



January 24, 2025

Commissioner Hester Peirce  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090  
[crypto@sec.gov](mailto:crypto@sec.gov)

**Re: Cryptocurrency Task Force**

Dear Ms. Peirce:

I appreciate the opportunity to provide input on the Securities and Exchange Commission's (the "SEC's") newly formed crypto task force. By way of introduction, I have served as the General Counsel of two layer 1 protocols, one of which was Terraform Labs in 2019. Prior to that, I served as an in-house counsel at Goldman Sachs Asset Management, working closely with the SEC on various matters. Currently, I advise clients building on different blockchain networks and serve as a board member of several prominent blockchain projects. I am also an adjunct professor at Cornell Tech, where I teach blockchain law and regulation.

*Introduction*

One of the unfortunate events that resulted from the SEC's "regulation by enforcement" approach under former chair Gary Gensler is that a vast majority of good cryptocurrency projects have left or are in the process of leaving the U.S. These projects are actively cutting ties to the U.S. to a point where being a U.S. person becomes a competitive disadvantage when such projects are hiring talents. An important question now is, what regulatory framework and incentives, prior to any comprehensive digital asset legislation, would bring those good projects back to the U.S., while protecting investors at the same time.

I have no doubt that creating a regulatory framework is a complex endeavor. Below I discuss two topics that I believe are paramount for the task force to tackle immediately to bring Web3 innovation back to the U.S.

## Recognizing the Importance of (and Better Guidance on) Decentralization

As an initial matter, I am in full support of Commissioner Peirce's Token Safe Harbor Proposal,<sup>1</sup> which recognizes the unique nature of blockchain technology, and believe that a regulatory framework that encompasses such a proposal could be the right starting point. That said, it is important for the task force to go a step further and help answer the following questions:

- What does it mean for a network to be "decentralized and functional"?
- What activities can projects engage in while their networks are not sufficiently "decentralized and functional"?
- What required disclosures must be made public to help protect investors?

### *I. What should "decentralized and functional" mean?*

As an initial matter, the SEC should recognize that decentralization is a spectrum, not a zero-sum game. Within that spectrum, there are sub-spectrums that contribute toward whether a network is decentralized. For example:

- What is the number of third-party validators securing the consensus of a network?
- What is the geographic location and diversity of those validators?
- How many development companies are contributing toward the improvement of the protocol? Which companies are working on what parts of a product roadmap?
- What percentage of the total token supply is controlled by insiders? How is this expected to change over the years if token is inflationary in nature?
- How robust is a network's governance process and how democratized is it?

The correct definition of decentralization should, in my opinion, take into account answers to all of the above questions in some way. A project looking to benefit from a grace period noted in Commissioner Peirce's Token Safe Harbor Proposal ("Grace Period") can then be expected to provide periodic updates to the public and to the SEC on their scores on different areas – like a Decentralization Report Card.

A functional network may be harder to define, as different networks prioritize different functionality. On this, I recommend that the task force invite network developers, whom I can recommend, to formulate key metrics of functionality. I believe it is important that those developers are represented in a roundtable, not just representatives from crypto intermediaries, such as exchanges, broker-dealers, custodians, and even technology attorneys. A Grace Period is especially important for a network's functionality because it allows developers to collect data from live network, stress test the network and conduct security audits. These efforts, which ultimately improve the stability of the network, often require centralized efforts.

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<sup>1</sup> U.S. Securities & Exchange Commission, *Statement on Token Safe Harbor Proposal 2.0* (Oct. 6, 2022), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20>.

II. *What activities can or cannot projects engage in while their networks are not sufficiently “decentralized and functional”?*

A crypto project seeking to be under a Grace Period should receive the benefit of being able to engage in certain permitted activities. This provides a strong incentive for crypto projects to return to the U.S. because they may already be engaged in such activities outside of the U.S. Examples of such activities may include:

- a founder engaging in a public “Ask Me Anything” discussion<sup>2</sup>;
- foundation issuing grants;
- foundation engaging in a builder’s program<sup>3</sup>;
- publishing product and engineering roadmap<sup>4</sup>;
- engage in partnership efforts;
- community airdrops<sup>5</sup>;
- exchange listing efforts; and
- engaging “market-making” service providers.

The SEC may consider coupling permitted activities with what “score” a crypto project receives in its Decentralization Report Card or its state of functionality. The SEC may also consider coordinating efforts with the Commodity Futures Trading Commission to create a set of prohibited activities, such as violation of anti-fraud and anti-manipulation statutes.

III. *What required disclosures must be made public to help protect investors?*

At this moment, crypto projects are disclosing information about their networks without a uniform disclosure standard,<sup>6</sup> while others make no attempt at such disclosure. Below is a good starting point for a list of information that could be important for an investor:

- (a) a network’s Decentralization Score Card and state of functionality, as discussed above;

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<sup>2</sup> SEC v. Binance, No. 1:23-cv-02724 (S.D.N.Y. June 5, 2023), Complaint, at 73, <https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-101.pdf>.

<sup>3</sup> See *id* at 103.

<sup>4</sup> See *id* at 93.

<sup>5</sup> U.S. Securities & Exchange Commission, *Remarks of Commissioner Hester M. Peirce at the Blockchain Association’s “Crypto Policy Symposium”* (Feb. 6, 2020), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-blockress-2020-02-06> (quoting Hester M. Peirce, *Remarks of Commissioner Peirce*) (“We have created a regulatory Catch 22. Would-be networks cannot get their tokens out into people’s hands because their tokens are potentially subject to the securities laws. However, would-be networks cannot mature into a functional or decentralized network that is not dependent upon a single person or group to carry out the essential managerial or entrepreneurial efforts unless the tokens are distributed to and freely transferable among potential users, developers, and participants of the network.”)

<sup>6</sup> Cf. Ethereum Foundation, *2024 Transparency Report*, <https://ethereum.foundation/report-2024.pdf> and Algorand Foundation, *Transparency Report Q3 2024*, <https://26119259.fs1.hubspotusercontent-eu1.net/hubfs/26119259/Website-2024/Transparency%20Reports/Algorand%20Transparency%20Report%20Q3%202024.pdf>.

- (b) token unlock and vesting schedules (and whether managed by a smart contract or a group of people);
- (c) product readiness (e.g., what is the product roadmap for the next three years);
- (d) accurate token allocation schedule showing which person, team or entity currently owns what percentage of the total circulating supply of tokens from the network's genesis block;
- (e) financial transparency report of team or teams primarily in charge of developing and improving the network and its adoption;
- (f) any material incident, such as outage or hacking, that a reasonable token purchaser would expect to be informed of; and
- (g) any upcoming hardfork or softfork for the network.

Periodic and ongoing publication of this information benefits the public and can serve as a condition precedent for being admitted to the Grace Period.

### Conclusion

Many crypto projects are moving businesses to jurisdictions such as Cayman Islands and the British Virgin Islands. Currently, crypto lawyers are reading tea leaves and are providing (often inconsistent) advice across the board. A regulatory framework covering the above topics can, in my opinion, serve as a lighthouse for crypto projects to navigate back to the U.S. I would be happy to work with the task force further on matters described herein.

Sincerely,



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Name: Joon Kim

Title: Founder

Company: JK Advisory Sarl

Email: [joon@jkadvisory.llc](mailto:joon@jkadvisory.llc)