

Testimony of Rostin Behnam
Chairman, Commodity Futures Trading Commission
“Legislative Hearing to Review S.4760,
the Digital Commodities Consumer Protection Act”
U.S. Senate Committee on Agriculture, Nutrition, and Forestry
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Introduction

Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, I appreciate the opportunity to appear before you today as Chairman of the Commodity Futures Trading Commission (“CFTC” or “Agency”) to discuss S.4760, the Digital Commodities Consumer Protection Act (“DCCPA”). Before I begin, I would like to recognize and thank my fellow CFTC Commissioners and colleagues; their dedication, expertise, and commitment to the American public ensures our greatest success.¹

Last February, when I testified before this Committee,² I noted that the unique characteristics of the growing digital asset industry necessitated a comprehensive federal regulatory regime. I believe that to be more true today than ever, and thank the Committee for taking steps to directly address these needs through the DCCPA. I have directed staff to analyze specifically how current CFTC initiatives are already leveraging resources, personnel, and technology infrastructure towards the tenets of the DCCPA, and what additional needs we would have to support its implementation.

Digital asset commodity cash markets have significant speculative retail participation, often use high levels of leverage, and largely rely on platform-based custody arrangements outside of the traditional regulated banking sector. Many participants in these markets may perceive themselves to be interacting with exchanges and intermediaries structured and regulated like those in other financial markets. The reality is quite different. The lack of a comprehensive regulatory regime means that traditional market-based disclosures and bankruptcy protections are frequently absent, and disruptions involving trade settlement, conflicts of interest, data reporting, and cybersecurity resulting in unprotected customer losses are more likely.

Since I last testified, over \$1 trillion in market value has been lost in conjunction with the failure of several large high-profile firms operating in the shadows. One lesson from the recent fallout is that leverage, interconnected markets, and contagion can wreak the same havoc in the digital-asset ecosystem that they do in our traditional financial markets, particularly in the absence of appropriate regulation. Unfortunately, the most significant losses are disproportionately impacting lower-income investors and historically underserved

¹ I am grateful to David Felsenthal, Jason Somensatto, and Laura Gardy for their assistance in preparing for this hearing and my testimony.

² Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding “Examining Digital Assets: Risks, Regulation, and Innovation” before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Feb. 9, 2022), [Testimony of Chairman Rostin Behnam Regarding “Examining Digital Assets: Risks, Regulation, and Innovation” | CFTC](#).

communities. The volatility in the market, and its impact on retail customers – which may only worsen under current macroeconomic conditions – emphasizes the immediate need for regulatory clarity and market protections.

The CFTC: The Right Regulator

As I have publicly stated several times, including to this committee, and as has been recognized by federal courts, many digital assets constitute commodities. As recognized by the DCCPA, the CFTC’s expertise and experience make it the right regulator for the digital asset commodity market. The CFTC facilitates customer protections through its principles-based market oversight and disclosure regime aimed at ensuring transparency, integrity, and security of transactions. These structures inform customers about who they are dealing with and provide clarity on the risks of participating in our markets.

In requiring digital commodity brokers, dealers, and custodians to join a registered futures association³, the DCCPA acknowledges the key role that self-regulatory organizations, like the National Futures Association (“NFA”), our designated registered futures association, play in safeguarding the integrity of markets through strict requirements and oversight. Going a step further, the CFTC’s Reparations Program provides a prompt, accessible, and effective forum for retail participants to resolve disputes with registered trading professionals. Decisions rendered by an Administrative Judge are enforceable and may be reviewed by the Commission and ultimately a federal appeals court.⁴

The CFTC has often adapted its oversight capabilities to meet the demands of evolving markets within its jurisdiction, and to protect customers through scaling and building specialized knowledge. Most notably, in the wake of the 2008 financial crisis, Congress provided the CFTC authority over approximately 95 percent of the swaps markets under Title 7 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁵ The rulemakings set in motion by the Dodd- Frank Act now serve as the cornerstone of a robust regulatory regime for the \$350 trillion swaps markets.⁶

Expertise and Scale

Returning to the digital asset market, since 2014, the CFTC has brought almost 60 enforcement digital asset related cases, including a recent matter involving a \$1.7 billion fraudulent bitcoin scheme. With a lack of full visibility into the digital commodity asset market, the Agency’s enforcement program has had to lean primarily on tips and complaints from the public to identify fraud and manipulation, including submissions to the CFTC’s Whistleblower Program, which has been a critical driver to our actions.

While we are engaged in a comprehensive effort across the Agency to police these markets and their participants with the tools currently available to us, the DCCPA will allow us to apply our full oversight capabilities without restriction. For example, a few digital asset-focused companies currently operate CFTC-registered exchanges, and our Division of Market Oversight is actively reviewing new products tied to digital commodity assets both from these

³ See 7 U.S.C. § 21.

⁴ See 17 C.F.R. § 12; Reparations Program, CFTC, [Reparations Program | CFTC](#).

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”).

⁶ CFTC Weekly Swaps Report, <https://www.cftc.gov/MarketReports/SwapsReports/L1GrossExpCS.html>.

new entrants and from traditional registrants. The Agency has developed a deep understanding of this novel market and the underlying innovations that fuel it, hiring specialists, forming internal task forces and working groups, leveraging public-private partnership through the work of CFTC Advisory Committees, and most recently restructuring the CFTC's financial technology innovation hub into the Office of Technology Innovation.

Facing the Challenge Head-on

The DCCPA leverages the historical strength of the CFTC as a market regulator by requiring registration and supervision of digital commodity platforms and digital commodity intermediaries as is required in CFTC-regulated derivatives markets. Digital commodity facilities will be subject to compliance with core principles prescribing, among other things, that the platforms establish and enforce rules minimizing conflicts of interest, prohibiting abusive trade practices, establishing system safeguards to minimize cybersecurity and other operational risks and maintain emergency procedures and disaster recovery protocols, ensuring the financial integrity of transactions and intermediaries, and protecting customer funds. Critically, all digital commodity platforms must maintain adequate financial, operational, and managerial resources, segregate customer funds, and comply with Commission requirements for the treatment of customer assets. These tools have proven effective in preserving customer funds and market operations in times of instability, uncertainty, or market misconduct.

The DCCPA directly addresses the increased role of retail participants in the digital commodity asset markets by directing the Commission to adopt customer protection rules requiring digital commodity platforms to disclose to customers material conflicts of interest and material risks of trading digital commodities, establishing duties to communicate in a fair and balanced manner, and establishing standards for the platform's marketing and advertising.

With the additional resources contemplated by the funding mechanism in the DCCPA and the clear mandates for customer education, outreach, and information gathering to ensure that our efforts reach all demographics of the investing community, especially those that remain most vulnerable to fraud and abuse, the CFTC can move swiftly in effectuating this new regime.

Conclusion

On September 21, 1922, nearly 100 years ago to the day, the Grain Futures Act of 1922 was signed into law, which led to the near immediate establishment of the then CFTC. With that legislative accomplishment, this Committee and the Congress swiftly responded to a policy need that arose on the heels of emerging risks to American consumers because of new financial markets and products, technological innovation, and the promise of economic development. With the CFTC's rich history overseeing commodity markets, coupled with its expertise and track record, which rests on a firm foundation as a forceful and disciplined cop on the beat, the Agency stands ready to tackle these new risks and opportunities one century later.

Thank you and I look forward to answering your questions.