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Submitted via Website

Commissioner Hester M. Peirce
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Safe Harbor from Registration

Dear Commissioner Peirce and Crypto Task Force Staff:

On behalf of The Digital Chamber (“TDC”), the undersigned submits this response to Commissioner Peirce’s *There Must Be Some Way Out of Here* statement (the “Statement”) published on February 21, 2025. Formed in 2014, TDC is the world’s largest digital asset and blockchain trade association. TDC represents more than 200 companies innovating in the digital asset and blockchain industry and advocates for policies that foster responsible innovation, protect market participants, and support the long-term growth of the digital asset ecosystem.

TDC appreciates the Commission’s engagement with the public on the important issues highlighted in the statement and welcomes the level of transparency and diligence displayed by the Crypto Task Force in its work to date. This submission is focused on Questions 10 through 14 of the Statement.

Commissioner Peirce’s original token safe harbor proposal in 2019 was innovative, forward-thinking, and a responsible regulatory solution to the initial coin offering phenomena that started in 2017. If the Commission had adopted the proposal at the time, much of the regulatory uncertainty of the last six years could have been avoided. We commend Commissioner Peirce’s dedication to developing an appropriate regulatory framework for capital raising through the sale of crypto assets.

TDC’s membership has differing views on whether the Commission should pursue a token safe harbor while Congress is actively considering market structure legislation that would directly address the same problem that the token safe harbor would solve. Section 203 of the Digital Asset Market Structure Discussion Draft released by leadership of the House Financial Services and Agriculture committees¹ provides for an exemption from registration of an issuance of digital commodities under the securities laws. This provision is modeled, in part, on Commissioner Peirce’s safe harbor proposal. Similarly, the leading market structure bills from

¹ See Press Release, Hill, Thompson, Steil, and Johnson Release Digital Asset Market Structure Discussion Draft (May 5, 2025), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409719>.

the 118th Congress would amend the securities laws to provide a new disclosure framework for securities offerings relating to the sale of crypto assets. While passage of market structure legislation is not guaranteed, it notably is a priority for both the Trump Administration and the leadership of the Senate Agriculture, Senate Banking, House Financial Services, and House Agriculture committees.

We respectfully submit that the Commission should align its efforts on a safe harbor with similar provisions in market structure legislation, to the extent possible. If the Commission were to adopt a safe harbor that looks drastically different from an exemption adopted by Congress, the industry may be left in the unenviable position of having to adjust a series of shifting regulatory frameworks within the next four years. Token holders would be exposed to potentially different sets of disclosures and protections, adding unnecessary confusion to the marketplace. We understand that Congress has not yet passed legislation and that the Commission is not bound to any bill text. Nevertheless, we urge the Commission staff to coordinate and consult with relevant committee staff working on legislation in the coming months.

Other related pressing issues demanding regulatory clarity for the Commission relating to token distributions include whether common transactions involving distributions of crypto assets, such as grants, compensation, participation rewards, or airdrops trigger registration obligations under the securities laws. We urge the Commission to conclude that these common transactions do not involve the offer and sale of investment contracts, and refer to TDC's April 28, 2025, submission responding to question three of the Statement.²

Additionally, many of the enforcement actions against crypto asset trading platforms brought under former SEC Chair Gensler's leadership included overly broad interpretations of marketing efforts that may demonstrate the presence of an investment contract. TDC requests that the Commission provide interpretive guidance clarifying that common communications by persons involved with developing a network concerning milestones achieved by the network do not create a reasonable expectation of profit and do not demonstrate the existence of an investment contract.

To the extent the Commission considers a token safe harbor, we respectfully request that it address the following:

- The Commission should clarify that crypto assets sold pursuant to an investment contract under the safe harbor are not the security itself, and that secondary trading of the crypto assets sold pursuant to the safe harbor do not constitute investment contract transactions under the securities laws. Of course, this statement is not meant to cover tokenized stock or other common instruments within the securities definition.
- The Commission should indicate that reliance on the safe harbor does not establish a presumption that a particular offer or sale constitutes an investment contract transaction.

² TDC Letter, Security Status of Certain Crypto-Asset (Token) Transactions (Apr. 28, 2025), <https://www.sec.gov/files/ctf-written-input-tdc-rfi-042825.pdf>.

- The Commission should indicate that inclusion of specific disclosure requirements should not be viewed as a determination that information is or is not material for a particular project.
- While decentralization is a cornerstone for the industry, the Commission should avoid using decentralization as the threshold for determining whether a crypto asset is sold pursuant to a securities transaction. We believe that decentralization is best understood through a technology-lens. Imposing regulatory definitions of decentralization may distort otherwise preferable, organic efforts toward decentralization and optimization of security and safety of protocols. We recognize that decentralization considerations may be helpful in assessing whether certain elements of *Howey* are met but note that it should not be the determinative factor or test used in the securities law analysis.
- The Commission should exercise its rulemaking authority under Section 18(b)(3) of the Securities Act of 1933 to preempt state securities laws relating to the sale of tokens under the safe harbor.

TDC acknowledges the significant efforts of Coy Garrison, Steptoe LLP, towards the preparation of this letter. TDC also thanks the many members that contributed their time and expertise towards the development of this letter, including but not limited to, Thomas Chow, Chief Legal Officer & Secretary, Chia Network, Josh Lawler, Partner, Zuber Lawler LLP, and Lee Schneider, General Counsel, Ava Labs.

TDC thanks the Crypto Task Force for its consideration of these matters. We would be delighted to provide any additional information that would be helpful as a supplemental analysis, upon your request. If you have any comments or questions relating to the request or would like to arrange a meeting to discuss further, please do not hesitate to contact the undersigned at cgarrison@steptoe.com.

Sincerely

Coy Garrison

Coy Garrison

cc: Cody Carbone, Chief Executive Officer, The Digital Chamber
Annemarie Tierney, Senior Strategic Advisor, The Digital Chamber