I. WHY IS FIT21 NEEDED?

Blockchains and their related digital assets have the potential to serve as the building blocks of the next generation of internet technology. Blockchains permit the creation of networks to facilitate new, cooperative ways to offer services, like access to financial products, social networks, and shared computing systems.

User-developed, controlled, and owned networks could one day offer an alternative to existing networks and services offered by big-tech companies and other centralized actors. These democratized networks could permit users greater autonomy, privacy, and control over their activities on the internet, as well as reduce costs—both paid and hidden—in accessing these services.

The digital assets associated with blockchains are essential to the development and operation of these new networks. These digital assets serve as a medium of exchange within each network and are necessary to incentivize network participants to cooperate for the provision of services and the protection of information on the network.

While the promise of blockchains and digital assets is exciting and could bring significant changes to how services are delivered to Americans, the practical reality of these networks is far from that today. Currently, the development of these networks is hamstrung by a lack of regulatory clarity about the treatment of digital assets when they are created, traded, or used. This lack of regulatory clarity hurts responsible actors trying to innovate and build new services with this emerging technology, while rewarding bad actors seek to defraud the public with false promises and get-rich-quick schemes.

Rather than providing a fit-for-purpose regulatory framework that promotes innovation and protects consumers, regulators, led by the Securities and Exchange Commission (SEC), are taking an enforcement-first approach. They are defining the regulatory requirements for transacting in digital assets through enforcement actions rather than rulemaking. This regulation-by-enforcement puts responsible digital asset developers and service providers in an impossible spot of trying to guess what activities a regulator will decide runs afoul of the law. Similarly, digital asset firms, like brokers, dealers, and exchanges, lack a clear framework from regulators to know when a transaction with a digital asset is subject to the securities laws or not.

This confusion leaves the public with little information to determine which actors in the digital asset space are legitimate and which are not. Because there are no clear rules for responsible actors to comply with the law, there are significant risks of loss in digital asset markets, including through:

- Scams, including the issuance of fraudulent digital assets or the theft of customer funds;
- Hacks, including stolen customer funds or other exploitation which results in customer losses;
- Market manipulation, including front running, wash trading, and insider trading by insiders, firms, or their

affiliates; and
- Bankruptcies, including by firms who have misused customer funds or are overleveraged and unable to meet their obligations.

By bringing digital asset markets into the regulatory perimeter and closing those regulatory gaps, FIT21 provides robust consumer protections that do not exist under current law. It's Congress' job to create this regulatory framework that provides clarity to the digital asset markets through legislation, rather than allow regulators to continue to expand their authority through unilateral enforcement actions.

II. WHAT DOES FIT21 DO?

The Financial Innovation and Technology for the 21st Century Act (FIT21) establishes clear and functional federal requirements over digital asset markets. FIT21 extends existing securities and commodity laws, where appropriate, and provides certain tailored changes to address the unique risks and benefits of digital assets.

Similar to traditional financial markets, digital asset markets are served by many types of firms which help their customers facilitate digital asset transactions, including brokers, dealers, exchanges, and custodians. Unlike traditional financial markets, the application of existing regulatory frameworks to these markets is unclear, in large part because the treatment of digital assets under the securities laws is unclear.

To remedy this, FIT21 builds on existing regulations in both securities and commodities markets to create a fit-for-purpose framework for digital assets. This provides the same robust customer protections available in traditional markets and allows new innovations enabled by digital assets to flourish.

FIT21 creates a new process for compliant digital asset developers to: (1) use the securities laws to raise funds to develop a project, (2) to determine when a digital asset transaction is subject to SEC or CFTC oversight, and (3) to provide robust and relevant public disclosure of information about a digital asset project.

It also establishes two comprehensive frameworks, including registration and regulation of brokers, dealers, and exchanges, for the trading of digital assets. The first will be implemented by the SEC for digital assets which are used to raise capital and still significantly controlled by a developer and other insiders. The second will be implemented by the CFTC for digital assets that function similar to commodities, after the project is no longer able to be controlled or directed by a developer or other insiders.

Finally, FIT21 promotes increased financial technology literacy at the CFTC and SEC by formalizing their respective FinTech Offices and establishing a joint advisory committee on digital assets.

Taken together, these changes will protect consumers and project developers by establishing clear pathways to compliance with traditional financial market regulatory principles.

FIT21 will protect consumers by strengthening transparency and accountability with market participants:

- Digital asset developers will be required to provide accurate, relevant disclosures, including information relating to the digital asset project's operation, ownership, and structure; and
- Digital asset customer-serving institutions, like exchanges, brokers, and dealers will be required to:
  - Provide appropriate disclosures to customers;
  - Segregate customer funds from their own; and
  - Reduce conflicts of interest through registration, disclosure, and operational requirements.

FIT21 will strengthen the market by protecting digital asset projects:

- Digital asset developers will have a pathway to raise funds; and
- Participants will have a clear process to determine which digital asset transactions are subject to the SEC's jurisdiction and the CFTC's jurisdiction.

FIT21 will protect digital asset customer-serving institutions by:

- Establishing clear lines between the SEC and CFTC; and
- Creating comprehensive registration regimes to permit them to lawfully serve customers in digital asset markets.

III. WHY SHOULD CONGRESS PASS FIT21?

The current regulations for digital asset markets are unclear. While the securities laws do apply in some instances, they do not apply in every situation—leaving critical gaps in regulation which can be both exploited by bad actors and lead to confusion for consumers.

The securities laws, when they do apply, are not fit-for-purpose. The disclosures are often inadequate in some instances and inappropriate in others, leading to the dissemination of information that is not relevant to evaluating a digital asset project. Intermediaries are unable to register with the SEC given unnecessary and conflicting requirements that are either not compatible with the underlying technology or potentially not applicable because the firms' activities do not involve an offering of securities.

When the securities laws do not apply, such as in the case of Bitcoin, there is a significant gap because firms engaging in activities are not subject to the jurisdiction of a federal market regulator at all, leaving consumers out to dry.

FIT21 bridges these gaps between the authority of the SEC and the CFTC, allowing innovation promised by this new technology to continue developing in the United States. FIT21 will protect consumers, promote innovation, and provide a legal pathway for hundreds of businesses to continue to operate and serve U.S. customers.