

December 9, 2022

The Honorable Debbie Stabenow  
Chairwoman  
U.S. Senate Committee on Agriculture  
328-A Russell Senate Office Building  
Washington, D.C. 20510

The Honorable John Boozman  
Ranking Member  
U.S. Senate Committee on Agriculture  
328-A Russell Senate Office Building  
Washington, D.C. 20510

Re: Investor Choice and Digital Commodities Legislation

Dear Chairwoman Stabenow and Ranking Member Boozman:

As organizations that share a commitment to investor choice, we write to express strong concern that the Digital Commodities Consumer Protection Act (S. 4760), as currently drafted, does not contemplate any safeguards with respect to injured investors' ability to hold digital commodity issuers, brokers, and affiliated entities, accountable for misconduct.<sup>1</sup> Decades of experience with the investment adviser and brokerage industry demonstrate that any legislation lacking such explicit safeguards will, inevitably, open the door to the use of forced arbitration contracts, class action waivers, and forum selection clauses – all of which are demonstrably harmful to consumers.

Such protection is critical as we've continued to witness devastating crypto collapses this past year, from lender Celsius Network, to coin project Terraform Labs, to hedge fund 3AC, and most recently, FTX's bankruptcy filing. Unsecured creditors, including institutional investors managing retirement savings, have been forced to write down hundreds of millions of dollars on losses, while individual retail investors also find themselves losing tens of thousands of dollars in investments. Investors must be able to access the court system and retain the ability to hold these corporations legally accountable when such wrongdoing occurs.

Any federal legislation addressing digital commodities (or other digital assets) must guarantee investors' ability to access the state and federal court system to resolve cases. Without such protections, digital commodity issuers and other related market participants will undoubtedly seek to block investors' access to the court system, restricting investors' ability to recover for the harms that they suffered as a result of digital commodities issuers' and other related market participants' misconduct and undermining a critical accountability mechanism in the digital commodities market. An important component of investors' confidence is the independence and transparency that has historically accompanied the rights and protections afforded them in state and federal courts. This kind of accountability is critical in all investments, and especially with untested and novel products, such as digital commodities.

Effective and comprehensive government regulation alone is an insufficient remedy to ensure corporate accountability. The government is not equipped to hold every company accountable and return ill-gotten gains to investors. Private actions on the other hand, have proven a better mechanism to hold companies accountable for wrong-doing and recoup investor money. For example, in five large securities fraud scandals, SEC enforcement action recovered a total of 1.75 billion dollars, while

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<sup>1</sup> The signatories to this letter include organizations that have taken public positions on this legislation, and organizations that have not. This letter should not be construed as addressing any aspects of the bill other than those that could potentially limit investors' access to the court system, or limit investors' ability to recover for the harms that they might suffer as a result of misconduct by digital issuers and other related market participants.

private actions recovered a total of 19.4 billion dollars.<sup>2</sup> In fact, federal securities class actions have returned over \$100 billion to defrauded investors in the past 20 years alone.<sup>3</sup>

We strongly urge this committee to ensure investors are protected and their choice in how to pursue their rights is upheld in any federal legislation on digital currencies.

Sincerely,

**American Association for Justice (AAJ)**

**Americans for Financial Reform (AFR)**

**Consumer Action**

**Consumer Federation of America (CFA)**

**Consumer Reports**

**Institute for Agriculture and Trade Policy (IATP)**

**National Association of Consumer Advocates (NACA)**

**Public Citizen**

**Public Investors Advocate Bar Association (PIABA)**

**U.S. Public Interest Research Group (US-PIRG)**

**20/20 Vision**

CC: Members of the Senate Committee on Agriculture, Nutrition and Forestry

Member of the Senate Committee on Banking, Housing and Urban Affairs

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<sup>2</sup> Tyco SEC Settlement Fair Fund: <http://www.tycosecsettlement.com/> (\$55.8 million settlement); Enron SEC Settlement Fair Fund: <http://enronvictimtrust.com/> (\$570 million); WorldCom SEC Settlement Press Release: <http://www.sec.gov/news/press/2003-81.htm> (\$750 million); Bank of America SEC Fair Fund: <http://bankofamericafairfund.com/> (\$375 million); Global Crossing SEC Settlement Press Release: <http://www.sec.gov/litigation/litreleases/lr19179.htm> (\$300,000).

<sup>3</sup> In re: Tyco International, Ltd., Securities Litigation, U.S. District Court, District of New Hampshire, 02-266 (\$3.2 billion settlement); In re: Enron Corporation Securities Litigation, U.S. District Court, Southern District of Texas, 01-3624 (\$7.2 billion settlement); In re: WorldCom, Inc. Securities Litigation, U.S. District Court, Southern District of New York, 02-3288 (\$6.1 billion); In re: Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, U.S. District Court, Southern District of New York, 09-2058 (\$2.4 billion settlement); In re: Global Crossing Ltd. Securities Litigation, U.S. District Court, Southern District of New York, 02-910 (\$447.8 million settlement).

The Top 100 U.S. Settlements of All Time, ISS: Securities Class Action Services, (2017), available at: <https://www.issgovernance.com/file/publications/SCAS-Top-100-US-Settlements-31Dec2016.pdf>