceding provisions of this section, is amended by adding at the end the following new subsection:

“(i) EXCEPTION FOR BUSINESS NEEDS AND HEDGING TRANSACTIONS.—Except as provided in regulations prescribed by the Secretary, subsection (a) shall not apply in the case of any sale or other disposition of any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary, and which—

“(1) is directly related to the business needs of a trade or business of the taxpayer (other than the trade or business of trading foreign currencies or commodities described in subsection (h)), or

“(2) is part of a hedging transaction (as defined in section 1221(b)(2)).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and other dispositions after December 31, 2021.

Proposed Legislative Language—Report on IRS Use of Blockchain Technology for Tax Compliance

SEC. XX. REPORT ON IRS USE OF BLOCKCHAIN TECHNOLOGY FOR TAX COMPLIANCE

(a) STUDY.—The Secretary shall conduct a study on the use of blockchain technology to facilitate tax administration and compliance.

(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the House Ways & Means Committee and the Senate Finance Committee a report on the results of the study.

(c) RECOMMENDATIONS.—The Secretary shall include in the report recommendations to Congress on the best ways to use innovative blockchain technologies to increase tax compliance while reducing taxpayer burden, such as that associated with third-party information reporting, and minimizing the impact on taxpayer privacy.

Proposed Legislative Language—FFRDC

SEC. XX. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

The following section is added to 31 U.S.C. Chapter V—

“31 USC Section 523. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS

(a) The Director, acting through the Deputy Director for Management, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis, or to carry out other responsibilities, including coordinating and integrating both the extramural and intramural programs, on the following subjects:

- (1) Web 3;
- (2) Digital infrastructure;
- (3) Digital identity;
- (4) Cryptocurrencies, crypto-assets, blockchain, and other decentralized technologies; and
- (5) Decentralized, privacy-promoting computing.

(b) In carrying out these responsibilities, the Director shall coordinate with the Secretary of Commerce, the Secretary of Homeland Security, and the Director of the Office of Science and Technology Policy.

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<sup>ii</sup> On a given blockchain, mining (for proof-of-work chains) and validating (for proof-of-stake chains as well as chains using other consensus mechanisms) are used to secure and verify transactions on the blockchain ledger. In each case, this involves the creation of a new block, the verification that the transactions meet the requirements of the protocol, the addition of the transactions to the new block and the addition of the

new block to the blockchain. Such process effectively updates the entire blockchain ledger. Currently, the miners or validators on leading blockchains number in the hundreds of thousands.

<sup>iii</sup> A protocol is a collection of smart contracts that have been deployed to a blockchain, and that collectively act in a manner similar to common internet protocols (HTTP, SMTP, etc.). Once deployed, these smart contracts typically vary between being entirely immutable (i.e., cannot be altered) and partially immutable. In the latter case, the owners of such smart contracts are typically able to change certain variants of such smart contracts. For decentralized projects, the protocol smart contracts are typically not owned by anyone (once deployed they are a permanent part of the applicable blockchain), but are controlled by a decentralized autonomous organization (“**DAO**”), which itself is controlled by the holders of governance tokens of such DAO. Protocols do not typically collect information from users or store their data, as doing so would be extremely inefficient given that such actions would need to be taken on-chain.

<sup>iv</sup> Blockchain applications run on websites and mobile apps and provide users with a navigable interface to interact with blockchain protocols. There are often numerous applications developed by independent parties for each underlying protocol, and several applications have been developed that act as aggregators and enable users to access a multitude of protocols on multiple blockchains. This combination of applications and protocols is what is most commonly referred to as Web 3, and access to its functionality first requires that users connect their blockchain wallets to the applications they wish to use. Importantly, applications cannot process the transfer of any digital assets without connecting and interacting with a smart contract or protocol on-chain. As such, any actual transfers undertaken using an application are ultimately routed through a smart contract or protocol and are reflected on-chain. Unlike protocols, which are typically developed and deployed by developers and then governed by DAOs, applications are typically developed, operated and owned by the developers of such applications. Applications do not typically collect information from users or store their data.

<sup>v</sup> A wallet provides a blockchain user with control over an address on such blockchain, making the wallet owner the de facto owner of such address. Wallets offer users a wide range of services depending on the underlying blockchain they are connected to. Most ethereum wallets are unhosted software wallets that users download and then run on their own electronic devices. They enable users to buy, sell and swap digital assets, sometimes by connecting to decentralized protocols.

<sup>vi</sup> VASPs provide a wide array of services to users of blockchain technology. Most importantly, they act as on and off ramps for fiat-to-crypto and crypto-to-fiat transactions, and therefore bookend user on-chain activity. VASPs are highly regulated as money service businesses, which requires them to collect and store personally identifiable information of their users.

## Proposal to Compare Jurisdictional Harmonization with Federally Chartered Self-Regulatory Organization or Nonprofit Corporation

### Issue

As several studies have shown, U.S. federal financial regulators currently operate with overlapping or blurred jurisdictional boundaries. In 2016, the Government Accountability Office (“GAO”) found that, “Fragmentation and overlap have created inefficiencies in regulatory processes, inconsistencies in how regulators oversee similar types of institutions, and differences in the levels of protection afforded to consumers,” and recommended that Congress consider whether changes to the financial regulatory structure were needed to reduce or better manage fragmentation and overlap. This state of affairs has led to confusion amongst market participants, particularly with respect to new and innovative products, such as decentralized technology. In particular, as a result of the jurisdictional overlap among agencies such as the Securities and Exchange Commission; the Commodity Futures Trading Commission; agencies of the Department of the Treasury, including the Financial Crimes Enforcement Network, the Office of Foreign Asset Control, the Internal Revenue Service, and the Office of the Comptroller of the Currency; and agencies such as the Consumer Financial Protection Board and the Federal Trade Commission, cryptocurrency regulation, digital asset regulation, and regulation of next-generation internet protocols is disorganized and fragmented. For policymakers seeking to promote national objectives such as consumer protection, market integrity, sustainable economic growth, and financial inclusion, the current situation is untenable. It is also costly, potentially requiring duplicative investment across a variety of federal departments, agencies, boards, and commissions.

### Reason for Change

Federal agencies have begun asking Congress for greater jurisdictional authority for cryptocurrency and digital assets, often overlapping with (or at the expense of) other federal agencies. However, different projects and opportunities that implement decentralized technology will demand different expertise, and these projects and opportunities intersect with subjects such as intellectual property, network security, data protection, net neutrality, consumer protection, property rights, banks, currencies, derivatives, corporate governance, telecommunications, energy, and any number of other areas. Existing regulatory structures have gaps and are often outdated with respect to emerging technologies. Congress is therefore left to determine whether adjusting jurisdictional boundaries makes sense (or is even feasible, given the number of issues at

play) and ensuring that there are no unintended consequences. Many in the industry have advocated instead for the establishment and/or designation of a federally chartered self-regulatory organization (“**SRO**”). This approach also has benefits and drawbacks. An alternative (and potentially concurrent) approach, drawn from the first generation of internet innovation, would involve the formation of one or more nonprofit corporations to oversee the technical management and standards setting for this emergent industry. Directing a study comparing the cost and level of effort of legislatively harmonizing jurisdiction among a variety of federal departments and agencies, with the cost and level of effort of establishing and/or designating an SRO and/or supervisory nonprofit corporation for the industry, would provide Congress with a mechanism to compare these approaches, which can inform further action.

### Description of Proposal

A twelve-month study, conducted by the GAO, would evaluate the requirements for comprehensively adjusting jurisdictional boundaries for regulatory oversight of cryptocurrency, digital assets, and decentralized technology, as well as the impact of potential jurisdictional changes to the U.S. financial regulatory system as a whole. For comparison, the study would also assess the costs and level of effort of establishing and/or designating: (i) a federally chartered SRO; and/or (ii) one or more nonprofit corporations.

To ensure a holistic view of the current financial regulatory framework, the study would examine the following:

- How is the financial regulatory oversight currently divided among federal departments and agencies with respect to cryptocurrency, digital assets, and decentralized technology, and the implications of such division;
- In what instances do cryptocurrency, digital assets, and decentralized technology fall within the regulatory oversight of multiple regulators and the implications of dual regulation;
- What is the estimated cost and level of effort to effect harmonization of jurisdictional responsibilities for cryptocurrency, digital assets, and decentralized technology across federal departments and agencies;

- What is the estimated cost and level of effort to establish and/or designate an SRO for oversight of cryptocurrency, digital assets, and decentralized technology;
- Whether such an SRO could report into a multi-agency working group, rather than being designated under a single agency;
- Past instances where regulatory responsibilities have been allocated to an SRO, and the benefits and drawbacks of doing so;
- What is the estimated cost and level of effort required to establish and/or designate one or more nonprofit corporations to oversee technical management and standards setting for decentralized technology;
- Past instances where technical oversight over an emerging industry or standard has been allocated to a nonprofit corporation, and the benefits and drawbacks of doing so; and
- Past instances where technical oversight over an emerging industry or standard has been overseen by a multi-stakeholder group including representatives from government, industry, and civil society, and the benefits and drawbacks thereof.

#### Proposed Legislative Language

#### SEC. XX. STUDY ON JURISDICTIONAL OVERLAP OF FINANCIAL REGULATORS.

(a) STUDY — The Government Accountability Office shall conduct a study on the current allocation of jurisdictional responsibilities for oversight of cryptocurrency, digital assets, and decentralized technology across federal departments and agencies, and alternatives to legislative harmonization of jurisdictional responsibilities.

(b) ELEMENTS — The study conducted pursuant to subsection (a) shall —

(1) Examine how the financial regulatory oversight is currently divided among federal departments and agencies with respect to cryptocurrency, digital assets, and decentralized technology, and the implications of such division;

(2) Evaluate any instances in which cryptocurrency, digital assets, and/or decentralized technology fall within the regulatory oversight of multiple regulators and the effects of overlapping regulatory authority;

(3) Estimate the cost and level of effort to effect harmonization of jurisdictional responsibilities for cryptocurrency, digital assets, and decentralized technology across federal departments and agencies;

(4) Estimate the cost and level of effort to establish and/or designate a self-regulatory organization for oversight of cryptocurrency, digital assets, and decentralized technology;

(5) Identify past instances where regulatory responsibilities have been allocated to a self-regulatory organization, and the benefits and drawbacks of doing so;

(6) Assess the feasibility of requiring a self-regulatory organization for oversight of cryptocurrency, digital assets, and decentralized technology could report into a multi-agency working group;

(7) Estimate the cost and level of effort to establish and/or designate one or more nonprofit corporations to oversee technical management and standards setting for decentralized technology; and

(8) Identify past instances where technical oversight over an emerging industry or standard has been allocated to a nonprofit corporation, and the benefits and drawbacks of doing so; and

(9) Identify past instances where technical oversight over an emerging industry or standard has been allocated to a multi-stakeholder group, including representatives from government, industry, and civil society, and the benefits and drawbacks of such a model.

(c) **TIMELINE** — The study shall be completed within twelve (12) months of the enactment of this bill.