The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

August 11, 2025

The Honorable
Tim Scott
Chairman
U.S. Senate Committee on
Banking, Housing,
and Urban Affairs
Washington, DC 20510

The Honorable
Elizabeth Warren
Ranking Member
U.S. Senate Committee on
Banking, Housing,
and Urban Affairs
Washington, DC 20510

The Honorable
Edward Markey
255 Dirksen Senate Office
Building
Washington, DC 20510

RE: Digital Asset Legislation Should Preserve State Securities Regulator Authority

Dear Chairman Scott, Ranking Member Warren, and Senator Markey:

I am writing in my capacity as the chief securities regulator[1] for Massachusetts to adamantly oppose provisions of H.R. 3633, the Digital Asset Market Clarity Act of 2025 (the "Clarity Act"), the Responsible Financial Innovation Act of 2025 ("RFIA"), and any further Congressional action in the digital asset space that preempts state-level investor protections and weakens existing securities laws.

While I support advances in the financial markets, innovation at the expense of investor protection is not true innovation. Instead, such action moves our capital markets, the most robust in the world, backwards. The regulatory framework surrounding digital assets should not represent a simple pass through; instead, these laws and regulations should be strengthened to protect retail investors from demonstrated harm.

To this end, it is simply misguided to omit state securities regulators from the first attempts at comprehensive digital asset legislation. Congressional action at a minimum should preserve state securities authority to pursue fraud, deceit, and other unlawful conduct relating to digital assets and should keep in place critical investor safeguards.

[1] The Office of the Secretary of the Commonwealth administers and enforces the Massachusetts Securities Act, M.G.L. c.110A, through the Massachusetts Securities Division (the "Division").

A. State Securities Regulators are Purpose-Built to Protect Main Street Investors from Frauds in the Digital Asset Space

My office has led efforts, along with state securities regulators across the country, to investigate fraud in the digital asset space—successfully protecting Massachusetts investors from scams by launching numerous investigations and taking action against deceptive digital asset practices.

The Division has issued cease and desist orders, imposed fines, and, most importantly, ordered restitution directly to defrauded Massachusetts investors. In one such case, my office took action against an entity and its principal who defrauded veterans in connection with a purported "blockchain" enterprise involving veterans' medical records.[2] In other cases, we have protected investors by going after firms that used aggressive and misleading promotional tactics to lure Massachusetts investors[3], or utilize "bad actors," including, in one instance, ordering nearly $3.5 million in rescission to Massachusetts investors after identifying a crypto mining company promoter with a prior securities fraud record.[4]

The number of complaints we receive from Massachusetts investors about fraud involving cryptocurrency has grown steadily. In fact, over the last two years, the Division has received dozens of complaints from investors and purchasers who were promised, but never realized, significant returns from digital asset investments. This is to say nothing of cryptocurrency complaints reported by the FBI's Internet Crime Complaint Center (IC3) to have affected over 2,000 Massachusetts residents in 2024 alone.[5]

While the specifics in these complaints vary, many of these schemes follow a similar "pig butchering" pattern: a person invests a large sum, is shown promising returns, and attempts to withdraw their funds; then, a scammer demands fees, does not return the investor's principal or the promised returns, and ultimately goes offline.

In one instance, a Massachusetts investor was invited to a group chat wherein a scammer advised them to invest $700,000 into a cryptocurrency, promising returns of over $4,000,000. The investor subsequently lost access to their account and the scammer then demanded the investor pay an additional $40,000 to regain access to their account. The investor subsequently lost all communication with the scammer, and access to the account was never restored. In another similar fact pattern, an investor was duped, not once, but three times, before contacting my office. Cryptocurrency scams of this nature have cost Massachusetts investors millions of dollars.

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[2] *In the Matter of Exochain Public Benefit Corporation*, Docket No. E-2021-0092 (August 3, 2022)
[3] *See, e.g.*, *In the Matter of Blue Vase Mining*, Docket No. E-2018-0018 (May 21, 2018)
[4] *In the Matter of U.S. Data Mining Group, Inc.*, Docket No. E-2022-0011 (March 22, 2022)
[5] https://www.ic3.gov/AnnualReport/Reports/2024State/#?s=24

Unless addressed, there is a real and unacceptable risk that these frauds will run rampant. A strong federal and state framework is needed. I call on Congress to preserve state securities authority to pursue fraud, deceit, and unlawful conduct in the digital asset space.

B. Current Efforts to Rewrite Well-Established Principles Governing Securities Law—including Redefining the Term "Investment Contract" are Dangerous

I also urge Congress to remove text from the current proposals that would alter the definition of an "investment contract." There is no merit in the notion that this key legal term needs to be amended. For nearly 80 years, a cornerstone of the securities markets has been the adaptable legal test of an investment contract as a security. Investment contract analysis has allowed state and federal regulators, including my own office, to reach frauds like pyramid schemes, "investment certificate" offerings, Ponzi schemes, and other exotic and unconventional securities. The legal test is adaptable, well known, and its investor protection impact has been far-reaching.

Definitions in the state and federal securities laws, like "investment contract," are designed intentionally to be "sufficiently broad to encompass virtually any instrument that might be sold as an investment." *Reves v. Ernst & Young*, 494 U.S. 56, 60-61 (1990). In the seminal *Howey* decision, the Supreme Court described a test that was intended to "embod[y] a flexible rather than a static principle, one that is capable of adaptation to meet the **countless and variable schemes** devised by those who seek the use of the money of others on the promise of profits." *Securities & Exch. Comm'n v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946) (emphasis added).

As described by the Supreme Court, the investment contract test has operated flexibly to protect investors. For decades, courts, regulators, and industry have accepted the *Howey* test as determining the rules of the road. Any limitation to this fundamental term would affect not only digital assets, but would have the disastrous impact of limiting the application of investment contracts to other kinds of investment fraud. H.R. 3633 and RFIA seek to upend the decades-long investor protection tool, by carving out certain assets or adding or limiting language.[6] These efforts should be rejected and I call on Congress to remove such provisions from the current proposals.

C. Proposals that Unnecessarily Limit Critical Investor Protection Safeguards are Dangerous

Current proposals apparently recognize that fraud will occur in the digital asset space. *See, e.g.*, RFIA Title I, Sec. 102 (preserving certain private rights of action as well as Section 17 of the Securities Act of 1933). And such concern is warranted, especially given RFIA's expansive exemption for offerings up to $75 million per year for four years, and potentially even

[6] For example, Title I, Sec. 105 of RFIA, would change what constitutes an investment contract by including a "de minimis" standard and limits the scope to "business entities" even though many schemes involve fictitious entities or individual driven programs. The Clarity Act, for its part in Title II, Sec. 201, would carve out from an "investment contract," "investment contract asset[s]" as further defined therein.

higher if calculated on a percentage basis. *See e.g.*, RFIA Title I, Sec. 102. If state enforcement authority is preempted, a regulatory "black hole" will likely exist that would allow retail investors to be snared in small offering fraud. An investment of a few hundred or even thousands of dollars might constitute a person's entire life savings—and, at the very least, represent the hard-earned savings of millions of Massachusetts residents.

To this end, RFIA's proposed disclosure regime omits critical corners of the market. RFIA, for its part, carves out offerings under $5 million from any disclosure requirements. And the proposal further layers on other definitional prerequisites. My office frequently takes action to protect investors without regard to the dollar size of the unlawful activity. It is not uncommon for my office to take action even where the size of the fraud is a few thousand dollars; unfortunately, many frauds start out small and then grow in size. To put in place a framework that weakens investor access to critical information invites fraud in its many forms. What is needed is a robust disclosure regime.

Even when disclosures are required, the disclosure is qualified in terms of timing; to "the extent that information is material and known or reasonably knowable," imposes no requirement to disclose financial statements, and may be overridden by a toothless self-certification mechanism. *See* RFIA Title I, Sec. 101(d). Similarly, my office's prior actions demonstrate that bad actors have and will participate in capital raising efforts. RFIA's exemptive framework set forth in Title I, Sec. 102(c)(3), conspicuously omits promoters and others that may be integrally involved but not in "control" or "caus[ing] the offer, sale, or distribution . . ." and have been the subject of final orders concerning fraudulent, manipulative, or deceptive conduct. *See* RFIA Title I, Sec. 101(a)(2) and 102(c)(3).

Also, where liability is contemplated, RFIA implicitly includes a carve out for material omissions, limiting liability only to those statements made by the originator, thereby reducing investor protection and tacitly endorsing *caveat emptor* as the regulatory standard.

Instead of a weakened disclosure regime, those in the digital asset space should be called upon to provide the kind of uniform and ongoing disclosure that is provided in securities markets. Efforts to limit required information and foist risk on Main Street investors should be rejected.

D. Proposals that Direct the SEC to Rewrite Regulatory Safeguards are Dangerous

Finally, current proposals should remove any broad directive to rewrite securities laws rules and regulations. Sec. 109 of RFIA calls upon the SEC to "amend, rescind, replace, or supplement" recordkeeping and fundamental compliance systems, among other items, that now help keep investors safe and ensure efficient markets. RFIA's mandate under Sec. 109 opens the door to an industry "wish list" of changes to broker-dealer rules and regulations that only, even tangentially, involve "digital asset activity." What is most troubling is any directive to revisit "customer protection requirements," with a corresponding directive that sets a regulatory ceiling on these efforts, governed by cost and complexity considerations.

This approach ignores the fact that digital assets do not present a "similar risk profile" to other assets or classes of investments. While we expect to see many more retail investors participate in the markets for digital assets, this directive is problematic because recent studies suggest digital assets are not yet widely deployed in traditional savers' portfolios and that acceptance of digital assets in retail portfolios remains low.[7] Most investors are at the beginning of the learning curve with respect to cryptocurrencies and digital assets. Given this apparent gap in retail knowledge, setting an inappropriate floor to investor protection will result in increased fraud and abuse.

Because the current bills will substantially reduce investor protections, I urge Congress to amend any digital asset market structure bills to address these critical concerns. Please do not hesitate to contact me or Anthony R. Leone, Deputy Secretary – Securities Division at 617-727-3548, if you have questions or we can assist in any way.

Sincerely,

William Francis Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts

[7] *See, e.g.*, https://www.pewresearch.org/short-reads/2024/10/24/majority-of-americans-arent-confident-in-the-safety-and-reliability-of-cryptocurrency/