



September 27, 2021

The Honorable Pat Toomey  
Ranking Member  
Senate Banking, Housing and Urban Affairs Committee  
U.S. Senate  
Washington, D.C. 20510

Dear Senator Toomey:

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, I write in response to your request for feedback on clarifying laws around cryptocurrency and blockchain technologies. We appreciate your leadership in examining this emerging technology and appreciate the opportunity to provide the views of the venture capital community.

### **Background on Venture Capital**

As background, venture capitalists (VCs) create partnerships with institutional investors to combine the capital held by pension funds, endowments, foundations and other sophisticated investors with their talent and expertise to make risky, long-term equity investments into innovative startups. VCs typically invest early in the promise of an idea, then support a company with multiple investment rounds spanning between five and ten years, sometimes longer.

Venture capital investment has been critical to the experimentation and development of most emerging technologies in the post-World War II economy, including hardware and the home computer industry, the birth of the biotechnology industry, the software revolution, and clean energy development. Looking forward, VCs see promise in many emerging technologies, including blockchain technology. Due to increased interest in the technology by our members, the National Venture Capital Association (NVCA) created the Blockchain Working Group to bring together venture capital investors and the blockchain entrepreneurs they support to engage in the dynamic public policy conversations surrounding the emerging technology.

### **Venture Capital and Blockchain Technology**

Many of our members believe that blockchain holds the promise to be the next transformative industry, provided the policy environment allows entrepreneurs to fully experiment with the technology in the United States. The current discussions around blockchain have many similarities to the regulatory policy conversations that occurred during the rise of previous generations of new industries, such as biotechnology and the commercialization of the Internet. In each of these cases, doubts amongst policymakers proliferated and policy proposals were considered that could have prevented American leadership before the full promise of the technology was realized. Fortunately, cooler heads prevailed and as a result, the United States

has been the unquestioned global leader in technological innovation since World War II.

The commercialization of blockchain technology is in its infancy, but a glimpse into the current efforts of blockchain entrepreneurs offers a clear illustration of its potential. At this time, blockchain entrepreneurs are working to apply the technology to solve critical societal challenges like access to financial services for the unbanked and underbanked, expanding economic opportunity, fighting climate change, and providing a market-based solution to technology and financial services industry concentration. These individuals are undertaking the risky endeavor of entrepreneurship to explore how the power of open protocols can fundamentally redesign how individuals and businesses use the internet.

History shows that open networks drive innovation and consumer value. Blockchain can create the fuel that powers the rise of open networks as all of these efforts are being developed on open, decentralized architectures, similar to how the early Internet was developed. This architecture is particularly relevant today given concerns about the concentration of market share held by a small number of important technology platforms. Blockchain architectures are governed and managed by decentralized communities, participation in which is available to anyone who chooses, further democratizing access to this important foundational technology.

### **Implement an Effective Blockchain Regulatory Regime**

Our members strongly believe that the optimal solution for blockchain technology regulation is not one-off regulatory proposals, but a comprehensive and effective regulatory regime that can protect consumers and that blockchain entrepreneurs can rely on as they build their technology. We understand that establishing a clear regulatory framework for blockchain technology is a difficult task, but it is a priority shared by many policymakers on both sides of the aisle and most industry participants. As with any emerging technology field, there are many complex questions that must be answered.

Wishing away the rise of a technology has never been an effective solution to challenges that arise during innovation processes. Instead, we urge policymakers to do what previous generations of regulators were able to accomplish when faced with similar challenges: construct a regulatory regime that allows the technology to develop in a safe and sustainable manner. The bipartisan *Token Taxonomy Act* provides a base of work for policymakers to develop and implement an effective blockchain regulatory regime.

### **Modernize the SEC's Venture Capital Fund Definition**

When Congress mandated in Dodd-Frank that hedge and private equity funds become registered investment advisors (RIAs), they directed the Securities and Exchange Commission (SEC) to exempt VC funds and left it to the agency to define venture capital. Failure to meet this definition requires a venture capital fund to register with the agency as an RIA, while funds that do qualify for the exemption file annual reports with the SEC under exempt reporting advisor (ERA) status. ERAs still register with the SEC but have a lower regulatory burden and spend significantly less in annual compliance costs. A survey by NVCA found members that are registered experience about eight times the annual compliance costs of those firms who are ERAs.

The SEC promulgated this definition in 2011, and in the succeeding decade several trends in the venture capital industry have created pressure on the requirements for “qualifying” investments—defined as a direct investment into a private company. A number of challenges have risen with this definition, including: the increased prevalence of secondary investments in venture financing rounds; biotech VCs wanting to support their portfolio companies with direct financings shortly after the company has gone public; if VC funds want to invest in emerging VC funds, particularly to support entrepreneurship opportunity in areas off the coasts; or if VCs make a blockchain investment.

*Investments in ICOs, Tokens, and Other Digital Assets*

We recommend the committee craft legislation directing the SEC to revise Rule 203(l)-1 to permit venture capital funds to invest more broadly in initial coin offerings (ICOs), tokens and other forms of digital assets. Such a change would permit venture capital funds to more significantly participate in, and therefore act as a positive influence on, one of the potentially most dynamic and innovative developments in the capital markets in recent years. The changes we seek would also give investors access to these markets through a fund managed by venture capital professionals who are in a much stronger position to safeguard their interests.

**Conclusion**

Blockchain technology is still in its infancy but has the potential to rearchitect how the internet works, an area that the U.S. should support and allow its best innovators and brightest minds to explore fully to ensure we remain the global leader in internet technology. As your committee explores these and other proposals to encourage the growth of blockchain technology in the United States, we encourage you to not lose sight of the critical role venture capital plays in spurring economic growth through emerging technologies. Thank you for your attention to this important matter. NVCA looks forward to working with you.

Sincerely,

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

Bobby Franklin  
President and CEO