

Congress of the United States
Washington, DC 20515

May 24, 2023

Dear Chairman Gensler:

We write to express our concerns regarding the Securities and Exchange Commission (SEC) Investor Advisory Committee's ("IAC" or "Committee") April 6, 2023 letter to you titled, "IAC Views on Crypto Assets" ("Crypto Letter").¹ This letter, which purports to represent the views of "a consensus of the IAC Members," conveys broadly and without any evidentiary support the IAC's position that "virtually all, if not all, crypto tokens are securities," and that the platforms and custodians dealing in these tokens must comply with the federal securities laws.² We have serious questions regarding the process (or potential lack thereof) used by the IAC to draft and approve the Crypto Letter, including whether a committee vote was held and whether any dissenting views were registered. More broadly, the Crypto Letter follows on the heels of the IAC's September 2022 draft recommendations supporting the SEC's radical climate disclosure rule proposals, which suggests that the IAC may increasingly be functioning as an echo chamber for this Commission's pro-ESG, anti-free markets agenda.³

Section H of the IAC's Bylaws state, "When a *decision* or recommendation of the Committee is required, the presiding officer will request a motion for a vote."⁴ The Bylaws further state that the IAC follows Robert's Rules of Order, which also generally require a vote on significant decisions or recommendations.⁵ However, we see no evidence based on the Committee's public

¹ <https://www.sec.gov/files/20230406-iac-letter-cryptocurrency.pdf>.

² The IAC's view that "most, *if not all*, crypto tokens" (emphasis added) are securities suggests that the Committee lacks fundamental knowledge of the crypto markets and securities regulations its letter addresses, as well as the SEC's public positions on certain cryptocurrencies, including the fact that the SEC and CFTC have recognized that neither Bitcoin nor Ethereum tokens are securities. See, e.g., Rakesh Sharma, "SEC Chair Says Bitcoin Is Not A Security," Investopedia (June 15, 2019); Mat Di Salvo, "Bitcoin Still Not a Security, But Regulation Is Coming: Ex-SEC Chairman," Decrypt (Apr. 1, 2021); William Hinman, "Digital Asset Transactions: When Howey Met Gary (Plastic)," Remarks at the Yahoo Finance All Markets Summit: Crypto (June 14, 2018) (addressing Bitcoin and Ethereum tokens); *Commodities and Futures Trade Commission v. Armen Temurian and Vista Network Technologies* (Case 1:23-cv-01235) <https://www.cftc.gov/PressRoom/PressReleases/8660-23>. We further note that while the letter praises the work of the SEC's FinHub, we have been informed that FinHub has been almost completely sidelined within the Commission when crypto market participants have attempted to pursue SEC registrations.

³ See Recommendation of the SEC Investor Advisory Committee Related to Climate-Related Disclosure Rule Proposals (draft as of Sept. 14, 2022), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220914-draft-climate-related-disclosure-recommendation.pdf>.

⁴ <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-bylaws.pdf> (emphasis added).

⁵ Robert's Rules of Order, Part 1, Article 1, Section 9: "Putting the Question and Announcing the Vote. When the debate appears to have closed, the chair asks again, "Are you ready for the question?" If no one rises he proceeds to

agendas going back to the start of 2022 that the IAC met to discuss the matters covered in the Crypto Letter, solicited feedback from informed market participants, or voted to approve issuing the Crypto Letter. Drafting and issuing a public statement of this significance—which purports to represent the consensus views of the IAC on a topic of importance to tens of millions of investors—surely amounts to a “decision”, if not a recommendation.

Moreover, while the Crypto Letter states that the Committee chose not to issue “a formal IAC recommendation”, this attempted distinction further rings hollow given that the Crypto Letter “encourages”—i.e., recommends—that the SEC take a number of steps with regard to regulating the cryptocurrency markets. The extent of the Commission’s involvement in this matter (beyond that of the SEC’s own Investor Advocate who sits on the IAC) is also unclear, although the IAC’s views on cryptocurrency markets and products bear strong similarities to a number of your recent statements.⁶

We are also concerned that the Committees’ current membership does not adequately reflect the categories listed in the SEC’s Procedures for Appointments to the Investor Advisory Committee (“Membership Procedures”) or the diverse array of investors who participate in U.S. capital markets. For example, only one of the Membership Procedures’ 23 functional membership categories is “Academic,” but *five* of the IAC’s 23 members fall within this category. And, even though the Membership Procedures say nothing about environmental and social experience or interests, such as environmental-driven investing, multiple representatives highlight “sustainable investment” or “carbon neutrality” in their IAC biographies.⁷ As noted above, the IAC appears to be increasingly dominated by progressive activists and academics who have no obvious, direct experience in the markets about which they purport to advise the Commission.⁸

We believe the IAC must be investigated and reformed from the ground up, starting with a thorough review of its structure and activities, as well as whether its current membership is capable of effectively representing American investors. We request that you provide the following information no later than June 7, 2023:

put the question -- that is, to take the vote on the question, first calling for the affirmative and then for the negative vote.” https://iag.dgfi.tum.de/fileadmin/IAG-docs/Robert_s_Rules.pdf

⁶ See, e.g., Anndy Lian, “SEC chair Gensler confirms ‘everything other than Bitcoin’ is a security: Implications and analysis,” Crypto Slate (Feb. 28, 2023); SEC Chairman Gary Gensler, “Getting crypto firms to do their work within the bounds of the law,” The Hill (Mar. 9, 2023).


⁷ <https://www.sec.gov/spotlight/investor-advisory-committee-members-biographies#cmf>

⁸ This is particularly troubling when compared to the membership of other SEC advisory committees in the recent past, including the Equity Market Structure Advisory Committee and the Fixed Income Market Structure Advisory Committee, both of which were largely composed of market participants with substantial, direct experience and expertise in the markets and products on which they advised the Commission.

- All minutes and notes of the IAC or any member thereof addressing cryptocurrencies or the Crypto Letter.
- Documentation of any vote taken to draft and/or issue the Crypto Letter including, but not limited to, a full list of all IAC members who voted in favor of the decision to draft and/or issue the Crypto Letter and all IAC members who voted against the decision to draft and/or issue the Crypto Letter. If no such votes were held, provide a detailed description explaining why.
- A description of the rationale of each IAC member's decision or vote to approve or disapprove of the views expressed in the Crypto Letter.
- A description of any interactions between or among IAC members and third parties relating to the Crypto Letter, and copies of all communications with third parties.
- All communications (including off-platform communications) between any member of the IAC and the Chairman or the Chairman's office staff related to cryptocurrency including, but not limited to, the Crypto Letter.

Sincerely,


Bill Hagerty
United States Senator


French Hill
Member of Congress

Cc: SEC Inspector General Deborah J. Jeffrey