The Honorable Sherrod Brown
Chairman
U.S. Senate Committee on Banking,
Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Toomey, Jr.
Ranking Member
U.S. Senate Committee on Banking,
Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Maxine Waters
Chairwoman
U.S. House Comm. on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
U.S. House Comm. on Financial Services
4340 O'Neill House Office Building
Washington, DC 20024

The Honorable Debbie Stabenow
Chairwoman
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry
328A Russell Senate Office Building
Washington, DC 20510

The Honorable John Boozman
Ranking Member
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry
328A Russell Senate Office Building
Washington, DC 20510

The Honorable David Scott
Chairman
U.S. House Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515

The Honorable Glenn Thompson
Ranking Member
U.S. House Committee on Agriculture
1010 Longworth House Office Building
Washington, DC 20515

December 15, 2022

Dear Congressional Committee Leadership,

We write to you today, in the wake of the FTX collapse, to ask you to take a more deliberative and systemic approach to advancing policies to regulate digital assets. We urge you to resist pursuing legislative proposals that are either compromised by industry influence or do not adequately address the systemic problems found within the digital asset industry. Instead, we believe Congress should seek to empower regulators to use their existing authorities and prioritize consumer and investor protection over the digital asset industry's largely unproven promises.

We offer the following recommendations for how we believe the ongoing debate around crypto policy should be framed going forward.

Policymakers should recognize there are widespread systemic problems within the digital asset industry, and not characterize this incident as a case of a 'few bad apples.'

Some policymakers and digital asset industry voices claim the actions of Sam Bankman-Fried and others within FTX were those of outliers - bad actors who misled others for their own gain. Thus, they claim, FTX's collapse does not represent the digital asset industry as a whole. It is true that the behavior of FTX's leadership fits a pattern of reckless, unethical, and potentially fraudulent activity. But it is a mistake to see this pattern as exceptional.

Only months ago, the digital asset industry faced major financial losses as the result of the mismanagement and questionable actions of several other crypto platforms and their chief executives. The collapse of Terra/Luna, Celsius, Voyager, Three Arrows Capital and other firms laid bare a network of interconnected actors whose shady deals and insular management approach disrupted the digital asset marketplace and generated major financial losses for customers and firms alike. The FTX collapse has only reinforced this picture, suggesting a system-wide fragility that raises concerns about the resiliency of the market overall. It has also exposed due diligence failures by the private investors providing critical funding to FTX and many other digital asset firms as well.

Even prior to the collapse of FTX, digital asset industry critics have long pointed to a myriad of risks and concerns present within the digital asset marketplace - the ubiquitous scams; predatory marketing; volatility; hacks, thefts and use of digital assets and platforms for illicit finance, to name a few. Not only are these harms problematic, they arguably create a 'criminogenic' environment where bad behavior is not only tolerated but often encouraged. This is particularly problematic given that crypto has been presented as a tool for financial inclusion, when in fact evidence suggests that digital assets do not further financial inclusion but jeopardize and strip wealth from communities of color and push them further behind. Not all actors in the digital asset space fit this pattern, but it is frequent enough that it is deeply intertwined with the industry's culture and business models.

As such, calls for policy responses or accountability measures for FTX alone may have some value, but are insufficient to address these broader systemic problems.

Congress should prioritize protecting consumers, investors, and financial stability over promises of innovation from a technology that has yet to deliver lasting, widespread, scalable use cases.

The industry has made ambitious claims about what they see as the nearly unlimited potential of digital assets and blockchain technology to transform not only finance, but the web itself and more. This rhetoric, fueled by a flood of lobbying and public relations campaigns, created an atmosphere where it was easy for some policymakers to buy the rhetoric, and believe their role was to move policies that fostered such purported innovation.

We have seen this before. Private market actors, major banking institutions, fintech ventures, payday lenders and others have made similar arguments; namely, that promising new technological advances can make a meaningful contribution to financial inclusion, capital formation or economic development, if only regulators can waive their usual oversight and accountability measures to allow such innovation to thrive. In reality, however, these arguments usually amount to little more than a deregulatory push for less accountability and oversight for products and services that provide little new benefit, but plenty of real risks to consumers, investors, and the financial system itself.

Given this context, we believe policy makers should view claims from the digital asset industry regarding its innovative potential with skepticism. Rather than lowering the bar, the path forward should instead include robust and consistent regulatory oversight that protects consumers and investors while also fostering innovation from actors that can meet these existing standards.

Congress should bolster regulators' existing authority and capacity to oversee the digital assets industry, instead of pointing fingers. Any legislative efforts should first 'do no harm.'

Though there is still more to learn from the FTX collapse and its fallout, some lessons appear clear: basic consumer and investor protections that exist in traditional finance can help prevent, mitigate, or remedy harms like those we have observed within the digital asset marketplace. They are effective because in large part they are meant to apply to a wide range of financial products and services, regardless of the technology used to provide them or the way in which they are marketed and sold and apply as much to activities and actors as they do the assets themselves.

Regulators already have many of the tools, powers and standards needed to provide these protections and accountability measures; Congress should be supporting their efforts to use them. Indeed, there is a case to be made that, despite political pressure and the limitations of jurisdiction, some federal regulators were able to use these powers to prevent the FTX collapse from spreading further, in part by distancing risky crypto firms from the more traditional banking and finance sectors.

Unfortunately, some in Congress, egged on by voices in the crypto industry, are now trying to blame the same regulators they spent months or years criticizing for being too heavy handed with digital asset firms. Instead of obstructionism and investigations looking for scapegoats, Congress should urge regulators to accelerate their oversight and coordination efforts and should provide regulators with emergency funding to bolster their capacity at this critical moment in time, as well as consider providing more sustainable long-term funding.

Previous legislative proposals offered during this Congressional session to create or clarify regulatory standards for digital assets have largely advanced approaches that would have created more permissive, less rigorous oversight and accountability standards for digital assets, actors, and activities, and would have threatened to undermine existing regulatory authority for federal regulators and regulatory standards for traditional finance as well.

Members of Congress should be focused on getting the policy right, as opposed to just getting it done. There is a real opportunity here for Congress to reset crypto policy discussions and focus on first principles. But that can only happen if Members see the FTX collapse for what it is: not a random hiccup, but the inevitable outcome of a speculative bubble built more on hype than on tangible value.

We hope that as Congress concludes this session with these oversight hearings and begins to develop its agenda for the coming session, that Members take these recommendations to heart and begin a new chapter for digital asset regulation and consumer protection. Our organizations are willing and ready to contribute to those discussions and look forward to our continued engagement with the Committees on this critical issue.

Sincerely,

Organizations

Action Center on Race and the Economy
Americans for Financial Reform
California Reinvestment Coalition
Center for Popular Democracy
Consumer Action
Demand Progress
Electronic Privacy Information Center (EPIC)
Groundwork Data
Institute for Agriculture and Trade Policy
Media Alliance
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
Public Citizen
Public Justice Center
Revolving Door Project
Virginia Citizens Consumer Council
Woodstock Institute
20/20 Vision DC

Individuals
Art E. Wilmarth, Jr. – Professor Emeritus of Law, George Washington University Law School
Lee Reiners – Policy Director, Duke Financial Economics Center

CC: Chairman Rostin Behnam, Commodity Futures Trading Commission
Director Rohit Chopra, Consumer Financial Protection Bureau
Chair Gary Gensler, Securities and Exchange Commission
Secretary Janet Yellen, Department of the Treasury