Testimony

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Crypto Regulation, Protection, Transparency, and Oversight (CRPTO) Act

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Honorable members of the committees, on behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments in support of the recently introduced bill authored by the New York Attorney General titled the "Crypto Regulation, Protection, Transparency, and Oversight (CRPTO) Act." My name is Bartlett Naylor, financial policy advocate of Public Citizen's Congress Watch division. Formerly, I was chief of investigations for the U.S. Senate Banking Committee (where I led probes into the S&L crisis and private equity), and then director of Corporate Affairs for the Teamsters (where I worked with the collective $100 billion union pension plans). Public Citizen generally works to protect consumers from corporate excess. As financial policy advocate, I focus specifically on financial sector harms, both in consumer and housing credit as well as systemic risk issues. For many years, Public Citizen has sought to protect consumers from scams connected to cryptocurrencies. To better inform myself about this sector, I audited an MIT class on blockchain and cryptocurrency; traded in two tokens; and created my own crypto token. Based on this and additional research, Public Citizen has provided testimony on crypto issues before numerous bodies, including the U.S. House Financial Services Committee, the U.S. Senate Banking Committee, the U.S. Department of Treasury, the Federal Deposit Insurance Corp., and the Consumer Financial Protection Bureau.

Review of Cryptocurrency Issues

The problems addressed by the CRPTO Act begin with a foundational question: "What explains the fascination with digital assets?" The popularity of cryptocurrency has exploded in recent years. From the adoption of the first cryptocurrency, Bitcoin, which was introduced in 2008[1] and could initially be

[1] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, (2008) https://bitcoin.org/bitcoin.pdf

purchased for pennies, the market capitalization of all cryptocurrencies rose to a peak in 2022 at $3 trillion, before falling back to around $1 trillion during the latest so-called "crypto winter."[2]

The crypto boom came with a proliferation of projects trying to draw in new investors with exited promises of riches, democratized finance, and transformational technologies. No doubt, real problems make the current U.S. payment system inefficient and expensive, and many understandably hold major banks in low regard. For many, the current economy truly is rigged against them. That said, crypto is not the answer to the problems with our banking system. The recent crypto crash reinforces the reality that many crypto projects are thinly veiled Ponzi schemes that use huge quantities of energy with few actual benefits or protections for retail investors or users. The failures of FTX, Celsius (now in bankruptcy), Luna and TerraUSD attest to the false claims and Ponzi characteristics of this market.[3] The projects have grown only in the cracks created by regulatory inattentiveness, and regulators and legislators must now step in to fill the void.

Cryptocurrency has failed in its initial promise of a decentralized, efficient, less costly, and more equitable financial system especially for those with less access to traditional banking. This failure follows more than a decade of efforts by thousands of experts exploring the potential of blockchain and Bitcoin, which was described in the 2008 white paper by the pseudonymous Satoshi Nakamoto as an alternative payment system.[4] Instead, cryptocurrencies have served mainly as a source of speculation, a vehicle for funding illegal activity including tax evasion, and a massive use of energy that exacerbates climate change. Cryptocurrency's problems and clear and present dangers.

First, in addition to failing to solve problems in the banking system, the prevailing cryptocurrencies also cause market problems, often gyrating wildly in price in a single day. In the last year, Bitcoin traded as high as $60,000 per token and as low as $19,000.[5] These swings undermine the case for digital assets as a means of exchange: A customer who believed that Bitcoin would rise in value would not rationally use one for a purchase on that day since they would be over-paying. They would only use the coin if they thought the price would fall. Conversely, a vendor who believed Bitcoin would fall would not accept the coin, since it would be an underpayment, and would only accept the token if they believed the price would rise. In other words, a fluctuating price stifles the use of Bitcoin as a vehicle of market exchange.

Stablecoins promised to answer the problem of volatility in pricing by pegging each token to a specific value, such as the U.S. dollar. However, many sponsors failed to fully back these tokens. The New York Attorney General fined Tether and Bitfinex for such failures.[6] Celsius promised high yields to those who purchased its stablecoin, but allegedly paid those yields with newer investors' money, a basic Ponzi scheme. Its bankruptcy filing noted it owed $4.7 billion to some 1.7 million investors, and only had $167

[2] Emily Flitter, How Wall Street Escaped the Crypto Meltdown, New York Times (July 5, 2022) https://www.nytimes.com/2022/07/05/business/economy/wall-st-cryptocurrency-prices.html
[3] Wayne Duggan, *What Is Celsius? Why Is It Crashing the Crypto Market?* FORBES (July 18, 2022) https://www.forbes.com/advisor/investing/cryptocurrency/what-is-celsius/
[4] Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, (2008) https://bitcoin.org/bitcoin.pdf
[5] *Bitcoin*, COINDESK (website accessed June 11, 2021) https://www.coindesk.com/price/bitcoin
[6] *Attorney General James Ends Virtual Currency Trading Platform Bitfinex's Illegal Activities in New York* NY ATTORNEY GENERAL, (Feb. 23, 2021) https://ag.ny.gov/press-release/2021/attorney-general-james-ends-virtual-currency-trading-platform-bitfinexs-illegal

million in assets.[7] Voyager allegedly claimed its stablecoin was backed by FDIC insurance, according to the federal agencies.[8] Voyager declared bankruptcy.[9]

Second, the promise of cost-free transactions has also proven illusory. The cost of transactions for Bitcoin are substantial and vary greatly. In the last year, they have reached $300 for each transaction.[10] This is hardly democratizing finance. Related to this, the same population that lacks a bank account, and who are most sensitive to financial fees, may also lack the technology to interact with digital currencies.

Third, investment scams involving cryptocurrencies abound. During a recent five-month period, the Federal Trade Commission reported 7,000 cryptocurrency scams covering some $80 million in reported losses. That is 12 times the number of scams reported during the same period a year earlier, with a 1000 percent greater estimated loss.[11] One review found some malicious actors created digital coins that can be purchased but not sold, while others promised enormous returns and then failed to deliver.[12] Highlighting these scams is perhaps one of the greatest thefts in history, namely, the alleged heist by Sam Bankman-Fried and his co-conspirators of more than $8 billion in customer accounts at his crypto exchange FTX. That's roughly half of the total of $16 billion in customer accounts at FTX.[13] Some of these stolen funds went to a sister company also controlled by Bankman-Fried called Alameda Research. An FTX co-founder and the former CEO at Alameda Research have already plead guilty to fraud.[14] Other funds went to sports celebrities who endorsed cryptocurrency, charities and politicians.[15] These alleged conspirators counted among the largest donors of political funds in the last election cycle. While they deployed but a few percent of the $8 billion to campaigns and dark money super PACs, the enthusiastic, vocal support Bankman-Fried and colleagues received from Capitol Hill was palpable.[16] Again, while the FTX theft may be the most outstanding, it is inescapable that fraud may be endemic to the business model of cryptocurrency.

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[7] MacKenzie Sigalos, *Homeless, Suicidal, Down To Last $1,000: Celsius Investors Beg Bankruptcy Judge For Help* CNBC (Aug. 2, 2022) https://www.cnbc.com/2022/08/02/celsius-investors-owed-4point7-billion-beg-judge-to-recover-life-savings.html

[8] FDIC, Federal Reserve, Letter to Voyager Digital, FEDERAL RESERVE *July 28, 2022) https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20220728a1.pdf

[9] Rohan Goswami, *Voyager CEO Made Millions In Stock Sales In 2021 When Price Was Near Peak* CNBC (Aug. 3, 2022) https://www.cnbc.com/2022/08/03/voyager-ceo-made-millions-in-stock-sales-in-2021.html

[10] *Bitcoin Average Cost Per Transaction*, YCHARTS (website accessed June 11, 2021) https://ycharts.com/indicators/bitcoin_average_cost_per_transaction

[11] Emma Fletcher, *Cryptocurrency Buzz Drives Record Investment Scam Losses*, FEDERAL TRADE COMMISSION (May 17, 2021) https://www.ftc.gov/news-events/blogs/data-spotlight/2021/05/cryptocurrency-buzz-drives-record-investment-scam-losses

[12] Alexis Goldstein, *Testimony*, HOUSE FINANCIAL SERVICES COMMITTEE (June 20, 2021) https://financialservices.house.gov/uploadedfiles/hhrg-117-ba09-wstate-goldsteina-20210630-u1.pdf

[13] Vicky Ge Huang, *FTX Tapped Into Customer Accounts to Fund Risky Bets, Setting Up Its Downfall,* WALL STREET JOURNAL (Nov. 11, 2022), https://www.wsj.com/articles/ftx-tapped-into-customer-accounts-to-fund-risky-bets-setting-up-its-downfall-11668093732

[14] Phil Helsel, *An FTX Co-Founder and The Former CEO At Alameda Research Plead Guilty To Fraud,* NBC News (Dec 21, 2022) https://www.nbcnews.com/business/business-news/ftx-co-founder-former-ceo-alameda-research-plead-guilty-fraud-rcna62891

[15] *Riches To Rags: How Did Sam Bankman-Fried Spend His Fortune?,* STYLE (Nov. 28, 2022) https://www.scmp.com/magazines/style/celebrity/article/3201152/riches-rags-how-did-sam-bankman-fried-spend-his-fortune-bahamas-properties-and-sponsoring-sports

[16] Lisa Gilbert*, How Sam Bankman-Fried's Dark-Money Political Donations Fueled His Massive Fraud,* SALON (Dec. 21, 2022) https://www.salon.com/2022/12/21/how-sam-bankman-frieds-dark-money-political-donations-fueled-his-massive-fraud/

Fourth, the number of cryptocurrencies is staggering, and growing. In 2021, there were more than 10,000 different cryptocurrencies.[17] In the summer of 2022, that number nearly doubled to 19,000, according to one estimate.[18] Commodity Futures Trading Commission Chair Rostin Behnam testified before Congress that "there are now hundreds of thousands of unique digital assets in circulation."[19] That is a greater than the number of banks in the United States. Dogecoin, the 10th largest cryptocurrency by value, was created as a "joke," according to its founders.[20] Even if one or a few cryptocurrencies are adopted as common tender, it is inconceivable that the number accepted would be greater than 10, or 100, and certainly not 19,000. Thus, their utility as a tender for goods and services seems limited, at best.

A few retailers have experimented with accepting Bitcoin for payment, but many have stopped.[21] Facebook (now called Meta) applied its prodigious muscle to launch a digital currency. In a test of remittances, however, the blockchain validation costs proved exorbitant.[22] [23]

Fifth, the claim that cryptocurrency cannot be stolen has been proven untrue. While it may not be as vulnerable to street theft as cash, or to cyber criminals hacking a bank account, a cyber-criminal might be able to hack into a personal computer where Bitcoin codes are kept. In 2021, a ransom paid in digital assets by Colonial Pipeline to hackers that took over their system (which led to a temporary decline in gasoline supplies on the East Coast), was traced and recovered by the FBI. "Crypto experts say it is at times easier to track than hard currencies such as U.S. dollars," according to the Wall Street Journal.[24]

Many experts question the value of cryptocurrency. Berkshire Hathaway CEO Warren Buffett called cryptocurrency "rat poison squared." His associate Charlie Munger labeled trading in this market as "dementia."[25] Investor Mark Cuban said he'd prefer bananas to Bitcoin, "Because at least as food, bananas have intrinsic value."[26] Bill Gates says cryptocurrencies are "100% based on greater fool theory," or reliance on a rational assumption of one speculator finding another speculator willing to pay a higher price.[27] JPMorgan CEO Jamie Dimon said he'd fire any employee he found investing in Bitcoin.

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[17] *Understanding the Different Types of Cryptocurrencies,* SOFI LEARN (Jan. 15, 2021) https://www.sofi.com/learn/content/understanding-the-different-types-of-cryptocurrency/

[18] Arjun Kharpal, Crypto Firms Say Thousands Of Digital Currencies Will Collapse, Compare Market To Early Dotcom Days, CNBC (June 3, 2022) https://www.cnbc.com/2022/06/03/crypto-firms-say-thousands-of-digital-currencies-will-collapse.html

[19] Rostin Benham, *Testimony,* SENATE AGRICULTURE COMMITTEE (Feb. 9, 2022) https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam20

[20] Avi Salzman, *Dogecoin Was Started as a Joke,* BARRON'S (May 5, 2021) https://www.barrons.com/articles/dogecoin-started-as-a-joke-now-its-too-important-to-laugh-off-51620229273

[21] Steve Fiorillo, *How to Use Bitcoin for Purchases,* THE STREET (April 18, 2018) https://www.thestreet.com/investing/what-can-you-buy-with-bitcoin-14556706

[22] Alexis Goldstein, Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks? HOUSE FINANCIAL SERVICES COMMITTEE (Dec. 14, 2021) https://www.banking.senate.gov/imo/media/doc/Goldstein%20Testimony%2012-14-21.pdf

[23] Open Markets Institute, *Letter to Federal Regulators*, OPEN MARKETS INSTITUTE (Nov. 23, 2021) , https://downloads.regulations.gov/CFPB-2021-0017-0089/attachment_2.pdf

[24] James Uberti, *How the FBI Got Colonial Pipeline's Money Back*, WALL STREET JOURNAL (June 11, 2021) https://www.wsj.com/articles/how-the-fbi-got-colonial-pipelines-ransom-money-back-11623403981

[25] James Royal, *Warren Buffet Says to Avoid these Two Types of Hot Investments,* BANKRATE (May 6, 2019) https://www.bankrate.com/investing/warren-buffett-says-avoid-these-hot-investments/

[26] Taylor Locke, *Mark Cuban: Bitcoin Is 'More Religion Than Solution' And Won't Help In 'Doomsday Scenarios,* CNBC (Dec. 17, 2020) https://www.cnbc.com/2020/12/17/mark-cuban-bitcoin-is-a-store-of-value-that-is-more-religion.html

[27] Ryan Browne, *Bill Gates Says Crypto And NFTs Are '100% Based On Greater Fool Theory, '* CNBC (June 14, 2022) https://www.cnbc.com/2022/06/15/bill-gates-says-crypto-and-nfts-are-based-on-greater-fool-theory.html

European Central Bank President Christine Lagarde says cryptocurrency is worth "nothing."[28] Other skeptics include Allianz economist Mohamad El-Erian, economist Paul Krugman, and Oaktree Capital Management founder Howard Marks.[29] Nassim Taleb, who once considered Bitcoin promising, now says its ultimate worth is "zero."[30] Outspoken critics include the indefatigable Molly White, an independent observer,[31] as well as John Reed Stark (former chief of the SEC's Office of Internet Enforcement).

Finally, many experts question the utility of the underlying blockchain technology. In June 2022, 1,500 computer scientists, software engineers, and technologists sent an open letter urging Washington policy makers to "take a critical, skeptical approach toward industry claims that crypto assets (sometimes called cryptocurrencies, crypto tokens, or web3) are an innovative technology that is unreservedly good." The experts take direct issue with blockchain, which they argue, "by its very design . . . is poorly suited for just about every purpose currently touted as a present or potential source of public benefit." Further, they write, blockchain technologies facilitate few, if any, real economy uses."[32] Among the signatories are employees of IBM, Netscape, Google, Microsoft, Apple, MIT, Meta, Columbia, eBay and Amazon.

If cryptocurrency does not seem useful as a currency, why did the market capitalization reach $3 trillion? We believe, simply, perhaps obviously, that those who buy cryptocurrency hope to make money—they are speculators. (We leave aside for now those using cryptocurrency for illicit activities.) Presumably, most investors who might purchase stock in a jet manufacturer or pharmaceutical firm may have little personal expertise in aerospace technology or biochemistry. Similarly, few who purchase cryptocurrencies are likely familiar with Merkle Trees, nonces, or other technical features of blockchain. But these speculators can see that some who purchase stock in a jet maker have made money, and that's been the case with cryptocurrency as well.

The sad reality is that about 46 million Americans now own Bitcoin alone.[33] Why do so many people invest in Bitcoin and other cryptocurrencies? We assume, as with a stock or other traditional asset, these speculators believe the price will rise and that they will profit. To date, that has been the case. Bitcoin's market capitalization has occasionally exceeded four times that of JP Morgan Chase.[34] Speculators who purchased at lower prices are, indeed, sitting on a profit. Bitcoin sold for $1,000 in 2017, before peaking at $60,000 in 2021.[35] Would-be speculators saw these winnings and likely were attracted to the arena.

Bolstering the stories of success, mainstream institutions and public influencers are affirming the legitimacy of cryptocurrencies as investments. Cryptocurrency sponsors have spent extravagantly on advertising, relying conspicuously on influencers. Crypto.com spent $15 million in advertising in

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[28] Ryan Browne, *Christine Lagarde Says Crypto Is Worth Nothing* CNBC (May 23, 2022) https://www.cnbc.com/2022/05/23/ecb-chief-christine-lagarde-crypto-is-worth-nothing.html
[29] Trisha Phillips, *Bill Gates and Other Powerful People Who Hate (or Love) Bitcoin,* SHOWBIZ CHEATSHEET (MAY 25, 2018) https://www.cheatsheet.com/money-career/powerful-people-love-or-hate-bitcoin.html/
[30] Tanaya Macheel, *Black Swan' Author Nassim Taleb Says Bitcoin Is Worth Zero And Fails As A Currency And A Hedge* CNBC (July 13, 2021) https://www.cnbc.com/2021/07/13/black-swan-author-nassim-taleb-says-bitcoin-is-worth-zero.html
[31] Gerrit De Vynck, *First She Documented The Alt-Right. Now She's Coming For Crypto.* WASHINGTON POST (May 29, 2022) https://www.washingtonpost.com/technology/2022/05/29/molly-white-crypto/
[32] *Letter in Support of Responsible FinTech Policy,* (June 1, 2022) https://concerned.tech/
[33] *About 46 Million Americans Own Bitcoin,* NASDAQ (May 14, 2021) https://www.nasdaq.com/articles/about-46-million-americans-now-own-bitcoin-2021-05-14
[34] *JP Morgan,* YCHARTS (website accessed June 11, 2021) https://ycharts.com/companies/JPM/market_cap
[35] James Royal, *Best online brokers for buying and selling cryptocurrency in June 2021,* BANKRATE *(June 1, 2021) https://www.bankrate.com/investing/best-online-brokers-cryptocurrency-trading/*

November 2021.[36] CoinDesk reportedly mounted a $100 million advertising campaign in 2021.[37] The cryptocurrency balloon has been inflated by influencers, many surreptitiously paid;[38] [39] massive advertising campaigns that we now know were funded, in part, through crypto firms' misuse or theft of customer funds, such as FTX;[40] and a rogue's gallery of online crypto enthusiasts, some of whom may have a self-interest in elevating the price of tokens.

Well known brokers, including large firms catering to small investors such as Schwab, now offer cryptocurrencies.[41] Wells Fargo offers the product to is elite clients.[42] Fidelity Investments announced it would provide cryptocurrency options for sponsors of 401(k) plans.[43] Cryptocurrencies legitimized by large institutions naturally invites otherwise rational people to consider allocating at least some of their portfolio to this sector.

For those who believe there is little future as a currency, and that blockchain holds little promise, speculation may be based on the "greater fool" theory.[44] Such sponsors are effectively promoting a Ponzi scheme, with new investors paying a higher price than previous investors. (A sponsor is an individual or firm that creates and promotes cryptocurrency. Bitcoin has no sponsor.)

Some cryptocurrency sponsors may be exploiting this "greater fool" theory with those who believe they've been shut out of the traditional financial system. We are especially dismayed by reports that of the U.S. individuals who own cryptocurrencies, 40 percent of people of color. According to one report, the average cryptocurrency trader is under 40 (mean age is 38) and does not have a college degree (55 percent). Forty-one percent are women. More than one-third (35 percent) have household incomes under $60k annually.[45] After centuries of exploitation of people of color, after nefarious bankers targeted Black borrowers with abusive mortgages leading to the 2008 financial crisis,[46] it is tragic that predatory

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[36] Jet Encela, *Crypto Companies Slash Ad Spending By 90% Amid Market Jitters*, BITCONIST (website visited July 15, 2022) https://bitcoinist.com/crypto-companies-slash-ad-spending/

[37] Jamie Crawley, *Crypto.com Looks to Cash In on Bull Market With $100M Advertising Campaign*, COINDESK (Oct. 2021) https://www.coindesk.com/business/2021/10/28/cryptocom-looks-to-cash-in-on-bull-market-with-100m-advertising-campaign/

[38] *SEC Charges NBA Hall of Famer Paul Pierce for Unlawfully Touting and Making Misleading Statements about Crypto Security,* SECURITIES AND EXCHANGE COMMISSION (Feb. 17, 2023) https://www.sec.gov/news/press-release/2023-34

[39] *SEC Statement Urging Caution Around Celebrity Backed ICOs* SECURITIES AND EXCHANGE COMMISSION (Nov. 1, 2017) https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos

[40]Tiffany Hsu, *Larry David Doesn't Get Crypto. That's Why He's the Perfect Pitchman.* NEW YORK TIMES (Feb. 13, 2022) https://www.nytimes.com/2022/02/13/business/media/larry-david-super-bowl-ftx-crypto.html

[41] James Royal, *Best online brokers for buying and selling cryptocurrency in June 2021,* BANKRATE *(June 1, 2021) https://www.bankrate.com/investing/best-online-brokers-cryptocurrency-trading/*

[42] *Wells Fargo: US Bank Set to Offer Crypto to Rich Clients*, BBC (May 19, 2021) https://www.bbc.com/news/business-57147386

[43]Rob Wile, *Fidelity Lets Companies Offer Bitcoin In A 401(K), But Financial Advisers Warn It's A Risky Bet* NBC (May 22, 2022) https://www.nbcnews.com/business/consumer/bitcoin-401k-fidelity-financial-advisers-warn-risk-cryptocurrencies-rcna29099

[44] Nolan Whitcomb, *The Greater Fool Theory*, OXFORD BUSINESS REVIEW (Dec. 30, 2020) https://oxfordbusinessreview.org/the-greater-fool-theory/

[45] *More Than One in Ten Americans Surveyed Invest in Cryptocurrencies* University of Chicago (July 22, 2021) https://www.norc.org/NewsEventsPublications/PressReleases/Pages/more-than-one-in-ten-americans-surveyed-invest-in-cryptocurrencies.aspx

[46] Ylan Q. Mui *Ex-Loan Officer Claims Wells Fargo Targeted Black Communities For Shoddy Loans*, WASHINGTON POST (June 12, 2012) https://www.washingtonpost.com/business/economy/former-wells-fargo-loan-officer-testifies-in-baltimore-mortgage-lawsuit/2012/06/12/gJQA6EGtXV_story.html

cryptocurrency sponsors may have targeted the Black community with this Ponzi scheme. Derrick Hamilton of the New School noted, that crypto has a "low barrier to entry with a promise of high returns. , , , [The industry] preys on people's desire to make something of themselves."[47]

Digital asset markets are rife with scams and other manipulative financial practices. Several federal regulators, including the Consumer Financial Protection Bureau (CFPB), Securities and Exchange Commission (SEC), and Federal Trade Commission (FTC), among others, have issued regular alerts warning consumers and investors about the prevalence of scams, hacks and manipulative activities found within the digital asset markets, and have collected data to back up these warnings. Numerous media articles, academic studies and even industry reports have documented the large sums of money lost through these scams and exploitative practices. For example, a recent study by crypto analytics firm Chainanalysis found there were $14 billion in losses in 2021 alone due to malfeasance, and that there had been a 79% increase in crypto related crime during that same year.[48]

These scam-related losses may be the tip of the iceberg; a Better Business Bureau report profiling crypto schemes noted that the FTC claims that only about 5% of fraud victims end up reporting their losses or victimization.[49] Tellingly, the FTC has also historically found that Black and Hispanic or Latino Americans are more likely than white Americans to be victims of scams or fraud and are more likely to under-report such experiences as well.[50] This suggests that, even as digital assets are being promoted (via sophisticated marketing campaigns) as vehicles for financial inclusion for communities traditionally excluded from or exploited by traditional financial actors, these same communities may be bearing the brunt of the losses generated by fraud and scams.

Cryptocurrencies also serve as a medium of payment for illicit activities. One study found that "approximately one-quarter of Bitcoin users are involved in illegal activity" and that an estimated $76 billion in illegal activity per year involve Bitcoin (46% of Bitcoin transactions)," which is close to the scale of the U.S. and European markets for illegal drugs."[51] Many avoid paying taxes on cryptocurrency profits.[52]

The New York CRPTO Bill

In the context of these sweeping problems, we heartily welcome New York's proposed CRPTO bill. Importantly, the legislation goes to the inherent conflict of sellers of what we believe to be "fake" money who themselves actually do not want to hold the tokens, but instead secure the dollar currency from unwitting victims. Specifically, the bill would reign in conflicts of interest in the industry by:

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[47] William Pierre-Louis Jr, *Why Crypto is not the Solution to Financial Inclusion*, AMERICANS FOR FINANCIAL REFORM (website accessed July 18, 2022) https://ourfinancialsecurity.org/2022/07/blog-why-crypto-is-not-the-solution-to-financial-inclusion/

[48] *The Chainalysius Crypto Crime Report*, CHAINALYSIS (website accessed July 22, 2022) https://go.chainalysis.com/2022-Crypto-Crime-Report.html

[49] Better Business Bureau, *Cryptocurrency Scams Study*, BETTER BUSINESS BUREAU (website accessed July 22, 2022) https://www.bbb.org/all/scamstudies/cryptocurrency_scams/cryptocurrency_scams_study

[50] Federal Trade Commission, *Combating Fraud in African America & Latino Communities*, FEDERAL TRADE COMMISSION (June 15, 2016) https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf

[51] Sean Foley, et al, *Sex Drugs and Bitcoin*, THE REVIEW OF FINANCIAL ECONOMICS, (May 2019) https://academic.oup.com/rfs/article/32/5/1798/5427781

[52] Greg Iacurci, *Cryptocurrency Poses A Significant Risk Of Tax Evasion* CNBC (May 31, 2021) https://www.cnbc.com/2021/05/31/cryptocurrency-poses-a-significant-risk-of-tax-evasion.html

- Preventing common ownership of crypto issuers, marketplaces, brokers, and investment advisers and preventing any participant from engaging in more than one of those activities;
- Preventing crypto brokers and marketplaces from trading for their own accounts;
- Prohibiting marketplaces and investment advisers from keeping custody of customer funds, the problem highlighted by FTX;
- Prohibiting brokers from borrowing or lending customer assets; and
- Prohibiting referrals from marketplaces to investment services for compensation, a core issue with influencers.

Understanding that crypto relies on the appearance of market interest and the integrity of reserves, the bill takes several steps to uphold the integrity of public statements. Specifically, the bill requires firms to:

- Undergo mandatory independent auditing and publish audited financial statements;
- Provide investors with material information about issuers, including risks and conflict-of-interest disclosures;
- Require marketplaces to establish and publish listing standards; and
- Require cryptocurrency promoters to register and report their interest in any issuer whose crypto assets they promote.

To protect consumes and reduce the use of crypto for illicit activities, the bill would:

- Establish "know-your-customer" provisions, meaning brokers would have to know essential facts about their customers, and requiring crypto brokers and marketplaces to only conduct business with firms that comply with KYC provisions;
- Ban the use of the term "stablecoin" to describe or market digital assets unless they are backed 1:1 with U.S. currency or high-quality liquid assets as defined in federal regulations; and
- Requiring platforms to reimburse customers who are the victims of unauthorized asset transfers and transfers resulting from fraud.

Public Citizen endorses all these principles and urges the New York legislature to approve this legislation which would create robust investor and public protections as they deal with the crypto sector.

Federal Legislation

We also urge New York leaders to support federal legislation and encourage a model based on the CRPTO bill. While New Yorkers may be protected through this legislation from New York-based operators, the internet knows no political boundaries.

Federal regulators must prevent crypto firms from engaging in fraud on their customers and must not allow crypto infrastructure to be used to perpetuate fraud. The people who digitally mint and promote the coins need to be liable for fraudulent statements, fraudulent transactions, rug pulls, abandoned projects, and self-dealing.[53] (In a "rug pull," predators lure investors into a project, then abandon the project and take the money.) We welcome announcements of greater staffing at the Securities and Exchange Commission (SEC) and urge the Federal Trade Commission (FTC) to increase its enforcement efforts as well. We also welcome the enforcement efforts of the Commodity Futures Trading Commission (CFTC).

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[53] *SEC Signals Ramp-Up in Crypto Enforcement by Nearly Doubling Its Crypto Assets Cyber Unit Staff* BAKERHOSTETLER (May 5, 2022) https://www.bakerlaw.com/SEC-Signals-Ramp-Up-in-Crypto-Enforcement-by-Nearly-Doubling-Its-Crypto-Assets-Cyber-Unit-Staff

This agency polices fraud, false reporting, and manipulation over commodity cash markets in interstate commerce. Since 2014, the CFTC has brought 50 enforcement actions involving digital assets. In 2021, it brought 20 enforcement actions alleging digital asset-related misconduct.[54] Authorities are prosecuting "rug pulls" in several non-fungible token (NFT) cases. [55] [56] In one rug pull case, the durable wire fraud law proved reliable in arresting two suspects.[57] The FTC signaled it will better scrutinize "gatekeepers," where rug pulls are prominent. [58]We welcome the Department of Justice's decision to establish a National Cryptocurrency Enforcement Team.[59]

The SEC should regulate cryptocurrency as a security. The SEC defines a security with the Howey Test. The Howey Test consists of four prongs, all of which must be satisfied for the SEC to classify a transaction as a security. The four elements are as follows: [1] An investment of money [2] in a common enterprise [3] with expectations of a profit [4] to be derived from the efforts of others.[60] (The "effort of others" derives from the promotion by the sponsor.) Given that sponsored cryptocurrencies satisfy all these elements, they should be regulated by the SEC. The has SEC declared several cryptocurrencies as "unregistered securities." [61] Since its creation in 2017, SEC's Crypto Assets and Cyber Unit has brought more than 80 enforcement actions related to fraudulent and unregistered crypto asset offerings and platforms, resulting in monetary relief totaling more than $2 billion. The expanded Crypto Assets and Cyber Unit will leverage the agency's expertise to ensure investors are protected in the crypto markets, with a focus on investigating securities law violations related to:

- Crypto asset offerings;
- Crypto asset exchanges;
- Crypto asset lending and staking products;
- Decentralized finance ("DeFi") platforms;
- Non-fungible tokens ("NFTs"); and
- Stablecoins.[62]

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[54] Rostin Benham, *Address*, BROOKINGS INSTITUTION, (July 25, 2022) https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam24

[55] Kevin Roose, *What are NFTs?* NEW YORK TIMES (website visited July 21, 2022) https://www.nytimes.com/interactive/2022/03/18/technology/nft-guide.html

[56]*FYI on NFTs: Consumer Protection and Privacy Considerations* WILSON SONSINI (March 9, 2022) https://www.jdsupra.com/legalnews/fyi-on-nfts-consumer-protection-and-5976517/

[57]U.S. Attorney's Office, *Two Defendants Charged In Non-Fungible Token ("NFT") Fraud And Money Laundering Scheme* DEPARTMENT OF JUSTICE (March 24, 2022) https://www.justice.gov/usao-sdny/pr/two-defendants-charged-non-fungible-token-nft-fraud-and-money-laundering-scheme-0

[58] Lina Khan, *Vision and Priorities for the FTC*, FEDERAL TRADE COMMISSION (Sept 22, 2021) https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf

[59] Department of Justice, *Justice Department Announces First Director of National Cryptocurrency Enforcement Team* DEPARTMENT OF JUSTICE (Feb. 17, 2022) https://www.justice.gov/opa/pr/justice-department-announces-first-director-national-cryptocurrency-enforcement-team

[60]*Framework for "Investment Contract" Analysis of Digital Assets* SEC (website accessed August 3, 2022) https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets

[61]Press Release, *SEC Charges Former Coinbase Manager, Two Others in Crypto Asset Insider Trading Action* SECURITIES AND EXCHANGE COMMISSION (July 21, 2022) https://www.sec.gov/news/press-release/2022-127

[62] Securities and Exchange Commission, *SEC Nearly Doubles Size of Enforcement's Crypto Assets and Cyber Unit,* SEC.GOV (May 3, 2022) https://www.sec.gov/news/press-release/2022-78

Once cryptocurrencies status as securities is clarified, the SEC's pending climate disclosure rule, if adopted, could provide a comprehensive, verified view of the emissions generated by digital assets and trading, especially if the rule requires registrants to disclose the emissions released in their value chain, also known as Scope 3 emissions. Along with the immediate benefits to investors, such disclosures would also provide important inputs to systemic financial risk monitoring conducted by the Office of Financial Research and the Financial Stability Oversight Council, which has highlighted both climate and digital assets as emerging risk areas. To realize these benefits, it's important that the SEC clarify the reach of its proposed Scope 3 reporting requirement, which currently only requires disclosure if those emissions are "material." Ideally, the SEC would recognize the importance of Scope 3 emissions disclosure for all companies. But, at a minimum, it should clarify that for large firms that own or trade significant quantities of cryptocurrency, their Scope 3 emissions would be material and subject to disclosure for the reasons discussed above. Due to their importance, those emissions should also be subject to the level of assurance required for Scope 1 and 2 emissions.

Stablecoins should be regulated along the lines established recently by the European Markets in Crypto Assets (MiCA).[63] When implemented, European authorities will require stablecoin sponsors to hold liquid assets on a 1-1 basis with the tokens and provide for refunds with no charge. (Because stablecoin transactions require decentralized "miners" for verification, and they are paid in that stablecoin, then stablecoin sponsorship may be inherently unprofitable.[64]) Sponsors will also need to disclose their climate footprint. Crypto asset service providers must register with the European Securities and Markets Authority. We believe U.S. stablecoin sponsors should publish audits of their reserve monthly. Exchanges need margin requirements and stress tests; stablecoins need a liquid assets requirement and money market mutual fund-style protections to prevent runs and death spirals; banks and other traditional financial institutions must hold adequate capital to reflect the riskiness and volatility of crypto assets. Banks that hold crypto should post 1250 percent risk capital, as described by the Basel Committee.[65]

Specifically, Public Citizen believes any stablecoin bill should contain the following:

- Assets backed on a 1-1 basis.
- The assets must be safe and highly liquid, restricted to U.S. Treasury securities.
- The sponsor must maintain capital of 5 percent. (Sponsors must maintain assets that are 5 percent greater than the value of outstanding stablecoins.)
- Sponsors may not be affiliated with any commercial firm, or that is not a bank. (This means that firms such as Facebook or WalMart could be sponsors.)
- Sponsors must disclose their climate footprint.
- Sponsors must register with the Securities and Exchange Commission (SEC).
- Registration must include:
    - A list of any criminal conviction, deferred prosecution agreement, and pending criminal proceeding in any jurisdiction against all the following: (i) The applicant;

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[63] European Council *Digital finance: agreement reached on European crypto-assets regulation (MiCA)* EUROPEAN COUNCIL (June 30, 2022) https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/

[64] *The Stablecoin Cryptocurrency System* JDSUPRA (Dec. 1, 2020) https://www.jdsupra.com/legalnews/part-2-the-stablecoin-cryptocurrency-78223/

[65] Basel Committee on Banking Supervision, *Prudential Treatment Of Cryptoasset Exposures*, BANK OF INTERNATIONAL SETTLEMENTS (Sept. 10, 2021) https://www.bis.org/bcbs/publ/d519.pdf

(ii) Any executive officer of the applicant; (iii) Any responsible individual of the applicant; (iv) Any person that has control over the applicant; (v) Any person over which the applicant has control.

    - A list of any litigation, arbitration, or administrative proceeding in any jurisdiction in which the applicant or an executive officer or a responsible individual of the applicant has been a party for the 10 years before the application is submitted determined to be material in accordance with generally accepted accounting principles and, to the extent the applicant would be required to disclose the litigation, arbitration, or administrative proceeding in the applicant's audited financial statements, reports to equity owners and similar statements or reports.
    - A list of any bankruptcy or receivership proceeding in any jurisdiction for the 10 years before the application is submitted in which any of the following was a debtor: (i) The applicant; (ii) An executive officer of the applicant; (iii) A responsible individual of the applicant; (iv) A person that has control over the applicant; (v) A person over which the applicant has control.
    - A set of fingerprints for each executive officer and responsible individual of the applicant.

- Sponsors must publicly disclose monthly their assets, liabilities, capital, income, and expenses of the licensee, and an independent audit of this financial data quarterly.
- Sponsors shall maintain a surety bond or trust account in United States dollars in a form and amount as determined by the SEC for the protection of those who engage in digital financial asset business activity with the registrant.
- Banks that hold stablecoins must post 1250 percent risk capital, as described by the Basel Committee.[66]
- Penalties for infraction of any of these terms shall be one percent of the outstanding value of the stablecoin on the first infraction, and termination of the stablecoin on the second.

In addition, we believe that the Financial Stability Oversight Council (FSOC) should use its authority (under Dodd-Frank Section 120) to recommend that primary financial regulatory agencies move quickly to address these issues.

Regulators must look at the impacts of crypto operations and financial footprint on groups who have been excluded from financial markets because of racial discrimination. Crypto purportedly permits access to the financial system for those groups, but those claims rarely amount to more than marketing.

The Department of Labor (DOL) should instruct fiduciaries that crypto is not a responsible investment. We welcome DOL guidance that notes that "Fiduciaries may not shift responsibility to plan participants to identify and avoid imprudent investment options, but rather must evaluate the designated investment alternatives made available to participants and take appropriate measures to ensure that they are prudent." The DOL notes a U.S. Supreme Court explanation that "even in a defined-contribution plan where participants choose their investments, plan fiduciaries are required to conduct their own independent

[66] Basel Committee on Banking Supervision, *Prudential Treatment Of Cryptoasset Exposures*, BANK OF INTERNATIONAL SETTLEMENTS (Sept. 10, 2021) https://www.bis.org/bcbs/publ/d519.pdf

evaluation to determine which investments may be prudently included in the plan's menu of options." The failure to remove imprudent investment options is a breach of duty, the DOL states.[67]

Regulators must account for the energy and emissions impacts of crypto, particularly given the lack of underlying economic value of the assets. Both the direct emissions from mining and the broader effects of a mining ecosystem can have serious consequences for energy prices, the environment, and the climate. Crypto firms must adopt practices and protocols that mitigate these impacts in line with science-based targets for emissions and waste reduction.

Crypto's anonymity must not enable avoidance of legal obligations or illicit behavior. Regulators must make crypto firms comply with Know Your Customer rules, not facilitate sanctions avoidance, and issue tax docs for sale of coins (including swaps into other cryptocurrencies). Agencies must better ensure that gains from the sales of cryptocurrencies are properly taxed, including an increased focus on this issue by enforcement officials at the IRS. We support greatly increased funding to the agency to help tackle this type of enforcement.

In addition to cryptocurrencies, other digital assets such as NFTs may require no additional regulation. We are astounded at some of the prices, such as the $69 million paid for a digital collage called "Everyday: the First 5000 Days," by an illustrator known as Beeple.[68] The bidding, conducted by Christies, started at $100, suggesting that this expert auction house itself had no accurate understanding of what the market value might be. The purchaser owns this digital asset, but not the copyright. Anyone can enjoy the identical digital image as the purchaser by searching for it on the internet. We are aware that NFT promotions may involve scams to exploit a consumer's digital wallet. But these take place outside the question of whether NFT has value that any reasonable investor would assign. [69]

Improving the Payment System

As noted, the cryptocurrency promised to improve the payment system. We welcome efforts to broadly make the payment system more efficient and less costly for consumers and businesses alike.

Many U.S. residents are underbanked. More than six percent of American households, or some 33 million citizens are without a traditional bank account. Some do not trust banks, while others lack the funds that financial institutions require to open and maintain an account.[70]

Even for those lucky people with deposit accounts, the payment system is slow. Overdraft fees can be substantial. Checks and credit card payments can take two days or more to clear, meaning that vendors are without these funds during that time. It is also costly. Checks and particularly wire transfers can include substantial fees. Banks charge interchange fees for credit cards, a substantial burden for

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[67] Department of Labor, *401(k) Plan Investments in "Cryptocurrencies* (March 10, 2022) https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01

[68] Abram Brown, *Beeple NFT Sells for $69 million*, FORBES (March 11, 2021) https://www.forbes.com/sites/abrambrown/2021/03/11/beeple-art-sells-for-693-million-becoming-most-expensive-nft-ever/?sh=402d6d0c24

[69] Amanda Hetler, *Eight Ways to Avoid NFT Scams*, TECHTARGET (May 26, 2022) https://www.techtarget.com/whatis/feature/8-ways-to-avoid-NFT-scams

[70] Mehrsa Baradaran, *How the Other Half Banks*, HARVARD UNIVERSITY PRESS (2015) https://www.hup.harvard.edu/catalog.php?isbn=9780674983960

retailers.[71] And it is complex, with thousands of banks with idiosyncratic ledger systems communicating with one another and the Federal Reserve.

We note the apparent success of the Pix payment system in Brazil, sponsored by the Central Bank of Brazil.[72] This uses QR codes (or two-dimensional bar codes, formally known as a quick response code) that appear in the customers' cell phones. After a year of operation, this electronic system, free of fees to customers, represented some 6 percent of electronic commerce in the country.[73] During the pandemic, adoption of Pix led to a 73 percent decline in the unbanked population.[74] The Brazilian Central Bank requires Brazilian banks to participate. Banks reportedly discovered that while they lost some revenue from fees, they saved money from the reduced use of checks.[75]

The 28 countries of the European Union, along with several others, are experimenting with Single Euro Payments Area, an electronic transfer system that promises transaction completion within 10 seconds. (European regulators, however, do not require banks to participate.[76])

At the same time, Public Citizen does support exploration of a Central Bank Digital Currency (CBDC). This federal digital coin, in one form dubbed a FedAccount, holds the promise to address some of the problems with the payment system reviewed above. Currently, depository institutions maintain accounts with the Federal Reserve.

Conceived by Lev Menand of Columbia Law School in June 2018, the CBDC would be a Federal Reserve account. It would be available to "any U.S. resident or business in digital wallets operated by the Federal Reserve, the Post Office, or one of the country's several thousand community banks," he explains.[77] "The digital wallets would charge no fees and have no minimum balances. They would come with debit cards, direct deposit, and bill pay. They would have customer service, privacy safeguards, and fraud protection—if for example one lost their password. And these accounts would earn interest at the same rate that the Fed pays to banks."

Lack of profitability for the banks represents one of the reasons that banks fail to service roughly six percent of the population. The FedAccount would be available regardless of any balance and would be

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[71] Aaron Klein, *A Few Small Banks Have Become Overdraft Giants*, BROOKINGS INST. (Mar. 1, 2021) https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants/

[72] *Pix*, CENTRAL BANK OF BRAZIL (website accessed July 18, 2022) https://www.bcb.gov.br/en/financialstability/pix_en

[73] *The Pix Revolution in Brazil*, EBANK (website accessed July 18, 2022) https://business.ebanx.com/hubfs/ABM/APMs/Pix/English/PIX-Revolution-EBANX-EN.pdf?utm_medium=email&_hsenc=p2ANqtz-9rblI_fY1tYx3FDsbh-srIZgbL8Xm3IC1j2G5w_c2Zc8YqlVgzOSnCMB8XLdkCn06suim1TD9pQ8gw1s4SdfcW3iIylQ&_hsmi=206763316&utm_content=206763316&utm_source=hs_automation&hsCtaTracking=5529a87a-3179-4fcd-94eb-bf706937d921%7Cf2d4b972-00a6-4aed-a46a-3d880e2cf259

[74] *A Year of PIX in Brazil: What Does the Future of Real-Time Fraud Look Like?* ACI WORLDWIDE (Dec. 10, 2021) https://www.aciworldwide.com/blog/a-year-of-pix-in-brazil-what-does-the-future-of-real-time-fraud-look-like

[75] Maxnaun Gutierrez, *Why Pix is the Revolution of Consumer Experience in Brazil* PAYMENTS JOURNAL (Feb. 24, 2021) https://www.paymentsjournal.com/why-pix-is-the-revolution-of-consumer-experience-in-brazil/

[76] Andrew Singer*, Brazil's PIX Payments System Has the Same Spirit, but Not a Blockchain Structure* COINTELEGRAPH (Feb 28, 2020) https://cointelegraph.com/news/brazils-pix-payments-system-has-the-same-spirit-but-not-a-blockchain-structure

[77] Lev Menand, *Testimony*, U.S. SENATE BANKING COMMITTEE (June 9, 2021) https://www.banking.senate.gov/imo/media/doc/Menand%20Testimony%206-9-21.pdf

streamlined with immediate clearing. There would be no fees. With such an account, delivery of federal payments such as Covid relief or other government benefits would be immediate.

Noting though that before such a system is implemented, important questions must be answered. For example, many bank account holders are subject to garnishments because of unpaid debt. Debt collectors would have a simple way to garnish funds through the CBDC. That also means the Federal Reserve would need to engage with debt collectors in addition to individual Federal Reserve account holders. There may be political issues. For example, the CARES Act might have more effectively delivered needed rescue funds to needy Americans via a FedAccount system. However, some of the individuals who received relief may have been subject to garnishment, meaning the Federal Reserve would be in a position of deciding whether, in times of extraordinary need, it would protect or release these funds.

Conclusion

From a non-existent market in 2008 to a recent market capitalization of $3 trillion, cryptocurrency has mushroomed to the point where it now threatens to become a source of systemic risk. If New York leaders worried that more forceful intervention in this giant Ponzi scheme might concuss through broader markets, such concerns should be allayed by the recent collapse, where the market value has now declined by about $2 trillion in a matter of months. If erasing two thirds of market capitalization has not caused tremors, we believe the final $1 trillion will not either.

We urge New York and other leaders to adopt the robust regulatory scheme they have proposed without fear of sparking systemic risk, and with support from consumer protection advocates when it comes to protections for consumers contemplating an investment in assets without true value.

For questions, Bartlett Naylor at bnaylor@citizen.org.

Thank you.