



February 1, 2022

Martha Legg Miller
Director, Office of the Advocate for Small Business Capital Formation
Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

Re: Concerns Around the Rise and Popularity of Non-Fungible Tokens (“NFTs”)

Dear Ms. Miller,

The Crowdfunding Professional Association (CfPA) has been closely following the growth of Non-Fungible Tokens (“NFTs”) and are concerned by the increasing number of NFTs that appear to be offered as unregistered securities. The CfPA is very familiar with decentralized ledger technology that enables the creation of NFTs and digital assets as a whole and has petitioned the SEC in the past to adopt rules on the regulation of digital assets that are securities, such as initial coin offerings (ICOs) and so called stablecoins.

The purpose of this letter is to implore the SEC to take immediate action on potential overt skirting of basic securities laws by an overwhelming number of NFT retailers. For context:

- In 2021, over \$24 billion was generated selling NFTs;
- Less than 1% of NFT sales were conducted on a regulated platform or via SEC exemptions;
- Lessons learned from the ICO bubble points to NFTs being a rebranding of certain scams where retail investors bear the burden of a slow and/or unclear regulatory response;
- The lack of quick and responsive action creates harm not only to investors, but also to regulated crowdfunding portals and brokers and issuers complying with Regulation Crowdfunding and Regulation A, especially in entertainment, music and art verticals;
- Without immediate action by the SEC, regulated intermediaries and lawful issuers of NFTs, digital assets and traditional financial instruments will be further harmed as investors may be impacted by certain scams and other acts of fraud.

While NFTs do pose relevant and significant opportunities in establishing authenticity and social proof of unique assets, the CfPA believes that the mere minting of an NFT does not negate the need for these types of digital products to comply with existing SEC regulations, especially where capital formation is concerned. Additionally, the circumstances under which platforms that facilitate the sales, trades and transfers of NFTs are required to register as an exchange of some kind with the SEC and/or other regulatory agencies are not clear.

In conclusion, we recommend the SEC: a) create a task force to focus on instances where NFTs are potentially being offered as unregistered securities (the CfPA can assist); b) publish a concept release on the regulation of NFTs that clearly defines when an NFT is a security; and c) determine what type of registration is required by entities engaging in and facilitating the sale, trade and transfer of NFTs.

We look forward to hearing from you and working together to improve access to capital for all startups and small businesses.

Sincerely,
Samson Williams, President