BLOCKCHAIN COOPERATIVE COALITION

August 5, 2025

Via email to MarketStructure_RFI@banking.senate.gov

The Honorable Tim Scott
Chairman
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Elizabeth Warren
Ranking Member
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, D.C. 20510

Re: Digital Asset Market Structure Response to Request for Information

Dear Chairman Scott, Ranking Member Warren, and Senators Lummis, Hagerty, and Moreno:

In response to the Digital Asset Market Structure Request for Information (the "RFI") from the Senate Committee on Banking, Housing and Urban Affairs (the "Committee"), the Blockchain Cooperative Coalition (the "Coalition") is pleased to propose new Section 110 to the Responsible Financial Innovation Act of 2025 (the "Act").

Section 110 would require the Securities and Exchange Commission (the "SEC") to promulgate a safe harbor from US federal securities registration rules called "Regulation Membership." And though Section 110 would be small – just two pages of printed text – its effect would be profound, empowering Americans to claim a voice and stake in blockchain enterprises, healthcare networks, sports teams, and other businesses they use every day. The engine driving Regulation Membership is a business structure as old as securities law itself: the cooperative.

In this memorandum, the Coalition (1) outlines the historical and legal foundations for Regulation Membership; (2) explains Regulation Membership's core conditions; and (3) draws examples from blockchain, healthcare, and professional sports to illustrate how Regulation Membership would lead to an economy where businesses operate in the best interests of ordinary Americans.

Our proposal responds to RFI questions 1(b), 1(d), 2, and 35, which address the definition of an "investment contract" under US securities registration laws, the SEC's exemptive authority, and federal preemption.

I. THE HISTORICAL AND LEGAL FOUNDATIONS FOR REGULATION MEMBERSHIP

The story of Regulation Membership begins long before the first blockchain, and before the invention of social media, the Internet, or the digital computer, for that matter.

A. Some Cooperative Memberships Have Been Exempted by Statute Since the Inception of Federal Securities Laws

Regulation Membership has its genesis not in the Digital Age, but in nineteenth century England. In 1844, a group of textile workers formed the Rochdale Society of Equitable Pioneers, a grocery that provided unadulterated food to workers who would otherwise lack access to healthy options. The member-owners of the Rochdale Society were the workers themselves, which ensured that store managers would operate the grocery in the workers' best interests. Members also received a cut of any profits the grocery earned in proportion to the volume or value of each member's in-store purchases. The modern cooperative was born.

Fast forward to the early 1930s in the United States. Over preceding decades, cooperatives had gained popularity throughout the country, especially as applied to farming supply and marketing businesses, rural utilities, and retail banking. They succeeded in providing essential goods and services to ordinary Americans, while avoiding the speculative abuses that haunted stock corporations in during the 1920s. One reason for this success was the nature of cooperative memberships themselves. Cooperative memberships were not generally transferable, and the people who purchased cooperative memberships did so with the primary purpose of patronizing the cooperative, rather than flipping their memberships to make a quick profit.

It's no surprise, then, that when Congress passed the Securities Act of 1933 (the "Securities Act"), they expressly exempted farming cooperatives from the law's registration requirements.[1] Congress also exempted cooperative banks and savings and loan associations from the Securities Act and certain provisions of the Securities Exchange Act of 1934 (the "Exchange Act").[2] These exemptions allowed agricultural cooperatives to expand their memberships from the cranberry bogs of Massachusetts to the dairy farms of the Midwest and beyond, and they remain a pillar of the US economy today – with over half of all farmers being members of at least one cooperative, such as Land O'Lakes, Blue Diamond, and Ocean Spray. Consumer-owned banks have thrived, too, with the result that approximately 120 million people are now members of consumer financial institutions that they own and control.

[1] *See* Securities Act Section 3(a)(5); *see also* "The Application of Securities Laws to Cooperatives: A Call for Equal Treatment for Nonagricultural Cooperatives," Kathryn J. Sedo, DRAKE LAW REVIEW, Vol 46 pp. 259 – 297 (1997).

[2] *See* Securities Act Section 3(a)(5).

B. Other Cooperative Memberships Have Been Exempted on a Case-by-Case Basis Under Supreme Court and SEC Precedents

Congress did not grant memberships in other industries any specific exemption from federal securities laws, however. For cooperatives outside agriculture, utilities, and banking, federal courts and the SEC have decided whether cooperative memberships constitute "securities" on a case-by-case basis, a costly process that has stifled the expansion of cooperatives nationwide.

But there's a silver lining. For decades, various cooperatives have requested one-off exemptions from federal securities laws, precipitating a significant body of Supreme Court and SEC precedents regarding cooperative memberships. From these precedents, we can distill legal principles that form the core of Regulation Membership.

For example, in *United Housing Foundation, Inc. v. Forman*, the Supreme Court held that shares in a New York City housing cooperative did not constitute "stock" under the Securities Act because they did not "represent any of the 'countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.'"[3] In reaching this conclusion, the Court noted that the shares were not negotiable (i.e., not subject to fluctuations in value or transfer); could not be pledged or hypothecated; conferred no voting rights in proportion to the number of shares owned; and could not appreciate in value. The Court also noted that the cooperative's marketing materials did not seek to attract participants with the "prospect of profits resulting from the efforts of the promoters or third parties."[4]

Furthermore, in numerous no-action letters following the Supreme Court's holding in *SEC v. W.J. Howey Co.*, the SEC determined that membership interests in certain non-profits, mutual insurance companies, and cooperatives were not "investment contracts" under the Securities Act.[5] Although the facts presented in these no-action letters vary widely, we can distill from them certain factors the SEC found dispositive in deciding not to recommend enforcement action.[6] These factors often

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[3] *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848 (1975).

[4] *Id.* at 854-56.

[5] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

[6] *See, e.g.*, No-Action Letter, The Baltimore Life Insurance Company (Dec. 11, 2020) (membership interests in mutual insurance company); No-Action Letter, Entheos Audiology Cooperative, Inc. (June 2, 2014) (membership interests in purchasing cooperative for independent audiologists); American Crystal Sugar (membership interests in sugar beet processing cooperative); No-Action Letter, Minn-Dak Farmers Cooperative (Sept. 24, 2012) (membership interests in sugar beet processing cooperative); No-Action Letter, Coral Beach & Tennis Club (Nov. 11, 2011) (membership interests in tennis club); No-Action Letter, Midwest Real Estate Data LLC (Aug. 18, 2008) (membership interests in company offering multiple listing service to real estate brokers); No-Action Letter, Handy Hardware Wholesale Inc. (June 28, 2006) (membership interests in hardware purchasing cooperative); No-Action Letter, Northwest Physicians Mutual Insurance Company (July 2, 2003) (membership interests in professional mutual insurance company); No-Action Letter, Green Bay Packers, Inc. (Aug. 26, 1997) (special stock units in non-profit entity that owns NFL team).

focus on members' inability to profit from the memberships, except from their own participation in the enterprise:

- *Non-Transferability*: Membership interests described in the no-action letters are generally non-transferable except to the company for the original purchase price. In limited circumstances, the interests may be transferable to other members, but only with the approval of the board. These transfer restrictions and the absence of a secondary market limit members' ability to profit from the interests through speculative trading.

- *Limited Profit Distributions*: Membership interests described in the no-action letters do not generally entitle their members to profit distributions, other than patronage dividends generated from members' participation in the business. If membership interests entitle members to distributions of profit from a mix of their own efforts and the efforts of others, those interests could be considered securities despite the cooperative aspect.[7]

- *Limited Capital Gains*: Membership interests described in the no-action letters must generally be sold for their original purchase price to foreclose the possibility of speculative gains. Some price appreciation may be permitted, however, if the buyer's primary motivation is to participate in the business and not to invest passively.[8]

Despite the absence of a general exemption for cooperative memberships in federal securities laws, the Supreme Court and SEC have treated cooperative memberships much like Congress treated agricultural cooperative interests at the inception of the Securities Act: as instruments that implicate neither the letter of the securities laws nor the policy concerns that animate them.

C. State Securities Laws Exempt Cooperative Memberships, But They're a Patchwork

Of course, federal securities laws are only one piece of the puzzle. Each state has its own rules for issuing securities to its citizens. And for the most part, state securities laws are consistent with their federal counterparts in how they treat cooperative memberships.

But not entirely consistent. At least sixteen states use a variation of the "risk capital" test to decide whether an instrument should be subject to securities rules.[9] Unlike the *Howey* test, which focuses

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[7] *See* No-Action Letter, Calavo Growers of California (Oct. 23, 1996) (arguing that cooperative ownership interests may constitute securities if distributions come from non-member activities).

[8] *See* No-Action Letter, Coral Beach & Tennis Club (Nov. 11, 2011) (arguing that membership interests may be sold for profit if purchaser's primary goal is to gain access to club, not speculative gains).

[9] States that use a variation of the risk capital test include Alaska, Arkansas, California, Georgia, Hawaii, Illinois, Michigan, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Washington, Wisconsin, and Wyoming. *See* "The Risk Capital Test – List of States", Sustainable Economies Law Center, available at https://www.theselc.org/which_states_apply_the_risk_capital_test_when_deciding_what_is_a_security.

on whether an instrument offers the prospect of profits from the efforts of others, the risk capital test holds that an instrument may be a security if an investor's money is substantially at risk when invested – i.e., if it's possible the investor will lose their money and receive nothing of value in return. Under this formulation, a membership in a business that hasn't been built yet could be considered a security, even if the membership affords no profits from the efforts of others.[10]

Furthermore, states have taken varied approaches to exempting cooperative memberships from their securities laws using statutory carveouts. Some states, including Colorado, Hawaii, Kansas, Maine, Maryland, Mississippi, Nevada, Oklahoma, Pennsylvania, and South Carolina carve the issuance of cooperative memberships out of their securities laws entirely.[11] Other states, including Nebraska, New Hampshire, North Dakota, Texas, and Virginia carve out membership issuances only for cooperatives formed under the laws of their own state.[12] Still other states like California, Delaware, Florida, and New York exempt membership issuances for cooperatives in specific industries like agriculture, utilities, and housing, but not cooperatives in other industries.[13]

In short, though most states provide exemptions from securities registration laws for cooperatives, these exemptions provide an inconsistent patchwork rather than a uniform regulatory framework.

D. Legal Ambiguity and Inconsistency Have Stunted Cooperative Growth

What's been the result of this fractured state and federal landscape for cooperative memberships? As one would expect, cooperatives in industry sectors that enjoy specific safe harbors at the state and federal levels have thrived, particularly farming, utility, and housing cooperatives.

But cooperatives outside these favored industries have struggled to grow, and the cooperative business model has largely failed to penetrate some of the most important business sectors to arise in the Digital Age: computing, the Internet, and more recently, blockchain.

This failure is not for lack of effort.

In May 2024, for example, Project Liberty, Frank McCourt's $500 million initiative to remake the Internet, announced a groundbreaking bid to buy TikTok in response to the Protecting Americans

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[10] *See Silver Hills Country Club v. Sobieski*, 55 Cal. 2d 811 (1961) (holding that membership in a to-be-constructed country club constituted a security).

[11] Colo. Rev. Stat. Ann. § 7-56-509; Haw. Rev. Stat. § 485A-201(8); Kan. Rev. Stat. Ann. § 17-4632; 32 Me. Rev. Stat. § 16201(8); Md. Code Ann., Corps. & Ass'ns § 5-5A-28; Miss. Code. Ann. § 75-71-201; Nev. Rev. Stat. 90.520(1)(m); Okla. Stat. Ann. § 71-1-201(8); 68 Pa. Cons. Stat. Ann. § 4407; S.C. Code Ann. 35-1-201(8).

[12] Neb. Rev. Stat. Ann. § 8-1111(15); N.H. Rev. Stat. Ann. § 421-B:17(II)(j); N.D. Cent. Code § 10-04-05(8); 2021 Tex. Sec. Act § 5(N); Va. Code Ann. § 13.1-514(A)(11).

[13] Cal. Food & Agric. Code § 54201 (agricultural cooperatives); 6 Del. Code Ann. § 73-207(12) (agricultural cooperatives); Fla. Stat. Ann. § 425.29 (rural electric cooperatives); Iowa Code § 502.202(12)-(13) (housing and agricultural cooperatives); N.Y. Rural Elec. Coop. Law § 68 (rural electric cooperatives).

from Foreign Adversary Controlled Applications Act.[14] Called the "People's Bid," the initiative would migrate TikTok's data infrastructure to a blockchain-based protocol that gives users control over their personal data. As part of the effort, Project Liberty researched whether TikTok's users could join in the sale through a cooperative: Users could become members of the cooperative in exchange for a membership fee, and the cooperative would then buy a portion of TikTok's equity, giving each member a vote and an economic stake in proportion to his or her use of the platform.

But ultimately, this plan was abandoned. The lack of an explicit federal safe harbor for cooperative memberships and the potpourri of state securities laws made the approach too risky, expensive, and time consuming to merit further consideration.[15]

Some blockchain-based businesses have adopted the cooperative model notwithstanding the regulatory patchwork. One example is ETHDenver, the largest Ethereum hackathon in the world with over 95,000 attendees during its seven-year history. ETHDenver's founder, John Paller, created a digital cooperative called SporkDAO to own and operate ETHDenver. Unlike most decentralized autonomous organizations ("DAOs"), from which members receive value only when they sell their tokens, SporkDAO issues regular dividends to members who stake SporkDAO's native token ($SPORK) in proportion to their participation in the hackathon.[16] Other examples include Opolis, a payroll and benefits platform for independent workers; DC DAO, an organization for crypto builders in the Washington, DC area; Coinage, a member-owned media outlet focused on cryptocurrencies; and Collab.Land, a tokenized DAO membership management platform.[17]

Yet user-owned blockchain businesses remain the exception rather than the rule. Though entrepreneurs frequently ask attorneys – including members of our Coalition – how to give customers a voice in their businesses and reward customers for their participation, the answer is always the same: Under current laws, there's no clear path for customers to become member-owners without unreasonable expense or significant legal risk.

The Coalition believes that cooperatives cannot – and will not – extend the benefits of user ownership to Americans in blockchain, social media, or any other Digital Age industry unless

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[14] "The People's Bid for TikTok", Project Liberty LLC, available at https://www.thepeoplesbid.com/about.

[15] There have been several other unsuccessful attempts to transfer ownership of digital networks to the users. In each case, the absence of a harmonized legal framework for customer ownership doomed the effort. *See* "#BuyTwitter," Exit to Community (Dec. 22, 2023) (explaining attempt by Twitter users to purchase and convert Twitter into a public utility with cooperative ownership), available at https://e2c.how/case-studies/buytwitter/; "Meetup to the People: How a Zebra Could Rise from a Unicorn's Fall," Jennifer Brandel, Astrid Scholz, Mara Zepeda, and Nathan Schneider, Medium (Nov. 5, 2019) (proposing that social platform Meetup become user owned), available at https://medium.com/zebras-unite/meetup-to-the-people-how-a-zebra-could-rise-from-a-unicorns-fall-cfa93d83bcdc.

[16] "How to Claim Your Member Dividend", SporkDAO, available at https://www.sporkdao.org/claim.

[17] *See* "Homepage," Opolis, available at https://opolis.co/; "The Joys and Responsibilities of Joining DC DAO", DC DAO, available at https://mirror.xyz/geraldgallagher.eth/AodmVeXbafwc49PAEaZuyUTXJYxrMQjphDrpBkW_Jjc; "Homepage", Trustless Media, available at https://www.coinage.media/; "Homepage", Collab.Land, available at https://collab.land/.

Congress harmonizes the current state and federal framework. The time has come for the United States to write the next chapter of cooperative enterprise, starting with Regulation Membership.

II. THE CORE CONDITIONS OF REGULATION MEMBERSHIP

Proposed Section 110 of the Act would require the SEC to adopt Regulation Membership, a securities registration safe harbor for cooperatives in any industry. The conditions for the safe harbor have been distilled from Supreme Court cases, SEC no-action letters, and state precedents, with the aim of allowing cooperatives to scale nationwide while protecting consumers and minimizing encroachment on state powers to regulate businesses under their jurisdiction.

In this section, we explain the rationale for each element of Regulation Membership. The text of proposed Section 110, including the key conditions included in Regulation Membership, is set forth in Exhibit A.

A. Exemption from Definition of "Security" Under Securities Act and Exchange Act

Regulation Membership provides that membership interests in a cooperative would not be deemed "securities" under the Securities Act or the Exchange Act if the cooperative's governing documents include the restrictions outlined below.

1. Members Must Participate in the Cooperative's Business

First, the cooperative's governing documents must restrict issuance of membership interests only to people who participate in the business of the cooperative or any entity in which the cooperative owns equity, as determined by the cooperative's governing body (e.g., its board of directors).[18]

This condition ensures membership interests may not be sold to raise capital for speculative uses. Many states use the "risk capital" test instead of the *Howey* test to determine whether an equity interest is a security, and under this test, an interest may be deemed a security if the purchaser's money is substantially at risk when invested – i.e., if it's possible the purchaser will lose their money and receive nothing of value in return. By requiring each purchaser to be an active participant in the business, Regulation Membership excludes issuers whose business has no active customers or contributors. The only people eligible to purchase membership interests under the safe harbor would be those who are *already* benefiting directly from the business.

What constitutes "participation" will vary from business to business. For a crypto-focused business, participation may mean validating information added to a layer-1 blockchain, making trades on a decentralized exchange, or creating the artwork for a new NFT collection. For a social media business, participation may mean posting content or "liking," commenting, and sharing. For a professional sports team, participation may mean attending games, buying merchandise, or reposting an athlete's video on social media. Given the wide variety of activities that may constitute participation, it's important that the cooperative's governing body have flexibility to

[18] *See* Exhibit A, Proposed Section 110(b)(1)(A).

define participation for the business in question, within constraints included in the cooperative's governing documents.

Regulation Membership makes clear, however, that a mere investment of money cannot be deemed "participation" for purposes of the safe harbor.[19] This condition ensures Regulation Membership is not used to exempt passive investment schemes from established securities registration laws.

2. Dividends Must Come from Member's Own Efforts

Second, the cooperative's governing documents must restrict dividends and other profit distributions to holders *except* patronage dividends derived from the member's participation in the business of the cooperative or entities in which the cooperative owns an equity interest.[20]

The *Howey* test defines an "investment contract" subject to federal securities laws as "an investment of money in a common enterprise *with profits to come solely from the efforts of others*."[21] Regulation Membership's second condition ensures that dividends distributed to members derive not from the "efforts of others," but from each member's own activities.

Subchapter T of the Internal Revenue Code of 1986 (as amended, the "Code") defines "patronage dividends" as used in Regulation Membership. Under Section 1388(a) of the Code, patronage dividends are "an amount paid to a patron . . . (1) on the basis of quality or value of business done with or for such patron, (2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and (3) which is determined by reference to the net earnings of the organization from business done with or for its patrons."

Regulation Membership clarifies that members may earn patronage dividends by participating in the business of the cooperative *or any entity in which the cooperative owns an equity interest*. To illustrate, if a cooperative owned five percent of the equity of a social media company, dividends issued by the social media company to the cooperative (to the extent these dividends constitute "net earnings" of the cooperative) could be distributed to the cooperative's members, but only if those dividends derived from members' patronage activities with the social media company.

To satisfy this condition, cooperatives would need to track each member's participation in the business of companies in which the cooperative owns an equity interest. A cooperative could do so by entering an information sharing agreement with the company. However, if the cooperative

[19] *See* Exhibit A, Proposed Section 110(b)(2).

[20] *See* Exhibit A, Proposed Section 110(b)(1)(B).

[21] *Howey*, 328 U.S. at 301 (emphasis added).

issued dividends from sources other than members' participation, its membership interests could be considered "securities," and the sale of those interests could be ineligible for the safe harbor.[22]

3. Transfers Must Be Limited

Third, the cooperative's governing documents must restrict transfers of membership interests except to (i) the cooperative, (ii) an existing member, or (iii) a new member who participates in the cooperative's business, in each case, at a price determined by the governing body.[23]

In *Forman*, the Supreme Court noted that cooperative "stock" was not a security, in part, because the stock was non-negotiable and could not appreciate in value. Furthermore, in no-action letters, the SEC chose not to apply registration rules to instruments that weren't transferable except to the issuer or, in some cases, to other members with the permission of the issuer's board.[24] These restrictions ensured that members purchased memberships not for their speculative value, but for the value members derived from patronizing the business.

In a similar way, Regulation Membership would prohibit members from trading their membership interests on secondary exchanges. But it would not prohibit transfers entirely. In some cases, a member may die or no longer need the goods or services the cooperative provides. In these cases, Regulation Membership would allow members to sell their membership interests back to the cooperative or to another member at a fair value determined by the cooperative's governing body. This approach would prevent members from using membership interests for speculation, while permitting members to withdraw the fair value of their membership when they exit the business.

Furthermore, as a corollary, we would expect the price to purchase a membership in the cooperative to be low. If members can't speculate with their memberships, and if they receive dividends only in proportion to their own efforts, there would be little incentive for members to pay large sums for their memberships. Instead, we would expect memberships to be priced similarly to non-equity memberships in companies like Amazon, Costco, or REI. This dynamic could protect members from spending – or potentially losing – life-altering amounts of money by participating in a cooperative under Regulation Membership.

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[22] *See* No-Action Letter, Calavo Growers of California (Oct. 23, 1996) (arguing that cooperative ownership interests may constitute securities if distributions come from non-member activities).

[23] *See* Exhibit A, Proposed Section 110(b)(1)(C). We would expect the cooperative's governing body to rely on a valuation by an independent third-party firm to establish the price of memberships.

[24] *See* No-Action Letter, American Crystal Sugar Company (July 17, 2013) (transfer to other members permitted with consent of entity); No-Action Letter, Midwest Real Estate Data LLC (Aug. 18, 2008) (transfer to other members permitted with consent of entity); No-Action Letter, San Francisco Baseball Associates L.P. (Feb. 24, 2006) (transfer of seat licenses to other members permitted with consent of entity).

4. Members Must Control the Cooperative

Fourth and finally, the cooperative's governing documents must grant members voting control of the entity.[25] This condition ensures the governing body answers to the members, owes fiduciary duties of care and loyalty to the members, and operates the business in members' best interests.

B. Amendment to "Accredited Investor" Definition

Proposed Section 110 would also require the SEC to amend the "accredited investor" definition used in Regulation D under the Securities Act ("Reg D").[26] The amendment would add a new category of accredited investor consisting of any cooperative (1) that issues and sells no less than 100% of its membership interests in compliance with Regulation Membership; and (2) in which accredited investors comprise a majority of the cooperative's governing body.

It's fair to ask why Congress should amend the accredited investor definition to cover cooperatives meeting the conditions above, when the current accredited investor definition expressly excludes any entity "formed for the specific purpose of acquiring the securities offered."[27] This exclusion sensibly aims to prevent groups of unaccredited investors from pooling funds into a single entity to circumvent the wealth and income standards that Reg D imposes on investors who use the exemption.

The answer has to do with the economic challenges of starting and scaling cooperatives. Because cooperatives are owned by their members, with dividends proportional to each member's participation rather than their capital contribution, cooperatives have historically been unable to attract significant venture or growth capital. Investors are often uninterested in funding a business where there's little possibility of earning an outsized return. As a result, few cooperative startups ever achieve the scale of their corporate counterparts. This is evident in the US economy today, where most online marketplaces, social media platforms, and AI businesses are held by corporations, while scarcely a handful of Digital Age businesses are member owned.

The proposed amendment to the accredited investor definition could change this dynamic. An illustration helps to show how. Imagine that users of a social media platform want to co-own the platform. As a first step, they would form a new cooperative under Regulation Membership. Any verified user of the platform could join the cooperative for a reasonable membership fee. Next, the cooperative could use an issuer exemption like Reg D or a resale exemption like Section 4(a)(7) of the Securities Act to purchase shares in the platform for a negotiated price. The cooperative would pay for the shares using membership fees, third-party financing, or a combination of both. Finally, once the sale is consummated, the cooperative would vote its shares and receive dividends just like any other investor, and the cooperative would distribute dividends received from the

[25] *See* Exhibit A, Proposed Section 110(b)(1)(D).

[26] *See* Exhibit A, Proposed Section 110(d).

[27] 17 C.F.R. § 501(a)(3), (9).

platform to its members as a patronage refund. The patronage refunds would be calculated based on each member's participation in the platform, measured by their purchases, posts, or other metrics decided by the cooperative's governing body. Following this pattern, social media platforms and other important businesses could become partially or wholly member-owned, while compensating investors for the risks they took investing a startup or growth business. This approach could be accessible and affordable if qualifying cooperatives were deemed accredited investors under the Securities Act.

To ensure the cooperative gets a fair deal when negotiating a purchase of shares under Reg D or Section 4(a)(7), Regulation Membership would require that a majority of the cooperative's governing body be accredited investors. Furthermore, under state cooperative laws, the governing body would owe fiduciary duties of care and loyalty to their members. We believe these requirements and duties would protect members' interests, while allowing cooperatives to use Reg D and Section 4(a)(7) on equal footing with other accredited investors.

C. Exemptions Under the Investment Company Act of 1940

In addition to exempting certain memberships from the definition of a "security" under the Securities Act and the Exchange Act, Regulation Membership would exempt memberships from the definition of "security" under the Investment Company Act of 1940 (the "Investment Company Act").[28] The proposal would also exempt any cooperative that has issued 100% of its membership interests under Regulation Membership from the definition of an "investment company."[29]

These exemptions follow naturally from the proposed exemptions under the Securities Act. Under the Investment Company Act, an investment company is defined as "issuer" that engages in various securities investment activities.[30] An "issuer," in turn, is defined as any "person who issues or proposes to issue any security, or has outstanding any security which it has issued."[31]

By these definitions, a cooperative that engages in investment activities need not be an investment company. In a line of no-action letters, the SEC granted relief to the effect that membership interests in a mutual insurance holding company would not be considered "securities" under the Investment Company Act and, thus, registration as an investment company would not be required.[32] These letters analyzed whether mutual insurance interests are "securities" in much the way the SEC analyzed whether certain memberships are "securities" under the Securities Act.

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[28] *See* Exhibit A, Proposed Section 110(b)(1)(D).

[29] *See* Exhibit A, Proposed Section 110(c).

[30] 15 U.S.C. § 80a-3(a)(1).

[31] 15 U.S.C. § 80a-2(a)(22).

[32] *See, e.g.*, No-Action Letter, Principal Mutual Life Ins. Co. (June 8, 1998); No-Action Letter, American Mutual Life Ins. Co. (June 13, 1996); No-Action Letter, Mutual Benefit Life Ins. Co. (Apr. 21, 1994); No-Action Letter, AAI

Following this logic, we believe that if membership interests are deemed non-securities under Securities Act pursuant to Regulation Membership, they should not be deemed securities under the Investment Company Act. And if a cooperative issues 100% of its membership pursuant to the safe harbor, it should not be considered a securities "issuer" or an "investment company" under the Investment Company Act. Regulation Membership would expressly codify these exemptions.

D. Limited State Preemption

Finally, proposed Section 110 preempts state securities registration laws, but only to the extent those laws would require registration of membership interests exempt under the safe harbor.[33]

States boast an array of securities registration exemptions for cooperative memberships, ranging from broad exemptions for any cooperative entity to narrow exemptions for cooperatives in specific industries like agriculture and electric utilities. This jumble of rules makes it difficult for cooperatives to scale nationally without first conducting a time-intensive and costly 50-state securities law survey.

By contrast, when companies issue equity pursuant to a federal securities safe harbor that preempts state laws – like Rule 506 under Reg D – the issuer doesn't need to survey state securities laws before issuing shares. The federal safe harbor provides a single exemption that applies across all fifty states. But if the issuer fails to satisfy the conditions of the federal exemption, state securities laws would continue to apply. In this sense, the federal safe harbor creates a narrow carveout from state securities laws, without preempting the entire "field" of securities regulation or depriving states of authority to police securities transactions outside the scope of the federal safe harbor.

In a similar way, Regulation Membership would establish only a narrow carveout from state securities registration laws. If membership interests were deemed non-securities under the federal safe harbor, those memberships would be deemed non-securities and exempt from state securities laws, too. But state securities laws would continue to govern any membership interests not issued in compliance with Regulation Membership.

Furthermore, Section 110 clarifies that Regulation Membership would not deprive states of their authority to enforce laws regarding cooperative incorporation and governance, fraud, or unfair business practices. State law would continue to govern the procedures for forming a cooperative, operating a cooperative, disclosing information to members, and filing information statements with state authorities, among other things. State agencies would also continue to investigate and

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Mutual Holdings Corp. et al. (July 1, 1991); No-Action Letter, Investment Company Institute (June 9, 1987); No-Action Letter, Energy Insurance Mutual Fund (Aug. 16, 1986); No-Action Letter, Attorneys Insurance Mutual (July 10, 1986); No-Action Letter, Podiatric Assurance Co. (Feb. 19, 1985); No-Action Letter, Attorney's Liability Assurance Society Ltd. (Feb. 12, 1979).

[33] *See* Exhibit A, Proposed Section 110(d).

prosecute fraud and other misconduct under applicable consumer protection statutes. Regulation Membership would not curtail these powers.

III. A FUTURE WORTH BUILDING

A proverb attributed to King Solomon says, "Where there is no vision, the people perish."[34]

Today, the American people need a vision of the future that's better than the present. They need to see a future where the businesses they rely on operate in their best interests. Where they have a voice to shape the products and services they need. Where they have a genuine stake in the economy. Regulation Membership could pave the way to this more open ownership model.

To envision the future under Regulation Membership, it helps to consider concrete examples. We'll briefly consider the implications of the safe harbor for blockchain, healthcare, and sports.

A. Cooperative Blockchain Enterprises

In November 2021, Graham Novak and a group of crypto enthusiasts formed ConstitutionDAO, a decentralized autonomous organization that rallied to buy an original copy of the US Constitution from a Sotheby's auction. In less than a week, ConstitutionDAO raised $47 million in ETH, proving blockchain's power to mobilize people and funds.

ConstitutionDAO lost their bid to buy the Constitution. But it inspired others to launch DAOs for a plethora of purposes, from raising funds for charitable causes to operating a member-owned golf course. Unfortunately, many of the DAOs failed shortly after launch. These failures resulted, in part, from difficulties navigating federal securities laws. It was unclear whether DAOs that issued "governance" or "utility" tokens – which didn't bear the hallmarks of traditional securities – were required to register those tokens under the Securities Act. Without a clear legal framework, DAOs struggled to retain members and execute their business plans.

Regulation Membership would change that. Under the new safe harbor, people could form a DAO with cooperative legal wrapper; issue NFT membership tokens in exchange for cryptocurrency; and use the funds to buy and run businesses in the best interests of its members. People who hold membership tokens could receive patronage dividends in stablecoins or other cryptocurrencies. DAO cooperatives could establish a foothold in all corners of the blockchain industry, operating layer-1 and layer-2 blockchains, payment service providers, and wallet providers.

Cryptocurrency exchanges would be a particularly important use case. If traders could become owners of cryptocurrency exchanges through Regulation Membership, they could influence governance and receive patronage refunds of fees they incur through trading activities. When buying equity in the exchange, the cooperative could negotiate to appoint a representative to the exchange's board of directors to ensure traders' voices are represented. The exchange's managers would also owe fiduciary duties to the cooperative in its capacity as a shareholder, aligning their

[34] Proverbs 29:18.

legal obligations with traders' interests. These protections could lower the risk that the exchanges engage in fraud, self-dealing, or unfair business practices to the detriment of traders.

B. Cooperative Healthcare Companies

Regulation Membership would reach beyond blockchain. It could also empower doctors, patients, and researchers to play a bigger role in how healthcare is provided and consumed.

Health Access Solutions, based in Naples, Florida, is already moving in this direction. In 2024, it unveiled Health Access Cooperative, a program "designed to provide support for large, unexpected medical expenses." The cooperative provides benefits similar to traditional health insurance, but on a not-for-profit model. Members contribute to a shared fund that's used to cover medical incidents like emergency room visits, surgeries, and maternity care, and members can choose any provider they wish. Because Health Access Cooperative is owned by its members, the organization is bound by fiduciary duties to prioritize patient care and affordability over profit.[35] Regulation Membership would pave the way for more patient-first companies like Health Access Cooperative and Opolis (discussed in Section I(D)) to form and grow.

Regulation Membership could also supercharge medical research. Today, much of the medical data needed to discover new cures is fragmented and siloed in hospitals, universities, or clinics. But using cooperatives, these institutions could contribute anonymized data to a common database, where the data would be sorted, graded, and licensed to pharmaceutical companies, medical technology developers, and regulators. The licensing proceeds could be distributed back to the hospitals, universities, and clinics as a patronage dividend, reducing their dependence on government funding and allowing healthcare providers to lower their costs. Furthermore, if patients contributed their data to the cooperative, they could apply the proceeds to pay insurance premiums, reducing the burden on Medicare and other government programs. There are already several companies in "stealth mode" that are working on this approach, but Regulation Membership would allow them to scale with greater speed and confidence.

C. Fan-Owned Sports Franchises

In 2017, Oakland California native Jorge Leon founded the 68's, a club for die-hard fans of the Oakland Athletics baseball team. At first, the 68's membership included only fans who sat in the Coliseum's right field bleachers. But when Athletics owner John Fisher announced he was moving the team to Las Vegas, the 68's ranks swelled. During the summer of 2023, the Oakland 68s became the public face of the "SELL" movement, a series of boycotts, reverse-boycotts, and rallies to convince Fisher either to keep the team in Oakland, or to sell the team to someone who would.[36]

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[35] *See* "What Is the Health Access Cooperative & How Does It Work with Your Preventative Membership," Health Access Solutions (last accessed Aug. 4, 2025), accessible from https://healthaccesssolutions.com/what-is-the-health-access-cooperative-how-does-it-work-with-your-preventive-membership/.

[36] *See* "When Fans Fight Back," Dan Moore, The Ringer (Apr. 18, 2024), available at https://www.theringer.com/2024/04/18/mlb/oakland-athletics-relocation-sacramento-fan-resistance-boycott.

Though their efforts made national headlines, Leon and the 68s failed in their mission: The Athletics relocated to a temporary home in Sacramento at the start of the 2025 season. But hope wasn't entirely lost. Before the Athletics had packed their bags, a new baseball team arrived to fill the void. The Oakland Ballers, a Pioneer League team founded by a Bay Area education executive and a Los Angeles TV producer, started playing at Raimondi Park.

Leon contacted the Ballers' founders to discuss how fans could become co-owners of the team, ensuring that the tragedy of the Athletics would never be repeated. Leon proposed that the Ballers invite fans to become owners using a cooperative, which would give fans voting and patronage dividends from the tickets, hot dogs, and merchandise they purchased. And Leon found the cooperative approach attractive for another reason: Because cooperative memberships are non-transferable, they would reduce the risk of a hostile takeover by investors like Fisher. The cooperative would guarantee people bought Ballers equity because they loved the team, and not for their speculative value.[37]

The Ballers ultimately sold stock using Regulation Crowdfunding, a framework better suited for funding startup ventures than enabling member ownership of operating businesses. But Regulation Membership would let fans like Leon and the 68s become member-owners of professional sports teams in the future. There are many others who might join them. Football Club Group, a cooperative founded by Consumer Reports senior associate Anthony Fiume, wants to buy a professional soccer team.[38] Wilton Rancheria, the first Native American tribe to own a professional men's sports team, would consider selling some of their equity in Sacramento Republic FC to a fan cooperative, if allowed. Some fans might even use a DAO to buy an NFL team, an NBA team, or an NHL team.[39] In doing so, they would join the ranks of fan-owned clubs like the Green Bay Packers, which is renowned for its passionate fanbase and unwavering commitment to its community.

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[37] *See* "Can Fan-Owned Cooperatives Change the Relationship Between Fans and Owners for the Better?", Melissa Lockard, New York Times (Aug. 17, 2023), available at https://www.nytimes.com/athletic/4783026/2023/08/17/fan-cooperatives-sports-ownership/.

[38] "Homepage," Football Club Group (last accessed Aug. 4, 2025), available at https://footballclubgroup.com/.

[39] *See* "These Crypto Enthusiasts Are Trying to Raise $4 Billion to Buy the Denver Broncos," MacKenzie Sigalos, CNBC (Feb. 19, 2022), available at https://www.cnbc.com/2022/02/19/-buythebroncos-dao-aims-to-raise-4-billion-to-buy-denver-broncos.html; "Homepage," Krause House (last accessed Aug. 4, 2025), available at https://www.krausehouse.club/; "How a DAO Took Aim at an NHL Team, and What They Learned from Failing," Shafin Tejani, Forbes (Mar. 4, 2022), available at https://www.forbes.com/councils/forbesfinancecouncil/2022/03/04/how-a-dao-took-aim-at-an-nhl-team-and-what-they-learned-from-failing/.

IV. CONCLUSION

In considering the Responsible Financial Innovation Act of 2025, Congress has the opportunity not only to write laws for cryptocurrencies, but to frame the way Americans do business in the Digital Age. We believe that proposed Section 110 of the Act and the safe harbor it would establish, Regulation Membership, would newly enfranchise the American people as we enter a season of rapid innovation and change. Of this we are certain: A future where the American people have a voice and a stake in the economy is a future worth building.

We ask the Committee to seriously consider proposed Section 110 and Regulation Membership. Should the Committee have any questions, we would be happy to answer. You may contact the Coalition by emailing James Wigginton (jwigginton@orrick.com) or calling (916) 329-7903.

(Signature Page Follows)

Respectfully submitted,

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EXHIBIT A

Concept Draft of Membership Interest Exemption
Responsible Financial Innovation Act of 2025

Proposed Section 110. Exemption and Rulemaking for Certain Membership Interests.

(a) Promulgation of Regulation Membership.—

(1) IN GENERAL.—The Commission shall, in accordance with paragraph (2), adopt rules under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), which shall be referred to collectively as "Regulation Membership", to implement subsections (b), (c), and (d) of this section.

(2) TIMETABLE FOR ADOPTION OF FINAL RULES.—The Commission shall—

(A) not later than 180 days after the date of enactment of this Act, publish proposed rules for Regulation Membership in the Federal Register; and

(B) not later than 1 year after the date of enactment of this Act, adopt final rules for Regulation Membership.

(b) Exemption from Definition of Security.—

(1) IN GENERAL.—Rules adopted by the Commission under this section shall provide that no membership interests in a cooperative shall be deemed to be a "security" for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) if the certificate of incorporation, articles of association, bylaws, membership agreement, or other governing documents of the cooperative:

(A) restrict issuance of the membership interests except to persons who participate in the business of the cooperative or any entity in which the cooperative owns an equity interest, as determined by the cooperative's governing body;

(B) restricts distributions of dividends to any holder of the membership interests except patronage dividends (as defined in 26 U.S.C. § 1388) derived from the holder's participation in the business of the cooperative or any entity in which the cooperative owns an equity interest, as determined by the cooperative's governing body;

(C) restricts any transfer of membership interests except transfers at a price determined by the cooperative's governing body to (i) the cooperative; (ii) any existing holder of membership interests; or (iii) another person

who participates in the business of the cooperative or any entity in which the cooperative owns an equity interest; and

(D) provides that holders of membership interests shall have voting control of the cooperative.

(2) INVESTMENT OF MONEY.—An investment of money shall not be deemed participation in the business of the cooperative or any entity in which the cooperative owns an equity interest for purposes of subparagraphs (b)(1)(A)-(B) of this section.

(c) Exemption from Definition of Investment Company.—Rules adopted under this section shall provide that no cooperative shall be deemed an "investment company" for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) if the cooperative issues and sells no less than 100 percent of its membership interests in compliance with the conditions of subsection (b).

(d) Accredited Investor Definition.—Rules adopted under this section shall provide that any cooperative shall be deemed to be an "accredited investor" for purposes of section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) if:

(1) the cooperative issues and sells no less than 100 percent of its membership interests in compliance with the conditions of subsection (b); and

(2) a majority of the members of the cooperative's governing body are accredited investors pursuant to section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)).

(e) Preemption.—Rules adopted under this section shall preempt State securities registration laws and related regulations, to the extent such State laws and regulations would require registration of membership interests that qualify for exemption under this section. Nothing in this section shall deprive any State of authority to enforce State laws regarding cooperative incorporation and governance, fraud, or unfair business practices.

EXHIBIT B

Fast Facts about Regulation Membership

The Problem: Regulatory Patchwork

- Cooperatives lack a uniform federal exemption from securities laws.
- States apply different tests to decide if cooperative interests are securities.
- Legal ambiguity deters cooperative expansion into Digital Age industries.

The Solution: Regulation Membership

- Defines safe harbor from securities laws for cooperatives.
- Aligns with US Supreme Court precedents and SEC no-action letters.
- Codifies standards for member participation, dividends, and transfer limits.

Core Conditions of Safe Harbor

- Members must actively participate in business of cooperative or entities in which it owns equity.
- Patronage dividends tied to a member's own efforts (not passive profits).
- Memberships must be non-transferable or transferred only to other members.
- Members must have voting control of the cooperative.

Why It Matters

- Enables user-owned blockchains, health data cooperatives, fan-owned sports teams, and more.
- Expands access to equity ownership for non-accredited Americans.
- Promotes bipartisan goals: economic empowerment, decentralization, and consumer protection.