NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
750 First Street N.E., Suite 990
Washington, D.C. 20002
202-737-0900
www.nasaa.org

May 21, 2024

The Honorable Mike Johnson (R-LA)
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries (D-NY)
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Vote NO on H.R. 4763, the Financial Innovation and Technology Act for the 21st Century Act, As Amended

Dear Speaker Johnson and Democratic Leader Jeffries:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to express strong opposition to H.R. 4763, the Financial Innovation and Technology for the 21st Century Act, as amended ("H.R. 4763"). In short, H.R. 4763 would create a bespoke, light-touch regime under federal securities and commodities laws to benefit market participants that elect to use blockchain and other distributed ledger technologies ("DLTs") to raise capital, manage risk, and trade products. As explained below, over time, this bill could upend decades of industry, judicial, legislative, and regulatory work to build capital markets that are the gold standard. Near-term, the bill would nullify or otherwise severely complicate the ability of securities regulators to fulfill their missions.

To begin, H.R. 4763 would supplant long-standing and critical components of securities laws through the introduction of new defined terms into our federal market frameworks for products such as "digital assets," "investment contract assets," and "digital commodities." Indeed, the point of entry to access this regime would be the definition of a "digital asset." The bill would define such products as any fungible digital representation of value that (i) can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, (ii) is recorded on a cryptographically secured public distributed ledger, and (iii) is not a product enumerated in H.R. 4763, which in short is a list of selected products treated as securities and commodities under federal law. With respect to "digital assets" that run on a DLT that is certified as "decentralized," meaning no one person or entity had "unilateral authority" during the lookback period to control the operation of or access to the system, H.R. 4763 would treat them as "digital commodities." This designation would place them and associated

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

intermediaries under the Commodity Futures Trading Commission ("CFTC"). By contrast, for those "digital assets" that run on a DLT that is not "decentralized" enough to qualify as a "digital commodity," H.R. 4763 would treat them as "digital assets," "restricted digital assets" or "securities," depending on the facts. This designation would place or keep them and associated intermediaries under the Securities and Exchange Commission ("SEC"). Alarmingly, H.R. 4763 would define "investment contract assets" by carrying over the "digital assets" definition and then essentially carving the product out of federal securities laws, thereby creating a new gap, specifically the investment contracts assets gap with no federal market regulator in charge.

Staying on the bill's impact on the SEC's regulation of "digital assets," the legislation would establish a new minimally transparent market for transactions "involving the offer or sale of units of a digital asset" that meet specified criteria. In short, H.R. 4763 would create an exemptive pathway for raising capital under the Securities Act of 1933 ("1933 Act"). Issuers relying on the exemption could raise as much as $75 million within a 12-month period with certain limits on sales to non-accredited investors.[2]

Importantly, while H.R. 4763 would prevent state governments from requiring issuers to register their digital asset offerings with the states, the legislation would preserve the ability of states to investigate and if appropriate bring enforcement actions for fraud and require notice filings and associated fees. Anti-fraud authority and notice filings are important tools that mirror existing state authority for certain other federal "covered securities." However, they are insufficient regulatory tools when it comes to authority meant to stop potential harm before it is inflicted on retail investors. Unfortunately, fraud tied to the offer and sale of digital asset securities has been and continues to be a top investor threat.[3]

Further, H.R. 4763 would introduce several new defined terms under federal securities law for intermediaries associated with "digital assets" such as a new category called a "digital asset broker." Creating such bespoke new categories, particularly when they would or could be redundant of existing categories such as broker-dealer agents, would add complexity and costs to our federal market frameworks, with no net-benefit for investors. Indeed, years after the adoption of SEC Regulation Best Interest and Form CRS, many investors still struggle to distinguish between broker-dealer agents and investment adviser representatives. Injecting new, largely redundant digital asset intermediaries would only create more confusion and more conflicts for retail investors.

Undoubtedly, the deregulatory nature of this bill would prompt so-called traditional market participants to explore the use of DLTs if only to access a regime that has less transparency and less robust standards than the present one. We have seen time-and-again that market behaviors shift to more opaque areas of the markets, a move observable most recently in

[2] If Congress were to move forward with this legislation, we encourage you to consider a more transparent and competitive amount such as $5 million, the exemption limit under SEC Regulation Crowdfunding.

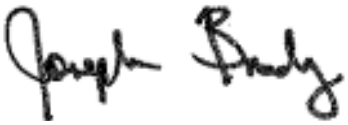
[3] *See, e.g.,* NASAA Enforcement Report 2023 Edition at 11 ("After coordinating their filing of enforcement actions against BlockFi, NASAA members continued protecting investors from other issuers accused of illegally, deceptively, and fraudulently dealing in earn accounts. These issuers included Celsius and Voyager. However, unlike BlockFi, neither Celsius nor Voyager settled their claims with state securities regulators. Instead, Celsius and Voyager, like various other issuers of earn accounts, ultimately froze investor accounts and filed for bankruptcy before the cases could be litigated or settled.").

the now widespread use of the SEC Regulation D, Rule 506(b) exemption in lieu of public offerings. In addition to further reducing transparency in our markets, such a shift would create new competition concerns, particularly for small market participants who generally cannot afford to use the latest technology.

In sum, we believe this legislation began as a well-intentioned effort to fill what was described initially as a potential regulatory gap for so-called virtual currencies. Fast forward to today, the legislation that has emerged in the form of H.R. 4763 introduces anti-competitive, overly complicated, costly, and unwarranted changes to the laws that have protected investors and promoted robust capital markets for decades.

Should you have any questions, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Respectfully,



Joseph Brady
NASAA Executive Director

CC: Members of the U.S. House of Representatives