

September 4, 2025

Via Electronic Mail

The Honorable Tim Scott
Chairman
Senate Banking, Housing, and Urban Affairs Committee
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Digital Asset Market Structure Request for Information

Dear Chairman Scott:

MFA¹ appreciates the opportunity to provide feedback on the Senate Banking Committee's digital asset market structure request for information ("**RFI**").² Technological advancements offer to make the U.S. capital markets more efficient and robust. We applaud your willingness to engage constructively with industry, market participants, and other stakeholders on these important issues.³ We encourage you and regulatory agencies to engage in a transparent, deliberative process regarding the details of any proposed action to promote the digital asset market structure.

The U.S. financial markets are the largest and most successful in the world, in part, due to their strong regulatory frameworks. U.S. markets promote competitive, open, fair, transparent, and efficient markets. MFA urges Congress and relevant regulatory agencies, including the SEC and Commodity Futures Trading Commission ("**CFTC**"), to consider ways to enhance competition and resiliency of U.S. markets and to promote market stability, liquidity, and integrity, including by modernizing certain aspects

¹ Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

² Senate Banking Committee, Digital Asset Market Structure Request for Information (July 23, 2025), available at: https://www.banking.senate.gov/imo/media/doc/market_structure_rfi.pdf. The Senate Banking Committee also solicits feedback on a discussion draft of digital asset market structure legislation (the Responsible Financial Innovation Act of 2025), available at: https://www.banking.senate.gov/imo/media/doc/senate_banking_committee_digital_asset_market_structur_e_legislation_discussion_draft.pdf.

³ The Crypto Task Force at the Securities and Exchange Commission ("**SEC**") also has sought feedback on how to provide clarity on the application of the federal securities laws to the crypto asset market and practical policy measures that aim to foster innovation and protect investors. Crypto Task Force Written Input is available at: <https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input>.

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of the market structure to keep pace with technological innovation.⁴ Blockchain technology, in particular, has introduced novel ways to distribute, trade, and own assets, including securities, in a “tokenized” format. Tokenization may facilitate capital formation and enhance investors’ ability to use their assets as collateral.

We support President Trump’s goal of making the United States the “crypto capital of the world” and not drive innovation offshore.⁵ As traditional financial assets and digital assets converge, more than ever, we need a clear regulatory framework that allows for technological innovation and integration while designed to support capital formation, liquid markets, and investor needs. This is particularly the case as we consider the tokenization of securities and weigh the benefits against potential unintended consequences created by such innovations. The old adage—measure thrice, check twice, and cut once—is particularly apt here given that the continued health and competitiveness of the U.S. economic system is at stake.

I. Executive Summary

In the following, we set forth some high-level considerations that we encourage the Senate Banking Committee to consider as it continues to address the opportunities and challenges of technological innovation. These include recommendations to:

- Provide greater clarity to digital asset market participants by empowering functional regulators to create clear, transparent, and narrowly-tailored digital asset rules.
- Direct the SEC to refine its rules, as necessary and appropriate, to facilitate the tokenization of both publicly-traded and private securities while preserving their unique place within the U.S. capital markets so that tokenized securities are:
 - subject to comparable regulatory safeguards to further the shared goals of capital formation, integration and fungibility, market efficiency, and serving investor needs; and
 - treated generally in the same manner as traditional equity securities from a regulatory perspective, unless there are compelling reasons otherwise.
- Avoid where possible different regulatory and tax treatment for economically similar products to prevent regulatory arbitrage.

⁴ See Letter from Jillien Flores, Chief Advocacy Officer, MFA, to the Honorable French Hill, Chairman, House Financial Services Committee, and the Honorable Ann Wagner, Chairman, House Subcommittee on Capital Markets (Mar. 28, 2025), available at: <https://www.mfaalts.org/wp-content/uploads/2025/03/MFA-Letter-to-HFSC-on-Capital-Formation-As-submitted-3.30.25.pdf>.

⁵ See Presidential Executive Order, Creating a Strategic Bitcoin Reserve and U.S. Digital Asset Stockpile (Mar. 6, 2025), available at: <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-establishes-the-strategic-bitcoin-reserve-and-u-s-digital-asset-stockpile/>.

- Authorize the CFTC to adopt rules governing the custodial requirements for market participants engaged in digital assets and require the CFTC to coordinate its efforts with the SEC relating to custody requirements.
- Encourage the Department of Treasury to continue to refine the scope of the rules it adopted relating to anti-money laundering requirements for investment advisers.
- Avoid subjecting market participants to overlapping SEC and CFTC regulatory regimes and in particular requiring dual registration of market participants.

II. Improve Regulatory Clarity and Pursue Regulatory Tailoring Consistent with Investor Protection

We support efforts to provide greater transparency regarding the regulation of digital assets generally and the tokenization of securities in particular. This includes providing transparency regarding which digital assets are securities under the federal securities laws and how such laws apply to new technology. Market participants need clear rules of the road, not regulation through enforcement.⁶

As a general matter, we believe there should be flexible, adaptive, principles-based rules governing digital assets—one size does not fit all. To effectuate this, Congress should delegate to the SEC or CFTC, as appropriate, the responsibility to establish more detailed prescriptive rules where necessary (*e.g.*, regarding requirements relating to the monthly proof of reserves in RFI Q.10).

While Congress works to build a new regulatory framework for digital assets, the SEC has an opportunity to utilize its existing rulemaking, interpretive, and exemptive authorities, as appropriate, to set fit-for-purpose standards for market participants. In particular, new technological innovations like the blockchain have the potential to improve the efficiency of the clearance and settlement process and thereby make the markets more efficient. We believe the regulatory approach to the continued growth of technology in the securities markets, including any exemptive relief, should serve the SEC’s mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

III. Tokenization of Securities

The regulatory framework for equity securities in the United States has been developed over decades and gone through many technological innovations. The resulting framework has served investors well. The United States has the deepest, most liquid capital markets in the world. As Congress and the SEC consider how to address the tokenization of securities, it should keep this in mind.

We begin by noting that there is no universal definition or taxonomy of the term tokenization. It means different things to different people; tokenized securities offerings may convey different rights and benefits depending on how they are structured. This makes it difficult, in the abstract, to determine what

⁶ For example, Congress and/or the SEC should provide guidance regarding disclosure obligations with respect to digital offerings (see RFI, Q.4) and the application of trading practices and investor protections (see RFI, Q.14).

the tokenized security is from a regulatory perspective (equity, debt, a security-based swap, etc.) and, therefore, what regulatory requirements should apply or what relief is necessary.

Furthermore, it is important to distinguish between the tokenization of publicly-traded securities and privately-traded securities. The main difference between publicly-traded and privately-traded companies consists in their ownership and the ability for investors to trade shares. Publicly-traded securities must be registered with the SEC before they can be sold to the general public, while privately-traded securities are not required to be registered and may only be offered to a restricted number of investors. As a result, the disclosure obligations are different, with publicly-traded securities having robust financial and business disclosure requirements to the public, including quarterly and annual reports to the SEC. By contrast, private companies generally have fewer disclosure requirements and are not required to make their financial information public.

A. Privately-Traded Securities

Market participants have already begun using blockchain technology to issue and trade privately-offered securities. We support such initiatives that comply with applicable federal securities laws (*e.g.*, transfer restrictions). Privately-offered securities offer fewer challenges, from a regulatory perspective, because, among other reasons, they:

- Can limit the investors eligible to invest in the private offerings
- Are exempt from the many disclosure requirements applicable to registered securities offerings
- Are not securities subject to the NMS regulatory framework designed to ensure fair and efficient trading of publicly-traded equity securities.

We support targeted refinements to SEC rules, as necessary and appropriate, to facilitate the tokenization of privately-traded securities, while preserving their unique place with the U.S. capital markets.

B. Publicly-Traded Securities

In contrast to privately-traded securities, the tokenization of publicly-traded securities raises more difficult regulatory questions. We appreciate the potential benefits of technological innovation for the efficiency and liquidity of the public securities markets. As policymakers consider the intersection of public equities and tokenized public equities, we believe policy should be driven by the goals of capital formation, integration and fungibility, market efficiency, and serving investor needs. We also note the unique role of the United States in driving digital asset regulatory policy globally and the importance of crafting thoughtful, flexible, and durable rules that other jurisdictions can follow and incorporate into their own local requirements. The global digital assets community would be ill-served by inconsistent regulatory standards across jurisdictions, especially as the underlying blockchain technology is borderless.

As a general matter, we believe tokenized U.S. equities should be treated in the same manner as traditional equity securities from a regulatory perspective, unless there are compelling reasons otherwise—particularly when it comes to core principles such as best execution, fair access, and pre- and post-trade

transparency.⁷ Differences in regulatory treatment should be warranted by the differences in the product. For example, targeted relief from a limited set of SEC rules and regulations may be necessary and appropriate to accommodate specific characteristics of publicly-offered tokenized securities. However, such relief must be consistent with the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. In order for publicly-traded securities to be tokenized without creating regulatory arbitrage opportunities, it will be necessary for the tokenized securities trading infrastructure to be more fully developed.

IV. Pursue Innovation without Regulatory Arbitrage

As Congress and the SEC and CFTC will take all reasonable steps to make the United States the “crypto capital of the world” and bring innovation onshore, we believe the U.S. framework should avoid different regulatory and tax treatment for economically similar products. With respect to securities, we strongly encourage Congress and the SEC to avoid regulatory arbitrage through innovation. While we strongly support technological innovations designed to address market inefficiencies, we caution Congress and the SEC not to create regulatory arbitrage opportunities for “look-a-like” securities. There should not be disparate (or favored) treatment of blockchain or other new technology, unless warranted by real differences in the product.

V. Custody

We support efforts to provide registrants with greater optionality in determining how to custody digital assets, regardless of whether the digital asset is under the purview of the SEC or CFTC (or neither). We appreciate that the SEC has rescinded Staff Accounting Bulletin 121 (“**SAB 121**”), which placed a significant restraint on the ability of banks to maintain custody of cryptocurrency assets on behalf of customers. Because SAB 121 dissuaded banks and others from custodizing digital assets, investment managers were hampered in their abilities to incorporate digital assets as part of an overall fund investment strategy.

MFA recommends (RFI Q.15.c) that Congress grant the CFTC all necessary rulemaking to promulgate rules to address custodial requirements for digital assets that are subject to CFTC jurisdiction. Custodial requirements are complicated, and subject to change with evolving technologies, risk management, and market needs. Consideration of any custody rule would require input from a host of market participants including custodians, banks, intermediaries such as private fund advisers, other investment advisory firms, broker-dealers, custodians, banks, and technology providers. The relevant administrative agencies are best positioned to consider input from this diverse group of stakeholders.

Moreover, it is critical that the CFTC's custody rulemaking efforts are aligned with the related work underway with the SEC as it relates to digital assets that are securities. MFA further recommends that Congress requires the CFTC and SEC to coordinate efforts to arrive at a unified approach, to the extent

⁷ See Commissioner Hester M. Peirce, Enchanting, but Not Magical: A Statement on the Tokenization of Securities (July 9, 2025), available at: <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-tokenized-securities-070925> (noting that blockchain technology “does not have magical abilities to transform the nature of the underlying asset”).

practicable, for custody of all digital assets subject to the jurisdiction of each regulator. Digital assets are at an important regulatory crossroad and avoiding conflicting, duplicative, overlapping or redundant regulations would be helpful to the continued growth of the asset class generally.

MFA recommends that Congress instruct the SEC and CFTC to provide clarity on the types of custodians that will be deemed acceptable to custody digital assets on behalf of investment advisory clients. The existing SEC custody rule under the Investment Advisers Act of 1940 (“**Advisers Act**”) requires client assets to be custodied with a qualified custodian. MFA suggests that the SEC be encouraged to elaborate (RFI Q.15.d and 15.e) on the conditions required for an entity to be a qualified custodian for digital assets and create reasonable exceptions from the qualified custody requirements to accommodate certain common practices within crypto asset markets, including under limited circumstances, self-custody of digital assets (RFI Q.15.g).

VI. Illicit Financing

MFA supports strong controls at all relevant aspects of the financial ecosystem to prevent money laundering and other types of illicit financing. When considering anti-money laundering (“**AML**”) controls for investment advisers, it is critical to consider the unique position of private fund advisers within the overall financial system. MFA recommends that digital assets be subject to AML controls that are comparable to those that have long existed in traditional finance. It would be unhelpful for the development of the digital asset industry if it became a haven for illicit finance because of more lax rules than in traditional finance.

For both digital and traditional assets, private fund advisers typically have implemented reasonable AML controls (RFI Q.16) that are appropriate based on the nature of their investment strategy and investor base and representations made to investors or others regarding AML controls. While the private fund adviser is responsible for investing and managing the Funds’ assets, the adviser does not hold investor funds: rather, they are held at accounts maintained by the funds at different financial institutions, including prime brokerage accounts. There are no financial transactions directly between the private fund adviser and the investor.

When the investor elects to invest in a private fund, the investor instructs its bank (typically a bank organized in the United States or another jurisdiction that is a member of the Financial Action Task Force (“**FATF**”)) to send investment dollars to the fund’s bank account, and when the investor redeems its interest, the fund wires the redemption proceeds to the investor’s bank account. The initial investor “subscription” and periodic and ultimate redemptions, in addition to add-on investments, comprise the interactions between the investor and the private fund during the life of the investment. The limited role of private fund advisers would not change if investors were able to fund investments with digital assets, the private fund adviser manages a fund that invests in digital assets, or the fund pays redemption proceeds to the investor in digital assets.

The various institutions that a private fund business uses to implement its investment strategies are “financial institutions” for purposes of AML rules—the custodian banks, the prime brokerage firms and banks used by the fund adviser, the other counterparties through which the private fund trades—are all

subject to detailed AML rules. The same typically is true for non-U.S. funds that rely on a non-U.S. administrator, custodian, or counterparties.

Given the fact that the end investor is not the private fund adviser's client, there is limited need for additional regulatory oversight pointed squarely at private fund advisers for either digital or traditional assets. For this reason, MFA views as unnecessary any additional legislative efforts regarding AML rules for investment advisers (RFI Q.17)—either regarding digital or traditional assets. We note that the Financial Crimes Enforcement Network (“**FinCEN**”) has recently announced that it intends to delay the effectiveness of its rules that would apply AML requirements to investment advisers⁸ for two years – until January 2028. During that time, FinCEN stated that it would revisit the scope of the AML rule and issue appropriate exemptive relief. We are hopeful that FinCEN will use the time of this extension to fully consider the applicability of an AML framework for investment advisers relating to digital assets.

VII. Coordination of the SEC and CFTC

We support the continued coordination and cooperation of the SEC and CFTC on issues of common regulatory interest to foster market innovation and fair competition and to promote efficiency in regulatory oversight. We encourage Congress, the SEC, and the CFTC to avoid subjecting market participants to overlapping regulatory regimes, in particular avoid requiring dual registration of market participants. As MFA members have experienced, being subjected to dual regulation as investment advisers with the SEC and commodity trading advisors and commodity pool operators with the CFTC is costly and burdensome, raises the barriers to entry, and fails to yield measurable benefits.

VIII. Conclusion

We look forward to working with the Senate Banking Committee to strengthen the U.S. capital markets and keep pace with technological innovation.

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⁸ See U.S. Dept. of Treasury, Treasury Announces Postponement and Reopening of Investment Adviser Rule (July 21, 2025), available at: <https://home.treasury.gov/news/press-releases/sb0201>. MFA commented on the FinCEN proposal emphasizing the need for clarity in the scope of its application given the limited role of private fund advisers in a private fund structure. See Letter from Jennifer Han, MFA, to FinCEN (Apr. 15, 2024), available at: <https://home.treasury.gov/news/press-releases/sb0201>.

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MFA appreciates your consideration of our recommendations. We look forward to working with Congress and the SEC and the CFTC to foster financial innovation to support U.S. economic growth, promote capital formation, and make the United States the “crypto capital of the world.” We would be pleased to discuss our recommendations in further detail. Please do not hesitate to reach out to the undersigned with further questions.

Respectfully yours,

/s/ Jillien Flores

Jillien Flores
Chief Advocacy Officer
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