



NASAA

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NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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September 16, 2024

The Honorable Charles Schumer (D-NY)  
Majority Leader  
U.S. Senate  
Washington, DC 20515

The Honorable Mitch McConnell (R-KY)  
Minority Leader  
U.S. Senate  
Washington, DC 20515

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

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

Re: To Continue Protecting Seniors from Scams Like Pig-Butchering, Congress Should Maintain a Technology-Neutral Approach to Market Regulation

Dear Congressional Leaders:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I write to communicate comments that apply across the federal bills under consideration related to the trading of securities and commodities<sup>2</sup> using distributed ledger technology (“DLT”). First, we believe that the federal government should maintain a technology-neutral approach to market regulation. This approach is what has allowed innovative technologies, including DLTs, to emerge. In addition, it has allowed regulators to adapt to help address the latest scams, including ones against vulnerable persons. Second, to maintain a technology-neutral approach while being responsive to calls to make it more evident how DLTs may be used under present law, we continue to urge Congress to direct market regulators to conduct a joint rulemaking exercise. Third, should Congress pursue a paradigm-shifting approach to market regulation by replacing applicable existing law with bespoke laws governing particular types and uses of selected technologies, such laws must unequivocally preserve existing state securities regulatory authority to protect investors.

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<sup>1</sup> 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.

<sup>2</sup> For ease, we sometimes use the term “commodities” as a general reference to transactions regulated under state and/or federal commodities laws, not the actual commodities such as corn.

## A. Congress Should Preserve a Technology-Neutral Approach to Market Regulation

Historically, the federal government has used a technology-neutral approach for the regulation of entities, professionals, products, and risks in our capital markets. This approach embodies the principle that similar activities should be regulated similarly. It fosters regulatory predictability and thus stability for both regulators and regulated entities, as well as the technologists and other innovators who support them.

Indeed, since the 1990s, Congress has resisted the temptation to pick winners and losers among emerging technologies that have facilitated the growth of what we originally described as “online trading.” By way of example, Congress remained committed to the term “electronic” rather than specifying each new means by which persons have communicated or otherwise transmitted information the last three decades. To this point, presently, the Securities Act of 1933 uses the word “internet” zero (0) times and the word “electronic” three (3) times. The Securities Exchange Act of 1934 uses the word “internet” six (6) times and the word “electronic” 21 times. The Commodity Exchange Act uses the word “internet” zero (0) times and the word “electronic” 41 times.<sup>3</sup>

Contrary to this historical approach, a growing number of federal legislators and federal regulators appear willing to pivot away from the technology-neutral approach that has long maintained competitive capital markets in the United States towards a technology-specific approach. For example, various bills have been introduced and, in some cases, have been advanced to adopt new laws for transactions using DLTs, which promoters generally have described as “virtual currencies” and “payment stablecoins.” Remaining unclear is the extent to which these and potentially other measures would amend federal laws for other types of transactions using DLTs such as the offer and sale of stocks, bonds, mutual funds, or derivatives.

Respectfully, NASAA continues to caution strongly against making the paradigm shift from a technology-neutral approach to one that favors one or more specific categories of electronic means. Importantly, making the shift only to DLTs would give the use of DLTs a competitive advantage over other electronic means, thereby stifling competition and discouraging technological innovations, even where innovations provide a better product or service. Further, making the shift only with respect to selected uses of DLTs would give those uses a potentially unfair advantage over other present and future uses of DLTs—unless and until Congress prescribes bespoke regulation for additional or all uses of DLTs in our capital markets. Last, tying regulators to prescriptive uses of technologies, DLTs or otherwise, would make it even more difficult for regulators to use the elasticity of existing law to help address the latest scams targeting investors.

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<sup>3</sup> These counts include word variations such as “electronically.” Further to this point, the Securities Act of 1933 and the Commodity Exchange Act only use the word “website” one (1) time each. The Securities Exchange Act of 1934 uses the word “website” 11 times. *See* the Securities Act of 1933, *available at* <https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf>; the Securities Exchange Act of 1934, *available at* <https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf>, and the Commodity Exchange Act, *available at* <https://www.govinfo.gov/content/pkg/COMPS-10309/pdf/COMPS-10309.pdf>.

## **B. Taking a Technology-Specific Approach Would Benefit the Scammers and Hurt Americans, Including Seniors**

As the local cops on the beat, state securities regulators are all too aware that scammers eagerly take advantage of the buzz surrounding new technologies to try and rip off investors. Indeed, one of the worst consequences that could come from tailoring legislation to fit certain types of technologies would be an inherent imprimatur for those selected technologies. This would make it even more difficult for regulators to address the latest wave of scams tied to new and emerging technologies.

As background, in 2022 alone, state securities regulators investigated 8,538 cases and initiated 1,163 enforcement actions, including 136 criminal actions, 59 civil actions, and 825 administrative actions. NASAA members also secured \$702 million in restitution and more than \$223 million in fines, as well as approximately 5,337 months in prison sentences and 9,520 months of supervised release. Cumulatively, this data highlights the continued vigilance of NASAA members as the local cops on the beat.<sup>4</sup>

Most of this work focused on schemes tied to various new and evolving uses of DLTs. By way of example, pig butchering scams,<sup>5</sup> including ones against the elderly, emerged in 2022 as a top threat throughout the United States. These scams share many of the characteristics of traditional affinity scams. Bad actors contact victims – often seemingly by accident – and build trust over time. They then leverage the trust to convince victims to invest in a lucrative opportunity, often through a series of modest transactions.

In 2022 and throughout the last three decades, state securities regulators have been able to hold more bad actors accountable precisely because state legislators did not tie their authorities to selected technologies and uses thereof. State regulators have long relied on the term “investment contract” as an important tool supporting their investor protection efforts. The term has served as a necessary touchstone in market regulation for the myriads of evolving investment schemes, which often are built around relationships, and upon trust and leverage of the latest technologies.<sup>6</sup> Keeping technology out of the definition of a security and in particular

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<sup>4</sup> NASAA anticipates publishing a new enforcement report with 2023 data during Fall 2024. In the meantime, please consider reading the [NASAA Enforcement Report 2023 Edition](#).

<sup>5</sup> The name is derived from the process of fattening hogs for slaughter. The Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission (“SEC”), the Office of Customer Education and Outreach of the Commodity Futures Trading Commission (“CFTC”), the Financial Industry Regulatory Authority, and NASAA recently issued an Investor Alert to warn investors about relationship investment scams. Relationship investment scams are sometimes referred to by various terms, including romance scams, “cryptocurrency” investment scams, financial grooming scams, and even the distasteful term “pig butchering scams.” [NASAA Investor Alert: Relationship Investment Scams](#) (Sept. 2024).

<sup>6</sup> While an “investment contract” can be “negotiated” in a variety of circumstances, the essence of this “security” is an agreement, transaction, or *scheme*, with a view toward an investment, entered into by investors that are relying on the efforts of others to put their money to work.

the use of “investment contract” has had proven benefits for Americans that should not be ignored.

**C. Congress Should Direct an CFTC-SEC-State Joint Rulemaking Exercise Instead of Passing Bespoke Legislation for Specific Technologies**

There are undoubtedly many ways in which Congress could approach the use of DLTs and related technologies in the capital markets. In that vein, we acknowledge and appreciate what we believe is the fundamental, unifying goal of the individuals pursuing changes to existing laws, specifically the goal of making it more evident how market participants can or must comply with existing requirements when using DLTs.

In support of that goal, we continue to urge Congress to direct the SEC and the CFTC, in close consultation with state securities commissions, to conduct a joint rulemaking exercise. NASAA has prepared draft legislative text. We welcome inquiries from legislators wishing to learn more about it. Such an exercise would require the agencies to use their non-enforcement regulatory tools to make more evident how market participants can or must comply when using DLTs. It also in effect would improve the approach to communicating such information to the public and industry.

**D. At Minimum, Congress Should State Unequivocally That State Governments Possess the Authority to Investigate and Where Appropriate Enforce the Law**

We acknowledge the growing interest in Congress to pursue technology-specific reforms to market regulation and respectfully urge consideration of the technology-neutral, joint rulemaking approach described above. For that approach, or for any proposal designed to address these issues, we offer the following legislative text that, at a minimum, should be included in any of the legislative proposals under consideration:

“State securities commissions (or any agency or office performing like functions) are authorized to investigate and bring enforcement actions for any violation of federal law, regulation, or rule established pursuant to [insert the title of the new law].”<sup>7</sup>

In offering this text, we wish to underscore that the failure to make such authority clear in federal law would have immediate benefits for scammers and immediate devastating consequences for individuals and businesses throughout the United States. In particular, passing legislation that directly or indirectly undermines the continued efforts by state regulators to use “investment contract” or otherwise rely on well-established principles in the securities laws would be a win for the scammers. Further, passing legislation that allows the scammers to evade

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<sup>7</sup> Congress’ piecemeal and varied approaches to legislating uses of DLTs in our capital markets makes it difficult for NASAA to offer legislative text that could be used universally across all proposals affecting state authority. NASAA would be pleased to work with any congressional office seeking technical support, particularly with respect to a preservation of state authority clause.

Congressional Leaders

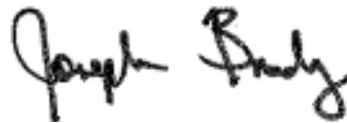
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cops on the beat by simply using DLTs would be a devastating loss to fraud victims, who already have limited recourse against sophisticated, international organized crime operations.

As always, NASAA welcomes the opportunity to provide technical or other comments on federal proposals. Should you want assistance or otherwise 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](mailto:khutchens@nasaa.org).

Respectfully,

A handwritten signature in black ink that reads "Joseph Brady". The signature is written in a cursive, slightly slanted style.

Joseph Brady  
NASAA Executive Director