

# OVERSIGHT OF DIGITAL COMMODITIES

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## HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE,  
NUTRITION, AND FORESTRY

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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# OVERSIGHT OF DIGITAL COMMODITIES

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Wednesday, July 10, 2024

U.S. SENATE  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m., in room 328A, Russell Senate Office Building, Hon. Debbie Stabenow, Chairwoman of the Committee, presiding.

Present: Senators Stabenow [presiding], Brown, Klobuchar, Bennet, Gillibrand, Booker, Luján, Warnock, Welch, Boozman, Ernst, Marshall, Tuberville, Braun, Grassley, and Fischer.

## **STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM THE STATE OF MICHIGAN, CHAIRWOMAN, U.S. COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

Chairwoman STABENOW. Good morning. I call this hearing of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry to order.

The last time this Committee gathered to discuss digital assets, in December 2022, we were closing out a year in which investors lost \$2 trillion in the crypto market. Losses from hacking were at an all-time high and some of the most recognizable crypto firms had not only gone bankrupt but had stolen customer funds in brazen fashion.

At the end of last year, the largest crypto exchange in the world and its CEO were found guilty of willfully evading anti-money laundering laws and enabling the financing of terrorism.

Meanwhile, the public seems undeterred. The crypto market has rebounded to nearly record highs. Bitcoin is trading at nearly \$60,000.

As institutional investors pile into Bitcoin and Ether derivatives and exchange-traded products, the interconnection between crypto and traditional financial markets is increasing.

The trading of spot digital commodities like Bitcoin and Ether are not overseen by any Federal regulator. These and other digital assets that are not securities account for most of the value traded in crypto markets, as we know.

If recent history is any guide, we cannot afford to wait any longer to regulate these assets. The time to act is now, and that is why I am so glad we are having this hearing. This is why I have been working so closely with Senator Boozman to advance bipartisan legislation that would give the Commodity Futures Trading Commission (CFTC) regulatory authority over digital commodities.

We are working to have specific language to members by the end of the week for your review.

We have a lot of important work to do this year in the Committee, and I am committed to building the bipartisan coalitions both here and on bipartisan farm bill so that together, we can make supporting America's farmers and families and rural communities a top priority for this Senate and for this Congress.

In terms of today, we must have clear, commonsense rules of the road that allow good actors to innovate and grow. Blockchain technology can help us manage data and move money in more efficient and transparent ways, but these goals cannot be realized without comprehensive Federal legislation. Our counterparts around the globe recognize this, and the U.S. must as well.

Most importantly, we owe it to the American public to protect them from bad actors exploiting digital assets for personal gain at the expense of their customers. It is not enough to bring enforcement actions after the money is gone. Financial regulators need the tools to stop abusive conduct before it happens.

I believe any legislation that advances through this Committee should focus on three key pillars.

The first pillar is similar rules for similar risks. Crypto firms must safeguard customer assets, hold sufficient capital reserves, and abide by rigorous cybersecurity standards, just like traditional financial market participants.

The second pillar is protecting retail customers. Customers should have access to accurate information about their investments, presented in a way that is appropriate for their level of experience. Financial markets must be fair for all participants; free of conflicts of interest that give the few an unfair advantage over the many.

The third pillar is adequate, permanent funding for the CFTC to oversee the digital commodity market. Without it, we not only handicap the Agency's work in this evolving market but we imperil the essential work it is doing in overseeing our Nation's derivatives markets.

Our colleagues in the House have recognized that protecting customers and providing clear rules of the road is not a partisan issue—I very much appreciate the conversations I have had with leaders in the House—and they have passed crypto market legislation out of their chamber. While our bill takes a somewhat different approach and focuses on filling the regulatory gap that exists for digital commodities, I am confident we can come together to pass legislation that brings greater integrity to the crypto market.

Today, we will hear from Chairman Behnam about how the CFTC has been on the front lines, policing the crypto markets for fraud and abuse. We will also hear about the limit of his agency's authority and the challenges this poses to protecting customers and our markets. I appreciate his testimony and his expertise, and I welcome him back to the Committee.

Now I would like to turn to our Ranking Member, Senator Boozman for his opening remarks.

**STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM  
THE STATE OF ARKANSAS**

Senator BOOZMAN. Well, thank you, Madam Chair, very, very much, and welcome to my colleagues and, again, thank you for calling today's hearing on the current state of digital commodities. I would also like to welcome CFTC Chair, Chairman Behnam. We appreciate your hard work. As the Chair said, you are certainly not a stranger to this Committee. We appreciate your willingness to come over and visit with us as we request.

As the Ranking Member of this Committee, I have consistently said in the past that I believe the CFTC is the right agency to regulate spot digital commodities. I still believe that to be true. The CFTC's principle-based approach has proven to effectively protect consumers in the derivatives market, and I believe with the appropriate authorities this same approach will protect consumers in the digital commodities space. At the same time, as policymakers we must also protect innovation and provide regulatory certainty businesses need to maintain their operations in the United States.

The Chair has been drafting legislation that would give the CFTC the authority to regulate spot digital commodity trading. We have had many, many conversations, and my staff have been working closely with hers on her proposal for the last several weeks. I am committed to continue to work in good faith on legislation to give the CFTC the authorities it needs.

Digital commodities and the regulatory issues they raise are complex and not well understood. I believe as a committee we have a responsibility to help educate our colleagues and the public on these issues, and I would like to see us do more to better understand what policies are needed and why. Hopefully today's hearing will begin to fill that gap.

Additionally, as we proceed as a committee, it is vital that we limit our policy proposals to the agencies that we have jurisdiction over, in this case the CFTC. We do not have authority over the Securities and Exchange Commission, the Treasury Department, the Federal Reserve. The oversight of those agencies is clearly outside the jurisdiction of this Committee. Any legislation reported out of this Committee should not direct or require anything of agencies not under our authority.

Finally, I believe that we must have broad support within the community we wish to regulate if we ultimately want to protect consumers and innovation. I and my staff have had numerous meetings with those who would be covered by the proposed legislation. The frank and honest feedback we have received from these discussions does not lead me to believe the necessary level of support for this proposal to be successful currently exists among stakeholders and people are working very hard to try and rectify that.

Again, I am committed to working with the Chair to regulate digital commodities. Today's hearing is a good start. I look forward to hearing the thoughts of Chairman Behnam and the questions posed by our colleagues.

With that I yield back.

Chairwoman STABENOW. Thank you very much. Again, welcome. Rostin Behnam is the Chairman of the CFTC, as we know, following his unanimous confirmation by the U.S. Senate in January

2022. Chairman Behnam had previously served as CFTC Acting Chairman, beginning in January 2021, and a CFTC Commissioner since September 2017. His arrival at the CFTC followed extensive experience in financial markets as Senior Counsel on this Committee, among other roles.

Chairman Behnam, we are so pleased that you are back with us, and we recognize you for five minutes of testimony and any other information you would like to put in the record.

Welcome.

**STATEMENT OF HON. ROSTIN BEHNAM, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, DC**

Mr. BEHNAM. Thank you Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee. Thanks for the opportunity to appear before you today to discuss the state of the digital commodity market.

During my almost seven years at the CFTC as both a Commissioner and as Chairman I have observed the digital asset market evolve significantly, expanding and collapsing and at times with periods of high volatility. It has also facilitated countless scandals and fraudulent activity, some very small and typical in criminal form, others massive in scale and profile. I have watched the market as it has piqued the interest of both novice and sophisticated investors and have seen some of our Nation's most established financial institutions build businesses driven by digital assets.

What has concerned me the most throughout the expansion of this digital asset class is that while everyday Americans fall victim to one digital asset scam after another, there remains no completed legislative response. I have repeatedly been asked by Members of Congress what am I doing to protect their constituents, and I believe the single most important thing I have done, and continue to do, is advocate to this body to fill the regulatory gap.

I am not alone in my concerns. In 2022, the Financial Stability Oversight Council, a report from the FSOC highlighted that there is a gap in regulation of the spot market for digital assets that are not securities. This gap for non-security tokens continues to constitute a majority of the digital asset market, measured by market capitalization.

As the digital asset market continues to integrate into traditional financial institutions, concerns regarding broader market resiliency and perhaps even financial stability will ripen. In short, our current trajectory is not sustainable.

It has been almost nine years since the CFTC brought its first enforcement action in connection with an illegal Bitcoin operation. Since that time, the Agency has been aggressive in using its powerful but limited anti-fraud and anti-manipulation authority. In total, the CFTC has brought over 135 digital commodity cases, resulting in billions in penalties and restitution.

Just last week, a district court in the Northern District of Illinois entered summary judgment in favor of the CFTC in a case involving fraud by an unregistered entity that promised steady returns in digital asset commodities such as Bitcoin and Ether. In its decision, the court reaffirmed that both Bitcoin and Ether are commodities under the Commodity Exchange Act. In Fiscal Year 2023, ac-



tions involving digital asset allegations comprised almost half of our enforcement docket.

Ultimately, the CFTC, whose primary responsibility is overseeing the multi-trillion-dollar derivatives markets is committing nearly half its enforcement resources to a market it does not have the authority or appropriated resources to regulate.

Nearly a decade of digital asset experience has given CFTC staff a deep understanding of the market and underlying technology that supports it. Market regulators like the CFTC were built precisely for situations we find ourselves in today. The flawed notion that regulating an asset class legitimizes it misses the point of our responsibilities.

As this Committee continues to consider legislation to fill the regulatory gap, I would like to focus your attention on the components of what I believe is a successful framework.

First, the principles-based oversight model has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements and measured flexibility.

Second, appropriate funding is necessary to meet the mandate of any legislatively enacted regulatory program.

Third, given the retail-oriented nature of the digital asset market, authority for the CFTC to require registrants to provide a comprehensive disclosure regime to ensure investors have access to material information.

Fourth, it is essential that legislation provide comprehensive authority for anti-money laundering, know your customer, and customer identification programs.

Fifth, given the important role the Securities and Exchange Commission plays in the oversight of security-based digital tokens, the Committee should consider a disciplined, balanced framework for the determination of tokens as commodities or securities.

Finally, given the broad adoption of digital assets by a significant portion of the American population, a comprehensive education and outreach program will enable the investing public to understand both the risks and opportunities of this technology.

I am encouraged by this Committee's continued efforts, dating back to 2022, to fill the gap in regulation, prioritizing customer protections and, of course, market stability. We need to act thoughtfully but with urgency to fill this harmful regulatory gap in order to give American investors the protection they deserve.

I thank the Committee for your focus in this area and look forward to answering your questions.

[The prepared statement of Mr. Behnam can be found on page 36 in the appendix.]

Chairwoman STABENOW. Well thank you so much. First, of course, everyone will have five minutes this morning to ask questions of our witness.

First let me talk further, Mr. Chairman. You mentioned in your testimony that the single most important thing Congress must do amid the increasing popularity of crypto is to pass legislation that establishes Federal oversight of non-security tokens. If Congress does not act to fill this regulatory gap, does any Federal regulator have the authority to regulate the market for crypto assets like Bitcoin that are not securities?

Mr. BEHNAM. Senator, thanks for the question. The short answer to the question is no. I mean, this is really the reason we are here. The problem is, and as you mentioned in your opening statement, if you measure the Bitcoin economy by market capitalization, upwards of 70 to 80 percent of the market are non-securities, which means there is no direct Federal regulatory oversight.

Despite what I think some may believe, this leaves this giant gap, this vacuum, and ultimately customers at risk for loss of money, and I think our enforcement record demonstrates that over the past better part of 10 years.

As you pointed out also in your statement, the problem with our enforcement authority, although powerful, it is reactive. We are never able to be on our front foot in the situation. We are always being responsive to tips, complaints from individuals who typically have been defrauded. Our typical regulatory framework involves registration and compliance with an existing set of rules, which gives the CFTC, or any market authority, the ability to look through a registered entity, whether it is a broker, an exchange, a custodian, or an individual participant. Those are the types of regulatory tools that enable us to really eliminate, if not reduce, significantly market fraud and manipulation. Anything else, which is the current state of play with crypto, again is only reactive.

We have a very successful enforcement record and one that I am very proud of, and this Committee should be too, but ultimately we are only coming in after the fact, which means money is typically lost, we are not able to get money back to customers, and we are really not having that same deterrent effect that we should have if we had a robust, comprehensive regulatory regime.

Chairwoman STABENOW. Thank you. Could you talk a little bit more about the CFTC's experience protecting retail customers?

Mr. BEHNAM. Sure. You know, we actually have, despite, I think, a little bit of a narrative that we do not have much of a retail-oriented market. Certainly a huge part of our market is institutional and wholesale, as many of you know, significantly on the agriculture side and the energy side and the large financial institutions side for interest rate and credit. We do have a growing participant pool of retail investors in both futures. Many on this Committee are familiar with prediction markets, which is a very retail-oriented market, as well.

We do have a pretty robust pool of retail investors, and have so for many years.

I would also mention, from an enforcement standpoint, despite some big-ticket enforcement cases against large institutions, which typically involve manipulation of markets or non-compliance, our entire fraud pool of enforcement, or at least a significant portion of it, is very much focused on retail investors. Unfortunately, retail investors fall prey to fraud around metals, gold and silver, which I am sure on the Committee are familiar with. You see these in commercials or radio advertisements. FOREX, which is foreign exchange, a very typical area where retail fraud occurs.

If you look at the CFTC's record in enforcement, the fraud is very much focused on retail, and that has enabled us to build a very strong office of customer education and outreach and a very comprehensive program to get information to retail investors through

the internet, social media, conferences or other events, to make sure they are aware of the risks associated with retail fraud in commodity market.

Chairwoman STABENOW. Thank you. Finally, if we give the CFTC new authority to oversee the spot digital commodity market we know that we need to ensure you have adequate funding and the resources to be able to do it, to be able to do what we are asking you to do. That is part of what we are working on. Any fees will not be collected until the Agency finalizes its rules and begins registering these platforms.

During the interim how much do you anticipate would be needed in resources, in terms of annual appropriations, for you to set up the regulatory regime?

Mr. BEHNAM. Thanks, Senator. Actually, and you alluded to this, there have been a number of efforts in Congress, both here in the Senate, including this Committee, and in the House more recently, to produce bills around legislating authority for the CFTC. In light of those efforts, over the course of two to three years, we have actually done a bit of analysis at the Agency regarding what we would need.

Essentially, responding to your question, with some assumptions, of course, assumptions based on how many registrants we would have in the broker-dealer space and the exchange space and the custodian space, but with those assumptions, which I think is fair and informed, based on what we see in the unregulated market, we have largely estimated that we would need somewhere between \$50 to \$60 million in a first year and then \$30 to \$35 million in a second year, with a correlated number of full-time equivalent employees, ranging from 100 to 50 to 75 in the first and the second year.

We also have estimates for the third year, but we do have fairly thorough analysis of what we would need in an interim, whether it is one, two, or three years, and we are happy to share that with the Committee as it considers legislation.

Chairwoman STABENOW. Thank you so much. Senator Boozman.

Senator BOOZMAN. Like so many of us, Senator Grassley needs to be at another hearing, at Finance, so if it is okay we would like to go ahead and bypass me and go down to Senator Grassley.

Chairwoman STABENOW. Senator Grassley.

Senator GRASSLEY. Thanks to both of you for your courtesy. I have a non-crypto question that you probably would expect me to ask. Before I ask that question, last Congress I led a temporary fix that ensure the CFTC whistleblower program continues to operate and make whistleblower awards. At the end of this Fiscal Year the fix expires, putting the program at risk. That is why I introduced a permanent bill with several of my colleagues, including Senators Hassan, Boozman, Warnock, Collins, and Fetterman. Our CFTC Whistleblower Fund Improvement Act aims to make the administrative fix permanent and allow the CFTC to hold as much in fines as we allow the Securities and Exchange Commission to do. Without a fix, the program could become a victim of its own success through accounting snags, even as it continues to bring in fines.

You know how important it is to listen to whistleblowers because even though you may have a relatively small agency compared to

others, you cannot know what is going on. Outside of your agency you cannot know.

Chairman Behnam, what would happen to the CFTC Whistleblower Office of Congress fails to act before October?

Mr. BEHNAM. Senator Grassley, thanks for the question, and before I respond I just want to thank you for your leadership on this particular area. It is extremely important. As much as you say, it is not necessarily crypto-related. It is, in many respects, because so many of the enforcement cases that we are seeing in this space are driven through, or could originate from, the Whistleblower Office.

Ultimately, if this fix is not made permanent, and I hope it is, in fact, made permanent as soon as possible, this will have a very negative impact on our ability to both staff the Whistleblower Office, to ultimately fund it, and to be able to get word out to the general public about what the whistleblower process is, the awards that can be awarded, essentially, and the protections that are also afforded.

Writ large, across all of our regulated markets, as you pointed out, our success has been really the detriment of this program itself. The past 10 to 15 years, since Dodd-Frank, after the financial crisis, has demonstrated the Whistleblower Office's outstanding success. I think there is a lot of trust from the Agency with industry stakeholders and market participants. We have seen \$100 million-dollar whistleblower awards be paid out, which is really the issue and the reason why we are talking about this right now.

Ultimately it is our enforcement program, the size of our markets, and the ability to receive these tips and complaints, and to have incentives for whistleblowers to bring this information to us, because without that, as you point out, given our size and regardless of Federal agencies, small or large, there is only so much we can see in the marketplace. We only have so many tools. Having this public-private partnership, in a sense, is extremely important to ensure transparent and fair markets.

I would ask you and the Committee to continue thinking about this. We are here at any moment to help with technical assistance. In order for the CFTC to continue to be successful and the whistleblower program to be successful, this fix is extremely important, because ultimately the payouts continue to grow, and if they do it is going to put the office in jeopardy from a staffing and a resource perspective.

Senator GRASSLEY. I thank you for your very firm statement on the urgency of this legislation. I am glad to have this opportunity that you are here to draw attention to the CFTC's Whistleblower Fund Improvement Act. This is something that we have got to work on and get passed by September 30th.

Mr. BEHNAM. Thank you, Senator.

Senator GRASSLEY. Thank you. I yield back my time, and I thank Senator Boozman.

Chairwoman STABENOW. Thank you very much. First let me say, Senator Grassley, I could not agree more, and thank you so much for your leadership. This is something I want very much to work with you on, to get done. It has got to get done. I thank you very much.

I know that Senator Brown just walked in and said he had to walk out in two minutes, so I am wondering, Senator Luján, if you would be willing—we are sort of jumping around today, but giving the other committees going on, if you would not mind we will move to Senator Brown.

Senator BROWN. Mic on. Thanks. They did.

As you know, there is concern of everybody on this Committee about crypto and what we do and making sure that consumers are protected. Some in this town are less interested in protecting consumers and investors than others.

Big institutions usually dominate, as you know, the complex derivatives market that CFTC currently oversees. If Congress expands the CFTC's jurisdiction, how will the Agency look out for consumers?

Mr. BEHNAM. Senator, thanks for the question. I think there are two components which I think are important, and I understand, appreciate, and I have heard the same concerns about the CFTC's jurisdiction, who our sort of main constituency is, and how this would challenge us to sort of be a more retail-oriented agency.

I will challenge that point in two ways, first on enforcement and then just generally on regulation. I mentioned this earlier, but on enforcement, if you look at our enforcement record, really over decades, it is split into two major buckets. One is manipulation of markets, and then the other is fraud. You could put non-compliance on the manipulation side.

On the manipulation side, that is typically what you are talking about—large financial institutions. This is, as you recall, and I am sure Senator Grassley does, as well, the Committee writ large, manipulation of large benchmarks. This is the LIBOR cases, which actually originated at the CFTC almost 15 years ago. Other off-channel or offline communications, big cases against large financial institutions.

On the fraud side of the ledger of enforcement, the fraud cases we bring are very typically retail-oriented, and I mentioned this to the Chairwoman. Typically FOREX, which is foreign exchange fraud, is very retail-oriented, and also physical commodity fraud around metals, so specifically gold and silver. If you look at our fraud docket, most of it is retail-oriented. These are pump-and-dumps, Ponzi schemes, very typical boiler-room type of fraud, and it is very typically directed at vulnerable retail investors.

Over the course of decades, because of this very typical fraudulent activity, directed toward retail investors, we built a very robust Office of Consumer Education and Outreach and we have a very vast network of partners at the State and local level, other regulators and law enforcement, to reach out to these local individuals who are vulnerable.

As much as I appreciate, if we do get authority we are going to have to perhaps change the way we send word out, through social media, the internet, and interact with retail. I actually do think, on the enforcement side, we have a very strong record of retail enforcement, in respect to the fraud cases that we have brought over many years.

Senator BROWN. Thank you. Let me talk a little bit about hacks on some crypto platforms. We have seen hundreds of millions of

dollars lost. There is no question. We need to protect consumers. What lessons have you learned, Mr. Chairman, what lessons has CFTC learned from past breaches and hacks in crypto markets?

Mr. BEHNAM. Senator, thanks for the question. I think in many respects these asset classes trade very similarly to other asset classes—stocks, bonds, and other futures contracts. In many respects—and I think this really gets to the point of your question, the technology is very unique and different and forces us to ask very different questions around cybersecurity and operational resilience.

As we see these hacks which enable fraudsters and ransomware attacks to hold collateral or hold fiat money and use Bitcoin or cryptocurrency as ransom, we are doing everything we can to ensure that we, both at the Agency level, but as we work with market participants, think about cybersecurity and operational resilience as a priority in this space.

Senator BROWN. Thank you. Thank you, Madam Chair, and Senator from New Mexico, thank you very much.

Chairwoman STABENOW. Absolutely. Thank you. Senator Ernst.

Senator ERNST. Thank you, Madam Chair, and of course, Ranking Member Boozman. It is nice to see you again, Chairman Behnam. Thanks so much for being with us.

The last couple of weeks I have been able to visit all across Iowa and hear from my folks as I continue my River-to-River Tour, and as I have mentioned here before, one question that continues to come to me is when will Congress come together and pass a farm bill. I hope we get around to that. Our farmers and rural communities really deserve a five-year piece of legislation that will provide us with some certainty and addresses the needs of rural America.

I do applaud the House for coming together in a bipartisan way. Chairman G.T. Thompson did a great job there in the House Ag Committee. I do hope that we can come together here in the Senate and have a bipartisan bill, as well.

Since we are here we will get back to the subject at hand. Chairman Behnam, as you know, the Supreme Court recently ended its term, and it handed down a number of decisions potentially impacting your agency's functions. The *Loper Bright v. Raimondo* ruling rightfully overruled the doctrine of *Chevron* deference, while *SEC v. Jarkesy* said the Seventh Amendment entitles the defendant to a jury trial when the SEC seeks civil penalties for securities fraud.

How does the Agency plan to apply the Supreme Court's decision reversing *Chevron*?

Mr. BEHNAM. Thanks, Senator, for the question. Certainly we continue to look at the decision and understand the importance of it, and we will certainly do everything to comply with the decision.

I would say, you know, if you look at the Commodity Exchange Act and the rule of this Committee and Congress overall, vis-a-vis the Agency, there is a fair amount of discretion given to the Agency in certain areas. There are certainly other areas that are more prescriptive, that the Agency needs to do something very clearly and directly.

We will review our rules. We will make sure that it is letter-of-the-law interpretation where it demands that, but also if there is

discretion, which in many circumstances it is important that an agency like the CFTC have some discretion because markets evolve. Markets change, and it is important, I think, an agency be able to be nimble, to an extent, evolve with markets at a quicker clip than perhaps Congress.

We are going to review our rules, we are going to review the decision, and we are going to ensure compliance with the decision.

Senator ERNST. Do you know, Chairman, approximately how many rulemakings would be impacted by that ruling?

Mr. BEHNAM. Not at this moment, given the sort of recent decision of Loper. We are continuing to review the decision, see how it applies to us, but certainly after we review it I am happy to get back to you and your staff and let you know if there is any direct impact or indirect impact, for that matter.

Senator ERNST. Yes. Then are there rulemakings that were subject to litigation, where you used Chevron deference as an argument?

Mr. BEHNAM. Well, we do have, and I do not want to get too far into it right now, but we do have open litigation on one matter in two different courts, and I do think the defendant did file a motion citing the Loper decision as a reason why it should be dismissed. Again, in that particular case there is a fair amount of discretion that we think would allow us to move forward with that.

Senator ERNST. Okay. That one is being revisited.

Mr. BEHNAM. Of course.

Senator ERNST. Okay. Very good. I appreciate that.

In the testimony that you had shared with us you mentioned that the CFTC has brought over 135 digital commodity cases, resulting in billions in penalties and restitution. With the Jarkesy ruling are you then, as well, conducting a review of the ongoing civil enforcement?

Mr. BEHNAM. Yes. The Jarkesy decision, obviously, has an impact. There are multiple elements to that decision around administrative law judges but also administrative proceedings. The administrative law judge, better known as an ALJ, does not necessarily apply to us. We have not really instituted an ALJ at the Agency for quite some time. In terms of administrative proceedings we are reviewing the ruling right now and the decision, and making sure that as we move forward with our enforcement docket it complies with the decision.

Senator ERNST. Sure. I know it only applied to the SEC, but will you commit to proactively giving defendants before the CFTC then a jury trial when you are seeking civil penalties and restitution?

Mr. BEHNAM. Absolutely.

Senator ERNST. Okay. Well, I really appreciate it. I am running out of time, I guess. I appreciate your forthright leadership, as well, on these issues. I truly appreciate you coming in front of us today. Thank you, Chairman.

Mr. BEHNAM. Thank you.

Senator ERNST. Thank you, Chairwoman.

Chairwoman STABENOW. Thank you very much. Let me also mention, I am anxious to get a bipartisan farm bill done and would certainly welcome anything Senator Boozman wants to say. We have a section-by-section bill that I have put out that is the

English language version of the text that will be given to CBO. It is a full section-by-section bill. I would welcome your engagement and involvement, because we need to be negotiating this and getting it done.

While I met with the Chairman as early as this week in the House and appreciate his work and so on, I did indicate that his bill shortchanges our commodities in the Midwest, which I have also shared with you. We have got some work to do together to be able to do something that will more accurately reflect the interests and States of members of the Committee, and I am anxious to do that as soon as possible. Thank you.

Senator BOOZMAN. Again, we certainly do need to get a farm bill done, and we just have a real difference of opinion as to how we get that done and what we need to be doing. The good news is, as I talk to members, every member I talk to wants to get a farm bill done. I think there is a path forward, and certainly everyone is negotiating in good faith.

Chairwoman STABENOW. Thank you. Let's do it.

All right, Senator Luján, thank you for being so patient before Senator Brown. Thank you.

Senator LUJÁN. Thank you, Madam Chair, and thank you to both you and the Ranking Member for this important hearing. Chairman, thank you for being here today.

Now I have a question about a concern that I have that exists, I think, in the U.S. financial system and sector, from a rules perspective. Because this hearing is focusing on crypto my question is pointed toward cryptocurrencies.

If a cartel was laundering money from illicit drug sales at the border using cryptocurrency, are there any Federal regulations that would require exchanges to report that activity to law enforcement?

Mr. BEHNAM. Senator, thanks for the question. The exchanges that currently operate right now, as I pointed out to the Chairwoman, are not subject to regulation by a Federal regulator for non-security tokens. That said, the exchanges that do participate in the space that are not regulated again do comply with various requirements by FinCEN and then money transmitter requirements at the State level.

If there was, in your hypothetical, the cartel intersected with an exchange to, again, to move the money, to launder the money, to move it into a different form of currency, then I do believe there would be a requirement at the State level, and they by virtue of the FinCEN requirements, to report it.

Again, that, I think, exposes—

Senator LUJÁN. Report it to who, Chairman?

Mr. BEHNAM. At the Federal level it would be the Treasury Department's FinCEN, I believe.

Senator LUJÁN. To the Treasury. In the same way that a SARS report is held at Treasury if a financial institution is found of wrongdoing or a financial institution is caught laundering money for a cartel or someone else, the current system requires that financial institution to appoint somebody to be approved by Treasury to be the watcher from inside. It sounds like a pretty good gig. It is the internal person to watch over the alleged wrongdoing and come up with a report for that financial institution to correct its behav-



ior. Then Treasury keeps that report, and Treasury keeps that report in a vault somewhere, apparently. I do not know who gets to see them. No one that I am aware of.

Is it that same reporting that goes to Treasury is what would happen today?

Mr. BEHNAM. Senator, I cannot speak to the SARS process and necessarily where it goes and who sees it. Again, that is a question probably for Treasury. Knowing the FinCEN requirements, the Crime Enforcement Network at Treasury, and then also the State-level money transmitter requirements, again if there was an intersection with a cartel with one of these exchanges I do believe, through either the FinCEN requirements or the State-level requirements there would be a requirement to report any activity like that.

Senator LUJÁN. For some yes, for some no.

Mr. BEHNAM. It depends how—again, this is really the problem that I think you are rightfully exposing, is that there are gaps all along this chain.

Senator LUJÁN. Let me ask the question this way. Why is it important to have Federal requirements to report suspicious activity to law enforcement?

Mr. BEHNAM. Not unlike the question that Senator Grassley provided around whistleblowers, SARS reports, which, as you pointed out, are suspicious activity reports, are extremely important for regulators because we are utilizing the information that institutions have on the inside as they identify suspicious activity, whether it is a transaction or payment or anything like that.

As much as we have a lot of tools in the regulated space, they are limited, and when we reach that limitation we do rely on the regulated market to report things to us. Which is, again, not unlike the Whistleblower Program or the Complaints and Tips.

SARS reports are extremely important. They certainly come into play with some of our regulated institutions, which are regulated by multiple regulators, but they are certainly, I think, more prevalent within the banking space and prudential supervisors and regulators.

Senator LUJÁN. I believe Suspicious Activity Reports are a tool to help stop illicit financing. I do not believe there is enough attention brought in the United States to illicit financing. While I supported the legislation that would have provided more support to changing asylum rules in the country and changing investments for border security, no one wants to talk about illicit financing because it is a bunch of folks that wear the nicest suits and the nicest ties and wear the nicest jewelry, that get reported for something, maybe even get charged with something. They do not go to jail. They get to go swim in their swimming pool in whatever country they choose to go to that weekend. There is not enough attention brought here.

The reason I am raising this is there have been reports coming out of China that Chinese crime syndicates are using cryptocurrencies to launder billions of dollars, including money raised from fentanyl sales in America. Other countries are cracking down, The United States is not doing a darn thing about this. I

think that this exists across every sector of the false rules that exist within holding people accountable in the United States.

With that, Madam Chair, I will reserve the rest of my questioning. I hope we can do something about this, to be included in this legislation, so that we can really get our hands around one of the causes of so many deaths, 100,000 deaths from fentanyl alone in America, because someone was able to make a buck off of it. It is not going to stop until we can shut that valve off.

I appreciate that. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much, Senator Luján. I know you have raised this to me before, and this is something we really need to be focused on, and to what extent that is something we can focus on here in the Committee. It is certainly a huge issue. Thank you very, very much.

Senator FISCHER.

Senator FISCHER. Thank you, Madam Chairman, and thank you, Mr. Benham, for being here.

As we discussed the last time that you were before the Committee, Nebraska has played a leading role in the regulation of digital assets at the State level. In 2021, Nebraska passed legislation permitting the creation of banks or creations of divisions within existing banks for the purpose of trading in cryptocurrencies. Additionally, Nebraska's Department of Banking and Finance has used State laws and authorities from the Federal Commodities Exchange Act to provide robust oversight while, at the same time, fostering fair digital asset markets.

State regulators are the closest to the people, and they serve a key role in preventing fraud and abuse in digital asset markets. Do you have any concerns about Federal legislation preempting strong and effective State laws regarding digital assets, and is the CFTC equipped to fill any gaps that might exist there?

Mr. BEHNAM. Thanks, Senator Fischer, and I appreciate the question and certainly remember very clearly that back-and-forth we had a few years ago. As I mentioned back then, and I will repeat it because it is important, our State partners are some of our most important partners and ones that we take that relationship very seriously, because as you mentioned, they are the boots on the ground, for retail investors, for investors across the country, including Nebraska, in making sure that we are getting to every component of a local community to make sure folks are not being defrauded.

Ultimately, and answering your question more directly, I think with markets—and this has been something we have learned over decades in the U.S. and globally—having a national market system is a more efficient and effective means to bringing liquidity in trading to a single point, as opposed to having scattershot or a State-by-State national market system.

That said, putting the market element aside, I do think States should preserve rights around fraud, custody, which goes, to an extent, the point I was making with Senator Luján, about States preserving their rights for money transmission across State borders and inside State borders, as well. Then ultimately, and I will just point out again the extreme importance of the State attorneys general being able to preserve fraud authority and not be preempted.

I think there is a balance between creating some Federal system because there are efficiencies in having a single marketplace, but also preserving that we are ensuring certain elements of States' rights, whether it is in the fraud space, custody and payment space, so that the State will preserve the opportunities to protect its investors.

Since we discussed this a few years ago my office has reached out to Nebraska. We are certainly very aware of the success they have had and the leadership they have played. We will continue to do that.

Senator FISCHER. I was just going to ask if you have reached out. I know you have been in contact with Nebraska, with the department there. Have you reached out to other States? Do you see action increasing at the State level with State laws being implemented and put in force? Because I think any time you talk preemption it is because probably the Federal Government has moved too slowly.

Mr. BEHNAM. Yes.

Senator FISCHER. States, as they should, step up. They are the laboratories that we have in our system. It makes it then more difficult, I think, especially when you have States that have stricter laws in place than other States, to try and thread that needle at the Federal level.

Mr. BEHNAM. Yes. We have not necessarily spoken to every State in the union, but we have spoken to many. We are a part of multiple multilateral organizations, which include national-level State securities regulators, and we work closely with State security regulators on enforcement.

To your question, yes, I think States, many of them have been frustrated, and there are two components to it. There is the enforcement and customer protection side, which I think is really driving Nebraskans' efforts, because there is a lot of fraud out there, and there is a lot of opportunity to take advantage of vulnerable individuals in many different ways. I think those individuals at the State level feel like they need to step up if the Federal Government is not moving in that direction.

The other element—and I think to the extent Senator Gillibrand certainly knows this—different States that may have more robust and well built-out financial systems, like New York, you are seeing those regulators build out compliance programs and regulatory programs.

Senator FISCHER. You point out in your testimony the need for appropriate funding to meet the mandate of new regulatory authorities for the CFTC, and you recommend a permanent fee-for-service model. As an appropriator I am curious what this funding level would be. Would it just be administrative funding? Would it be hiring additional staff? Would it be IT? What is your thinking on that?

Mr. BEHNAM. All of the above, and as I mentioned to the Chair—and I do want to correct the record. I mentioned \$50 million in the first year and \$30 million in the second. It is actually the opposite, 30 and 50 in the first and second year, respectively.

We have done a fair amount of work in this area because there have been multiple efforts to legislate around the space. We have

done analysis with different assumptions about how many individuals or entities would register with us. We are happy to share it with your office.

Ultimately the funding would come from users, so it would be a fee-for-service model, and it would be for personnel, but also hardware itself, so data hardware, cyber hardware, any type of hardware we would need for surveillance, and typical regulatory tools. A mix of both.

Again, a lot of assumptions. We would see how many would come in and register with us over time. We would certainly look to appropriators to help set a level, based on a request we made, and then offset that request by assessing the fees to the market participants.

Senator FISCHER. Okay. Thank you.

Mr. BEHNAM. Thank you.

Senator FISCHER. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much. I think Senator Booker just came in the room, to talk about just in time supply chain. Senator Booker.

Senator BOOKER. I appreciate that. I am a little upset that the microphone did not capture Senator Tuberville's kind words about my tie today. I just want to enter that for the record, if I can.

It is really good to see everybody here, and this is an exciting moment. I am really grateful for a lot of the bipartisan work, especially that of our Chairwoman, and her wingman, Senator Boozman. Thank you very much for your leadership on this issue, and this hearing.

When I joined a bipartisan group of Senators about two years ago working on this, to really find thoughtful, impactful legislation to strengthen regulatory oversight, we saw the urgency in this space. Since we did not get something done yet we have really not only failed to make progress on the legislation but we have seen a host of crypto issues, as we have seen in the newspapers and heard from our constituents, that has really left consumers, businesses, and our financial system at risk. Instead of acting we have left it up to the SEC and the CFTC to try to do our job for us, resulting in a marketplace that continues to be rife with fraud, manipulation, and abuse.

Although the SEC, CFTC, and DOJ continue to be our first responders in going after bad actors, which we are appreciative—they have done actions like a \$4 billion settlement with Binance last year—we have heard again and again that the CFTC and the SEC lack the resources and tools they need to conduct oversight in this huge market.

I appreciate that the CFTC takes its role in combatting fraud and manipulation in this space seriously. I have been grateful to meet with our witness today, just taking a look at the CFTC's enforcement docket, with nearly half of the cases are related, really, to crypto enforcement. It is extraordinary.

There are things that Congress has to do today to build the capacity for regulators, particularly for the CFTC, within the narrow scope of the spot market, to create a system that work better for customers, entrepreneurs, and the industry as like, as well as holding the United States as an important center for this activity.

Despite the enforcement actions they are taking, the known risks of this emerging space and a Crypto Winter, if we can call it that, of 2022, millions of retail customers continue to engage with our financial sector through digital assets, exposing a lot of ordinary folks to a lot of risk. I know that you see people of African American descent, people who are working class overrepresented in this space and often victim to this fraud.

We have got to prioritize the needs of these retail consumers through robust customer protections. We have got to strengthen the CFTC's oversight authorities by funding agencies at appropriate levels.

I am grateful that their energy in the work doing this—and again, I want to thank the Chairman and Senator Boozman for their extraordinary leadership in trying to drive this forward.

Chairman, again, I have said this before but love your haircut, the CFTC is already conducting some oversight of digital assets alongside other financial regulators. I just want to point it to you and hopefully you can speak to the gaps that the CFTC still faces and why legislation along the principles of the DCCPA is so important, if not urgent.

Mr. BEHNAM. Thanks, Senator, for your comment and your compliment. You pointed it out exactly. We have brought 135 enforcement cases over the better part of 10 years. In our last fiscal year, as you pointed out, half of our enforcement docket was crypto related, which I did not use this word in my statement but it is a staggering statistic for an agency that oversees trillion-dollar markets, to have to allocate half of its resources to a market it does not regulate or does not get appropriated funds for. It puts both markets at risk, and really exposes the fact that there is so much fraud in the crypto space.

Senator BOOKER. Therefore there is a stunning urgency by—

Mr. BEHNAM. Yes. Yes.

Senator BOOKER. Okay.

Mr. BEHNAM. The other point that really, I think, dovetails to your comment is, yes, we have had success in the enforcement space, but ultimately it is using a very powerful but limited authority. I used this phrase with the Chairwoman earlier. That authority allows us to bring enforcement cases, but only in the context of being reactionary and responsive to customer complaints and tips, as opposed to having a comprehensive regulatory regime where we can register exchanges, register individuals, and have typical, very fundamental compliance programs, which would if not eliminate, significantly reduce the fraud that we see every day in the marketplace, and allow us to be proactive as opposed to reactive.

Senator BOOKER. Can you be a little specific for me and lay out some of the tools that you think that you could use to better enable and oversee the industry?

Mr. BEHNAM. Very similar to the tools we have in our traditional regulated markets, registration authority to register exchanges, to register custodians, to register broker-dealer. Within that registration scheme are a whole number of core principles around compliance with governance, compliance with a board of directors, financial resources, eliminating conflicts of interest. All of these very typical things that have been built and evolved over decades in the

financial regulatory space that have really enabled U.S. markets to be the most robust, the strongest, and most desirable in the world.

It is really not rocket science, and a lot of it is built off the DCCPA, with some modifications certainly. Ultimately we are not trying to recreate anything. We want to model what is needed based on what has been successful.

Senator BOOKER. Just give me one—my time is up—one realistic consequence for us not getting this done in the coming months. What is something that you are concerned about.

Mr. BEHNAM. Senator, put aside the resources and the challenges that we have in allocating half of our resources to enforcement. Our No. 1 priority and responsibility is to protect customers. If we do not have this authority, we will continue to see fraud and manipulation, and individuals in New Jersey and across the country lose money.

Senator BOOKER. Chairwoman and Ranking Member, there is an urgency here. I am grateful for both of your leadership. I just ask us to move with some haste. Because if we do not move and get something done in this Congress, more and more people will be taken advantage of. More and more people will lose their money.

There is bipartisan unity, I think, in this, on both sides of the Capitol. The only real division I see at this table is the Senators with hair versus the Senators with not. Otherwise, we are together on this.

Chairwoman STABENOW. We will debate that separately.

Senator BOOKER. They also have the nicest ties.

Chairwoman STABENOW. Yes, exactly. We are debating ties today.

Well, on a serious note Senator Booker, thank you for that. Thank you for being part of the bipartisan group in the last couple of years who we have been working so hard to move something forward. Thank you so much for doing that.

Now we will turn to Senator Tuberville, for the hair rebuttal.

Senator TUBERVILLE. We are not opposition. Thank you, Lady Chairwoman.

You know, as Senator Booker just said, digital assets are our future, and for us to lead on this entity we have got to encourage innovation. If we do not, we are not going to make it. The legislation has got to be there, and I think we all agree with that.

I have just got a few questions here about this. You know, we all know there are good actors and there are bad actors. If we do not get legislation, the bad actors are going to take over, and we have seen some of that. Mr. Chairman, thanks for being here today.

A lot of my constituents use event contracts to hedge risk. Can you assure us that the CFTC's even contract rule will encourage innovation and not attempt to prohibit or limit event contracts?

Mr. BEHNAM. Senator, thanks for the question. In short yes, I will ensure that we support innovation in any rule that we finalize in the future.

Senator TUBERVILLE. Thank you. Two of your Democratic colleagues on the Commission are being considered by the Senate for new roles. Should they recuse themselves from ongoing CFTC rulemaking as they go through this confirmation process?

Mr. BEHNAM. Senator, thanks for the question. It is an important question and certainly one that we have looked at very carefully since they have been considered for these new positions, respectively at the FDIC and Treasury. Based on the legal analysis that we have done and the fact, ultimately, that they are going to other government agencies, they do not have to recuse themselves. We are——

Senator TUBERVILLE. Don't you think this is a conflict of interest?

Mr. BEHNAM. Well, ultimately, recusals should be done in a situation where there is, in fact, a conflict. It is most typically done if a public official is going to the private sector and you do not want that individual, while they are in their public office, to make decisions that would benefit a future employer.

In this case, since both are going to another public agency, another government agency, we have not been able to identify any, quote/unquote, "conflict of interest" that would require recusal. We are happy to look at the issue again and speak with your office, hear your concerns, and have a conversation about it.

Senator TUBERVILLE. Thank you. You know, I have a got a bipartisan bill with Senator Gillibrand to prohibit Chinese entities from acquiring U.S. digital asset broker-dealer, custodian, or exchange. Do you think that is the sort of legislation we need?

Mr. BEHNAM. Senator, you know, it is often dismissed or forgotten that financial markets and the institutions that comprise financial markets, whether it is a broker, an exchange, a clearinghouse, are critical infrastructure. They are not necessarily critical infrastructure in the sense that we would think in terms of national security, but they really are.

If we were attacked by an adversary and one of our core critical financial infrastructures was attacked through cyber and held up or stopped trading, this would have a huge impact on agriculture, on energy, and any number of things that impact our economy directly.

I appreciate the bill that you have filed and understand what you are looking to accomplish, and I do think it is very important, given the nature of financial markets and what our adversaries are willing to do, and making sure that we are preserving national interests and national security through financial infrastructure.

Senator TUBERVILLE. Thank you. You know, I want your thoughts on how mined crypto assets should be taxed. Take Bitcoin, for instance. The IRS is all over people that are mining Bitcoin. If you grow corn you do not pay tax on it until you sell it, but Bitcoin, if you mine it, even before you sell it you have to pay taxes on it. Do you think that is fair?

Mr. BEHNAM. Senator——

Senator TUBERVILLE. Have you thought about this?

Mr. BEHNAM. Actually, I have not thought about it until now. Principally speaking, and based on the way you articulate the analogy, you know, it does not sound fair, or there is not a clear sort of analogous policy around it. Thinking through some of the issue around mining and the efforts that are required through energy and otherwise to mine tokens, perhaps there is a policy reason that the IRS is looking at it through their lens. I am happy to look at

it more deeply and have a conversation with you. I otherwise do not focus too much on the tax code.

Senator TUBERVILLE. Well, please do. You know, if you buy stock you do not pay tax on it until you sell it.

Mr. BEHNAM. Correct.

Senator TUBERVILLE. If you buy gold you do not pay tax on it until you sell it. If you mine Bitcoin, or any kind of crypto, you know, the IRS wants their money now, whether you are going to make or lose money at the end of the day. I think if we are going to encourage people to get involved in crypto we need to address this issue pretty quickly, because a lot of people are being really harassed by the IRS, and they should not be. It should be like any other entity of where they have the opportunity to invest, and when they make a profit they pay taxes on it at that time. I appreciate your thoughts on it, when you can sit down and really think about it and talk to your people.

Mr. BEHNAM. I would be happy to.

Senator TUBERVILLE. Thank you.

Chairwoman STABENOW. Thank you very much. Senator Warnock.

Senator WARNOCK. Thank you very much, Madam Chair, and thanks to you and Ranking Member Boozman and others for your leadership on such an important issue. These cryptocurrencies and digital commodities are relatively new, but basic consumer and investor protections are not. They are still the pillars of a sound financial system. I am glad to see bicameral and bipartisan work taking place on this. As Senator Booker has already pointed out, it is difficult to overstate the urgency.

The questions that I will ask when evaluating any potential legislation are will this bill better protect families and investors in Georgia and across our country? Will it help grow our economy, and all of that with respect to all of the geopolitical challenges that we face? Basically will it help prevent folks from being taken advantage of? Will we be effective? Is it effective? Or will we just be able to check the box and say we did something?

Chairman Behnam, critics of proposals to expand the CFTC's authority into regulating certain cryptocurrencies note that as a financial regulator the CFTC has not needed to focus on protecting retail investors, and the Commission lacks the staff experience and the expertise to properly protect consumers.

Around this question of whether what we do will be effective, what can you say to reassure critics that the CFTC is up to this task that we all agree is so very important?

Mr. BEHNAM. Thanks, Senator Warnock. I am going to go back to something that I think I have said, because it is extremely important and I think very responsive to your question. There is, in fact, what I believe is a misnomer, a mischaracterization of what the CFTC's constituency is. It certainly is large commercial end users—farmers, ranchers, energy providers. It certainly is large financial institutions. We do have, and have had for a number of years, with a sort of growing demand, a fairly large retail investor community. They invest in futures, which are our main bread and butter contract, and also Senator Tuberville mentioned event contracts, a very retail-oriented marketplace.



From a regulated market we do see a lot of retail investors, and we see that growing. We see growing investor demand and enthusiasm for all types of financial contracts, something I know that this Committee should care about very deeply.

The second element that I think really is more responsive is around enforcement, and I mentioned this earlier. If you look at our enforcement docket, historically, not just in the past year or two years, five years, but historically, the fraud cases that the CFTC brings are very much related and oriented toward retail fraud. A significant amount of the fraud, as opposed to manipulation of markets, are oriented toward retail investor. That is because they involve something that is called FOREX, foreign exchange, and also physical commodity fraud, which is typically gold and silver, so metals. You see this in commercials and other types of advertisement.

If you look at our enforcement docket around fraud it is very much mom-and-pop, Ponzi scheme, pump-and-dump fraud that has occurred for decades in financial markets. Because of that, because of that record, we have actually built a very robust and deep Office of Customer Education and Outreach and a vast network of partners at the local, State, and Federal level, in terms of law enforcement, to get—and I will reference what Senator Fischer said—sort of boots on the ground at the local level.

I do not want to dismiss. I mean, we will have work to do. This is a new market. We will have to buildup with resources and personnel. What I do want to just recharacterize is this notion, this fallacy, that we are not a retail-oriented regulator. We have a big history on the enforcement side, and we have a growing constituency on the investment side, and I think we can build off of both to be successful in the digital asset space.

Senator WARNOCK. Sure. One of the things that will have to be addressed in any legislation that is proposed, because there are multiple financial regulators involved, is the dividing line between what the SEC should regulate versus the CFTC. You know, that is something we will be taking a look at.

With respect to this issue of capacity to do what we are asking you to do, you requested \$399 million for the CFTC's Fiscal Year 2025 budget. That funding level would support 725 full-time staffer, to effectively operate and support the agency in fulfilling its mission. Comparatively, the SEC requested \$2.5, almost \$2.6 billion for 5,703 full-time staffers.

Is this budget request sufficient for the Commission to take on the potential new role of protecting consumers and investors who are trading digital assets, and if not, what funds and staff levels are necessary?

Mr. BEHNAM. Thanks, Senator. As it stands that budget request, the \$399 million for 725 FTE is specifically for our existing required and mandated regulatory responsibilities, so not digital assets. This is for futures, options, and swaps.

We have done a fair amount of analysis, and I am happy to share it with you, that if we were to see legislation pass that would create authority for the CFTC to police digital assets, we would have an additional budget request around certainly resources, for personnel, and for security hardware, IT hardware, cyber hardware.

We have been thinking about it, but certainly it would be above the 399, which you would expect to be commensurate with the requirements that Congress applies to us.

Senator WARNOCK. Well, thank you. We look forward to seeing that analysis and what is necessary as we move forward.

Mr. BEHNAM. Happy to.

Senator WARNOCK. Thank you.

Mr. BEHNAM. Thank you.

Chairwoman STABENOW. Thank you very much. Senator Marshall.

Senator MARSHALL. Thank you, Madam Chair. Chairman, welcome back to the Committee. It was great to see you in Kansas City in the spring, and I appreciate you and your team coming there for a commodity futures conference.

Thanks to a wide-open southern border we have seen an explosion of fentanyl poisoning deaths, human trafficking. We have seen a large amount of illegal marijuana now being grown on farms, marijuana farms, in States bordering Kansas.

At the end of the day, all of this organized crime is resulting in money laundering, for the most part with crypto. The Chinese Triad, the Chinese organized crime, manages this crypto. Why is crypto the currency of choice for criminals?

Mr. BEHNAM. Senator, thanks for the question. I would say two-fold not an exhaustive response, certainly, but one, there really are not borders to crypto. You obviously can transfer money globally, fiat money globally, but in terms of cryptocurrencies, stablecoins, actual digital assets, Bitcoin, Ether, it is, in some respects, a borderless type of currency, so it is easy to move across borders.

Other than that, or in addition to that, excuse me, I would say it is the reason we are here today. There is largely a vacuum in the regulatory space on both the digital asset market side, which is what this Committee needs to consider as it relates to the CFTC, but also the stablecoin side, which deals with other agencies and other committees.

The larger picture is there is some State level regulation around money transmission. There is some Federal regulation around FinCEN and AML, KYC, and a lot is missing.

Senator MARSHALL. If I could, do you feel it is just as important for the crypto industry to know their customer as a bank does to know their customer?

Mr. BEHNAM. One hundred percent.

Senator MARSHALL. Okay. As we go forward, I am fearful that the SEC would have an outsized role in determining if something is digital commodity or not, and I am equally concerned that your agency could be sued if it does not comply.

Two questions here. I think it is the same answer. Do you support the SEC making decision on what it is under the CFTC's jurisdiction? Two, do you think it is a good use of Federal Government's time to have two agencies fighting over the designation of a digital commodity?

Mr. BEHNAM. Senator, short answer is no, but it is important that as we have, as two agencies, done in the past, work together to make determinations around certain assets that, I will call it a

gray area, exist in a gray area around what a security and a commodity is. That has happened for the better part of five decades.

Senator MARSHALL. You are not worried that the SEC says this is a commodity, and the CFTC says it is not, and you get sued over it, you are not concerned that that is going to happen?

Mr. BEHNAM. I cannot say that it is not going to happen. I think in this particular area, this digital asset space, there are a lot of legal questions of first impression. In our traditional commodity markets we have been dealing with determining what is a commodity and a security for decades, so it becomes a little bit customary and rote.

At this particular moment I think it is important that we preserve, as I said in my opening statement, a core principal model, a self-certification model, as well, which has worked quite well for the agency for the better part of two decades. Also I do think given the size of the market, the number of tokens, and some of the novel legal questions, it is important, as the agencies have done historically, work closely together to find consensus around whether or not a token is a security or a commodity.

Senator MARSHALL. What I am concerned about is we are writing legislation that sets up a system for this fight in the courts, when instead we need to make sure that we are writing legislation that creates total clarity of the SEC's versus the CFTC's jurisdiction over digital assets. Do you share that concern?

Mr. BEHNAM. I share that concern to the extent or in regard to the fact that whatever this Committee considers in the future I do believe there should be a system of listing contract, that is both similar and typical to what we have done at the CFTC in the past, but also does contemplate, to an extent, a relationship between the two agencies that we can work efficiently together.

The last thing I will say is I do think there is a way to build a system of listing contracts that does not prolong or delay the listing of contracts in a regulated market. We want to get these contracts, these tokens, on regulated markets as soon as possible so that we can eliminate or reduce the risk of customer loss and enhance customer protections.

Senator MARSHALL. I am a person who always believe that the government makes the simple complicated, and what leaders do is make the complicated simple. Wouldn't it be simpler if we just put this all under the CFTC's jurisdiction and then being the primary regulator, and maybe there are some offshoots for the SEC. Truly designating this is the CFTC's baby.

Mr. BEHNAM. Senator, I speak for myself. I would be happy to do that. I think we have the capacity to do that, the expertise, and the experience. There may need to be some definitional changes to what a security is and what a commodity is to accomplish that outcome.

Senator MARSHALL. Thank you. I yield back.

Chairwoman STABENOW. All right. Thank you so much. Senator Welch.

Senator WELCH. Thank you very much. I appreciate you and Senator Boozman having this hearing. It is an incredibly important topic. Thank you.

You have got a hard job. It is kind of a mystery, all this Bitcoin and these tokens, and I appreciate you doing the job that you are doing, and doing it so well.

I have really two questions. As I understand it, in your testimony you said that CFTC lacks the authority to regulate the cash spot markets for Bitcoin. Is that right?

Mr. BEHNAM. That is right. Correct.

Senator WELCH. Okay. That is one of the few investment tools available for investor to invest in cryptocurrency. Should Congress expand the CFTC's authority to include cash spot markets, the CFTC's enforcement authorities would likely need to increase beyond anti-fraud, right? Do you believe that the disclosure process for digital commodities should be the same as the current requirements for physical commodities?

Mr. BEHNAM. Senator, thanks for the question, and it is a really important one because I think a lot of the debate around the two agencies and the historical record of the CFTC and what it is oriented toward really misses some of the point around what we are trying to accomplish and what gap we are trying to fill.

This is exclusive what I have called for, for several years now, legislation around commodity tokens. If you look at commodity tokens—and this really goes to your question—or commodity assets, whether it is corn, soybeans, natural gas, or oil, the disclosure regime that is built around commodities is really market and risk based. It is not actually about the commodity.

I think the best way to think about it is if you think about wheat, for example. What would you disclose about what on a periodic or a constant basis, on a quarterly or annual basis? Wheat is a decentralized commodity. It is grown all across the world. You would not be able to disclose to an investor of a wheat futures contract what exactly the risks are associated with investing in the commodity itself.

I think that is very important to juxtapose against the Securities and Exchange Commission and corporate disclosure around centralized entities that have executive teams, boards of directors, audited financial statements, material risks to their business. That is the information that bridges a gap between a company that is issuing stock and an investor. You want that investor to know as much information about all of that corporate issuance so that they can make the best informed decision. That does not exist on the commodity side.

I would think, as it relates to digital tokens, we would have to be consistent around disclosures as they relate to market risk and material risk as it relates to the token itself. Some very characteristic driven disclosures around the token and what an investor might need to know before they make an investment.

Senator WELCH. Thank you very much. Another question, but I think we are under surveillance here. Representative French Hill just came in.

Chairwoman STABENOW. I was going to mention that, Senator Welch. We do have one of the leaders in the House on the Hill—

Senator WELCH. We have all got to be on our best behavior. Welcome.

Second question is about the energy consumption. I mean, this is not necessarily in the regulatory space but there is some question, I think, about what disclosures have to be made. It is an astonishing amount of energy use in this new domain. What I understand is crypto mining accounted for 2.3 percent of domestic electricity demand, as much electricity as the entire State of West Virginia or Utah combined last year.

That is going to go up, and especially as there is more mining related to it. There are real implications, not just the increase in the amount of energy but an impact on rate payers in Vermont and elsewhere. I am concerned about that. You know, what are the side consequences. Folks who have nothing to do with the whole market, are not in it, does not affect their lives, but it does affect their electricity bill, or it could.

My question is, with the energy demand from crypto placing a heavy burden on our electric grid and consequent potential price increases for everyday consumers, particularly with the demands that are imposed by the extreme weather, is there any room for the CFTC to consider requiring climate risk disclosures for crypto mining operations?

Mr. BEHNAM. Thanks, Senator. Again that would fall within the remit of legislation. If that is something you want to consider, my team is happy to work with you and your staff to figure out a way to accomplish that. I am certainly aware of this issue and the consumption of energy as it relates to mining of tokens.

We have observed this over a number of years, and it has ebbed and flowed, and I think, to credit some in the industry, there have been efforts to shift toward renewable energy sources as opposed to traditional fossil fuel-based sources. Again, the numbers are staggering in some instances, and in this moment where we have high energy costs, huge new demands from artificial intelligence, it is certainly something that we need to think about.

I think in previous efforts to create authority there have been provisions and potential bills around studying this issue at the CFTC with our other Federal partners, Department of Energy, FERC, and otherwise, to see what is actually happening on the ground, how much energy is being used, where are the pockets of demand, how it is affecting communities across the country, and whether or not there are any solutions to both reduce that demand or potentially to shift it to less intensive renewable sources.

An issue we are thinking about but certainly would welcome the opportunity to work with you.

Senator WELCH. Thank you very much. I yield back.

Chairwoman STABENOW. Thank you very much. Senator Gillibrand, let me first thank you for all of your wonderful work, in a broader sense. We know that our jurisdiction is commodities and the CFTC, but I very much appreciate your efforts in this area.

Senator GILLIBRAND. Thank you, Madam Chairwoman. Chairman Behnam, thank you for being here. I really appreciate your agency's leadership in the digital commodity space. As a member of this Committee I encourage congressional progress on digital commodities. The CFTC's continued partnership is essential to developing robust legislation.

The decision of regulation between the SEC and the CFTC is an ongoing discussion in the digital asset space. In your testimony before this Committee in September 2022, you stated that the CFTC is the right regulator for the digital asset commodities market. Legislative efforts in the Senate and the House seek to determine pathways to bring crypto into the regulatory perimeter.

Many of these efforts empower the CFTC to lead regulation of digital commodities. When Congress acts, is the CFTC prepared to take this regulatory role?

Mr. BEHNAM. Thanks, Senator, for the question and your support. I will answer that in two ways. First in terms of experience and expertise. I cannot think of another regulator—and you suggested this—that has been on the front line of crypto for the better part of 10 years, both from an enforcement side, and then we do have regulated futures contracts on Bitcoin and Ether. We are familiar with the constituency. We are familiar with the market, and its sort of ebbs and flows over the period of time, and then obviously from an enforcement standpoint we have been a frontline regulator across the country, and globally, as well.

Second part is can we handle this. I often point to what the Agency was able to accomplish after the financial crisis, and previously before the financial crisis you had the over-the-counter derivatives markets, more commonly known as the swaps market, moving into the jurisdiction of the CFTC. This is a multi-trillion-dollar global market that the CFTC, from 2010 when President Obama signed Dodd-Frank through the course of a few years, was able to implement a global regulatory regime over the swaps market.

We have done it before. I think we can do it again. Many similarities between the two, and I think the Agency has proven itself very capable in bringing in markets within the fold.

Senator GILLIBRAND. Can you tell us some of the risks of inaction in this space and how could legislation be helpful to provide additional regulatory and jurisdictional clarity? Second, how does the CFTC coordinate with the SEC in regulation, registration, rule-making, and enforcement in the current regulatory vacuum?

Mr. BEHNAM. Thanks, Senator. On the inaction question, taking that first, the No. 1 priority for me is customer protections, and I know that it is for you, as well. Ultimately if we do not take action, if Congress is not able to fill this gap, we are going to continue to see enforcement cases build, and ultimately, as I have said to some of your colleagues, we are always being reactive in our current posture. We are never able to regulate, register, and surveil markets like we traditionally do. We always have to react to customer complaints and tips, and the problem with that is the money is often gone and the fraud has already occurred.

The other inaction—I think this is more for you and less for me as a regulator—you pointed this out on numerous occasions, there is a level of concern around regulatory certainty. There are a lot of entrepreneurs and innovators that are uncertain what the posture is going to be in the U.S.

I serve as the vice-chair of IOSCO, which is the International Organization of Securities Commissions. We are behind at this point. We have been behind for a number of years, from a U.S. perspec-

tive, and I have seen that happen over the course of two or three years as vice chair of the organization, and I think it is important that we fill this gap by moving ahead with our allies across the globe.

In terms of coordination with the SEC, I would focus primarily on the coordination we have with the SEC from an enforcement perspective over the course of many years, including with the SEC but also the Justice Department. We have brought cases together with them, both civil and criminal, and our enforcement teams work very closely because we do have a fair amount of overlap on the enforcement side.

On the regulatory side, it is much more limited because, again, for the reason we are here today we do not really have regulatory authority of the spot market. There is no registration or these typical things that we would typically do with a financial market participant that I am hoping that this Congress and this Committee will work on.

Senator GILLIBRAND. Many of my colleagues are concerned with safety and stability of digital commodities and digital assets. How does the CFTC balance consumer safety when it comes to digital commodities while allowing innovation, and how could the core principles found in the Commodities Exchange Act be applied to crypto markets and potential legislation to encourage consumer protection and market integrity, moving forward?

Mr. BEHNAM. Thanks, Senator. Taking the second question first, the core principles, and I have said this a few times, are really a very efficient and robust and well-worn system. It is orderly and fair trading. It is making sure products are not readily susceptible to fraud and manipulation, system safeguards, which is cybersecurity and operational risk, making sure entities have appropriate financial resources.

Off of these core principles the Agency then builds more prescriptive rules. It is a good foundational system that has worked in all financial markets and one that I think would work in the crypto market, as well.

In terms of what the Agency is doing to foster innovation, we have the Office of Technology Innovation, which I lead, and the director reports to me. We have also had a number of advisory committees that have been very engaged with the industry, learning what they are doing, seeing and hearing what their challenges are, and to the extent possible, working with them to ensure that they have a sense of what our authority is, what we can and cannot do.

Ultimately again, as I said earlier, very limited in scope to just futures authority, which at this point is relatively small market to other derivatives. This is why we are here, and I think if we can provide this authority then we would certainly, and to your point, do our best to engage with the industry and support innovation.

Senator GILLIBRAND. Thank you, Chairman Behnam. Thank you, Madam Chairwoman.

Chairwoman STABENOW. Thank you very much. Senator Klobuchar, and then our cleanup hitter, Senator Boozman.

Senator KLOBUCHAR. Always patient. Always patient. Thank you, Chairwoman. Thank you, Senator Boozman, and thank you very much for your work, Chairman.

The CFTC, we know, has very important work right now. I think since we last talked, the digital asset market has grown tremendously. The market capitalization of digital assets has recovered to over \$2 trillion, doubling from its recent low point. Bitcoin alone recently hit a record high of over \$73,000.

Despite this, there is not really—you tell me, you believe you need more statutory authority. Correct?

Mr. BEHNAM. Senator, yes. We have a big gap.

Senator KLOBUCHAR. Okay. That is why we are having this hearing, which I appreciate that Congress must work in a bipartisan way to reinforce the CFTC's authority and ensure it has the necessary resources to protect commodities and maintain market stability. That includes considering legislation to regulate digital assets, protecting consumers and market participants while fostering innovation and ensuring a level regulatory playing field. That is how I think about it.

I know that some of this has been asked. I was at a hearing—we have a Federal judge nominee in Minnesota, and you do not really want to leave the Senate Judiciary Committee alone on its own when you have a nominee, so that is why I am a little late here.

You have previously discussed how the CFTC has a rigorous and deep disclosure regime for commodity market participants, including what they must share with investors. That differs from securities disclosures. It is also important to ensure consumers have sufficient disclosures about the underlying assets in addition to disclosures for market participants. Is that right?

Mr. BEHNAM. Correct.

Senator KLOBUCHAR. In other words, aren't disclosures about these assets as important as those about the entities trading them?

Mr. BEHNAM. Correct.

Senator KLOBUCHAR. Okay. Good. AI is set to become one of the most significant technological advances of our time. I think it was David Brooks who said he has trouble writing about it because he does not know if it is going to lead us to heaven or hell, and a lot of that is in our hands. It is great potential for innovation, but we have to put some rules in place, something that a group of Senators have been working on for months.

We are already seeking the risks of AI in financial markets. In January, the CFTC issued an advisory warning against the risk of AI-driven crypto scams. Can you talk about the kinds of fraudulent activity you have seen with the use of AI in digital asset markets?

Mr. BEHNAM. Thanks, Senator. It is an extremely important issue, and quickly putting aside the AI customer advisory, we have done a lot of work ourselves on soliciting comment from the industry around how AI is being used in the market, and we are taking and reviewing those comments now to ensure that we potentially consider a rule or advisory or guidance ourselves.

With respect to your question, what we have observed is really akin to a search engine, where artificial intelligence is able to essentially track vulnerable investor, individuals across the country, and where they put their resources, how they invest their money, where they look on the internet, and are able to use artificial intelligence to essentially capture them at a vulnerable time.



There is something called “romance scams,” which you may be familiar with, but this is really a very sad scam that has been going on for a number of years. I think the FBI noted just last year, in 2023, there was over \$3 billion of romance scams. This really is preying on the most vulnerable Americans who are looking for partnership and friendship and essentially stealing their life savings.

We are very focused on that. We are working with our Federal partners. A lot of it, to your question, is driven by artificial intelligence and seeing where users are located, who has money, where they are banking, and then ultimately what their patterns are, socially, so that they can ultimately be taken advantage of. We are doing our best to prevent that.

Senator KLOBUCHAR. Very good. Crypto operates in two areas, correct, on-chain decentralized users and off-chain centralized institutions, and most of the proposed legislation focuses on centralized platforms, not on-chain. Are on-chain activities and DeFi harder to regulate, and do you have any recs for how we should approach DeFi—

Mr. BEHNAM. Senator, thanks. It is a really important question, and I am going to use an example of what we are observing. It is still very early days, but a lot of more sophisticated, large financial institutions are looking at on-chain technology as a means for payment processes and settlement. Settlement, you could imagine in a financial market, is extremely important, and a lot of financial institutions are looking at blockchain and on-chain transactions as a means to make settlement or payment processes more efficient.

We are working with the industry, with other partners, in seeing how, and in what way we intersect with that. There is definitely a regulatory nexus. Is it more difficult? It is certainly not centralized. The whole point of blockchain is to be decentralized. It raises very interesting policy and legal questions about what do we want to do, from an elected legal perspective but also from a regulatory perspective, to properly regulate it but not over-regulate it, because there could be potential innovation and efficiencies developed from it.

Senator KLOBUCHAR. Well, thank you. If I learned anything around here it is do not use the Ranking Member’s time. I will maybe submit another question or two on record. I am very glad that the Chairman and Ranking are working on legislation on this. I think it is time to move, and I really, really appreciate you appearing before us. Thank you.

Mr. BEHNAM. Thank you.

Chairwoman STABENOW. Well, thank you so much. Last and certainly not least, Senator Boozman.

Senator BOOZMAN. You are always welcome to use airtime, so thank you for being here.

Chair Benham, as you know, multiple DCMs currently list futures contract with an underlying digital asset, all of which have been listed through the self-certification process without CFTC intervention, so the underlying digital asset clearly did not cause an issue.

Despite that, some think CFTC is too weak and ineffective to handle spot digital commodity self-certification. Are they right? Is

the CFTC not equipped or are they not capable to handle spot digital commodity self-certification?

Mr. BEHNAM. Senator, thanks for the question. I am going not say we are certainly equipped, and we are certainly capable. I would just reiterate what I have said multiple times to your colleagues. If this Committee act and provides additional authority to regulate these markets we would certainly need additional funding to do it. Otherwise, from a policy and expertise perspective, we are as well positioned as anyone.

Senator BOOZMAN. Very good. Thank you. Certainly that makes sense that you need the resources if you are moving in that direction.

Some have suggested the SEC should first determine whether something is a security and then CFTC should followup with its own determination. If the two disagree, the CFTC could sue the SEC. A similar process exists for novel derivatives products, but many in the industry would tell us it is an unworkable process that has largely killed those markets. I am afraid such a framework would also stifle crypto markets, which is a terrible outcome.

As you well know, this Committee does not have jurisdiction over SEC. Should Congress put the CFTC in the losing position of having to sue the SEC every time they disagree?

Mr. BEHNAM. Senator, the short answer to that question is that would be obviously a very difficult position and one, practically speaking, that is unlikely. The self-certification process, as you point out, is a well-worn process. It is about 24 years old right now. I did some work myself, when I was a Commissioner, looking at listing of products prior to the self-certification authority and after the self-certification authority. The numbers are actually quite staggering, to use that word again, in terms of listed products.

It is an efficient system. It is one that actually forces both the market participant, the exchange, and the regulator to be involved. It is not just driven by the market participant. We do engage. It is checking boxes. It is making sure they are complying with our rules and our regulations. It is an efficient system, and I think that should be a model as you consider legislation to use for digital assets, as well.

Senator BOOZMAN. Good. Thank you. To my knowledge, Congress has never held a hearing solely on decentralized finance, not once. Yet some would want to regulate in such a way to make it very difficult for the industry. The IRS just excluded DeFi from their new broker rule and the E.U. has punted. The rest of the world realizes the issue needs more studying. Instead of having CFTC spend resources on something the Agency has no expertise in, should we focus on regulating centralized exchanges?

Mr. BEHNAM. Yes, I think at this point, Senator, given what we have observed, what I have observed over the course of seven years, the priority should be centralized exchanges. We have brought a few enforcement cases around DeFi. We have engaged with market participants. We have seen this area evolve, certainly. I think the larger challenge right now, as it relates to customer protections, fraud, manipulation, is around these centralized exchanges. If I were to make a recommendation is to focus on that

particular area right now, because that gap is the one that is really the one that is most concerning to me.

DeFi is more challenging. We have heard our fair share of complaints from the industry, but I am a firm believer that there is a regulatory nexus for DeFi, but perhaps we have to take a unique look at it, given the unique nature of DeFi. It may not be exactly what we do with traditional centralized exchanges, but the notion or idea that it should live in a regulatory vacuum, I disagree with that.

All that to be said is I think it demands more thought, consideration, and discussion between both the regulator and this Committee before any further steps are taken.

Senator BOOZMAN. Good. Thank you.

Congress was clear that the CFTC's jurisdiction to regulate swaps outside the U.S. is limited to those that have direct and significant connection with the U.S. That boundary is important because unfettered regulatory overreach can lead to foreign retaliation, which hurts U.S. market participants and users. You have expressed today, and rightfully so, the CFTC's limited resources. Why should it be the world's crypto police?

Mr. BEHNAM. Senator, we should certainly not be the world's crypto police. I think I mentioned to Senator Gillibrand, I believe, that I serve as vice chair of IOSCO. I put it in my statement, as well. I have seen multiple jurisdictions across the globe—Asia, Middle East, Europe, U.K., South America—in the course of three years as vice chair, go from pilot programs to well-built regulatory systems.

From an enforcement, customer protection side, this delta between the U.S. and the rest of the world is not healthy, and I think from your perspective, as we think about innovation and economic development, it should be concerning that we are so far behind. I think we have the benefit of being the largest market in the world, and we do not necessarily have to move first, but we do have to move, and I think this is good step forward.

In terms of our nexus with non-U.S. participants and how far our reach should go, you raise a very important point and one that this Committee has thought about very deeply, just 10 or 15 years ago with the swaps market and the nexus test, which is in our statute. It is challenging. Ultimately I think, at its root, what we have to focus on is how are, if at all, U.S. customers impacted or affected. If they are affected then I think there is a clear nexus between what an entity, individual, or organization is offering to a U.S. customer, regardless of their location, whether it is in the U.S. or obviously, to the point of your question, outside of the U.S.

We have to think about it. I think our consistent baseline or foundation should be that nexus with U.S. customers and whether or not they are being offered products, and ultimately defrauded or manipulated. If we can find that nexus—and it is not necessarily always black and white. There are some areas that are gray, of where affiliates or subsidiaries are set. We have done a good job, I think, by and large, over the past 10 years implementing Dodd-Frank and Title VII. We have done this in other markets over the course of decades. I feel pretty strongly we could do the same in this particular market.

Senator BOOZMAN. Good. Well again, thank you very much for being here. We appreciate your leadership. You have got a lot of responsibility, and again, we just appreciate you stepping up to the plate and providing the leadership that is needed.

Mr. BEHNAM. Thank you, Senator.

Chairwoman STABENOW. Thank you so much. I want to do one followup question because Senator Boozman raised a really important issue that we are struggling with here with SEC and CFTC. Could you just speak a little about today, in this moment, where you do not have regulatory authority, but today, if the SEC thinks that an asset is a security, how does the CFTC respond?

Mr. BEHNAM. Senator, you know, I mentioned this a few times. This goes back decades with security futures, which really the issue is the legal issues, the policy issues were in the early 1980's, and then as you well know, with Title VII of Dodd-Frank the difference or the delta, to use that word again, between security-based swaps and commodity swaps.

The two agencies have a long history of working well together, and I will focus on the word "well." We understand our missions. We understand the outcomes we want to achieve. We understand that we are the two market conduct regulators in the U.S. Federal financial system, and that our jobs are extremely important. Our coordination in the efficiency is extremely important.

As we do have products listed, and it typically, as you can imagine, does not happen with physical commodities, it is around narrow-based and broad-based indices typically comes up these days. There have been some other products that have been listed in the recent past that have raised legal questions about what is a security, what is commodity. During this self-certification process, which Senator Boozman raises, it is not just a simple market registrant comes in and files a paper with us and they start listening. There is a process. Sometimes it takes months, and it is conforming a product with its specifications to our rules and our regulations, and ensuring there is compliance. If there are issues around whether or not an asset is a commodity or a security, they will talk to us, they will work with us.

I think what I want to emphasize to this Committee is we certainly, at the CFTC, work very closely with the SEC. We talk to them. We engage with them. We listen. We want to hear what their legal analysis is. We challenge them, for sure. We understand our domain, our jurisdiction, and we want to preserve that. We want to be respectful and mindful of what our sister agency believes, and we will deal with that, I think, in turn, as it relates to new and novel products.

This idea or notion that we sort of hang out there in a vacuum and the registrants just kind of self-certify on their own is not entirely accurate. We work very closely with the SEC, and I think as this Committee can considers a new model for digital assets it needs to be a balanced approach. I put this in my written statement. Efficient—we want to get products regulated. We want to move this along quickly. We also want to make sure both agencies are involved and consensus is reached.

Chairwoman STABENOW. Thank you very much. This is the dilemma. It is one thing to say that an industry can just pick their

regulator. You know, is that in the public interest, in the customer interest, and so on? I would argue, in general, no, that it is not. On the other hand, we do not want to see something mired down where you cannot proceed in terms of commodity, without jurisdiction as commodities, not securities. Contrary to what the House did in looking at both of those, our responsibility and authority is around commodities.

This is the challenge, I think, for us, in terms of making sure it is efficient, focused, that we are achieving what we want, in the public interest. As we move forward we are going to look forward to working with you on this.

Mr. BEHNAM. Thank you, Senator. We are happy to help.

Chairwoman STABENOW. Thank you very much. I thank everyone for their attendance today. I look forward to working with everybody to move forward on this really important legislation.

The meeting is adjourned.

[Whereupon, at 11:46 a.m., the hearing was adjourned.]



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# **A P P E N D I X**

JULY 10, 2024

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**Testimony of Rostin Behnam**  
**Chairman, Commodity Futures Trading Commission**  
**Oversight of Digital Commodities**  
**U.S. Senate Committee on Agriculture, Nutrition, and Forestry**  
**July 10, 2024**

*Introduction*

Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the opportunity to appear before you today as Chairman of the Commodity Futures Trading Commission (CFTC or Agency) to discuss the state of the digital asset commodity market. Before I begin, I would like to recognize and thank my fellow CFTC Commissioners and CFTC staff for their dedication and commitment to serving the American public.

*State of the Digital Asset Commodity Market*

During my almost seven-years at the CFTC as both a Commissioner and as Chairman, I have observed the digital asset market evolve significantly, expanding and collapsing, at times with periods of high volatility. It has also facilitated countless scandals and fraudulent activity, some very small and typical in criminal form, others massive in scale and profile. I have watched the market as it has piqued the interest of both novice and sophisticated investors, and have seen some of our nation's most established financial institutions build businesses driven by digital assets.

What has concerned me most throughout the expansion of this digital asset class is that while everyday Americans fall victim to one digital asset scam after another, there remains no completed legislative response. I have repeatedly been asked by members of Congress what I am doing to protect their constituents. I believe the single most important thing I have done, and continue to do, is advocate to this body to fill the regulatory gap. I am not alone in my concerns. In 2022, a Financial Stability Oversight Council report highlighted that there is a gap in regulation of the spot market for digital assets that are not securities.<sup>1</sup> This gap for non-security tokens continues to constitute a majority of the digital asset market measured by market capitalization.<sup>2</sup> Given the risks that this unregulated market poses to U.S. investors, I have consistently and publicly called for new legislative authority for the CFTC,<sup>3</sup> including before this Committee.<sup>4</sup> Congress must act

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<sup>1</sup> Financial Stability Oversight Council, *Report on Digital Assets and Financial Stability Risks and Regulation* (Oct. 2022), [Report on Digital Asset Financial Stability Risks and Regulation 2022 \(treasury.gov\)](https://www.treasury.gov/press-releases/Pages/2022/10/2022-10-27-report-on-digital-assets).

<sup>2</sup> <https://coinmarketcap.com/>

<sup>3</sup> See, Rostin Behnam, Chairman, CFTC, Testimony Before U.S. House Committee on Agriculture, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42> (Mar. 6, 2024); see also, Rostin Behnam, Chairman, CFTC, Testimony [on The Future of Digital Assets: Providing Clarity for Digital Asset Spot Markets Before the U.S. House Committee on Agriculture](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam32), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42> (Mar. 6, 2023).

<sup>4</sup> See, Rostin Behnam, Chairman, CFTC, Testimony Before the U.S. Senate Committee on Agriculture, Nutrition, & Forestry, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam32> (Mar. 8, 2023).



quickly in order for regulators, like the CFTC, to provide basic customer protections that are core to U.S. financial markets.

Further, based on my observations as Chairman, I do not believe inaction will quash public interest for digital assets; it will only result in greater risk to our financial markets and investors. As the digital asset market continues to integrate into traditional financial institutions, concerns regarding broader market resiliency and perhaps even financial stability will ripen. In short, our current trajectory is not sustainable. Federal legislation is urgently needed to create a pathway for a regulatory framework that will protect American investors and possibly the financial system from future risk.

#### *Enforcement*

It has been almost nine years since the CFTC brought its first enforcement action in connection with an illegal Bitcoin operation.<sup>5</sup> Since that time, the agency has been aggressive in using our powerful, but limited anti-fraud and anti-manipulation authorities. In total, the CFTC has brought over 135 digital commodity cases resulting in billions in penalties and restitution. All along, CFTC enforcement staff has worked closely with our civil and criminal law enforcement partners at the federal and state levels. The escalating rate of digital asset enforcement cases since 2020 mirrors the accelerated and sustained adoption of digital assets by U.S. investors.

Just last week, a District Court in the Northern District of Illinois entered summary judgment in favor of the CFTC in a case involving fraud by an unregistered entity that promised steady returns in digital asset commodities such as Bitcoin and Ether.<sup>6</sup> In its decision, the court re-affirmed that both Bitcoin and Ether are commodities under the Commodity Exchange Act.

In fiscal year 2023, actions involving digital asset-related allegations comprised almost half of our enforcement docket.<sup>7</sup> Of the 47 enforcement actions involving digital assets commodities, 35 alleged misconduct in the spot market. Ultimately, the CFTC, whose primary responsibility is overseeing the multi-trillion-dollar U.S. derivatives markets, is committing nearly half its enforcement resources to a market it does not have the authority or appropriated resources to regulate.

Nearly a decade of digital asset experience has given CFTC staff a deep understanding of the market and underlying technology that supports it. Market regulators like the CFTC were built precisely for situations we find ourselves in today. The flawed notion that regulating an asset class legitimizes it misses the point of our responsibilities.

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<sup>5</sup> See Press Release Number 7231-15, CFTC, CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering (Sept. 16, 2015), [CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering | CFTC](#).

<sup>6</sup> See Press Release Number 8931-24, CFTC, Federal Court Enters Summary Judgment Against Oregon Man and Orders \$83 Million in Restitution for Fraud Victims (July 3, 2024), [Federal Court Enters Summary Judgment Against Oregon Man and Orders \\$83 Million in Restitution for Fraud Victims | CFTC](#).

<sup>7</sup> See Press Release Number 8822-23, CFTC, CFTC Releases FY 2023 Enforcement Results (Nov. 7, 2023), [CFTC Releases FY 2023 Enforcement Results | CFTC](#).

### *International Progress*

Concurrent with my duties as CFTC Chairman, I have the privilege of serving as the Vice-Chairman of the International Organization of Securities Commissions, more commonly known as IOSCO. IOSCO's member agencies regulate more than 95% of the world's securities markets in over 130 jurisdictions.<sup>8</sup> In this role, I have observed both major and developing economies establish regulatory frameworks for digital assets. From Asia, the Middle East, the European Union, the United Kingdom, and South America, what started as pilot programs and draft legislation just a few years ago, has developed into established global regulatory systems.

The delta between the U.S. and our international counterparts preserves weaknesses that are exploited by bad actors, and prohibits us from much needed coordination efforts. Further, and primarily for the members of this Committee to consider, any potential economic benefits and innovation arising from this technology ultimately will be stymied without regulatory certainty.

### *Legislative Priorities to Achieve Success*

As this Committee continues to consider legislation to fill the regulatory gap, I would like to focus your attention on the components of a framework that would ensure the CFTC has the tools to provide customer and market protections.

First, the principles-based oversight model has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements, and measured flexibility to meet those outcomes. Core principles such as compliance with fair and orderly trading, system safeguards, financial resource requirements, and products not being readily susceptible to fraud or manipulation, to name just a few, serve as a solid foundation to build transparent and resilient markets, regardless of asset class. In light of the novel nature of digital assets, the CFTC would then, consistent with a legislative mandate, tailor rules to meet the risk and characteristic profile.

Second, appropriate funding is necessary to meet the mandate of any legislatively enacted regulatory program. A permanent fee-for-service model, exclusively assessed on digital asset registrants, and that is commensurate with the responsibilities outlined in a bill, is critical. As with other fee-for-service models, congressional appropriators and the agency should work in tandem to set budget levels and subsequently set fees to meet those budget levels.

Third, given the retail-oriented nature of the digital asset market, legislative authority for the CFTC to require registrants to provide a comprehensive disclosure regime regarding a commodity token's structure, purpose, market-based characteristics, and general risks is also critical to ensure investors have access to material information.

Fourth, it is essential that legislation provide comprehensive authority for anti-money laundering, know-your-customer, and a customer identification program, built off of existing requirements for market participants.

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<sup>8</sup> International Organization of Securities Commissions, About IOSCO, [https://www.iosco.org/v2/about/?subsection=about\\_iosco](https://www.iosco.org/v2/about/?subsection=about_iosco) (last visited July 8, 2024).

Fifth, given the important role the Securities and Exchange Commission (SEC) plays in the oversight of security-based digital tokens, the Committee should consider a disciplined, balanced framework for the determination of tokens as commodities or securities under existing law. The SEC and CFTC have a longstanding partnership that facilitates strong, robust regulation of securities and derivatives markets. I am confident that the two agencies will continue working closely, ensuring a reliable, fair, and efficient system for listing and trading of digital assets on regulated exchanges.

Finally, given the broad adoption of digital assets by a significant portion of the American population,<sup>9</sup> a comprehensive education and outreach program, building off of the CFTC's Office of Customer Education and Outreach, will enable the investing public to understand both the risks and opportunities of this technology.

#### *Conclusion*

I am encouraged by this Committee's continued efforts, dating back to 2022, to fill the gap in regulation, prioritizing customer protections and market stability. In addition to this Committee's work, there have been other important steps taken in Congress to address the need for comprehensive regulation of the digital asset commodity market. The principles and regulatory foundations that have made our capital markets and derivatives markets the deepest, most liquid, and most resilient in the world provide an effective model for the digital asset commodity market. We need to act thoughtfully, but with urgency, to fill this harmful regulatory gap in order to give American investors the protection they deserve.

I thank the Committee for your focus in this area, and look forward to answering your questions.

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<sup>9</sup> [Financial Literacy, Risk Tolerance, and Cryptocurrency Ownership in the United States \(kansascityfed.org\)](https://www.kansascityfed.org/financial-literacy-risk-tolerance-and-cryptocurrency-ownership-in-the-united-states).



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## **QUESTIONS AND ANSWERS**

JULY 10, 2024

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U.S. Senate Committee on Agriculture, Nutrition, and Forestry  
*Oversight of Digital Commodities*  
 July 10, 2024  
 Questions for the Record  
**The Honorable Rostin Behnam**

**Senator Kirsten Gillibrand**

I understand that the CFTC’s Global Markets Advisory Committee (GMAC) directed the CFTC to adopt a proposed digital asset taxonomy to clarify meanings behind the language used for writing regulations. Many of the legislative efforts in the crypto space, including my own, rely on robust definition sections to ensure that meanings are clear.

1. Will you please explain how the CFTC is thinking about what decentralization means in blockchain ecosystems?

**Response:** The CFTC applies requirements under the Commodity Exchange Act to all platforms in CFTC markets, whether centralized or decentralized.

Over the past few years, the Commission has brought multiple actions against decentralized (or “DeFi”) platforms to enforce these applicable legal requirements. The CFTC’s actions did not find that DeFi technology was per se violative of the CEA or illegal but rather that DeFi platforms are not exempt from our regulations.

The Commission has no current plans to issue guidance specific to DeFi. We will continue to work to ensure that digital asset transactions that should be conducted on regulated derivatives platforms are in fact conducted on those platforms.

2. Did the CFTC collaborate with other regulatory bodies, including the SEC, to develop a unified approach to defining terms in the digital asset ecosystem?

**Response:** The SEC and CFTC have a longstanding partnership that facilitates strong, robust regulation of securities and derivatives markets. I am confident that the two agencies will continue working together to interpret and implement court decisions that establish definitions used in the digital asset ecosystem.

3. What role should Congress play in clarifying definitions in this space?

**Response:** I would welcome additional clarity in the digital asset space that would further support closing the regulatory gap for digital assets that are not securities. The need for clarifying definitions would have to be considered within the context of any proposed legislation.

4. Broadly, how has CFTC recently collaborated with other federal financial regulators regarding the digital asset market?

**Response:** The CFTC continues to collaborate closely with other federal agencies in regulating financial markets by participating in multi-agency groups, through bilateral discussions and through joint projects with other regulators. For example, the CFTC is an active participant in the FSOC Digital Asset Working Group, which includes representatives from Treasury, the banking regulators and the SEC.

After *Loper Bright*, agency input will be even more critical to Congressional rulemaking, particularly in highly technical fields like digital commodities.

1. How does the CFTC plan to adapt rulemaking strategies in light of a new regime that reduces deference to agency experts? What additional resources are needed for the agency to conduct its work?

**Response:** Unlike many other statutes, the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1 *et seq.*, establishes a principles-based regulatory framework, which includes a number of explicit delegations to the agency to implement aspects of the statute in a reasonable manner. Deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), was premised on *implicit* delegations of authority in ambiguous text, and it has therefore not played a major role in the CFTC’s activities.

2. What steps has the CFTC taken to ensure that its staff have the necessary technical expertise to effectively oversee and regulate these markets?

**Response:** The CFTC has a long and successful track record of enforcing the law in connection with underlying cash markets for derivatives, and I believe exercising the same authority over digital commodity spot markets is a natural extension of the agency’s historic remit. The CFTC recognizes that the upskilling of professional staff is critical to optimizing enhanced analytics and AI functionalities in the coming years. Attorneys are encouraged to continue developing their technical experience by attending conferences and roundtables on emerging topics. Further, the CFTC’s Division of Data in FY 2024 hosted multiple training sessions on topics related to CFTC data, data science, programming languages, and cloud-based tools, with over 300 unique CFTC employees participating.

3. Are there plans to hire more technology-focused professionals or invest in advanced training for existing staff?

**Response:** Resources permitting, the agency would take a strategic approach to increase the hiring of more technology-focused professionals while also investing in advanced training to upskill existing staff.

4. How does the CFTC work with stakeholders in the digital asset community to better understand new technology and further support and encourage responsible innovation and growth in a way that best protects consumers, investors, and the broader markets?

**Response:** Staff routinely meet with industry stakeholders considering new products, platforms and forms of trading to better understand their needs, as well as the evolution of

technology and the markets. The CFTC has established an Office of Technology Innovation (OTI) specifically to consider innovation in our markets. OTI fosters innovation in CFTC's regulatory oversight and mission critical functions by supporting the operating divisions and the Commission's participation in domestic and international coordination. OTI regularly advocates for the advancement of responsible innovation, industry collaborations, and public outreach and education.

5. Will you discuss how providing CFTC clear statutory authority over digital commodities can provide the clarity needed to keep innovation in the US?

**Response:** I believe that Congress needs to act to address a regulatory gap that exists today for oversight of the digital asset spot markets. With the proper framework and funding provided by Congress, the CFTC is well positioned to oversee these markets and issue regulations that will provide clarity to digital commodity markets.

The CFTC has decades of experience in protecting investors and markets while allowing for responsible innovation. The CFTC's principles-based oversight model has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements, and measured flexibility to meet those outcomes. Core principles such as compliance with fair and orderly trading, system safeguards, financial resource requirements, and products not being readily susceptible to fraud or manipulation, to name just a few, serve as a solid foundation to build transparent and resilient markets, regardless of asset class. In light of the novel nature of digital assets, the CFTC would then, consistent with a legislative mandate, tailor rules to meet the risk and characteristic profile.

#### Senator Reverend Raphael Warnock

1. Cryptocurrency and other digital assets have long been marketed at Black Americans<sup>1</sup> and communities of color as one method to help build generational wealth.<sup>2</sup> As a result, by 2021, 18 percent of Black Americans were invested in, traded, or used cryptocurrency, compared to only 13 percent of white Americans.<sup>3</sup> Specifically, 38 percent of Black investors under 40 own cryptocurrencies.<sup>4</sup> There also is data to suggest people of color, who disproportionately own and trade cryptocurrencies, do so because they, their families,

<sup>1</sup> Jared Council and Raquel "Rocky" Harris, *Crypto, Creators, and HBCUs Gained Black Culture momentum in 2021*, Forbes (Dec. 30, 2021), <https://www.forbes.com/sites/jaredcouncil/2021/12/30/crypto-creators-and-hbcus-gained-black-culture-momentum-in-2021/?sh=1872ba3f2516>.

<sup>2</sup> Michelle Singletary, *Crypto Is Not the Key to Black Generational Wealth*, The Washington Post (Apr. 26, 2023), <https://www.washingtonpost.com/business/2023/04/26/cryptocurrency-black-generational-wealth/>.

<sup>3</sup> Andrew Perrin, *16% of Americans Say They Have Ever Invested In, Traded, or Used Cryptocurrency*, Pew Research Center (Nov. 11, 2021), <https://www.pewresearch.org/short-reads/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/>.

<sup>4</sup> Tonantzin Carmona, *Debunking the Narratives About Cryptocurrency and Financial Inclusion*, Brookings Institution (Oct. 26, 2022), <https://www.brookings.edu/articles/debunking-the-narratives-about-cryptocurrency-and-financial-inclusion/>.



and their communities have been denied access to traditional financial institutions and their services.<sup>5</sup> How will the CFTC ensure investor protections for Black Americans, Hispanic Americans, and historically marginalized communities are properly prioritized and represented during any potential rulemaking process to implement market structure legislation?

**Response:** Should Congress pass legislation providing the CFTC with regulatory authority over digital commodity spot markets, the CFTC will build off the current and ongoing work of CFTC’s Office of Customer Education and Outreach (“OCEO”) to assist the investing public in understanding both the risks and opportunities of these assets. Over the past year, OCEO has been engaged in an active campaign to reach vulnerable communities and inform them of the warning signs and dangers of relationship scams (known as “pig butchering”) using digital assets. As markets evolve and introduce new participants and infrastructure providers, the CFTC has a greater responsibility to provide trusted and verifiable information, education, and outreach. It is incumbent upon regulators to ensure that the investing public, including those in underserved communities, have the tools and information to make informed decisions.

2. In your testimony<sup>6</sup>, you have stressed the need for Congress to provide the regulatory authority for the CFTC to proactively stop bad actors and protect consumers who are buying and selling digital assets. You also cited the need to prevent unlicensed and unregistered exchanges, broker dealers, and custodians from taking advantage of consumers. However, there are concerns from some<sup>7</sup> that illegal and unregulated activity has persisted in new offerings, like event contracts. As Congress considers cryptocurrency legislation, what additional legal authorities does CFTC need to better stamp out illicit activity and protect consumers?

**Response:** I believe the most pressing issue today is the need for Congress to act to address a regulatory gap that exists for oversight of the digital asset spot markets. With the proper framework and funding provided by Congress, the CFTC is well positioned to oversee these markets and specifically the trading of digital commodity spot markets. If provided with regulatory authority by the Congress, the CFTC will adjust its existing investor disclosure regime to fit the needs of the digital commodity spot market.

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<sup>5</sup> Kristen Broady, Mac McComas, and Amine Ouazad, *An Analysis of Financial Institutions in Black-Majority Communities: Black Borrowers and Depositors Face Considerable Challenges in Accessing Banking Services*, Brookings Institution (Nov. 2, 2021), <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>.

<sup>6</sup> *Oversight of Digital Commodities Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry*, 118<sup>th</sup> Cong. (July 10, 2024) (statement of the Honorable Rostin Behnam, Chairman, Commodity Futures Trading Commission), [https://www.agriculture.senate.gov/imo/media/doc/9f9f3f18-c42a-db77-4f85-9c2f1e9a005d/Testimony\\_Behnam\\_07.10.2024.pdf](https://www.agriculture.senate.gov/imo/media/doc/9f9f3f18-c42a-db77-4f85-9c2f1e9a005d/Testimony_Behnam_07.10.2024.pdf).

<sup>7</sup> Connor Russo, *How Betting Platform PredictIt’s Legal Struggle Could Hamper Regulators and Hurt Regulated Firms*, Brookings Institution (Sept. 21, 2024), <https://www.brookings.edu/articles/how-betting-platform-predictits-legal-struggle-could-hamper-regulators-and-hurt-regulated-firms/>.

First, the principles-based oversight model has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements, and measured flexibility to meet those outcomes. Core principles such as compliance with fair and orderly trading, system safeguards, financial resource requirements, and products not being readily susceptible to fraud or manipulation, to name just a few, serve as a solid foundation to build transparent and resilient markets, regardless of asset class. In light of the novel nature of digital assets, the CFTC would then, consistent with a legislative mandate, tailor rules to meet the risk and characteristic profile.

**Senator John Thune**

1. In your testimony you alluded to the fact that despite the absence of a regulatory structure for digital assets, our underlying financial system and the principles that have allowed our markets to thrive over the years provides a good foundation for a robust digital assets marketplace.
  - a. As Congress thinks through ways to provide regulatory clarity to the digital assets marketplace, both through the CFTC and the SEC, can you briefly speak to what extent you believe we can strike a responsible regulatory balance and land on a solution that both protects consumers and investors while also ensuring digital asset exchanges can continue to innovate here in the United States?

**Response:** I look forward to continued work with Congress on appropriate legislation that strikes a reasonable balance between protecting consumers and innovation. The principles-based oversight model established through the Commodity Exchange Act has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements, and measured flexibility to meet those outcomes. Core principles such as compliance with fair and orderly trading, system safeguards, financial resource requirements, and products not being readily susceptible to fraud or manipulation, to name just a few, serve as a solid foundation to build transparent and resilient markets, regardless of asset class. In light of the novel nature of digital assets, the CFTC would then, consistent with a legislative mandate, tailor rules to meet the risk and characteristic profile. This approach to smart regulation has allowed U.S. derivatives markets to be the most innovative and competitive markets globally.

2. In your testimony, you briefly spoke to the partnership that the CFTC and the SEC currently have in regulating digital commodities and digital securities.
  - a. Could you just expand on ways in which this partnership works in practice today and where coordination is lacking or what the Ag Committee and Banking Committee should be looking at to make sure this dual-agency oversight of digital assets on both the securities and the derivatives side is efficient and effective, yet not weighed down by bureaucratic disagreements or overly burdensome or duplicative compliance requirements?

**Response:** The SEC and CFTC have a longstanding partnership that facilitates strong, robust regulation of securities and derivatives markets. I am confident that the two agencies will continue working closely, ensuring a reliable, fair, and efficient system for listing and trading of digital assets on regulated exchanges.

3. Some think the CFTC should study the energy consumption of digital commodities, despite the fact that the CFTC has no energy regulatory experience.
  - a. In your view, is the CFTC the appropriate agency to regulate energy consumption stemming from digital commodities?

**Response:** If instructed by Congress to study energy consumption of digital commodities, the CFTC will comply.