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STAKEHOLDER PERSPECTIVES ON FEDERAL OVERSIGHT OF DIGITAL COMMODITIES

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C O N T E N T S

Tuesday, July 15, 2025

STAKEHOLDER PERSPECTIVES ON FEDERAL OVERSIGHT OF DIGITAL COMMODITIES

TUESDAY, JULY 15, 2025

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

The Committee met, pursuant to notice, at 3:33 p.m., in Room 106, Dirksen Senate Office Building, Hon. John Boozman, Chairman of the Committee, presiding.

Present: Senators Boozman [presiding], Hoeven, Ernst, Marshall, Tuberville, Hyde-Smith, Justice, Klobuchar, Smith, Luján, Fetterman, Durbin, Booker, Bennet, Schiff, and Warnock.

STATEMENT OF HON. BOOZMAN, U.S. SENATOR FROM THE STATE OF ARKANSAS, CHAIRMAN, U.S. COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairman BOOZMAN. Good afternoon. It is my privilege to call this hearing to order. I thank my colleagues for joining us today. We are here to talk about digital commodities and hear from a range of stakeholders on what this Committee needs to do with respect to legislation.

It has been reported that the current market cap for the digital asset market exceeds $3.5 trillion. Approximately 70 percent of digital assets are traded digital commodities, and roughly 55 million Americans own or use crypto. The U.S. currently lacks comprehensive federal regulation of the digital commodity markets, which means a significant percentage of Americans trade with crypto with very limited federal customer and market risk protections. This has been referred to as the digital commodity regulatory gap. While the regulatory gap has not stifled consumer interest in crypto, we know from past experiences what can happen when crypto intermediaries operate outside of a regulated framework. Without clear and comprehensive digital commodity market regulation, Americans' economic interests are at risk.

The lack of comprehensive federal regulation in the U.S. has created significant regulatory uncertainty among innovators, developers, and market participants. Not knowing the rules of the road, U.S. businesses have moved overseas, leaving U.S. consumers vulnerable. This is why we must act on digital assets legislation to protect customers and ensure innovation and growth remain in the U.S.

I have said it before but will say it again. The CFTC and only the CFTC should regulate the spot trading of digital commodities. The CFTC currently has enforcement authority over these markets.

We should build upon that authority, not distribute it among different regulators. Let me be clear. Entities that list or facilitate the trading of digital commodities should not be exempted from CFTC regulation simply because they are registered with another federal agency.

The U.S. financial capital markets stand as the deepest and most liquid in the world. It is largely a byproduct of the Federal Government's bifurcated approach to regulating those markets, with the SEC regulating the securities market and the CFTC regulating the commodity derivatives market. This longstanding American approach to financial market regulation was at the core of the Dodd-Frank Act's regulation of the swaps and security-based swaps market and should be the foundation upon which we build a comprehensive regulatory framework for digital assets markets.

This is not to pit regulators against one another. It is the opposite. We draw inspiration from the agency's past regulation of the swaps market as we entrust the CFTC and the SEC with the authority to collaboratively regulate the digital asset markets. We must act expeditiously to develop a comprehensive regulatory framework for the trading of digital commodities, but we must ensure we get this right. We must also support our colleagues in the Banking Committee as they work on a regulatory framework for the trading of digital assets in securities transactions. As with the CFTC and the SEC, while there are clear lines of jurisdictions between our Committees, we are committed to working collaboratively on a comprehensive bill for the digital asset marketplace.

I, alongside Ranking Member Klobuchar and all Members of the Committee, will work in a transparent and bipartisan manner to develop this regulatory framework. This task requires hearing from everyone who wants to be heard and for all Committee Members to work together to create a framework that allows for liquid and resilient spot digital commodity markets, strong retail protections, and rules that give American businesses confidence to continue to innovate and grow in the United States.

Today, we will hear from former CFTC Chairman, the head of the derivative self-regulatory organization, and the head of an association representing a diverse group of crypto stakeholders. I look forward to hearing their thoughts as we contemplate legislation.

With that, I now turn to our Ranking Member, Senator Klobuchar, for her opening statement.

STATEMENT OF HON. KLOBUCHAR, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Well, thank you so much, Chairman, and thank you to all our witnesses for being here today.

Over the past decade and a half, as the Chairman just noted, we have seen the increasing use of and investment in digital commodities like Bitcoin. What was once a niche market for early adopters and cryptography enthusiasts is now a swiftly growing market that is increasingly interconnected with traditional financial markets and institutions.

When we met in July of last year, I noted that the market capitalization of digital assets was over $2 trillion. It is now more than $3 trillion. The price of Bitcoin then was $73,000. It is now more

than $100,000. Yet oversight and regulation of this market has not evolved to keep up with the growth.

The Commodity Futures Trading Commission has long played a vital role in ensuring the integrity of our financial and agricultural derivative markets. That includes protecting market participants from fraud and manipulation; maintaining orderly markets; and enabling farmers, ranchers, manufacturers, and small businesses to hedge against risk. We are honored to have two former Chairs here with us today.

As early as 2015, the CFTC determined that digital assets could be commodities and found that Bitcoin, the largest such asset, was a commodity. Derivatives on Bitcoin and other digital commodities have been listed on CFTC-regulated exchanges, and the CFTC has full regulatory authority over these products. It has only anti-fraud and anti-manipulation authority over the underlying spot markets, a regulatory gap that has resulted in untold losses to customers and the increasing risk of contagion to traditional financial markets as digital commodity markets grow in size and are integrated into the existing financial system.

If Congress gives the CFTC the authority and the resources to step in and oversee these spot markets, it would be well positioned to do so, given its existing role. That role is overseeing the digital commodity derivative markets and the enforcement authority it has exercised over the underlying spot markets. Providing regulatory certainty and oversight to these markets can encourage responsible innovation and the adoption of new technologies.

At the same time, we have to ensure a level regulatory playing field so that crypto market participants are subject to standards as rigorous as those applied to traditional financial institutions. If Congress is to do this, it must do so without compromising on crucial customer protections with safeguards to prevent illicit finance and with provisions to address market integrity concerns. It also means putting in place guardrails to address conflicts of interest in the digital assets sector, preventing exchanges and issuers from using their position to favor affiliated actors or exploit customers. If Congress is going to establish a new financial regulatory framework, it must strengthen our system, not weaken it, by putting safeguards in place to prevent corruption or self-dealing by federal officials, including those in positions of power who might sponsor, issue, or profit from digital tokens.

I look forward to hearing from our witnesses on how they believe regulation of the digital commodities spot market can responsibly encourage innovation while ensuring our financial markets continue to be the safest in the world for market participants. This is a big job we have, but I look forward to hearing your testimony and working with you. Thank you.

Chairman BOOZMAN. Thank you. We will now introduce our panel of witnesses. I am pleased to introduce Mr. Ji Kim. Mr. Kim currently serves as President and Acting Chief Executive Officer of the Crypto Council for Innovation. Mr. Kim has over 15 years of experience in the digital assets sector, and before being named CEO, served as Chief Legal and Policy Officer for CCI. Mr. Kim, thank you very much for being here today.

I think Senator Klobuchar is going to introduce Russ.

Senator KLOBUCHAR. Thank you very much. We are pleased to welcome back Russ Behnam. Many of you know him from his years of service on the Committee staff and most recently as both Commissioner and Chairman of the CFTC.

Mr. Behnam is a distinguished fellow at the Psaros Center for Financial Markets and Policy at Georgetown University's McDonough School of Business. From 2021 to 2025, he served as Chairman of the CFTC following his service as a Commissioner. Before joining the Commission, he was Senior Counsel on this Committee to then-Chairwoman Debbie Stabenow.

During his tenure at the CFTC, Mr. Behnam oversaw the significant expansion of digital commodity derivative markets and led the agency's enforcement activity in spot markets for digital assets. We welcome you back to the Committee.

Chairman BOOZMAN. Mr. Massad.

Senator KLOBUCHAR. We are also pleased to welcome back Timothy Massad. Mr. Massad is a research fellow at the Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School of Government where he directs the center's Digital Assets Policy Project.

From 2014 to 2017, he served as Chairman of the CFTC. During his tenure, he oversaw the implementation of Dodd-Frank reforms in the over-the-counter swaps market, worked to harmonize cross-border regulation, and led the CFTC in becoming the first U.S. regulator to take action on cryptocurrencies.

Previously, he served as Assistant Secretary for Financial Stability at the U.S. Treasury Department, and that was from 2010 to 2014.

Mr. Massad, welcome back to the Committee. I am sure you remember many happy moments here before this Committee. Thank you for your testimony.

Chairman BOOZMAN. I am happy to introduce Mr. Tom Sexton. Mr. Sexton is the President and Chief Executive Officer of the National Futures Association, the self-regulatory organization for the U.S. derivatives market. Mr. Sexton joined NFA in 1991 and is on the Commodity Futures Trading Commission Global Markets Advisory Committee and is a board member of Futures Fundamentals.

Mr. Sexton, thanks again very much for being here.

I would also like to introduce the Honorable Walt Lukken, former Acting Chairman and Commissioner of the U.S. Commodities Futures Trading Commission from 2002 through 2010. Mr. Lukken currently serves as the President and Chief Executive Officer of Futures Industry Association, a position he has held since 2012. Prior to his time at the CFTC, he served as counsel for this Committee under Chairman Lugar.

Welcome back, Mr. Lukken, and thank you for being here.

Again, we appreciate all of you being here. This really is a "who's who" of the industry, and we are very anxious to hear from you. Let's start out with you, Mr. Kim.

STATEMENT OF JI KIM, CHIEF EXECUTIVE OFFICER, CRYPTO COUNCIL FOR INNOVATION, NEW YORK, NY

Mr. KIM. Thank you, Chairman Boozman, Ranking Member Klobuchar, and Members of the Committee for the opportunity to tes-

tify today on how best to strengthen United States' leadership in digital asset innovation. I believe this can best be accomplished through comprehensive federal oversight of digital commodities. I am pleased to represent the Crypto Council for Innovation, a global alliance of industry leaders across the digital asset space.

I respectfully submit that it is critical for Congress, following this Committee's leadership, to urgently pass legislation providing the CFTC with oversight over the trading of digital commodities. This will provide necessary regulatory clarity and certainty, protect consumers, and ensure continued U.S. leadership over digital assets.

For years, the digital asset industry has requested clear rules of the road and a coherent federal framework to operate within the U.S. Such a framework, which is in the national interest, will benefit users and consumers, foster industry growth, and strengthen U.S. markets by preventing fragmentation and regulatory ambiguity. Now is the time for Congress to act to secure this future.

Today, roughly 28 percent of American adults, about 65 million Americans, own digital assets. The reasons and benefits are many. Individuals and businesses use them to make transactions more efficient. Humanitarian groups use them to deliver aid in high-risk regions, setting their speed, transparency, and reliability. Decentralized finance is expanding access to economic services. Beyond payments, tokenization of real-world assets, securities, real estate, and even agricultural commodities has the potential to make markets more liquid, accessible, and inclusive.

Given the many benefits and expanding real-world applications of digital assets, we commend this Committee for pursuing a legislative framework to guide further development. From a consumer protection standpoint, clear federal supervision of market activity is essential. The industry is committed to building necessary guardrails so that consumers can participate in marketplaces that are fair and secure.

With that backdrop, a significant portion of the digital asset ecosystem, including widely used assets such as Bitcoin and Ether, function like commodities rather than traditional securities. These assets are not issued by centralized entities to raise capital and lack profit-sharing rights. In fact, courts and regulators, including the CFTC, have affirmed that such assets fall under the Commodity Exchange Act, depending on their structure and use.

Most digital asset trading volume occurs in secondary markets, where participants treat these assets as store of value, not as equity stakes. Recognizing the commodity-like nature of these assets is essential to crafting a regulatory framework. A comprehensive framework can provide essential consumer protections, including business conduct standards, disclosures, segregation of customer funds, minimum capital requirements, trade surveillance, and more. Digital asset firms in the U.S. are already subject to AML compliance, sanction screening, and suspicious activity reporting, and these requirements should be confirmed and codified in any new comprehensive framework.

In addition to its oversight of the digital asset derivatives market, the CFTC already has enforcement authority over spot commodity markets, but this must be matched by a broader federal framework that addresses how Americans use digital assets today.

The CFTC is well-situated to play a central role in overseeing the spot digital asset commodity market. It is a principles-based regulator with a mandate to deter price manipulation, ensure financial integrity, protect market participants, and promote responsible innovation. The agency has extensive experience in supervising large and complex markets and maintains a robust enforcement capability.

The U.S. is in a global race for leadership in digital asset innovation. It is a true race to the top. We have seen other jurisdictions, including the EU, the U.K., Japan, and Singapore, recognizing the importance of this technology by actively engaging with industry to consider and implement tailored regulatory regimes.

While many of the best minds, technology, and resources still exist in the U.S., we can further establish U.S. leadership by way of a comprehensive legislative framework. Indeed, legislation is the most effective way to ensure long-term stability and guard against future policy volatility that may otherwise repeatedly shift the goalpost. This important work, squarely within the domain of this institution, Congress, and this Committee, will unleash powerful potential, enhance clarity, ensure consistency, and best protect consumers.

Thank you again. I look forward to answering your questions.

[The prepared statement of Mr. Kim can be found on pages 38–49 in the appendix.]

Chairman BOOZMAN. Thank you. Mr. Behnam.

STATEMENT OF THE HONORABLE ROSTIN BEHNAM, DISTINGUISHED FELLOW, PSAROS CENTER, GEORGETOWN UNIVERSITY, WASHINGTON, D.C.

Mr. BEHNAM. Chairman Boozman, Ranking Member Klobuchar, Members of the Committee, thank you for the opportunity to testify before you today on this important topic.

Between 2017 and 2025, I served first as CFTC Commissioner, then Chairman. During that more than seven-year period, I observed the significant growth of the digital asset market. While I served at the CFTC, the digital asset market endured multiple periods of dramatic volatility. Throughout this time, I publicly stated one consistent message to Congress. Under U.S. current law, there is a gap in regulation for the digital commodity asset market. The regulatory gap remains today and must be filled with targeted legislation. It has facilitated countless scandals and fraudulent activity, some very small in typical and criminal form, others massive in profile.

First and foremost, filling the regulatory gap will provide the needed customer protections that American investors have become accustomed to in traditional financial markets regulated by the CFTC and the SEC. Further, I do not believe public interest for digital assets will wane. Inaction will only result in greater risk to our financial markets and investors through lack of market transparency, fraud, market manipulation, corruption, and conflicts of interest.

One common refrain in connection with past legislative efforts to fill the digital commodity gap suggests that a U.S. regulatory framework will legitimize the digital asset market, creating regu-

latory loopholes. I believe this argument is the loophole. It has only left for far too long the vast majority of the digital asset market unregulated and American investors vulnerable.

I believe the CFTC is the appropriate regulator to oversee the digital commodity asset market because of its expertise regulating commodity markets, including digital asset derivatives since 2017, and its enforcement experience in the underlying digital commodity market. Unique characteristics of digital asset trading, including decentralized finance, custody, and market structure, demand specific focus to ensure broader policy outcomes, and all investors deserve access to material information about a financial asset to ensure an informed decision.

Market structure in traditional finance has evolved over many decades. I urge the Committee to carefully examine how current unregulated digital asset market structure differs from traditional market structure and consider where there may be opportunities for change and where existing market structure requirements should be preserved.

The CFTC has a longstanding and productive partnership with the SEC. In a situation where a regulated digital asset market participant handles both security and non-security tokens in the underlying market, separate and exclusive jurisdiction for each agency is critical. Any regulatory system that includes deference or exempted authority will be an incomplete effort. Further, any framework where each agency does not retain its exclusive licensing authority portends a future of blurred jurisdiction across digital assets and possibly physical commodities.

The CFTC's principles-based oversight model has served its regulated markets well, striking an appropriate balance between clear outcomes-based requirements and measured flexibility to meet those outcomes. In light of the novel nature of digital assets, market regulators, consistent with a legislative mandate, could tailor rules to meet the risk and profile, leaving flexibility to adapt with a changing market landscape as the digital market itself evolves.

Second, regulations are only as strong as the agency and personnel that enforce them. Appropriate funding is necessary to meet the mandate of any regulatory program.

Third, a reliable self-regulatory organization has been critical to the success of the CFTC. The National Futures Association has served as an effective partner for the CFTC for more than five decades. An effective legislative effort must include a role for the NFA.

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

Finally, given the broad adoption of digital assets by the American population, a comprehensive education and outreach program is critical as well.

Domestically, federal law enforcement relies heavily on state and local partners to identify and combat civil and criminal misconduct, which often targets society's most vulnerable. I encourage this Committee to ensure state and local law enforcement remain a key partner.

The principles and regulatory foundations that make U.S. capital markets and derivatives markets the deepest, most liquid, and

most resilient in the world provide an effective model for digital asset market structure. We need to act thoughtfully but with urgency to fill this gap. I am supportive of recent steps the U.S. House Committee on Agriculture and Financial Services have taken in a bipartisan manner to fill this gap.

That said, there is more work to be done to ensure congressional market structure legislation is comprehensive, does not undermine existing law, and addresses the unique characteristics of the ecosystem. Today's hearing is a critical step to achieve that goal.

I thank the Chairman, Ranking Member, and Members of 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 pages 50–54 in the appendix.]

Chairman BOOZMAN. Thank you. Mr. Massad.

STATEMENT OF THE HONORABLE TIMOTHY MASSAD, RESEARCH FELLOW AND DIRECTOR OF DIGITAL ASSETS POLICY PROJECT OF THE MOSSAVAR-RAHMANI, CENTER FOR BUSINESS AND GOVERNMENT, KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, WASHINGTON, D.C.

Mr. MASSAD. Thank you. Mr. Chairman, Ranking Member Klobuchar, Members of the Committee, and staff, thank you for inviting me to testify. The views I express are my own and do not represent the views of the Kennedy School of Government.

I hope this hearing gives us an opportunity to rethink how we should regulate digital assets. The Clarity Act, like many earlier proposals, has the right goals—address the regulatory gap, provide clarity—but the wrong approach. We need to keep in mind a few basic facts.

First, this is a technology; it is not an asset class. It will be used in many ways, and the most valuable use cases may be tokenizing securities.

Second, we cannot define whether something in digital form is a security, a commodity, or neither with a few paragraphs in a statute. Appropriate regulation depends on what the token represents, whether there is an issuer, whether capital is being raised, and other factors, and the technology is evolving rapidly. Therefore, we should not lock in definitions that will fail to bring clarity, nor should we tie regulators' hands.

Third, a principal reason for the lack of clarity is our fragmented regulatory system. We have two market regulators, neither of whom has jurisdiction to regulate the spot market for digital assets that are not securities. I believe this solution should bring the agencies closer together.

Finally, we are in a different place than the last few years. The primary regulatory response to date, court cases that sought to interpret the Howey test, was not sufficient, but the SEC has already abandoned regulation by enforcement and is actively working to provide necessary guidance. Congress should not fight the last war.

All of these factors argue for a different approach, one that establishes regulation over the spot market without rewriting the securities laws and one that mandates the SEC and CFTC work together,

not just on a few rules, but overall because both agencies have significant stakes and expertise in these matters.

Regulation of the spot market needs to draw on the expertise of both agencies. Classification issues can best be addressed by the agencies working together to implement general principles, not prescriptive rules provided by Congress. Customization of rules to make sure they work for digital technology in recordkeeping, custody, clearance, and settlement, or otherwise, must be as consistent as possible between the agencies.

Former SEC Chair Jay Clayton, who was appointed by President Trump, and I proposed essentially this approach two years ago. We said Congress should mandate that the SEC and CFTC work together to develop joint rules that would apply to every intermediary that trades or handles Bitcoin or ETH. That approach establishes jurisdiction over the market without, as we said, "debating classification of each token or Congress pursuing tortured rewriting of existing definitions of securities and commodities." We added that "Rewriting existing law might fail to bring clarity and inadvertently undermine decades of regulation and jurisprudence as they apply to traditional markets."

Unfortunately, the Clarity Act does the things we warned against. It will not provide clarity, but it will undermine regulation. Let me briefly note a few of its weaknesses.

It addresses classification with a tortured definition that rewrites existing law.

It provides exemptions from securities laws such as for raising funds if one has the intent to build a mature blockchain system that are unnecessary and will be misused.

It creates a broad exemption for decentralized finance activities, which will lead to migration of regulated activity into an unregulated sphere. Indeed, a large intermediary like Robinhood or Goldman Sachs could operate a software protocol for the trading of tokenized securities that would then be exempt from the Securities Exchange Act.

It will not require crypto trading platforms to own the digital assets their customers purchase, and it will permit them to engage in their own proprietary trading and have other conflicts of interest.

Finally, it will provide many opportunities for smart lawyers to find ways to manipulate its provisions to achieve lesser compliance burdens for their clients. I was a corporate lawyer for 25 years with one of the best firms in the world, and I know how that works. We can and must do better, and I describe how in my written testimony.

Finally, I just wish to agree with and underscore the Ranking Member's comments about the importance of addressing the activities of government officials in this sector.

Thank you again for inviting me. I look forward to your questions.

[The prepared statement of Mr. Massad can be found on pages 55–79 in the appendix.]

Chairman BOOZMAN. Thank you. Mr. Sexton.

STATEMENT OF TOM SEXTON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL FUTURES ASSOCIATION, CHICAGO, IL

Mr. SEXTON. Good afternoon, Chairman Boozman, Ranking Member Klobuchar, and Members of the Committee. Thank you for the opportunity to testify at this important hearing to explore a legislative framework for the federal oversight of digital commodities.

Over 50 years ago, Congress enabled the creation of a Registered Futures Association, or RFA, to support the CFTC's oversight of the commodity futures markets. NFA is the industry-wide independent self-regulatory organization for the derivatives industry and is an RFA. NFA is solely a regulatory body. We do not operate a market, and we are not an industry trade association.

NFA's and the CFTC over 40-year public-private partnership overseeing the derivatives industry has been a tremendous success, and we recognize the CFTC's commitment and significant efforts in promoting the integrity, resilience, and vibrancy of the derivatives markets. Today, I would like to address three main points that may be helpful as this Committee continues to work on market structure legislation for the federal oversight of digital commodities.

The first point is to introduce NFA and its critical role in protecting customers and ensuring the integrity of the derivatives markets. NFA has a clearly defined mission: Safeguard the integrity of the derivatives markets, protect investors, and ensure that NFA members meet their regulatory responsibilities. We optimize the self in self-regulation. Our board is primarily composed of representatives from NFA member firms, and we leverage industry expertise in every aspect of our work.

Our activities are closely overseen by the CFTC. The CFTC provides frontline regulatory oversight of exchanges, clearinghouses, and swap execution facilities. NFA provides frontline oversight of our global membership of CFTC-registered market participants, including FCMs, swap dealers, IBs, RFEDs, CPOs, and CTAs.

NFA's primary responsibilities include registering all firms and professionals on behalf of the CFTC, developing rules for fair dealing with customers and counterparties, monitoring members' compliance with those rules, taking enforcement actions when members violate those rules, offering an arbitration forum to resolve customer disputes, and providing investor protection and educational resources.

The second point is to discuss some key principles for the effective oversight of digital commodities. NFA firmly believes that the CFTC is well-equipped to take on the oversight of digital commodities, given its core principles, regulatory approach, experience over the years integrating new asset classes into its oversight framework, and its current experience gained from having anti-fraud jurisdiction over spot digital commodities and supervisory oversight of related derivatives products, including Bitcoin and Ether futures.

In establishing a federal oversight framework, we recommend the Committee focus on the following: Number one, clear lines of jurisdiction. We recommend that Congress provide the CFTC with exclusive authority over digital commodities and the SEC with au-

thority over digital securities. We should avoid a framework in which jurisdictional lines become blurred, and we have two market regulators writing rules for the same activity. This will be confusing for market participants, create blind spots in the oversight of this market, and lead to regulatory arbitrage.

Number two, strong customer protections. We advise Congress to look to the time-tested robust customer protections that have served the derivatives industry extremely well, which include customer fund safeguards, customer disclosures, business conduct standards, and anti-money laundering protections.

Number three, flexibility to keep pace with innovation. We encourage Congress to rely upon the CFTC's significant experience with innovative products and retain its core principles, regulatory approach.

The last point is to underscore that self-regulation provides many benefits to customers and the industry. As the derivatives markets have evolved over the years, Congress and the CFTC have entrusted NFA with additional responsibilities. Our coordination with the CFTC has resulted in a strong track record of protecting retail customers and prosecuting retail trading abuses and fraud. Today, customer complaints and single-event customer arbitrations followed at NFA, as well as the CFTC's reparation cases remain at all-time lows.

Importantly, NFA is adaptive and proactive. We currently have numerous NFA member firms engaged in spot digital commodity activities. To enhance oversight of these firms, we adopted a rule in early 2023 that imposed its anti-fraud, just and equitable principal trade, and supervision requirements on them.

Fifty years ago, Congress had the wisdom to establish a public-private oversight framework, which the CFTC and NFA have effectuated to form a strong oversight partnership. We strongly recommend that Congress, in any market structure legislation, retain a significant role for an RFA to partner with the CFTC.

Thank you again, and I am happy to take any questions.

[The prepared statement of Mr. Sexton can be found on pages 80–85 in the appendix.]

Chairman BOOZMAN. Thank you. Mr. Lukken.

STATEMENT OF THE HONORABLE WALT LUKKEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FUTURES INDUSTRY ASSOCIATION, WASHINGTON, D.C.

Mr. LUKKEN. Chairman Boozman, Ranking Member Klobuchar, and Members of the Committee, I appreciate this opportunity to testify. I am President and CEO of the Futures Industry Association, which represents the futures, options, and cleared derivatives markets globally. As was mentioned, I had the honor of working for this Committee during the passage of the Commodity Futures Modernization Act of 2000 and was able to go on to serve as Commissioner and Acting Chair of the agency for seven years, which included leading the agency during the financial crisis of 2008.

The digital asset industry and, importantly, its customers deserve a proper regulatory framework that will keep these markets safe, innovating, and growing. The U.S. has two strong market regulators in the CFTC and the SEC. Collectively; they can bring dig-

ital commodities and digital securities into a proper regulatory framework. Given my background, I want to share my views on the Commodity Exchange Act and the CFTC and why this agency is well suited for the oversight of digital commodities.

The CFTC's regulatory framework has five strengths worth highlighting. The first involves the agency's principles-based regulation, which ensures the CFTC can keep pace with technological changes and advancements in market dynamics. This will be key for the evolving digital commodity markets.

The second strength is the agency's support of innovation. The CEA explicitly and uniquely requires the CFTC to promote responsible innovation in fulfilling its duties. The agency has done this for 50 years, allowing innovative new asset classes to be listed, including futures on cryptocurrencies eight years ago. Today, more than 60 cryptocurrency futures and options trade on seven CFTC-registered exchanges.

A third strength is the agency's customer protections, which have safeguarded investors for years. These require futures commission merchants, or FCMs, to segregate and confirm customer balances every day. FCMs, those intermediaries who serve as agents for their customers, also provide a guaranty against customer shortfalls. FCMs contribute to a "break-the-glass" default fund at every clearinghouse should a single clearing member not be able to cover losses. This FCM model of protections has provided critical resilience and risk management over the years.

A fourth strength is enforcement. Strong enforcement in combination with robust customer protections has shown to be a powerful one-two punch for the agency. The CFTC has aggressively used this enforcement authority from LIBOR to retail forex to energy market manipulation to bring actions against those who seek to swindle investors or manipulate prices.

The last item I will mention is the CFTC's approach to cross-border trading, given the global nature of traditional commodities as well as digital assets. The CFTC's cross-border recognition framework, which it pioneered in the 1990s, strikes the right balance of protecting U.S. participants while providing access to markets globally. These five strengths will enable the CFTC to take on increased responsibilities in digital commodities and provide these innovative markets with a sound regulatory framework.

I also want to highlight a couple of other key stakeholder recommendations for your consideration. The first involves recognizing the risk-reducing positions of customers for margin and capital. Farmers and other end users utilize our markets to hedge the price risk of assets, whether it is corn, oil, or financial products. When these offsetting products are regulated by different agencies, customers may be forced to pay double margins because of a lack of recognition of these offsetting trades. FIA supports statutory language that instructs the CFTC and SEC to allow for cross-margining between offsetting positions in these respective markets.

FIA also supports legislative language that instructs prudential regulators to recognize these offsetting risk positions through cross-product netting. These two actions will free up capacity for these growing markets and incentivize strong risk management.

The last item I will mention relates to the need for clear rules around managing conflicts of interest. We support legislative language that requires the CFTC to conduct a rulemaking on managing conflicts of interest when entities combine exchanges, clearinghouses, FCMs, and trading arms all within the same legal structure. We believe the development of consistent rules around conflicts will ensure customers can utilize innovative new structures without facing differing customer protections due to market structure design.

Again, thank you for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Mr. Lukken can be found on pages 86–91 in the appendix.]

Chairman BOOZMAN. Thank you. Let's go ahead and start with our questions. Mr. Behnam, Mr. Lukken, as former CFTC Chairmen, can you describe why you believe the CFTC and only the CFTC is the right regulator for spot digital commodity trading? Can you also speak to concerns with allowing entities to list or facilitate trading in digital commodities without having to fully register with the CFTC?

Mr. BEHNAM. Thanks, Mr. Chairman. I would say the number one thing—and there are a few reasons why I have stated this in the past. You and I have had this conversation. I will start first with the experience, and this goes back to Chairman Massad's time in the mid-2010s when we had a determination of Bitcoin as a commodity, and you started to see enforcement actions coming out of the CFTC around digital assets. That is a long time ago, and over that 10-year period, the CFTC has been at the forefront of enforcement both on the fraud and manipulation side of crypto.

Enforcement does not just mean an enforcement action. There are staff within the agency that are conducting research. They are doing surveillance of both the derivatives markets and the underlying physical market itself. The agency has developed, over this course of time, a really distinct and unique expertise in the digital asset market.

The second thing I will say is the expertise in the commodity market. The CFTC is over 100 years old, the CFTC as an independent agency is 50 years old, and it understands commodity markets, and these are very distinguishable from securities markets, the way the markets are structured, and the regulation over them.

Lastly, I will say it is extremely important the CFTC become the primary regulator of any commodity asset. As you have noted, two market regulators, it is important we have two market regulators because they are independently very large, unique markets that demand different sets of regulation. I believe if there is any agency that starts to regulate commodity tokens, it becomes and potentially creates a blurred line of what is jurisdiction between the CFTC, commodity markets, potentially physical commodities themselves, and other regulators.

Chairman BOOZMAN. Very good. Mr. Lukken.

Mr. LUKKEN. I would echo my colleague. I think, really, three strengths that really give the CFTC unique ability to oversee the digital commodity markets, as Russ mentioned, expertise. I mean, the agency for 50 years has been, you know, developing the ability

to look at secondary markets for commodities, and that expertise, you know, whether it is surveillance, manipulation of those markets and how best to ensure that those markets are not taken advantage by those trying to manipulate prices.

Regarding cryptocurrencies, as was mentioned, the CFTC already has experience in this. The CFTC regulates 60 products currently, futures on those derivatives and all that goes with it from, you know, all the core principles that go with that regulatory expertise. They already have experience in the digital commodity space.

The second is in their mission. In Section 3 of the Commodity Change Act, it is unique in that it says that the CFTC should be promoting responsible innovation as an agency. That is something that Congress had the wisdom to put in in 1974. That allows these products, as they get listed for them, to be thinking about ways that it can promote these new innovative technologies that are coming in. I think that is an important top-down mission of the agency. They are going to help these products evolve and develop.

Then lastly, it is just flexibility. The agency has principles-based regulation, as I mentioned, but other parts of the act foresee authority that allows it to carve out certain things that may not justly be in their jurisdiction, exemptive authority. I think the CFTC has the tools to exclusively oversee these markets, but also with some flexibility that will allow these markets to evolve.

Chairman BOOZMAN. Very good. Mr. Kim, can you talk about the importance of avoiding applying centralized intermediary regulatory requirements to decentralized software and technology?

Mr. KIM. Thank you very much, Mr. Chairman. This is a very important question. Decentralized finance in its purest form allows individuals to transact with one another peer-to-peer by the use of software and code without reliance on centralized intermediaries. Notably, the software and code do not take control or custody of the funds. Of course, we regulate exchanges, not the matching engine. We regulate brokers, not the trading screens. We regulate the centralized intermediaries, which take control and custody of the funds, Mr. Chairman. It is important to keep that in mind as we look to establish a comprehensive framework for the United States to keep innovation here in the U.S.

Very briefly, Mr. Chairman, of course, as Congress has been contemplating a broader market structure framework, the focus has been on centralized intermediaries that do take control or custody of funds. Right now, as my colleagues have mentioned, there is a regulatory gap. There is no federal framework for the supervision of digital commodities. That means there is no business conduct standards, no conflicts-of-interest provisions, no consumer education. It is important, in order for us to cement U.S. leadership and best protect consumers, that we address this gap by providing the CFTC with supervision, Mr. Chairman.

Chairman BOOZMAN. Very good. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chair.

I will start with you, Mr. Massad. You talked about the CFTC having a role and a clear one with regulating digital assets. Then you also talked about how you and the former Trump Chair have suggested doing something where the SEC does some of it and the CFTC does some of it. Mr. Sexton raised this issue that he is con-

cerned. I do not want to put words in your mouth, right? That there would be vagary or two, you know, that are regulating the same thing. Could you talk about how you think this could work in today's environment in terms of making those kinds of suggestions or including that in legislation? Because I found that interesting.

Mr. MASSAD. Certainly. The first thing is that Mr. Clayton and I were suggesting that if we were trying to establish jurisdiction over this spot market without rewriting securities laws, without rewriting the definition of security, that is why we argued for joint rules.

Second, this is a different market, and I think we have to recognize that. It is much more retail than what the CFTC has regulated in the past. I have great respect for the agency's abilities and expertise, but we need to keep that in mind.

We also need to keep in mind that this will be an exception, a very big exception, in that the CFTC does not regulate other spot markets, and we do not want that exception to grow. I would not want to see other constituencies come and say, well, why shouldn't the CFTC regulate this spot market?

Finally, it is an unusual technology in that you are going to have things that start out as securities and then become commodities. That is the reason why they have to work together.

How would it work? It would involve some joint rulemaking. It would certainly involve one of the agencies taking the lead, and I think in terms of implementing rules, enforcing rules, that could certainly be the CFTC with respect to this digital commodity spot market. I think it should also involve an SRO, a self-regulatory organization. I have great respect for the work of the NFA. I think that could be jointly supervised, as the Lummis-Gillibrand proposal advocated.

I think it would be a combination of joint rulemaking, perhaps a joint SRO. You could even have common Commissioners. I realize that would be a big step. I have not advocated merger. I am not advocating merger. I think this is an unusual situation that we are in, and this is a technology that is going to have multiple uses, and it is necessary that we approach it in a way that we have consistency across the board.

Senator KLOBUCHAR. Thank you.

Mr. Behnam, Mr. Massad just talked about that concern on the retail and how uniquely retail this is in terms of all the people that have purchased this, and it is part of their savings. What specific approaches would you recommend to ensure that innovation in crypto does not come at the expense of basic safeguards and customer protections for the public? Would there be specific marketing, disclosure rules? What would you see?

Mr. BEHNAM. Thanks, Senator. I think it is important to note—and I have said this many times, probably before the Committee—yes, in fact, Chairman Massad, I agree with him. A lot of the market is retail-oriented, unlike the typical CFTC market, which is more institutionally oriented. We have to look really at the asset itself, as opposed to the constituency that is investing.

Commodities versus securities are regulated in very different ways. Securities are regulated in a way to bridge information gaps

between an issuer of security and investor because you have centralized individuals and audited financial statements that need to be disclosed to investors. That is not the case with commodities. I do not think you are going to need to build, and quite frankly, I do not think you can build an investor disclosure regime at the CFTC like you have one at the SEC, because you cannot simply disclose something about Bitcoin that you can about a share of a stock.

Second, I advocated this. I said this in my testimony. Yes, the CFTC will absolutely need to increase its ability to get information out about the risk of loss associated with investing in digital assets. The CFTC has a very well-built-out customer education program, but I believe the Committee should think about investing in——

Senator KLOBUCHAR. Okay.

Mr. BEHNAM [continuing]. that program to further it.

Senator KLOBUCHAR. Thank you. I will get more from you personally, so thank you for your ideas.

Just one last question, Mr. Massad. In considering any legislation to regulate these digital markets, we cannot ignore the numerous ways that President Trump has sought to profit from digital assets and influence. His Trump meme coin offers a non-transparent backdoor for those seeking Presidential favors or attention, including the recent crypto dinner he sponsored that put money directly in his pocket. His World Liberty Financial issued stablecoin, USD1, only recently entered the market, but it has already skyrocketed to be one of the top five stablecoins.

What effect do these activities have on the crypto industry and on efforts to regulate it? If you and I seem to agree in my opening and your comments that this has to be part of any regulation.

Mr. MASSAD. I think it is a black eye for the industry, and I know a number of people in the industry that have expressed that but are afraid to speak out. I think it gives the wrong impression of what this sector is about, and that is why it is so important to address it through rules on conflicts, divestment, and so forth. I hope also I can come back on the disclosure point later.

Senator KLOBUCHAR. Okay. Well, I am sure I will have a second round or someone else——

Mr. MASSAD. Thank you.

Senator KLOBUCHAR [continuing]. one of my colleagues will ask you. Thank you.

Mr. MASSAD. Thank you.

Chairman BOOZMAN. Senator Marshall.

Senator MARSHALL. Thank you, Mr. Chairman. It is great to see everybody. Mr. Behnam, welcome back. You look great, so life must be treating you well.

[Laughter.]

Senator MARSHALL. I will give you my first question. The crypto industry seems to use a lot of synonyms. You know, since the first time we met, I have been concerned about anti-money laundering and know-your-customer rules, that the crypto industry be held to the same standard as banks. How can we stop these black markets from happening and using this type of activity? How should we handle potential deficiencies moving forward to address these issues?

Mr. BEHNAM. Thanks, Senator. It is great to see you as well. You know, I do think, and as I have said in my written testimony, as you and I have discussed over many years at this point, whatever efforts the Committee makes around anti-money laundering and know-your-customer should be grounded in existing law and existing law around both of those things that Treasury mostly implements, but the agencies will need to also have increased authority around anti-money laundering and know-your-customer.

Much of this industry is about anonymity. I think why we are here today is to bring that anonymity into light, to bring transparency around it, and regulation serves that purpose. Comprehensive regulation around the entities, the intermediaries, will provide the tools that Congress needs and the law enforcement agencies to prevent anti-money laundering and know-your-customer issues that, unfortunately, support a lot of the illicit activity, potentially terrorist activity, terrorist financing that I know has been a big issue that you have addressed, but something that has to be addressed very specifically——

Senator MARSHALL. Certainly, in your estimation, this remains a little concern, it is a big concern. How concerned——

Mr. BEHNAM. I think this is a primary concern that needs to be top of mind for all of you as you consider legislation, but I do not think it is reinventing the wheel. I think a lot of the AML/KYC law that has been developed over time is a good framework to build off of for this industry.

Senator MARSHALL. Okay. Mr. Kim, I will come to you next. It is kind of the same basic question. What specific guardrails could be implemented to make sure that crypto markets are not a haven for bad actors who want to use crypto for money laundering and financing terrorism?

Mr. KIM. Thank you for your question, Senator. Countering illicit finance is extremely important for the industry. No amount of illicit finance is acceptable in any industry or technology, including digital assets. As my colleague Mr. Behnam mentioned, FinCEN starting from 2013 has required digital asset exchanges to have SARS reporting, AML compliance, sanction screening, and I believe that providing the CFTC with oversight over the spot trading of digital commodities and allowing the CFTC to come up with additional necessary rules and guardrails to best protect the industry is something that would benefit industry, consumers, and that will allow innovation to grow in the United States because the only way for our industry to keep on growing is to best protect consumers.

Senator MARSHALL. Okay. All right. Thank you, Mr. Chairman. I yield back.

Chairman BOOZMAN. Senator Smith.

Senator SMITH. Thank you, Mr. Chair, Ranking Member, and welcome to the Committee, everyone.

I come at this from the basic perspective that people should be able to invest their money in any way that they choose, and they ought to also be able to count on free markets and markets that work well because there is a regulatory structure in place that protects them from unfair and rigged environments.

I am going to just start with you, Mr. Massad, because I could tell you wanted to follow up on this issue of sort of CFTC versus

SEC. I do not think it should be a versus or an either/or. I do believe that there is an important role for both agencies and also an important—our job here should be figuring out how to fill the gaps that exist when it comes to regulation regarding crypto assets. Would you just follow up about this issue——

Mr. MASSAD. Sure.

Senator SMITH [continuing]. of disclosure——

Mr. MASSAD. Yes.

Senator SMITH [continuing]. that was raised?

Mr. MASSAD. Thank you, Senator. I agree with Mr. Behnam that generally on commodities we do not worry about a disclosure framework in the context of commodity futures. We just worry about whether the contract is susceptible to manipulation. This is different. It will be different. If you look at the Clarity Act, if you look at Lummis-Gillibrand, if you look at any of these proposals, they provide for disclosure regarding so-called digital commodities. We will have to build out some kind of disclosure framework. Again, I am fine with the CFTC being the lead authority on overseeing these markets, ideally with the work of an SRO. I think the development of the rules is going to require cooperation.

Senator SMITH. Thank you. I appreciate that. That is helpful. You know, we do not have legislation here in the Senate. As you know, we have the Clarity Act, which the House will be taking up as soon as this week, so I want to dive into some of the issues on the Clarity Act. We just had a chance to speak about this last week in the Banking Committee as well.

Here is the first thing. Securities brokers are required to get their customers the best possible trade, right? They have to look across multiple exchanges. This is not happening for crypto trading right now. At best, the law is unclear, as I am understanding that. Would you agree with that? Would the Clarity Act do anything to address that issue?

Mr. MASSAD. No, I do agree with your point, and no, it would not. Again, I think Americans, you know, think that our financial markets are well regulated because they are with respect to securities and commodities, but this one is different. There is no best-execution obligation. There is no prevention of conflicts of interest on the part of brokers or crypto exchanges.

Senator SMITH. Is there any reason that a crypto broker could not or should not be required to execute trades in the best interest of their customers? Is there anything that is intrinsic in the technology——

Mr. MASSAD. No.

Senator SMITH [continuing]. or anything that would make that not reasonable?

Mr. MASSAD. Not to my knowledge, Senator.

Senator SMITH. Okay. It seems to me, I would agree with you, that customers deserve to know that when they are buying or selling an asset, that their broker is trying to get them the best possible execution on their trade and not somehow profiting without them knowing about it. I think this is a place, colleagues, where we could look at how to improve the Clarity Act as we go forward.

I want to ask you a bit about tokenized stocks, which I think is another very challenging issue. The trading platform Robinhood re-

cently announced that it was going to start offering tokenized stocks to European investors, I believe. These are not actual shares in a company, but they are digital assets that, at least in theory, derive their value from the real thing, the real stock. They do not provide any ownership stake in the company or any rights that would come with being a shareholder, for example.

Mr. Massad, proponents of these tokens claim that they would expand investment opportunities for folks, but I do not know that that really tells the full story. I mean, could you just address what risks these tokenized stocks would pose to investors and to the broader market?

Mr. MASSAD. Yes, Senator. I think it will be a situation where there could be a lot of confusion and a failure to protect investors. It will not be clear exactly what this tokenized thing is. Does it pass through all the rights, or does it just represent trading on the price? There could be fragmented disclosure. There could be less transparent trading. There is a big risk with the decentralized finance exemptions in things like the Clarity Act.

Senator SMITH. You could own a tokenized stock, but you would not have any of the protections that you would have if you were purchasing a stock with all of the protections that the SEC would provide.

Mr. MASSAD. It would depend, again, on what it meant.

Senator SMITH. Right.

Mr. MASSAD. Again, that is why I think we need, you know, some joint rulemaking and some coordination between the agencies. It could represent something where it is a pass-through, but it might not.

Senator SMITH. It is open. Just in the seconds I have left, how could the Clarity Act provide—I am concerned that there is going to be sort of an incentive to move to one regulatory structure versus another, which is going to be the best for the company and not the best for the investor. Couldn't we address that from a policy perspective if we chose to?

Mr. MASSAD. Oh, absolutely, we could. We would not have exemptions that encourage that kind of migration of activity. That is what we are seeing right now in the Clarity Act and some of these other proposals.

Senator SMITH. Thank you very much.

Mr. MASSAD. Thank you.

Chairman BOOZMAN. Thank you. Senator Tuberville.

Senator TUBERVILLE. Thank you. Mr. Kim, you touched on this very briefly in your opening statement. The EU and U.K. are moving quickly to attract, you know, blockchain-based innovation. What risk are we at in the United States? What are we going to face if we do not get more urgent about what is going on? I recently talked to some exchanges, and they are freaking out basically about, hey, we have got to do something or we are going to have to move out of the country. What are your thoughts?

Mr. KIM. Thank you very much for your question, Senator. As I mentioned in my testimony, it is a global race to the top, so other jurisdictions have not been waiting for the U.S. to lead. You have the EU, Singapore, Japan, U.K. all looking to attract technology resources. I see blockchain development and digital assets as the

plumbing and infrastructure for the second half of the 21st century. We need the U.S. to lead.

That said, despite the progress in other jurisdictions, everyone is watching the U.S. now. They are seeing the Senate having passed GENIUS. They are seeing development of a market structure bill, including in this Committee. Even the U.K. is actually a really good example, Senator, where they have been taking a very modular, patient approach, but recently, they announced an all-at-once approach. I believe that there is an opportunity for the U.S. to cement its leadership and make sure this innovation stays here in the U.S., and that starts with a comprehensive legislative framework, as I discussed, Senator.

Senator TUBERVILLE. Thank you. Mr. Sexton, do you have a follow-up on that? You got anything on that about us dragging our feet?

Mr. SEXTON. Senator, I encourage this Committee and the House to continue to work on legislation in this area. I think it is very important. I can tell you that from our perspective, we have, as I indicated, member firms already engaged in this activity. To the extent that the CFTC would be provided with not only anti-fraud, but also regulatory oversight over digital commodities, I think it would be very helpful as far as our own regulatory structure here.

Senator TUBERVILLE. Thank you. Mr. Behnam, the U.S. model of having two regulators—and we touched on this briefly—only works if they are clear jurisdictions. You are very familiar with that. Can you talk about the need to clear up, you know, this regulatory definition between the CFTC and the SEC?

Mr. BEHNAM. Senator, thanks for the question. It is the first and most important step because, from that point, the two agencies will be able to really start to develop rules either distinctly and uniquely or in a joint fashion. This is certainly a new asset that has a lot of characteristics that are similar to other assets but also have a lot of characteristics that are novel and new and are going to require a different way of thinking about, so I do think it is critically important.

I also think, putting myself in my old shoes, it is important that the agencies get a bit of a steer from this Committee and Congress because there are lines that I think this Committee and the Congress can draw to help the agencies start to really define the landscape of what tokens are securities and what tokens are commodities.

Senator TUBERVILLE. Thank you. I yield back.

Chairman BOOZMAN. Senator Luján.

Senator LUJÁN. Thank you, Mr. Chairman, and thank you for holding this hearing and an opportunity to have this particular discussion about digital asset market structure. One of the concerns I think has been brought up today and that many have had throughout the years is what happened with FTX, with Celsius, with a few others like Terra Luna when there was a lot of concern and devastation. What I have appreciated most recently is everyone's willingness to come and have more conversations and say, no, there needs to be rules. I appreciate the bipartisan nature of how this has been taking place as well, so just thank you so much for this particular conversation.

Now, Mr. Massad, it is widely understood that Bitcoin is a commodity, not a security. Now, if I wanted to buy or trade a Bitcoin, a meme coin, or another commodity, I could log on to an exchange to do that. However, I could also buy and trade tokens that look much more like securities on the same platform right next to each other. My question is, sir, what are some of the differences in the protections for consumers between a commodity like a meme coin versus a security like a stock?

Mr. MASSAD. Well, today, they are huge because we do not have any regulation of this spot market for so-called digital commodities. That is what we need to put into place. Your question also really goes to the fact that, you know, when we think about how to make that regime work, we are going to need things that are unusual for commodity markets. We are going to need disclosure rules, as well as trading rules, as well as conflict rules, and so forth. That is why, again, I think we are going to have to have some coordination between the agencies.

Senator LUJÁN. With that being said, is it reasonable for customers to be confused about the differences in their protections when they are listed next to one another? Does it increase the risk of something called rug pulls and pump-and-dump schemes, things of that nature?

Mr. MASSAD. Absolutely. For example, under the Clarity Act, it is not even clear that those meme coins would be regulated. Now, I think they have recently put out a revision that maybe they would be, but, you know, we should have a framework where anything that is traded on these platforms is subject to the regulatory framework. They cannot just list something else that is not, and then those rules have to be very clear so that customers are not confused. We should not have securities trading on the same platform.

Senator LUJÁN. What are your thoughts, your expertise here with what Congress needs to do to protect consumers from fraudulent schemes while still allowing Americans to access and benefit from cryptocurrencies?

Mr. MASSAD. Well, again, we need to put in a good comprehensive framework. You know, the measures that are proposed so far have some of those elements but not sufficient ones. I think they are too lax in a lot of the requirements. I think they, you know, do not address conflicts of interest sufficiently. I think they undermine securities laws by creating some exemptions from those laws. You know, it requires a comprehensive framework that will create investor protection standards that are comparable to what we have in the securities markets today.

Senator LUJÁN. Appreciate that. Mr. Behnam, one issue here is that the CFTC does not have clear regulatory authority over spot crypto markets. As past CFTC Chair, how would you protect consumers from fraud like those rug pulls that I just asked about and pump and dumps and meme coins where there are clear issuers, unlike other commodities like oil where there is no central issuer?

Mr. BEHNAM. Senator, thanks for the question. I do think before we get to a point where you are deciding which agency has jurisdiction, if we can get lines drawn around definitions between commodities and securities, the whole premise and thesis behind the com-

modity tokens is that they are, in fact, maybe an issuer at some point in the evolution of the token, but when it is trading on a CFTC exchange, it is decentralized enough or at some point where it is sufficiently decentralized where there is no central institution, group of individuals, or individual that is controlling or impacting the price of the asset. If it is sufficiently decentralized, which works off of a lot of the legal precedent that is built around our securities laws and our commodities laws, you really would not have that issue where you have individuals pulling off manipulative trading activities that could hurt investors.

Senator LUJÁN. Is it fair to say that the definition section of this legislation matters?

Mr. BEHNAM. The definition section of any legislation this Committee puts out is arguably the most important part of the legislation.

Senator LUJÁN. I appreciate that.

Mr. Chair, as my time expires, that is one of the issues that I and my staff raised during the markups with the GENIUS Act as well, and so, I certainly hope that we can pay particular attention to the expertise from the staff that we have around us and others coming in when we are looking at that definition section and just highlight your testimony today.

Thank you for the time today, Mr. Chairman.

Chairman BOOZMAN. Thank you. Senator Justice.

Senator JUSTICE. Thank you, Mr. Chairman, Ranking Member. Thank all you guys for being here.

Now, from my side, you know, I speak really plainly, okay? I would say just this. For God's sakes a living, do we not have enough smarts in the room to figure this out? I mean, when it really boils right down to it, do we not have the smarts in the room to figure it out? I really believe we do. I really believe hands down, too, that the upside potential is off the chart. Almost every country on the entire globe is scrambling like crazy to get a piece of the puzzle. You know, that is all there is to it. Why in the world are we so afraid of the dark? Why in the world are we so afraid of something that has the potential beyond belief, and do we not just figure it out?

Now, let me just tell you just this, just two or three things. Today, Bitcoin is trading in its own little hemisphere, you know, and it is trading at $117,000. Forty-five days ago, at the summit in Las Vegas, it was trading at $110,000. For all practical purposes, to make it real easy, 7 percent in 45 days. Now, lots and lots and lots of folks, whether we want them to or we do not want them to, lots of folks are saying, I want in.

Now, with all that being said, what we need to do is we need to have a framework that allows innovation, period. Do we not? Great big b-u-t with Jim Justice saying, great big, we have got to have an enforcement arm that protects the consumer. Without any question, we have got to protect Toby and Edith. Now, I always call Toby and Edith the voters, but Toby and Edith want in, but they do not have any idea how to understand this. You know what they do? They ask us to protect them. That is what they do.

They do not ask us to do this to—and I have said this a bunch of times, but in my world, I can remember my dad saying, just

count the egg-sucking cows. You do not need to count the legs and divide by four because they are moving their legs all the time. You cannot ever, ever figure out how many cows are in the field.

Now, come on. We are really smart, and we are a country that ought to be leading the way in every way. What are we doing? Why are we so scared of the dark? Why are we so committed to counting the legs and dividing by four?

Listen, we passed GENIUS. It is good. Now, we have to some way acknowledge legitimacy, market structure. We have to have regulated clarity. We have to have clarity. We have got to protect Toby and Edith all the time, 100 percent. We have got to have real live enforcement that absolutely eliminates your bad actors.

You are really smart people, super smart people. You have got some really smart people here on this Committee. Maybe not me, but you have got some really smart people. I am here to tell you, we need to move and move now. Now, we are going to sit around and twiddle our thumbs, and a lot of people are going to have a leg up on us like we cannot imagine. That is not doing Toby and Edith right. Toby and Edith want to play the game. They want to be involved. They want to be the next innovation. They ask us one simple thing, protect them.

I am almost out of time. You have got to go real fast, 10 seconds a piece. Tell me, how can we pull it off? How can we pull the innovation off? How can we protect them? Real simple.

Mr. KIM. I believe that when the U.S. puts its mind to something, that we can accomplish great things. I think, like you said, Senator, we do need a comprehensive legislative framework to allow for responsible innovation, a principles-based approach, while best protecting consumers, and I think now is the time to do so, Senator.

Mr. BEHNAM. Senator, I think, number one, just we have great capital markets and derivatives markets. Start with that as a foundation, and then we can figure it out.

Mr. MASSAD. I would say, keep a couple principles in mind. Do no harm to the existing markets. Keep it relatively simple in the legislation and rely on the expertise of our regulators. They do have expertise, and we should draw on it and not fight the last war when they were not doing enough, perhaps, to customize rules.

Senator JUSTICE. Thank you.

Mr. SEXTON. Use the time-tested structure that has already been in place and has been in place for years. The CFTC regulates commodities. The SEC regulates securities. Use that structure. Congress gives some definitional support to what is a security, what is a commodity, and you go from there. It has worked in the past. It is simple. It will work again. There are SROs underneath that that support the SEC and the CFTC in their work.

Senator JUSTICE. Thank you.

Mr. LUKKEN. Senator, your description of the volatility of Bitcoin reminded me of other commodities like oil, gold, production crops that farmers that talk to you all the time are dealing with. The CFTC is a natural home for these types of commodities that are dealing with volatility, the fact that they can trade the derivatives to help to hedge that volatility.

My advice to this Committee is to give exclusive jurisdiction over digital commodities to this agency and to give digital securities to the SEC and to give clear lines of jurisdiction to both agencies.

Senator JUSTICE. I want to thank all of you and thank you, Mr. Chairman, because you have led the charge and everything, and I am right with you, sir.

Chairman BOOZMAN. Thank you. Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman. We have said over and over again we have securities and commodities, and we have got to make careful definition, but I think there is more to the story. In the Clarity Act, which will receive a vote in the House this week, they created a loophole for crypto tokens known as collectibles. That means those crypto tokens will not have to register with financial regulators and would benefit from a lighter-touch regime. In fact, collectibles are not even considered digital commodities in the bill and are basically exempt from most requirements.

When Coinbase, one of the largest crypto exchanges, went to court with the SEC, Coinbase—I believe he is a member of your organization, Mr. Kim. Coinbase argued that the tokens listed in the SEC's complaint were neither securities nor commodities. Coinbase's lawyer argued in court these tokens were like Beanie Babies, meaning just trading collectibles. These collectibles can involve multi-millions of dollars. Just ask President Donald Trump, who listed his own meme coin on exchanges like Coinbase and Kraken, two exchanges that are part of the Crypto Council for Innovation.

President Trump's meme coin has no real use and trades its values basically on popularity and hype, just like a Beanie Baby. That did not stop President Trump from auctioning off his meme coin and giving top investors—get this—access to a face-to-face dinner with the President of the United States. Not only did President Trump make $315 million in fees by selling his meme coin—get this now, too—764,000 unique wallets lost money to the President's scheme. Talk about Toby and Edith. All the while, crypto exchanges like Coinbase and Kraken claim they had a robust listing process and continue to perform due diligence, on and on.

Mr. Massad, let's start with you. What concerns, if any, do you have about a huge exception for collectibles in any crypto market structure legislation, number one? Number two, you talked about a black eye to the industry, this transaction involving the President. I think it is more than a black eye. I think it is evidence of corruption. The question, the bottom line, as far as I am concerned is, what does the industry do if they are afraid of the President when it comes to regulation?

Mr. MASSAD. Thank you for the question, Senator. First, on the collectibles, I agree with you. The Clarity Act does exclude those as commodities, and I think the rule should be that digital commodity exchanges cannot trade anything unless they are covered by these rules. What I would suggest to you, Senator, is why don't you write all the big platforms, Coinbase, Kraken, Gemini, if it is so clear—if the Clarity Act is so clear as to what is a digital commodity, ask them to tell you of the hundreds of things they list which ones are digital commodities and see what answers you get.

Senator DURBIN. Mr. Sexton, what do you think?

Mr. SEXTON. Senator, with regard to those types of tokens, coins, I can tell you that we approach it from a slightly different angle, and that is, we regulate the conflicts that may be embedded within our members.

Senator DURBIN. I will have to ask you to make a brief conclusion to your answer so I can ask one other question.

Mr. SEXTON. Go ahead.

Senator DURBIN. In 2024, the FBI reported that Americans lost $16.6 billion to crypto schemes, 33 percent increase over the previous year. The type of scam I am concerned about involves a machine called a crypto ATM. Mr. Sexton, do you know how many we have in our state of crypto ATM machines?

Mr. SEXTON. I could tell you I do not know the exact number, Senator, but quite a few.

Senator DURBIN. I can tell you. It is 1,600. What happens with a crypto ATM? They put them in grocery stores and shops. They are basically the way they victimize senior citizens and people in minority communities. Once a victim places their hard-earned cash in one of these machines, it disappears into a criminal's wallet, almost impossible to get back. Here is how it works. Scammers call an unsuspecting victim, tell them they owe taxes to the IRS or a penalty for failure to appear for jury duty. Not to worry, they can pay it off at a crypto ATM. They direct them to the nearest crypto ATM. These people put their life savings, in some instances, into the criminal's digital wallet. In 2024 alone, scammers stole nearly $250 million from Americans, and the stories are heartbreaking.

This industry ought to wake up to this reality. There is a misuse of one of their operative machines to scam people over and over again with huge sums of money. Want to be known as a reputable industry? Do something reputable like protecting consumers. About 15 states have done it. All of them should, and we should put something in the federal bill. When the GENIUS Act came before the Congress, I wanted to offer this amendment. No amendments. Take it or leave it on the GENIUS bill. Well, if we have a second chance, whether it was clarity or GENIUS returning, let's at least think about the consumers for a few minutes.

Thanks, Mr. Chairman.

Chairman BOOZMAN. Thank you. Senator Booker.

Senator BOOKER. I am grateful. I think, if anything, we are hearing in this Committee is the urgency for a market structure bill that provides the appropriate regulation. I want to jump in right away, though.

Mr. Massad, you said something that to me maybe was an understatement. I never imagined in my life I would see the President of the United States create a digital asset that is open to being purchased, a meme coin that could be purchased by anybody, anywhere, from our adversaries, our rivals, from people trying to curry favor with the United States, from people who are looking for military deals, and to literally sell seats to a dinner at the White House, at one of America's more sacred civic spaces. To me, this amounts to a level of galling corruption never, ever before imagined that could happen in our country, and we are normalizing it.

It is corrupt, it is dangerous, it is an attack on our democracy, it is a violation of the Emoluments Clause, and it is undermining

this industry as a whole. Would you agree with me that my language is perhaps more appropriate?

Mr. MASSAD. I would totally agree with you, and I have said similar things. The meme coins are a perfect bribery tool because they are out there, someone can buy them and, therefore, you know, provide essentially money to the President, yet still claim, well, I am just speculating on a meme coin.

Senator BOOKER. Would you agree that the way our Constitution was designed, the legislative branch is supposed to provide checks and balances and oversight, and the fact that the United States Senate has not had one oversight hearing of this corruption is a surrendering of our obligations and duties under the Constitution?

Mr. MASSAD. It is shocking to me. I mean, he is making billions of dollars, not just from the meme coin, but from his own stablecoin. Even the meme coins have been called by the creator of Ethereum—the creator of Ethereum has called them a bribery tool.

Senator BOOKER. I think it is appalling that Congress has laid down. I think it is extraordinarily dangerous——

Mr. MASSAD. I would agree.

Senator BOOKER [continuing]. and I am beyond frustrated that we are normalizing this level of corruption in America and have the most corrupt President imaginable, who is making hundreds and hundreds of millions, if not billions of dollars, profiting off of the Presidency at the very national security risk that it poses to our country when he can make decisions that affect truly the safety and security of our country, as many of these countries are trying to curry favor and have deals. That does not even begin to mention the Trump hotels and all the other things that he is doing that truly undermine any idea of what it means to operate in the Presidency with integrity.

I want to jump really quick, Mr. Behnam, because I am very deeply engaged and involved in trying to make sure that we land something that could deal with a lot of the challenges. The one thing that has not been discussed, as you and I talked about this ad nauseum, is the CFTC's capacity to regulate this area. Right now, we have seen budget requests for a 2.9 percent decrease in funds from its 2024 request and a 5.1 percent decrease in personnel, which is on top of cuts made earlier this year by DOGE that threatens the CFTC's ability to oversee the $120 trillion equity and debt markets it is already responsible for, without even adding the growing crypto market into the equation as is envisioned. The House's Clarity Act would expand the CFTC's jurisdiction without a single additional dollar. It will create chaos for retail consumers in our markets, I believe both crypto and in traditional finance.

Am I right to be outraged that this is how we are starting, without understanding the resources that would be necessary to do what a lot of us are envisioning?

Mr. BEHNAM. Senator, short answer is yes. I mean, the number one priority, if we are going to authorize new authority for an agency, the CFTC here, is funding and resources so that it can execute those responsibilities.

Senator BOOKER. Well, I will tell you this right now. I want to lean in in a bipartisan way and craft market regulation. This is what I see right now. I see Senators and Congresspeople trading

stocks and bonds, people who are involved in the crypto world. Again, I have legislation with a number of other Senators that really say very clearly that we should be doing everything we can as a matter of integrity to stop corruption, that we should introduce and pass the End Crypto Corruption Act, which would make sure the President, Vice President, Senior Executive Branch Members of Congress and immediate families, that stops them from financially benefiting from issuing, endorsing, or sponsoring crypto assets such as meme coins.

We have this air of corruption that undermines the integrity of Congress and the Presidency at a level of corruption we have never seen before. The very regulatory bodies that should be overseeing these massive markets is being starved of resources to even do the jobs they are doing right now. Any serious effort to engage in the kind of market structure bill we are having without putting the resources that we have discussed in the past, in the bill that we had in the last Congress, a bipartisan bill, we had a way of addressing this.

There are a lot of structural problems I have right now. The level and possibility of corruption, of scams, of people that could get hurt if we do not do this right, is stunning to me, not to mention the very foundations of our democratic system so that we do not become some corrupt banana republic where Presidents and Senators and Congresspeople can bilk the American people by bending the rules, corrupting the rules for their own benefit. We have got to do things different.

Chairman BOOZMAN. Thank you. Senator Bennet.

Senator BENNET. Thank you, Mr. Chairman. Thank you for holding this hearing. Thank you to the witnesses for being here.

Mr. Massad, President Trump earned about $57 million from his stake in World Liberty Financial last year, according to the most recent disclosure forms. In the last few months, World Liberty Financial launched a stablecoin, which was used by an Abu Dhabi-backed investment company for a $2 billion investment in finance. Just before the inauguration, President Trump issued a meme coin, which surged in price in May. President Trump hosted a dinner, as has been said, for the 220 biggest holders of his Trump coin, further juicing the value of that coin. About 80 percent of the tokens are held by Trump-affiliated entities.

I do not think we should have to wonder if the President of the United States is favoring the interests of a foreign nation or a private crypto exchange like Binance because he stands to personally profit.

That is why, last month, I took over the Senate Floor to directly add an amendment to a piece of crypto legislation that we were considering, the so-called GENIUS Act, which was on the Floor of the Senate. My amendment, the only Democratic amendment that was pending, would have prevented the President and the Vice President from issuing stablecoins. I would be surprised to know that there are a smaller percentage than 95 percent of the American people who would not have agreed with my amendment. Yet it was thrown out of the bill, and Democrats and Republicans voted for that bill without demanding that the President and the Vice President, and Members of Congress, not issue these currencies.

Today's conversation does not only address stablecoins, but the entire ecosystem of digital assets, and it is really important for us to get it right. I believe, really strongly, that the—and I believe, again, 95 percent of the American people, if not 98 percent of the American people, would agree that the President, the Vice President, a Member of Congress, high-ranking officials of our government, should not be in the business of issuing any cryptocurrency.

Mr. Massad, as a former federal regulator, should federal elected officials be prohibited from issuing or endorsing digital assets while they are in office?

Mr. MASSAD. Absolutely, Senator.

Senator BENNET. What kind of market manipulation might result from that? We have had some discussions today about why these are like other commodities, like wheat or like—but how is it maybe different in this case?

Mr. MASSAD. The meme coins are a perfect example. They have been called a classic pump-and-dump scheme by a number of commentators. They were issued. People rushed to buy them. He made a lot of money off of that, and then the price fell, and a lot of people then had losses. You know, he is investing in not just a stablecoin. They are now doing things with Bitcoin mining and other business ventures. I agree with you totally. You should be prohibited from doing those things and required to divest.

Senator BENNET. Can you imagine any benefit to the American people of allowing the President or Vice President to speculate——

Mr. MASSAD. None.

Senator BENNET [continuing]. in this currency?

Mr. MASSAD. None whatsoever, Senator.

Senator BENNET. Yet the U.S. Senate has passed a bill that allows them to do it. I offered an—I had an amendment pending that said the President or Vice President should not do it. I would be shocked if I lived long enough to have an amendment pending that would be more popular with the American people than the one that I had in there, and yet the Senate threw it out before they blithely passed the legislation.

Mr. MASSAD. We have never imagined that a President would do these kinds of things, and therefore, you know, we do not have the rules in place to prevent it, but we need them now.

Senator BENNET. I would think the industry would want these rules in place.

Mr. MASSAD. I think they do. They are just afraid to say it. I have had a——

Senator BENNET. Why are they afraid to say it?

Mr. MASSAD. Because they are afraid that it might hurt their business interest. I have had so many people in the crypto industry come up and tell me that.

Senator BENNET. Well, we are going to have to figure out as the elected leadership of this Nation to do better than that somehow.

Mr. MASSAD. I would agree, Senator. If you do not do it, who will?

Senator BENNET. Exactly.

Mr. Chairman, thank you very much. I will submit my other questions for the record, but I appreciate—I think you shed some important light here.

Chairman BOOZMAN. Thank you.

Senator BENNET. Thank you.

Chairman BOOZMAN. Thank you, Senator Bennet. Senator Schiff.

Senator SCHIFF. Thank you, Mr. Chairman, and thank you all for being here to testify.

I think it is very important that we have good, strong, and sound regulation of this whole industry to protect consumers, to make sure that there are clear and understandable rules of the road, that there is some certainty for investors, for consumers, that there are protections in case of bankruptcy or fraud.

I am also deeply concerned, as Senator Bennet just alluded to, to the prospect of high Administration officials manipulating digital currencies or their ability to influence enforcement actions and being very interested in your thoughts about how to address these conflicts, potential and real conflicts of interest when you have people who are in positions of dominant influence like the President or others issuing, endorsing, sponsoring their own digital currencies, how we can ensure that we either prohibit such actions completely or that we make sure that people who are engaging in them are subject to laws against market manipulation and self-dealing.

Let me start, if I can, Mr. Behnam—good to see you again—by asking you, I know you have spoken directly about the need to maintain public confidence and integrity in these markets. Do you think public officials that have any kind of supervisory or influential role should be permitted to issue their own currencies or endorse their own currencies or would it be the most basic and fundamental provision that that should simply be banned?

Mr. BEHNAM. Senator, thanks for the question. Short answer is yes, it should be banned. I will say as a former regulator, you know, just five or six months removed for seven years at the Commission, I took that responsibility very seriously, the weight of the responsibility as a regulator over markets and ensuring there was no conflict of interest or exposure that me or my family had to the markets I regulated.

Senator SCHIFF. Does anyone testifying here today think it is okay, good practice, nothing to see here for high Administration officials who have influence over these markets to be able to issue or promote their own personal stablecoins, digital currencies of any kind?

Mr. MASSAD. Just to be clear, Senator, I agree that it should be banned, should be prohibited.

Senator SCHIFF. I would go further, the Administration officials, I would say ban all those actions from any Members of the House or Senate. Anyone disagree with that proposition?

Mr. KIM. Senator, I know this has been a discussion among policymakers. I just wanted to note that for myself, this is admittedly outside my area of expertise, and I see this as a decision for Congress. I just wanted to say that respectfully, Senator.

Senator SCHIFF. Well, I appreciate that. I hope we will make that very decision because I think it is vitally important that we regulate this area. I think the current unregulated or regulation-by-litigation posture we are in is undesirable for everyone, does not protect consumers, does not help legitimate actors in the industry,

does not provide any certainty or ability to plan or predict or invest. At the same time, the most basic protections we might put in place to protect consumers will be undermined if those that can influence the whole market are in business themselves and able to enrich themselves.

Let me move on from the problems that have been documented by the First Family's involvement in this business. In what other respects—and I open this up to any of our participants—can we help ensure that consumers are protected? Obviously, there have been some catastrophic failures of companies in this space engaged in fraud. What is the best way to protect consumers so that in the event of a catastrophic failure, they are protected?

Mr. LUKKEN. Maybe I will start off. I think the first is acting. I think the Congress needs to act to fill this regulatory gap. This Committee is starting that process of doing that. We are going to have to, as was mentioned, make sure that we have strong, clear lines between the CFTC and SEC on how you think the jurisdiction should go. Importantly, each agency brings unique customer protections and important market integrity issues that are going to help fix the problems that you are identifying. I think you are preaching the choir here. Everybody on this panel wants to fill this gap right now, and it is up to Congress to act quickly.

Mr. BEHNAM. Senator, I will add in December 2022, I testified before this Committee shortly after FTX failed. FTX had one entity that was registered with the CFTC. It had a number of entities globally, over 125. I said to this Committee, of the 125-plus entities, about two or three, two I think in Asia and one here in the U.S., LedgerX, which was registered and regulated by the CFTC, was viable, well-managed, and had value after that bankruptcy. After that fantastic bankruptcy, this entity that had regulation, that had supervision, that had oversight, had a future because of regulation. That is the point that I think is most important for this Committee to take away. As much as there are many issues to resolve and discuss and deliberate, regulation works, and it ultimately will protect customers.

Mr. MASSAD. I would agree with what former Chair Behnam said. I think the other entity of the FTX family was one in Japan that was also subject to pretty good regulation.

Mr. KIM. If I may very briefly, Senator, I agree with the need to address the regulatory gap, as I mentioned, by providing the CFTC with comprehensive oversight over digital commodities. It is just taking us on a slightly different angle. I know for CCI, a lot of what we do is consumer education, Senator, so we would love to be a resource to you and your office. We have different workshops making sure that there is scam awareness campaigns. A lot of our members do that as well because even though we are here to talk about the need for market structure, there is a need to just educate a lot of consumers about the fraud and scam out there, and CCI is committed to coming up with policy solutions, Senator.

Mr. SEXTON. Last, to keep it short, Senator, and thank you for the question, I agree with all my panelists. Look, this is not difficult. There are longstanding safeguards in place to protect retail customers. The CFTC and NFA have adopted them over the years with regard to derivatives. Those should be applied also to the dig-

ital commodity markets to protect retail customers, safeguarding customer funds, market practice rules, business conduct rules, disclosures. There is a whole litany of them. I think it is extremely important that this Committee look to those time-tested requirements and safeguards, and they go a long way to accomplishing what we are trying to do, and that is protect retail customers with regard to digital commodities.

Senator SCHIFF. Thank you. Thank you, Chairman.

Chairman BOOZMAN. Thank you. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. I just have a few questions as promised at the end.

I hope that the world watching here sees that we are not going to be rolled here on this bill, on the Clarity Act, and that you have a lot of Members who want to see a piece of legislation that truly protects consumers, people who have worked with the industry in the past on our side that are interested in working on this but really want to see some serious changes and are concerned both about the conflicts issue, are concerned, as Senator Booker—I am going to ask my first question on this—about the funding issue of how the CFTC should do this, and are certainly concerned about the consumer welfare and what safeguards should be in place, and there is not loopholes that could, you know, drive a truck through here. That is kind of where—it is not consensus. We have Members with different views on this, but I do think that people should take home from this that we are going to want to see some major changes.

Mr. Behnam, you previously called for additional funding and staff for the CFTC to write rules for and oversee these markets. How important is it that Congress provide for durable, sufficient funding when it comes to these brand-new markets?

I think just to combine my questions then with you, Mr. Lukken, one of the concerns is we have got derivative markets, we have got an economy that is on a roller coaster right now because of tariffs and other things. We do not want to disadvantage existing markets and market participants in how we do this, so it is a little bit the same question, but go ahead.

Mr. BEHNAM. Senator, very quickly, thank you for the question. Short answer, it is an absolute priority. If you authorize a regulatory program but do not have the funding, there is no teeth there. I did a number of estimates internally when I was Chair. We came up with about $130 million over the first few years to staff up both on the tech side and the personnel side.

To your last point, and I think this should resonate with everyone on the panel and on the Committee, I cannot tell you how much personnel time was taken in the last few years of my Chairmanship on crypto-related matters. I do not mean that in a negative way, but it is zero sum. When you have those people working on crypto matters, which are novel, unique, and do not have legal precedent, it leads them away from traditional markets, which I think we all agree are the core of what the CFTC does and the core of what this Committee cares about on the ag side, the energy side, the metals, and financials.

Senator KLOBUCHAR. Okay, thanks. Then Mr. Lukken.

Mr. LUKKEN. The question is around the funding and impact——

Senator KLOBUCHAR. It is pretty much funding because what is going to happen if resources are pulled too thin because of this major, major challenge coming in——

Mr. LUKKEN. Sure.

Senator KLOBUCHAR [continuing]. in a good and bad way, but something that is going to have to be accomplished. Then you have these other things going on that you have always done at the CFTC.

Mr. LUKKEN. Right. No, I think the agency certainly deserves full funding, and especially if they are taking on the new responsibility of digital commodities, they are going to need more funding to make sure that they can administer the act. You know, that is something that has traditionally been through an appropriations process. I think the Clarity Act gives the ability, a transitional fee that happens for four years. That, to me, makes some sense. I think if you start to put in a permanent tax on the industry, the concern is that you may start to impact hedgers, the people who are trying to utilize the markets and taxing them instead of appropriating that through the appropriations process, so I do have concerns with putting in a transaction tax permanently. I think it is better suited through the appropriations process.

Senator KLOBUCHAR. Mr. Kim, I am just only smiling because I am not going to get into the rescissions and what this means to many of us when we look at that process, what is before us now, and if we can ever trust it. Mr. Kim, so Senator Marshall was talking about the need to make sure we protect against terrorist use of these commodities. I thought that was a good line of questioning, and I just have one thing to add. Are digital commodity market participants technologically capable of complying with these financial laws? Should Congress tailor the laws in any ways to account for unique features of these markets or this technology?

Mr. KIM. Thank you, Senator. I think the U.S. already has a robust AML/CFT program through FinCEN, as I mentioned earlier. That said, I believe it is appropriate for the CFTC to be the regulator for digital commodities, and once that framework is established, Senator, I think there could be additional protections as need be. What has been missing, as I mentioned, is that regulatory gap right now where the CFTC does not have that statutory authority to take a look at centralized intermediaries. My testimony has been about the need to address that gap to ensure U.S. leadership, Senator.

Senator KLOBUCHAR. Some mention has been made of the collapse of firms like MF Global and FTX, and it truly revealed how customer assets can evaporate when we do not have the adequate safeguards. In both cases, customer funds were commingled and ultimately lost in cascading failures that shook public confidence in financial markets.

I will start with you, Mr. Behnam. What mechanisms would best guarantee that these assets are safe even if prices of collateralized digital assets collapse? How should Congress address these practices where firms reuse customer assets for their own purposes?

Mr. BEHNAM. Thanks, Senator. Just very briefly, it really goes to the core principles and the rules that the CFTC applies in regulated institutions. MF Global was unique in the sense that it was

a regulated entity, and those funds were commingled outside and in violation of the segregation rules. Some changes were made afterwards, but segregation rules, I think everyone would agree with on this panel, are sacrosanct to the CFTC, making sure customer money is protected and prioritized among house money and other customer money. I think if you replicate what rules around customer seg are used for traditional CFTC markets in the digital asset market, we will be able to accomplish our goals around protecting customer money and digital assets.

Senator KLOBUCHAR. Okay, thanks. Another question. We know that DeFi, decentralized finance, raises novel regulatory challenges. How should Congress approach decentralized finance platforms in regulatory frameworks?

Mr. BEHNAM. Thanks, Senator. At the CFTC, when I was Chair, we had a couple enforcement actions against DeFi protocols. I do think there should be and needs to be a unique look at how DeFi platforms function relative to centralized platforms, but I am a firm believer that there needs to be some mechanism of regulation and oversight. DeFi platforms cannot live in a regulatory vacuum. There has to be some intersection with a regulator and a decentralized platform in order to have effective regulation. Otherwise, there will be a race to the bottom, essentially a race to DeFi to circumvent regulations.

Senator KLOBUCHAR. Mr. Sexton, does the Clarity Act's DeFi exception, the exemption that is in there, concern you at all? Is it too broad?

Mr. SEXTON. Senator, thank you. I know that there are concerns expressed about the DeFi exception in the Clarity Act. I believe that Congress should give some instruction to the CFTC as to how to deal with these platforms going forward in legislation. Also, I think that the CFTC and the SEC should carefully examine together DeFi protocols and determine, as Chair Behnam just indicated, how best to look at these protocols in the future and possibly come up with some type of regulatory oversight over them.

Senator KLOBUCHAR. Okay. Do you want to add anything, Mr. Massad?

Mr. MASSAD. I think the DeFi exemption that is in the Clarity Act is one of its worst features. I think the first thing is we have to define what we mean. People use the term DeFi. It is not just an autonomous protocol. They are typically talking about, you know, situations where you have a business that is actually the front end of that or managing that, so there are lots of touchpoints for regulation. DeFi should not get a regulatory pass. We may need different rules, but we need to achieve the same regulatory objectives.

One simple way to think about this is if we had a protocol that was for the Treasury market and that suddenly became the main way Treasurys were traded, we would not say, oh, well, we do not need to regulate it. We do not need to worry about it. I think the key things are define what we mean, look at the touchpoints for regulation because there are typically centralized actors acting in that space and develop different rules if we need them, but achieve the same regulatory objectives.

Senator KLOBUCHAR. Okay. Mr. Behnam, the collapse, again, of offshore exchanges underscored how quickly gaps in the international monetary regulatory frameworks can put U.S. customers at risk with trading activity flowing across borders, outside the reach of domestic agencies. The challenge, in addition to the other ones we laid out here, becomes ensuring robust protections for customer funds that are in this truly international market. How can the U.S. ensure that customer funds are protected in a global market where trading often occurs on offshore exchanges beyond U.S. oversight?

Mr. BEHNAM. Thanks, Senator. You know, we have been a bit behind other regulators across the globe, and I think that has created arbitrage opportunities. Also, these international platforms who do not feel like they have a path to registration in the U.S. for a variety of reasons are circumventing, essentially, what are called VPNs or virtual private networks to get access to U.S. customers.

I firmly believe that, as the Committee moves forward and the Congress moves forward with a market structure bill, if drafted correctly and comprehensively, this will bring the market within the regulatory fold, and that will provide the customers that you are talking about the protections that they deserve and that we need to have on a sort of outcomes basis, as Chairman Massad said. Regulation, as we take steps, will resolve these issues in part and hopefully comprehensively with other global regulators.

Senator KLOBUCHAR. Okay. Thank you. I will go to something else. I see Senator Warnock is here. I want to thank you, Mr. Chairman, for having this bipartisan hearing and so everyone could listen to the witnesses' ideas, and we look forward to working with you and with the rest of the Committee going forward.

Thank you very much, and consider my last comments my closing.

Chairman BOOZMAN. Very good, thank you. Senator Warnock.

Senator WARNOCK. Thank you, Chair Boozman.

Mr. Behnam, last Congress, when we were considering legislation that would provide the CFTC with the authority to regulate the spot market for digital commodities, you testified before this Committee that the CFTC would need $120 million to properly staff up and prepare to supervise and regulate an entirely new industry. Do you still agree with your previous testimony, yes or no?

Mr. BEHNAM. Yes.

Senator WARNOCK. The President's nominee to replace you, Mr. Brian Quintenz, could not confirm that number, but he did indicate in his testimony before this Committee that more funds would be needed to implement the new authorities for the CFTC. Chair Behnam, to your knowledge, has the Trump Administration requested additional funding or additional staffing at our financial regulators to properly support additional regulatory responsibilities?

Mr. BEHNAM. No, it has not.

Senator WARNOCK. In six months, we have seen hiring freezes. We have seen staff reductions at the SEC, at the FDIC, at the OCC, all while refusing to nominate Democratic Commissioners for historically bipartisan boards like the CFTC. Chair Behnam, last

year, you were consistent that new funding would be needed for new staff, staff training, and technological upgrades.

Let's say a new crypto market structure bill that gives the CFTC new regulatory responsibilities is signed into law. Could you share what are the risks associated with Congress failing to provide the CFTC with sufficient resources to properly supervise the digital asset industry?

Mr. BEHNAM. Thanks, Senator. In short, the answer is without the tools, which become the resources behind the authorization for the program, the program becomes essentially useless. There is obviously a lot of talented staff at the CFTC, and I know they will work hard to implement the program, but we absolutely need resources at the agency to properly implement the program.

Senator WARNOCK. Absolutely, I agree with that. Clearly, investors of all sizes, if we are going to create a situation where capital markets can thrive, investors of all sizes, we need to have confidence that regulators are upholding the law, protecting consumers, that they have the capacity to do so. I look forward to working with my Republican colleagues to ensure that the CFTC is properly resourced.

Regulatory certainty for the digital asset industry limits unnecessary risk, and it can help prevent the collapse of another cryptocurrency exchange firm. One thinks of FTX, a few years ago. I am concerned that today, a handful of centralized firms have come to control multiple stages of the trading process. All of that concentrates the risk, creates conflicts of interest in my mind.

Mr. Massad, good to see you again. Is it routine for centralized exchanges to also serve as the custodian of customer funds and be responsible for listing, trading, clearing, and settling trades? Is this typically what we see?

Mr. MASSAD. Yes, it is. They even have more vertical integration than that. Of course, most trading is through those intermediaries, not on chain.

Senator WARNOCK. What sorts of risks and inefficiencies or conflicts of interest may exist when exchanges are vertically integrated like this?

Mr. MASSAD. There are all sorts of conflicts that can arise. For example, today, these trading platforms can do their own proprietary trading, so they can front-run customer orders or misuse customer information. They can have interest in the tokens that they list. That is not prohibited either. They can have other business ventures. With respect to custody, they can be charging separate fees and may not, you know, adhere to good custody rules. Even the Clarity Act does not even require these platforms to hold the Bitcoin that they say their customers own. It does not require that.

Senator WARNOCK. This vertical integration creating additional unnecessary risks for customers, we saw this with FTX with customers being unable to access their money months after the collapse of FTX. I am especially concerned that customers may not be getting the best prices on trades, that they may be paying higher fees, and more consolidation will lead to less competition in the market and create more systemic risk like we saw in the case of FTX.

Mr. Massad, what provisions do you see in a Senate bill to limit the risk that large, centralized firms may have on the digital asset market?

Mr. MASSAD. Sure. We need a comprehensive regulatory framework that prohibits these kinds of conflicts of interest, so no proprietary trading, no interest in the tokens they list, no other business ventures that can pose conflicts. We need to impose best execution requirements on brokers. We need to impose strict custody rules and, you know, either consider separate custodians or at least have rules that ensure that they really are holding the Bitcoin that they claim or the other assets that they claim their customers own, and they are segregating it properly, and they are not charging fees for that.

Senator WARNOCK. Thank you so very much for your testimony. I look forward to working with my Republican colleagues to create a Senate bill that contains strong conflict-of-interest language so we can safeguard the financial system and protect consumers.

Thank you very much, Mr. Chairman.

Chairman BOOZMAN. Thank you, Senator Warnock.

With that, thank you again to all of our witnesses, our Committee Members, for their participation in today's important hearing.

The record will remain open for five business days. Today's hearing is now adjourned.

[Whereupon, at 5:28 p.m., the Committee was adjourned.]

A P P E N D I X

JULY 15, 2025

CCI | Crypto Council for Innovation

WRITTEN TESTIMONY OF
Ji Hun Kim
CEO
Crypto Council for Innovation

BEFORE THE

United States Senate Committee on Agriculture, Nutrition, & Forestry

IN A HEARING ENTITLED

"Stakeholder Perspectives on Federal Oversight of Digital Commodities"

July 15, 2025

Thank you, Chairman Boozman, Ranking Member Klobuchar, and members of the Committee for the opportunity to testify today on how the United States can best lead when it comes to digital asset innovation—particularly through the establishment of comprehensive federal oversight of digital commodities. Thoughtful, comprehensive legislation can protect consumers, provide long-term regulatory clarity, and cement U.S. leadership in digital asset and blockchain technologies.

I am pleased to represent the Crypto Council for Innovation (CCI), a global alliance of industry leaders across the digital assets space. We believe that constructive partnership between government and business stakeholders is critical to crafting sound policy and regulation that benefits consumers, investors, and industry. We use an evidence-based approach to support governments that are shaping and encouraging the responsible regulation of this innovative technology. I am particularly grateful for the engagement and leadership of so many on this Committee.

To this end, CCI is encouraged that so many members of Congress—from both sides of the aisle—recognize the need for the U.S. to lead when it comes to digital asset innovation, including through the establishment of a comprehensive federal regulatory framework. We have experienced meaningful bipartisan progress in Congress, particularly in this Committee, and are confident that Members of this institution will continue to work together to complete needed market structure legislation to allow for responsible digital asset innovation and consumer protection. Indeed, I respectfully submit that it is critical for Congress, following this Committee's leadership, to urgently complete such efforts to provide the digital assets industry

with the necessary clarity and certainty to ensure continued U.S. growth and leadership in this space.

For years, the digital asset industry has requested clear rules of the road and a coherent federal framework to operate within the U.S. Such a framework is in the national interest—benefiting users and consumers, fostering industry growth, and strengthening U.S. markets by preventing fragmentation and regulatory ambiguity. Now is the time for Congress to act to secure this future.

Against this backdrop, my testimony aims to: (i) highlight the continued growth and transformative potential of digital assets and blockchain technology for empowering consumers and end-users; (ii) explain why most digital assets are more appropriately regulated as digital commodities and the importance of clear jurisdictional boundaries; (iii) detail how market structure legislation, specifically granting the U.S. Commodity Futures Trading Commission (CFTC) spot digital commodity oversight authority can further unleash the industry and protect consumers; and (iv) emphasize why the U.S. must lead in digital asset and blockchain technology, requiring timely and urgent legislation and leadership from Congress.

I. Digital Assets and Blockchain Technologies Empower Consumers and End-Users, while Advancing U.S. Financial Markets and Services.

We are entering a new phase of digital asset growth and innovation that will increasingly benefit individuals, companies, and our economy. Over the past fifteen years, digital assets and blockchain technologies have evolved from a topic of curiosity and nascent innovation into transformative tools with real-world applications—reshaping financial services, payments, and the architecture of global financial and economic systems.

Indeed, the global digital asset market has seen substantial growth, with increasing participation from both retail and institutional users. The total digital asset market capitalization currently exceeds $3.25 trillion.[1] The stablecoin market alone has grown to over $200 billion,[2] with daily transaction volumes surpassing billions of dollars—demonstrating increased use of digital rails for payments. A recent survey found that approximately 20% of Americans have owned or traded digital assets, with younger demographics leading the trend.[3] By one estimate, digital

[1] Forbes (no date) *Cryptocurrency prices today by market cap*. Available at: https://www.forbes.com/digital-assets/crypto-prices/?sh=66ee3c2c2478 (Accessed: July 11, 2025).

[2] Forbes (no date) *Top Stablecoins Coins today by market cap*. Available at: https://www.forbes.com/digital-assets/categories/stablecoins/?sh=473affe11cd0 (Accessed: July 11, 2025).

[3] Slaughter, J. and Little, D. (2024) *October 2024 Public Opinion Poll, Paradigm.* Available at: https://www.paradigm.xyz/2024/10/october-polling

asset ownership has nearly doubled since the end of 2021. As of 2025, approximately 28% of American adults—or about 65 million people—own digital assets.[4]

Interest in—and use of—digital assets is growing because of the tangible benefits these technologies offer. Digital assets and blockchain technologies improve how individuals and businesses access and conduct financial transactions. Tokenized assets and blockchain-driven transaction networks enhance financial access and inclusion, reduce counterparty risk, increase transparency, improve operational efficiencies, and lower costs. These innovations also modernize legacy financial systems and address persistent disparities that have long affected lower-income and historically underserved communities.

For example, stablecoins enable low-cost, efficient cross-border transactions, helping firms make payments and enabling individuals in collapsing economies or authoritarian regimes to purchase goods and services. Fiat-pegged stablecoins—especially U.S. dollar-backed stablecoins—are rapidly becoming a preferred medium of exchange in regions with volatile local currencies and limited banking infrastructure. Humanitarian organizations are also leveraging stablecoins to deliver aid to refugees and individuals in high-risk regions, citing the technology's reliability, efficiency, transparency, and security in high-risk environments.[5]

More broadly, decentralized finance (DeFi) is expanding access to financial tools and services. CCI has chronicled a number of digital asset use cases that enhance financial inclusion, such as a fintech company that combines AI-driven credit scoring with decentralized finance protocols to provide loans to people in Colombia, and a tokenized savings product in Kenya that fractionalizes bonds.[6]

Digital assets are also driving improvements to payments systems across both DeFi and traditional financial institutions, streamlining the settlement layer and introducing greater

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[4] Blackstone, T. (2025) *2025 Cryptocurrency Adoption and Consumer Sentiment Report*. Available at: https://www.security.org/digital-security/cryptocurrency-annual-consumer-report/

[5] UNHCR USA (2023) "UNHCR wins award for innovative use of blockchain solutions to provide cash to forcibly displaced in Ukraine,"' *The UN Refugee Agency*, 23 March. Available at: https://www.unhcr.org/us/news/press-releases/unhcr-wins-award-innovative-use-blockchain-solutions-provide-cash-forcibly.

[6] Mills, L. (2024) "How is crypto supporting humanitarian aid work?," *Crypto Council for Innovation*, 22 June. Available at: https://cryptoforinnovation.org/how-is-crypto-supporting-humanitarian-aid-work/.

security for transactions. Blockchain rails are quickly becoming the backbone for online payments, providing faster and more secure payments.[7] [8]

Beyond payments, tokenization of real-world assets—such as securities, debt, real-estate, and even agricultural commodities, like wheat—has the potential to make markets more liquid, accessible, and inclusive.[9] Legacy financial institutions have also recognized that tokenization of traditional offerings provide the benefits of blockchain's shared ledgers, reducing data errors associated with manual reconciliation, while 24/7 instant settlement and composability provide better user experience.[10][11] Additionally, blockchain technology can enhance data privacy, compliance, and resilience in a digital world, reducing reliance on centralized intermediaries that often introduce risks related to security, privacy, and identity theft.[12]

Beyond financial use cases, digital assets also provide critical utility to a range of projects that are lowering the cost to deploy and maintain critical services, including internet connectivity and computing capacity.[13] As forthcoming research from CCI will show, millions of Americans are already benefiting from lower costs and greater access to these networks, which leverage digital assets as a coordination mechanism for delivering essential services.

Market structure legislation will not only unleash innovation in these areas—it will also help advance goals for economic inclusion. Research conducted by CCI on builder experiences found that regulatory uncertainty had a profound impact on entrepreneurship, creating barriers to participation. Half of the builders surveyed reported facing substantial costs or altering core

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[7] Haqshanas, A. (2025) "Stablecoins are becoming 'default settlement layer' for internet: Alchemy," *Coin Telegraph,* 22 June. Available at: https://cointelegraph.com/news/stablecoins-default-settlement-layer-internet-alchemy

[8] World Economic Forum (2025) "Stablecoin surge: Here's why reserve-backed cryptocurrencies are on the rise," *WEF Centre for Financial and Monetary Systems*, 3 June. Available at: https://www.weforum.org/stories/2025/03/stablecoins-cryptocurrency-on-rise-financial-systems/#:~:text=Average%20supply%20of%20stablecoins%20in,and%20Mastercard%20transactions%20in%202024.

[9] *See* Karayaneva, N. (2024) *BlackRock's $10 Trillion Tokenization Vision: The Future Of Real World Assets.* Available at: https://www.forbes.com/sites/nataliakarayaneva/2024/03/21/blackrocks-10-trillion-tokenization-vision-the-future-of-real-world-assets/

[10] McKinsey & Company (2024) *What is Tokenization?*. Available at: https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-tokenization

[11] Aziz, A. (2025) *Fidelity Develops Stablecoin and Tokenized Fund as U.S. Weighs New Crypto Regulations. Available at: https://finance.yahoo.com/news/fidelity-develops-stablecoin-tokenized-fund-005651518.html*

[12] Flitter, E. and Weise, K. (2019) *Capital One Data Breach Compromises Data of Over 100 Million, New York Times.* Available at: https://www.nytimes.com/2019/07/29/business/capital-one-data-breach-hacked.html

[13] Crypto Council for Innovation (2024) *What is Decentralized Physical Infrastructure Network (DePIN)?*. Available at: https://cryptoforinnovation.org/decentralized-physical-infrastructure-network-depin-explained/

business decisions due to the lack of regulatory uncertainty – a significant burden that falls disproportionately on historically undercapitalized groups relative to their peers.[14] Increasing participation in shaping the industry will lead to the creation of products and services that better meet the needs of a broader population.

In parallel with this expanding real-world utility, the CFTC already plays a central role in supervising digital asset derivatives markets. Today, the CFTC oversees futures and options for Bitcoin and Ether on a number of exchanges, including one operated by CME Group—the world's largest derivatives exchange. These markets have seen significant institutional and retail participation. In Q2 2025, average open interest across CME's crypto derivatives reached a record $21.8 billion, with over 480 large open-interest holders, signaling broad and maturing participation. Average daily volume surpassed 198,000 contracts, representing $11.3 billion in notional value—nearly double the volume from early 2024. Micro Bitcoin and Micro Ether futures continued their rapid ascent, with year-over-year ADV growth of 113% and 250% respectively.[15] These regulated markets operate with mandatory clearing, trade surveillance, and robust investor protections under CFTC supervision.

In addition to its oversight of U.S. digital asset derivatives markets, the CFTC also has enforcement authority over spot commodity markets, and can bring actions against spot digital asset market participants in cases of fraud or manipulation.

While these oversight roles are vital, they must be matched by a broader federal framework that addresses how Americans actually use digital assets today. Digital assets are not just financial instruments—they are tools that deliver real value to end-users by reducing costs, expanding access, and improving efficiency. Nowhere is this more evident than in cross-border remittances, where digital assets are driving down fees and improving speed.

Traditional financial institutions often charge 5% to 12% for remittances.[16] Digital assets can lower those fees to 1% of the total cost, with transfers completed in a few seconds rather than days.[17] These savings can be reinvested in local economies, especially in developing regions. However, to realize the full potential of these innovations, users must be able to access and

[14] Crypto Council for Innovation (2024) *Equity and Inclusion in Web3: The Experiences of Underrepresented Builders.* Available at: https://www.centerforadigitalfuture.org/equityinweb3

[15] CME Group (2025) *Crypto Insights, April 2025*. Available at: https://www.cmegroup.com/newsletters/quarterly-cryptocurrencies-report/2025-q2-cryptocurrency-insights.html

[16] Rodima-Taylor, D. (2023) "The uneven path toward cheaper digital remittances," *The Online Journal of the Migration Policy Institute: Migration Information Source* [Preprint], (June 22, 2023). Available at: https://www.migrationpolicy.org/article/cheaper-digital-remittances.

[17] Alo, K.O. (2020) 'How Bitcoin is helping African migrant workers and their families save money,' *Forkast*, 9 March. Available at: https://forkast.news/cryptocurrencies-remittance-africa-blockchain-bitcoin-money-transfers-fees/.

exchange digital assets through secure, well-regulated trading platforms. A clear federal market structure framework is essential to ensure these platforms operate safely, transparently, and with appropriate protections for consumers.

Given the many benefits and expanding real-world applications of digital assets, we commend this Committee for pursuing a proper legislative framework to guide further development. Strong federal oversight of market activity is essential to codify appropriate safeguards and responsible risk management.[18] An appropriate regulatory regime for digital assets will reduce inherent risks, protect consumers and investors, and encourage adoption. The industry is committed to building necessary guardrails so that consumers can participate in marketplaces that are fair and secure. This includes requiring transparency and consumer disclosures around potential conflicts of interest, ownership and management identities, risk management procedures, and anti-money laundering (AML) policies.

II. Most Digital Assets Are More Appropriately Classified as Digital Commodities.

A significant portion of the digital asset ecosystem—including widely used assets such as Bitcoin and Ether—function more like commodities rather than traditional securities. These assets are not issued by centralized entities to raise capital, lack profit-sharing or governance rights, and are primarily used for payments, staking, or network participation. Courts and regulators, including the CFTC, have affirmed that such assets fall under the Commodity Exchange Act depending on their structure and use.[19]

The decentralized nature and functional utility of these assets in peer-to-peer networks make them ill-suited for regulation under federal securities laws. Treating them as securities by default introduces legal ambiguity, increases compliance burdens without commensurate benefit, and misapplies a framework designed for centralized corporate issuers—ultimately chilling innovation in the U.S.

Notably, most digital asset trading volume occurs in secondary markets, where participants treat these assets as stores of value[20]—not as equity stakes. Recognizing the commodity-like nature of

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[18] *See, e.g.,* the *Digital Commodities Consumer Protection Act of 2022* (DCCPA), introduced by Senators John Boozman and Debbie Stabenow. The bill proposed granting the CFTC exclusive jurisdiction on spot markets for digital commodities. The legislation emphasized market integrity, customer protection, and regulatory clarity.

[19] *See, e.g.*, Commodity Futures Trading Commission (CFTC) v. Changpeng Zhao, Binance Holdings Limited, Binance Holdings (IE) Limited, Binance (Services) Holdings Limited, and Samuel Lim, 1:23-cv-01887 (N.D. Ill. 2023), available at https://www.cftc.gov/PressRoom/PressReleases/8680-23; Commodity Futures Trading Commission v. My Big Coin Pay, Inc., 334 F. Supp. 3d 492 (D. Mass. 2018); Commodity Futures Trading Commission v. McDonnell, 287 F. Supp. 3d 213 (E.D.N.Y. 2018).

[20] Coinbase (2025) *The State of Crypto Summit 2025: Key insights on defining a new global financial system.* Available at: https://www.coinbase.com/blog/state-of-crypto-2025-summary

these assets is essential to crafting a regulatory framework that preserves responsible innovation while providing necessary consumer and market protections.

III. Market Structure Legislation that Grants CFTC Spot Digital Commodity Oversight Authority Can Unleash the Industry and Protect Consumers.

Achieving a golden age for innovation—and ensuring U.S. global leadership—requires the creation of coherent federal frameworks. These frameworks are essential to provide the industry with needed clarity and to clearly delineate regulatory jurisdictions and market oversight. Such frameworks must stand the test of time, surviving changes in Administrations and agency leadership.

The current regulatory landscape for digital assets in the U.S. has not materially changed since Bitcoin's inception in 2009.[21] Spot or cash digital asset trading activity is largely regulated at the state level under money transmission frameworks. While FinCEN's 2013 guidance and subsequent state-level money transmission licenses (MTLs) impose requirements like AML compliance, they do not uniformly impose the same types of market and trading oversight found in federal markets regulation. As a result, spot digital commodity trading remains outside comprehensive federal market oversight and supervision.

At the federal level, various regulators apply their rules depending on the asset and activity. Under the Commodity Exchange Act (CEA), the CFTC's jurisdiction over activity involving spot or cash trading in a commodity is relatively limited. More specifically, the CFTC has backward-looking enforcement jurisdiction over digital assets deemed to be "commodities," such as Bitcoin and Ether. However, the CFTC's authority over spot trading in digital commodities is not supervisory, and instead can be invoked only when there is suspicion of fraud or manipulation.[22] Supervisory authority, on the other hand, would entail rulemaking, registration, and regular examination of intermediaries involved in spot digital commodity trading. This would be similar to the robust oversight the CFTC administers with respect to derivatives products based on underlying commodities, including well-regulated Bitcoin futures markets. These successful markets have been subject to rigorous requirements for registration, trade surveillance, investor protection, and customer education for more than seven years.[23]

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[21] Gorfine, D. (2024) *"The Future of Digital Assets: Identifying the Regulatory Gaps in the Digital Asset Market Structure"*. Available at: https://docs.house.gov/meetings/BA/BA21/20230427/115821/HHRG-118-BA21-Wstate-GorfineD-20230427.pdf.

[22] CFTC (2017) A CFTC Primer on Virtual Currencies, *LabCFTC*. Available at: https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf

[23] *See* CFTC, 2017. *See also* Hung, J-C., Liu, H-C. and Yang, J. (2021) "Trading activity and price discovery in Bitcoin futures markets", *Journal of Empirical Finance*, 62, pp. 107-120. Available at: https://www.sciencedirect.com/science/article/abs/pii/S0927539821000207; *See also* MarketsMedia (2024) *Bitcoin Friday Futures are Most Successful CME Crypto Launch*. Available at: https://www.marketsmedia.com/bitcoin-friday-futures-are-most-successful-cme-crypto-product-launch/

Meanwhile, over time, the Securities and Exchange Commission (SEC) has asserted that many digital assets are securities. Under former Chairman Gary Gensler, the agency launched numerous enforcement actions against digital asset participants. Yet, the SEC failed to provide clear or consistent guidance on how it determines whether an asset is a security. This definitional ambiguity creates significant legal uncertainty, since regulatory jurisdiction hinges on whether an asset is a security or a commodity. Without clear rules, compliance becomes difficult—if not impossible—and the resulting uncertainty has chilled domestic innovation and growth, pushing many companies offshore to jurisdictions offering greater regulatory clarity.[24]

To address these critical gaps and ambiguities, Congress—under the leadership of this Committee—is the appropriate institution to act. A comprehensive governing framework can provide essential consumer and investor protections, including business conduct standards, customer disclosures, segregation of customer funds, minimum capital requirements, trade surveillance, and reporting and recordkeeping. Digital asset firms in the U.S. are already subject to AML compliance, sanctions screening, and suspicious activity reporting (SARs) under FinCEN's 2013 guidance, and these requirements should be confirmed and codified in any new comprehensive framework.

Indeed, this Committee has a strong record of bipartisan leadership on complex market structure issues—including in digital assets. As the Senate's authorizing committee for the CFTC, it is uniquely positioned to continue driving clarity, transparency, and consumer protections to digital commodities. Past work from the Committee underscores a commitment to thoughtful engagement on digital asset policy and to ensuring that U.S. markets remain fair, competitive, and well-regulated.[25] Earlier efforts reflect not only bipartisan collaboration, but also sustained momentum and institutional commitment to modernizing markets.

Just as the Committee has tackled opaque and fragmented physical commodity markets, I respectfully submit that it remains well-positioned to apply the same leadership to digital commodities—ensuring appropriate oversight, fostering innovation, supporting the safeguarding of customer assets, and protecting market participants.

A key overarching objective of comprehensive market structure legislation should be to clearly delineate the jurisdictional boundary for the CFTC when it comes to digital asset commodities. To that end, legislation should avoid fragmentation, duplication, and inefficient regulatory redundancy.

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[24] CCI commends and sincerely appreciates SEC Chairman Atkins and the new SEC Administration for taking meaningful steps to enhance clarity and course-correct from the prior four years. Legislative guardrails, however, are still needed to provide clear and codified rules of the road for digital assets.

[25] Stabenow, D. (2022) *S.4760 - Digital Commodities Consumer Protection Act of 2022*. Available at: https://www.congress.gov/bill/117th-congress/senate-bill/4760

More specifically, the CFTC is well-situated to play an increasingly central role in overseeing the spot digital asset commodity market.[26] It is a principles-based regulator with a mandate to deter price manipulation, ensure financial integrity, protect market participants, and promote responsible innovation. The agency is experienced in supervising large and complex markets and maintains a robust enforcement capability.

The success of CFTC-regulated Bitcoin and Ether futures markets demonstrates the agency's readiness. These markets are subject to rigorous requirements for registration, trade surveillance, personnel conduct standards, conflicts of interest, digital asset custody, platform and trading-system safeguards, cybersecurity protocols, transaction reporting, investor protection, and customer education.[27] The CFTC has successfully applied and tailored its regulatory framework to the unique characteristics of digital commodities. Additionally, many CFTC-regulated intermediaries are registered with the National Futures Association (NFA), a delegated self-regulatory organization (SRO) that now has years of experience overseeing digital asset-focused intermediaries.[28]

Importantly, the CFTC's principles-based approach to digital commodity oversight is increasingly viewed as a global benchmark. International counterparts—including the UK Financial Conduct Authority and the European Securities and Markets Authority (ESMA)—are engaging with the CFTC to align cross-border governance and regulatory frameworks. This global cooperation reflects growing recognition of the CFTC's credibility and experience supervising complex and evolving markets. Recent statements from current CFTC leadership have underscored the agency's ability to successfully apply and tailor its oversight model to the unique characteristics of digital commodities, citing its flexibility, market integrity, and commitment to responsible innovation.[29] As noted during the recent confirmation hearing for CFTC Chair nominee Brian Quintenz, Chairman Boozman emphasized that "the CFTC should regulate the trading of digital commodities" due to its market knowledge and flexible,

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[26] *See* Boozman, S. (2024) *Remarks at Senate Committee on Agriculture, Nutrition, and Forestry Hearing, Oversight of Digital Commodities Regulation*. Available at:https://www.boozman.senate.gov/2024/7/boozman-opening-statement-at-hearing-of-oversight-of-digital-commodities. ["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."]

[27] Gorfine, D., 2024.

[28] National Futures Association (no date) *Virtual Currency*. Available at: https://www.nfa.futures.org/members/ib/regulatory-obligations/virtual-currency.html. [Accessed on July 7, 2025]

[29] CFTC (2025) *Remarks by Acting Chairman Caroline D. Pham, 100 Impact Leaders Dinner and Annual Awards, Digital Assets Global Forum, UK House of Lords.* Available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham17

principles-based approach.[30] Ranking Member Klobuchar echoed the need for "durable and clear oversight frameworks" that support innovation while protecting consumers and ensuring legal clarity.[31] Extending the CFTC's authority to include digital commodity spot market oversight would build on this momentum, ensure stronger consumer safeguards, and cement regulatory leadership in the global digital asset economy.

There is broad, bipartisan support for expanding the role of the CFTC. Past Chairmen of the CFTC, ranging from J. Christopher Giancarlo and Heath Tarbert to Rostin Behnam, have all argued in favor of providing the CFTC with spot digital commodity oversight authority, as has the current nominee for CFTC Chairman, Brian Quintenz.[32] Without action, the U.S. risks perpetuating an existing gap in market supervision, as well as a fragmented regulatory landscape.

It is time for this Committee to deliver historic, comprehensive market structure legislation. This is the surest way for the U.S. to re-assert its global leadership position, prevent activity from migrating overseas, and ensure that American ingenuity can thrive within a clear, consistent, and durable regulatory framework.

IV. The U.S. Must Lead in Digital Asset and Blockchain Technology, Requiring Timely Legislation and Leadership from Congress.

The U.S. is in a global race for leadership in digital asset innovation.[33] While facilitating digital asset growth is by no means a zero-sum game, other leading jurisdictions, including the European Union, the UK, Japan, and Singapore, have recognized the importance of this technology and have implemented tailored regulatory frameworks, actively engaging with the industry to establish new rules and attract investment.

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[30] *See* United States Senate Committee on Agriculture, Nutrition, & Forestry (2025) *Chairman Boozman Opening Statement at Hearing to Consider CFTC Chair Nominee*. Available at: https://www.agriculture.senate.gov/newsroom/rep/press/release/chairman-boozman-opening-statement-at-hearing-to-consider-cftc-chair-nominee. *See also* Quintenz, B. (2025) Opening Statement of The Honorable Brian D. Quintenz Nominee to serve as the Chairman of the Commodity Futures Trading Commission Before the Senate Committee on Agriculture, Nutrition, and Forestry. Available at: https://www.agriculture.senate.gov/imo/media/doc/1dc7edc1-ce3d-5f9b-8b25-e3912d307d5b/Testimony_Quintenz_06.10.2025.pdf

[31] DeltaStrategy Group (2025) *Senate Agriculture Committee Nomination Hearing for Quintenz — June 10, 2025*. Available at: https://deltastrategygroup.com/senate-agriculture-committee-nomination-hearing-for-quintenz-june-10-2025.html

[32] Reeves, J. (2022) "US senators express support for expanded CFTC oversight in digital commodities markets," *FIA*. Available at: https://www.fia.org/marketvoice/articles/us-senators-express-support-expanded-cftc-oversight-digital-commodities?utm_source=chatgpt.com.

[33] Kim, J.H. (2025) *Written testimony before the U.S. House Financial Services Subcommittee on Digital Assets*, Crypto Council for Innovation. Available at: https://media.cryptoforinnovation.org/2025/02/Written-Testimony-of-CCIs-Ji-Kim.pdf.

For example, the EU's Markets in Crypto-Assets Regulation (MiCA) has established a comprehensive regulatory framework intended to establish a harmonized set of rules for issuers, intermediaries, and other participants in the digital assets ecosystem. MiCA went into effect and became applicable at the end of 2024, focusing on stablecoins and digital asset exchanges.

The UK has long aimed to become a global digital asset hub. With a renewed focus on growth and innovation, the UK government—through the HM Treasury (HMT)—has provided important regulatory clarity on staking, and the Financial Conduct Authority (FCA) has published an ambitious roadmap detailing a clear implementation timeline for implementing a digital assets regulatory regime by 2026.[34] The FCA is also actively supporting digital asset firms starting and scaling in the UK by extending pre-application support.[35]

Similarly, Japan has been actively revising its regulatory approach to digital assets, with a focus on investor protection and market stability.[36] Recent developments include tax reforms to incentivize digital asset investment and amendments to the Payment Services Act to accommodate stablecoins.

Finally, Singapore has also taken a proactive stance, with the Monetary Authority of Singapore (MAS) granting licenses to numerous digital asset service providers and issuing guidelines on various aspects of digital asset activities.[37]

Indeed, these jurisdictions are delivering what the U.S. digital assets industry has been requesting: regulatory clarity through a thoughtful, tailored regulatory regime that recognizes the potential of digital assets while balancing consumer protections and national security.[38]

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[34] Financial Conduct Authority (2024) *FCA Crypto Roadmap*, *Financial Conduct Authority*. Available at: https://www.fca.org.uk/publication/documents/crypto-roadmap.pdf.

[35] Rathi, N. (2025) *Letter from FCA to the Prime Minister regarding a new approach to ensure regulators and regulations support growth*, *Financial Conduct Authority*. Available at: https://www.fca.org.uk/publication/correspondence/fca-letter-new-approach-support-growth.pdf.

[36] GMO-Z.com Trust Company (2024) 'Japan's regulatory shift in cryptocurrency and digital assets,' *Medium*, 31 October. Available at: https://medium.com/gmo-z-com-trust-company/japans-regulatory-shift-in-cryptocurrency-and-digital-assets-1bded466818b.

[37] Yee, L. and Kim, S. (2024) 'Redefining boundaries: MAS consults on new regulatory framework for digital token service providers under the FSMA,' *Duane Morris and Selvam*, 18 October. Available at: https://blogs.duanemorris.com/duanemorrisandselvam/2024/10/18/redefining-boundaries-mas-consults-on-new-regulatory-framework-for-digital-token-service-providers-under-the-fsma/.

[38] The impact of that clarity is further reflected in the recent growth in blockchain developers and users within those jurisdictions. *See, e.g.*, Electric Capital (2024) '2024 Crypto Developer Report,' December 12, 2024. Available at: https://www.developerreport.com/developer-report?s=developer-report.

While many of the best minds, technology, and resources still exist in the U.S., we can only re-assert our leadership by establishing a comprehensive legislative framework. The President's Executive Order highlighting the strategic importance of digital asset innovation signals a commitment to fostering innovation and recognizing the potential for economic growth and global leadership.[39] However, more must still be done to unwind the significant damage caused by previous "regulation by enforcement" approaches.

Legislation is the most effective way to ensure long-term stability and guard against future policy volatility that may otherwise repeatedly shift the goalposts. It provides clarity and consistency that can stand the test of time, allowing U.S. companies to build, grow, and innovate domestically rather than offshore.

Congress has a critical role to play in enacting the proper federal framework for digital assets. By providing a comprehensive federal framework for market structure, this Committee and Congress can ensure additional needed regulatory certainty for the digital asset ecosystem and provide greater protections for individuals. This important work—squarely within the domain of this institution—will unleash powerful potential, enhance clarity, ensure consistency, and further mitigate outstanding risks.

* * *

Thank you again for the opportunity to testify before you today. I look forward to answering any questions.

[39] White House (2025) "*Strengthening American Leadership in Digital Financial Technology," Executive Order 14178*. Available at: https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/

Written Statement of Rostin Behnam[1]
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before the

United States Senate Committee on Agriculture, Nutrition, & Forestry

"Stakeholder Perspectives on Federal Oversight of Digital Commodities"

July 15, 2025

Chairman Boozman and Ranking Member Klobuchar, members of the committee, I am grateful for the opportunity to testify before you today on this important topic.

The Gap In Regulation

Between 2017 and 2025, I served first as a Commissioner, then the Chairman of the U.S. Commodity Futures Trading Commission ("CFTC"). During that more than seven year period, I observed the significant growth of the digital asset market and wider adoption of digital assets by both institutional and retail investors in the United States. Over this time, digital assets evolved from a little known financial product to one that has become ubiquitous globally, owned by nearly 1 in 5 Americans according to a 2024 Pew study[2], and easily accessible to the public.[3]

While I served at the CFTC, the digital asset market endured multiple periods of dramatic volatility, often significant in size and scale. Throughout this time, I publicly stated one consistent message to Congress: under current U.S. law, there is a gap in regulation for the digital commodity asset market. In 2022, a Financial Stability Oversight Council report highlighted this gap in regulation of the spot market for non-securities.[4] This gap for non-security digital assets continues to constitute a majority of the market measured by market capitalization.[5]

The regulatory gap remains today, and must be filled with targeted legislation; it has facilitated countless scandals and fraudulent activity, some very small and typical in criminal form, others massive in profile. First and foremost, filling the regulatory gap will provide the needed customer protections that American investors have become accustomed to in traditional financial markets regulated by the CFTC and the U.S. Securities and Exchange Commission ("SEC").

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[1] Chairman of the U.S. Commodity Futures Trading Commission (2021-2025); Commissioner of the U.S. Commodity Futures Trading Commission (2017-2021)

[2] https://www.pewresearch.org/short-reads/2024/10/24/majority-of-americans-arent-confident-in-the-safety-and-reliability-of-cryptocurrency/

[3] https://www.sec.gov/files/rules/sro/nysearca/2024/34-99306.pdf

[4] 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)

[5] https://coinmarketcap.com/

Further, based on my current observations and those while at the CFTC, I do not believe public interest for digital assets will wane; inaction will only result in greater risk to our financial markets and investors, through lack of market transparency, fraud, market manipulation, corruption, and conflicts of interest. As the digital asset market continues to weave itself into traditional financial institutions, concerns regarding broader market resiliency and perhaps even financial stability will grow. In short, our current trajectory is not sustainable.

One common refrain in connection with past legislative efforts to fill the digital commodity gap suggests that a U.S. regulatory framework will legitimize the digital asset market, leaving opportunities for bad actors and industry players to capitalize on regulatory loopholes and unwitting retail investors. I believe this argument is the loophole; it has only left, for far too long, the vast majority of the digital asset market unregulated and American investors vulnerable to fraud and manipulation. Between pursuing comprehensive regulation that does not undermine existing law and preserves the key pillars of sound market regulation, or inaction, I believe there is only one choice: comprehensive regulation.

A Legislative Solution to Empower Regulators

As this Committee explores a legislative framework for digital assets, I recommend focusing on the gap in regulation for commodity tokens. I have consistently and publicly called for new legislative authority for the CFTC so that the agency can provide the investing public with the needed customer protections in the digital commodity asset market.[6] I believe the CFTC is the appropriate regulator to oversee the digital commodity asset market because of its expertise regulating commodity derivative markets, including digital asset derivatives since 2017[7]; and its robust enforcement experience in the underlying, or spot digital commodity asset market. Additionally, I believe it is critical that this Committee anchor digital asset market structure legislation in the following principles: (i) durable legal precedent that defines digital tokens as either securities or commodities; and (ii) current CFTC core principles as the model for digital asset market structure.

Unique characteristics of digital assets and digital asset trading, including decentralized finance, custody, and market structure to name a few, demand specific focus to ensure broader policy outcomes of resilient, fair, and orderly trading are achieved, without undermining existing law. I believe digital asset markets are another milestone in the evolution of financial markets that pose unique, but solvable policy questions.

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[6] *See,* Rostin Behnam, Chairman, CFTC, Testimony Before the U.S. Senate Committee on Agriculture, https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam48 (July 10, 2024); *see also,* Rostin Behnam, Chairman, CFTC, Testimony Before the U.S. Senate Committee on Agriculture https://www.agriculture.senate.gov/imo/media/doc/Testimony_Behnam_09.15.2022.pdf (Sept 15, 2022); *see also,* 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/opabehnam42 (Mar. 6. 2023)

[7] https://www.cmegroup.com/media-room/press-releases/2017/10/31/cme_group_announceslaunchofbitcoinfutures.html

Disclosures

All investors deserve appropriate and material information about a financial asset to ensure an informed decision. Like traditional markets, the disclosure regime for security and non-security tokens will differ by virtue of the underlying asset. Any legislative solution must recognize that commodity assets do not necessitate an identical regulatory framework fit for securities. Most notably, a key pillar of the securities law is bridging information gaps between an issuer of securities and prospective investors through mandated disclosures. While information about a public company's audited financial statements, executive leadership team, and business risk factors are identifiable and quantifiable for security issuers, and critically important to investors, the same is not the case for commodity assets.

Market Structure

Market structure in traditional finance has evolved over many decades; it includes a variety of market participants like broker-dealers, exchanges, custodians, clearinghouses, and investment advisors. The life cycle of any tradable asset has very defined touch points from the initiation of a customer order to settlement. While unregulated digital asset markets operate with many of the same touch points of existing traditional financial market structure, the two are not identical. I urge the Committee to carefully examine how current unregulated digital asset market structure differs from traditional financial market structure, and consider where there may be opportunities for change, and where existing market structure requirements should be preserved, most notably, for customer protection purposes, avoidance of conflicts of interest, and market resiliency.

Entity Registration

The CFTC has a longstanding and productive partnership with the Securities and Exchange Commission that has facilitated strong, robust regulation of securities and commodity derivatives markets for decades. In a situation where a regulated digital asset market participant handles both security and non-security tokens in the underlying market, separate and exclusive jurisdiction for each the CFTC and SEC is critical to a healthy, comprehensively regulated ecosystem. Any regulatory system that contemplates a different model, including deference or exempted authority, will be an incomplete effort, leaving bad actors and arbitrageurs opportunities to exploit regulatory gaps and leaving American investors at risk.

Further, any framework where each agency does not retain its exclusive licensing authority portends a future of blurred jurisdiction across digital assets and possibly other assets like physical commodity derivatives. Over several decades, cross-agency collaboration has been a hallmark of both agencies, each using a variety of tools to achieve cost efficiencies and support resiliency for market participants. I am confident the same can be achieved in the digital asset market.

Targeted with Flexibility

As the Committee explores legislative solutions, I would like to focus attention on the components of a regulatory framework that would ensure U.S. market regulators have the tools to provide customer and market protections. The CFTC has been involved in the digital asset market for over

a decade, sharpening its expertise and skillset in a balanced, deliberative fashion. The CFTC has been at the forefront of many of the most complex and historic enforcement cases, working closely with law enforcement domestically and internationally.

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

Second, regulations are only as strong as the agency and personnel that enforce them. Appropriate funding, which includes technology and human capital, is necessary to meet the mandate of any regulatory program. I strongly encourage this Committee, as it should consider in any instance where an executive branch agency's mandate is expanded, to couple new digital asset authority for the CFTC with a permanent user-fee structure, surgically applied to digital commodity assets, and commensurate with the new authority.

Third, a reliable self-regulatory organization has been critical to the success of the CFTC. The National Futures Association has served as an effective partner for the CFTC, complementing and supporting its mission for more than five decades. An effective legislative effort mandating a regulatory framework for commodity digital assets must include a role for the NFA.

Fourth, it is essential that legislation provide comprehensive authority for anti-money laundering ("AML"), know-your-customer ("KYC"), and a customer identification program ("CIP"), built off of existing requirements for market participants. With the right tools, including AML, KYC, and CIP authority, the digital asset ecosystem will become safer and less vulnerable to terrorist organizations and illicit activity.

Finally, given the broad adoption of digital assets by a significant portion of the American population[8], a comprehensive education and outreach program, mirroring the CFTC's customer education programs will enable the investing public to understand both the risks and opportunities of this technology.

International & Domestic Cooperation

While CFTC Chairman, I had the privilege of serving as the Vice-Chairman of the International Organization of Securities Commissions ("IOSCO"). IOSCO's member agencies regulate more than 95% of the world's securities markets in over 130 jurisdictions[9]. As Vice-Chair, I saw major and developing economies establish regulatory frameworks for this new asset class.

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[8] Id. at 2

[9] International Organization of Securities Commissions, About IOSCO, https://www.iosco.org/v2/about/?subsection=about_iosco

The current divide between the U.S. and our international counterparts creates regulatory arbitrage opportunities that are exploited by bad actors, and prohibits the U.S. from contributing to much needed multilateral coordination efforts. Further, the potential economic benefits and innovation arising from this technology ultimately will be stymied without regulatory certainty. Investors, entrepreneurs, and various other stakeholders simply cannot participate with sufficient confidence without regulatory protections and certainty.

Domestically, federal law enforcement relies heavily on state and local partners to identify and combat civil and criminal misconduct, which often targets society's most vulnerable. While CFTC Chairman, I worked closely with the North American Securities Administrators Association ("NASAA") and its members to strengthen the CFTC enforcement program. State and local law enforcement are often the boots on the ground when identifying fraud within communities across America. As a former state securities investigator, I encourage this Committee, as it deliberates a digital asset regulatory regime, to ensure state and local law enforcement remain a key partner in fraud prevention.

Conclusion

The principles and regulatory foundations that make U.S. capital markets and derivatives markets the deepest, most liquid, and most resilient in the world provide an effective model for digital asset market structure legislation. We need to act thoughtfully, but with urgency, to fill this harmful regulatory gap in order to give American investors the protections they deserve. I am supportive of recent steps the U.S. House Committee on Agriculture and Committee on Financial Services have taken, in a bipartisan manner, to fill the digital commodity asset regulatory gap. That said, there is more work to be done to ensure congressional market structure legislation is comprehensive, does not undermine existing law, and addresses the unique characteristics of the digital asset ecosystem to ensure robust customer protections and regulatory certainty for market participants. Today's hearing is a critical step to achieve that goal.

I thank the Chairman, Ranking Member, and members of the Committee for your focus in this area, and look forward to answering your questions.

Written Statement of Timothy G. Massad*

before the

U.S. Senate Committee on Agriculture, Nutrition and Forestry

"Stakeholder Perspectives on Federal Oversight of Digital Commodities"

July 15, 2025

Mr. Chairman and Ranking Member Klobuchar, members of the committee and staff, thank you for inviting me to testify today.

Introduction

I welcome this hearing as an opportunity to rethink our approach to the question of how should we regulate digital assets. Congress needs to pass legislation, but the latest proposal—the Clarity Act—is not the right approach.

The need to improve federal regulation has been apparent for years. The lack of federal regulation for the spot market in so-called digital commodities—or digital tokens that are not securities—has led to a high degree of fraud, manipulation and lack of investor protection, as well as rampant speculation. I have spoken about this gap since shortly after I became chairman of the Commodity Futures Trading Commission (CFTC) in 2014 and we declared bitcoin to be a commodity.[1]

Meanwhile, industry representatives have repeatedly claimed that the lack of clarity in regulation is stifling innovation, driving talented individuals and businesses offshore, and causing the United States to fall behind.

But despite the obvious need for investor protection, and the many calls for clarity, there has not been a consensus on the way forward.

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[1] *See* Timothy Massad, *It's Time to Strengthen the Regulation of Crypto-Assets*, The Brookings Institute, p. 2 (Mar. 2019), https://www.brookings.edu/research/its-time-to-strengthen-the-regulation-of-crypto-assets/ (hereinafter "Massad 2019"). I have also spoken about this gap in numerous Congressional appearances. *See for example* my testimony before the Subcommittee on Digital Assets, Financial Technology and Inclusion of the U.S. House of Representatives Financial Services Committee and the Subcommittee on Commodity Markets, Digital Assets and Rural Development of the U.S. House of Representatives Committee on Agriculture, "The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Market," May 10, 2023, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408754 ("2023 Testimony").

The problem is most of the legislative proposals to date have taken us down the wrong road. Whether it was Lummis-Gillibrand, FIT 21 or the latest proposal—the Clarity Act—they have all assumed that legislation can draw a simple, fixed line between so-called digital securities and digital commodities that will provide the desired clarity forever. They have proposed rewriting the securities laws in various ways to achieve this objective. The latest proposal—the Clarity Act—also has many exemptions from existing law and other incentives to promote investment in digital assets. But this approach will not achieve clarity, nor the regulation that we need, and it will undermine existing regulation of our securities and commodities markets.

We need a different approach. It starts with recognizing a few fundamental facts.

First, this is a technology, not an asset class. We often speak of "digital assets," but there is no specific asset class that is distinctly "digital." Tokenization and blockchain are already being used in various ways and the use cases will expand. Some of the most valuable use cases will be in tokenizing traditional securities. We are already seeing tokenized money market funds and stocks.

Second, whether something in digital or tokenized form is a security, a commodity or neither cannot be easily defined by a paragraph or two in a statute. The appropriate regulation should depend on considering a number of factors like what the token represents, whether there is an issuer, whether the transaction involves raising capital, and whether it is even a financial instrument. Legislation can set some general principles, but it should not try to write definitive rules.

Third, the technology and use cases are rapidly evolving. We should not lock in statutory definitions that will prove obsolete soon, nor tie regulators' hands.

Fourth, a principal reason for the lack of clarity is our fragmented regulatory system. Most jurisdictions have one financial market regulator, which can make it easier to deal with innovations that cross product or other jurisdictional lines. The single regulator comes up with new rules to address the innovation. We have two market regulators, the Securities and Exchange Commission (SEC) and the CFTC, neither of whom has the authority to regulate the spot market for digital assets that are not securities. The crypto industry has taken advantage of this gap by arguing that most digital assets are not securities and can therefore be issued and traded without regulation. If, however, we create a regulatory framework for the spot market for non-security tokens, the stakes on classification choices will be lower, and they will be easier to address.

Finally, we are in a different place today than the last few years. The primary regulatory response to date—court cases that seek to interpret the Howey test to show that a particular token is a security—has not been sufficient. It was a whack-a-mole strategy even when the particulars of a case made sense, as I wrote almost four years ago.[2] It required the SEC to bring one case

[2] *See* Massad, Timothy G. and Howell E. Jackson. "How to Improve Regulation of Crypto Today—Without Congressional Action—and Make the Industry Pay For It." *Hutchins Center Working Paper*, no. 79, October 2022 ("Massad-Jackson 2022"), p. 10.

after another to set standards—especially if industry participants constantly tweak tokens, protocols or activities to distinguish them from rulings where the SEC prevailed.

But the SEC has already abandoned "regulation by enforcement" and is actively engaged in exploring ways to customize rules and facilitate innovations involving blockchain and tokenization efforts. Congress should therefore not fight the last war. It should not try to displace or override what the SEC is already doing, but rather build on that work.

All of these factors argue for a different approach. Legislation should advance the goals of the Clarity Act in a different manner. It should (i) establish regulatory oversight over the non-security spot market without rewriting the definition of securities, (ii) set forth general principles for classification and regulation and (iii) mandate the ways by which the SEC and CFTC should work together to address these issues.

Two years ago, Jay Clayton, the former SEC chair appointed by President Trump, and I said that the critical way forward was to have Congress require the SEC and CFTC to work together to develop joint standards, and apply those standards to any intermediary that trades bitcoin or Ether—the two most economically significant tokens whose status as non-securities is generally agreed upon.[3] That is the jurisdictional "hook". In this way, we wrote, we can establish a regulatory framework over all relevant platforms "without first debating classification of each token or Congress pursuing tortured rewriting of existing definitions of securities and commodities." The rules would apply to *all tokens* traded on such platforms, with the proviso that the SEC would retain jurisdiction over tokens that were securities. We warned that rewriting existing law "might fail to bring clarity and inadvertently undermine decades of regulation and jurisprudence as they apply to traditional securities and commodities markets." [4]

The Clarity Act, like similar proposals before it, unfortunately does exactly the things we warned against. It is not a question of whether it "might" fail to bring clarity and undermine decades of regulation. It is clear that it would, as I explain below.

It is vital for legislation to mandate that the SEC and CFTC work together, and to set forth the means for doing so, to ensure we develop consistent regulatory requirements and can properly address the sometimes difficult line-drawing questions. This should include but not be limited to mandating joint rulemaking, within minimum time frames. It should include creation of a jointly overseen self-regulatory organization to administer rules on trading of digital assets (similar to what was contemplated in the Lummis-Gillibrand proposal). [5] It could also mandate a joint committee with shared staff, or the appointment of common commissioners to lead reform efforts. For decades, there have been proposals to merge the two agencies.[6] We may not wish

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[3] See also text at note 20.

[4] *See* Clayton, Jay and Timothy Massad. "A Path Forward for Regulating Crypto Markets." *Wall Street Journal*, 7 July 2023 , and also Clayton, Jay and Timothy Massad, "How to Start Regulating the Crypto Markets—Immediately." *Wall Street Journal*, 4 December 2022.

[5] *See* Massad-Jackson 2022, note 2. I also proposed the SRO concept in my testimony in May 2023. *See* note 1. *See also* Lummis-Gillibrand Responsible Financial Innovation Act , S. 4155, 118th Congress ("Lummis-Gillibrand), Title VI, at https://www.congress.gov/bill/118th-congress/senate-bill/4155.

[6] There have been many proposals over the years calling for a merger of the two agencies or at least better coordination between them because of gaps in oversight, lack of coordination, inefficiencies or other problems

to take that radical step, but legislation must set forth the mechanisms by which they should work together.

An SRO does not mean the industry would govern itself. Consistent with U.S. practice since the 1930s, this SRO would be closely supervised and overseen by regulators—in this case, by the SEC and the CFTC jointly. [7]

My testimony proceeds as follows:

First, I discuss two principles that should inform market structure legislation: it must do no harm to our existing markets, and it should be kept simple.

Second, I discuss why I believe the current approach—as exemplified by the Clarity Act, as well as earlier legislative proposals—violates both these principles and why it will not achieve the desired objectives. I provide several examples of the failings, and in particular the risk of undermining our existing capital markets, the foundation of the American economy. Further detail is provided in Appendix I.

Third, I explain the alternative approach I am suggesting, which is similar to what former SEC Chair Jay Clayton and I advocated two years ago.

Fourth, I discuss the risks of illicit activity, a subject that unfortunately gets very little attention in these proposals, as well as the risk of financial instability arising from this sector.

Finally, I conclude with a discussion of the President's crypto activities, which should not be ignored in any discussion of how to regulate the digital asset market.

The Importance of Doing No Harm and Keeping Things Simple

There have been several proposals for the principles that should inform market structure legislation. These typically refer to the goals of achieving clarity and promoting innovation.[8] I suggest two other principles that are critical: do no harm and keep it simple.

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arising from having two market regulators. *See, for example,* Report of the President Task Force on Market Mechanisms (under Treasury Secretary Nicholas Brady in 1988) recommending greater coordination; the U.S. Treasury, Blueprint for a Modernized Financial Regulatory Structure (under Treasury Secretary Henry Paulson in 2008) recommending a merger; The Group of Thirty Report: Financial Reform: A Framework for Financial Stability, (chaired by former Federal Reserve Board chairman Paul Volcker in 2009), recommending a merger; the U.S. Government Accountability Office, Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System (2009), recommending merger or better coordination; the Financial Crisis Inquiry Commission Report of 2011 (highlighting problems caused by having two regulators); and the U.S. Treasury, A Financial System That Creates Economic Opportunities: Capital Markets, (under Treasury Secretary Steve Mnuchin in 2017), calling for greater harmonization. This is a good time to take a simple step to institutionalize greater cooperation.

[7] *See* Massad-Jackson 2022, note 2, p. 4-7.

[8] *See* French Hill and Glenn GT Thompson, "A Blueprint for Digital Assets in America," Coindesk, April 4, 2025. https://www.coindesk.com/opinion/2025/04/04/a-blueprint-for-digital-assets-in-america.
Chairs Hill and Thompson proposed six principles, the first two of which were to promote innovation and provide clarity for the classification of assets. *See also* "Scott, Lummis, Tillis, Hagerty Release Principles for Market

Do no harm means making sure that any digital asset market structure legislation does not undermine our existing capital and derivatives markets. The U.S.'s $120 trillion equity and debt markets, together with our derivatives markets, are the foundation of the U.S. economy and the envy of the world. They directly impact the health and well-being of our citizens and our businesses. Their depth, liquidity and diversity has been the source of great innovation over the years—and probably more useful innovation since the launching of bitcoin fifteen years ago than has come from digital asset technology. Their strength and integrity rests on a legal regulatory framework that has been gradually and thoughtfully created over almost 100 years.

For all the talk about the innovative potential of digital asset technology, it is vital to maintain perspective about its relative role in our economy and the fact that it is a *technology*, not an asset class.

For example, consider that the collective market capitalization of the "Magnificent Seven" companies—Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia and Tesla—is $16 trillion today. At the time bitcoin was launched in early 2009, two of these companies were not even public, and the other five had a collective market capitalization of just over $300 billion. Their collective growth (of over 5,000%) and the incredible innovation they have brought over that period is due in part to the strength of our capital markets.

Or consider the importance of the U.S. commodity futures and options markets—which is well known to this committee. These markets dominate global trading and are used around the world for price discovery, risk management and liquidity purposes. The Treasury futures market alone had an average daily notional value of contracts traded of $774 billion in 2024.[9] The world's oil markets depend on West Texas Intermediate and Brent crude oil futures contracts. Commercial hedgers and farmers depend on a wide variety of physical commodity futures products in the U.S. markets for crop prices and livestock costs.

Legislation that rewrites the definition of a security, or that creates new exemptions from regulation, in order to promote digital asset technology can easily undermine our securities markets. It can create fractures in the legal underpinnings of our markets that lead to evasion and destabilizing regulatory arbitrage as market participants seek to take advantage of new standards to avoid compliance obligations. I point out examples of how the latest proposal would do this below.[10]

Structure Legislation," June 24, 2025, https://www.banking.senate.gov/newsroom/majority/scott-lummis-tillis-hagerty-release-principles-for-market-structure-legislation. With all due respect, I believe their first principle exemplifies the wrong approach to trying to achieve "clarity": "A clear, economically rational line distinguishing digital asset securities from digital asset commodities should be fixed in statute, contemplating existing law and providing predictability, enhanced legal precision, and much-needed regulatory certainty."

[9] https://www.cmegroup.com/articles/files/2025/ir-liquidity-review-2024.pdf

[10] The desire to rewrite the definition of a security or revise the Howey test has been motivated in large part not by the *absence* of legal clarity as to what constitutes a security, but rather by a *dislike* of recent judicial decisions as to that standard. The fact is the SEC won most of its cases as to what constitutes a security, particularly in the context of primary offerings. A submission for a recent SEC roundtable documented in detail how the Howey test has been consistently applied in digital asset cases. *See* Lee Reiners, Prepared Statement for SEC's Crypto Task Force March 21, 2025 Roundtable titled "How We Got Here and How We Get Out – Defining Security Status" and Responses to

Similarly, if we adopt legislation that assigns the CFTC new responsibilities for overseeing trading of digital assets that are deemed to be commodities, and we fail to provide the agency with sufficient resources or support, that will inevitably detract from its ability to oversee the traditional commodity futures markets (in addition, of course, to making it difficult to regulate these new markets effectively).

If the CFTC is to have new responsibilities for the digital commodity spot market, it will need not only sufficient monetary resources; it will benefit from working more closely with the SEC because of the SEC's much deeper experience with regulation of retail markets. Moreover, having the CFTC work with the SEC will help minimize the risk that this new precedent--where the CFTC is involved in regulating a commodity spot market for the first time—leads to proposals or requests that it regulate *other* commodity spot markets.

Regarding the classification issue, it will be *easier* to determine whether a digital asset is a security or not if we fill the basic gap in regulation. Today, if a token is not deemed to be a security, then there is no investor protection framework that applies to the token. If we create reasonable regulation of the spot market for non-security digital assets, including appropriate disclosure requirements, then that reduces the importance, from an investor protection standpoint, of concluding that a token is a security. No longer will the choice be between securities regulation and no regulation. There is a long line of jurisprudence where courts have essentially created a "fifth prong" to the Howey test: where an alternative regulatory scheme exists, courts have said it is less critical to conclude that something is a security. In particular, this will make it easier to develop regulatory standards for investment contracts that incorporate tokens that are not traditional securities but are digital commodities, as I discuss below.

In addition, part of achieving clarity requires making sure that rules are technologically neutral. That is, if it is not clear *how* one complies with the law in the case of digital technology—as opposed to simply being unwilling to do so—regulators can and should address that. Whether the rules pertain to standards for tokenizing "real world assets," custody, clearing and settlement, recording and transfer of financial products or other areas, regulations should be technologically neutral. Once again, because these issues will arise for both the SEC and CFTC, the rules should be as consistent as possible.

The keep it simple principle calls for choosing a path forward that is most likely to achieve these goals most efficiently, with least risk of inadvertent harm. That means writing legislation that is not overly complicated, that establishes general principles, and that leaves to an administrative process the development of more detailed rules or guidance. Unfortunately, the Clarity Act, like other proposals previously issued, does not do this.

The Weaknesses of the Current Approach

"Security Status" Questions in SEC Commissioner Hester Peirce's February 21, 2025 Statement Titled "There Must Be Some Way Out of Here." https://www.sec.gov/files/ctf-input-reiners-2025-3-18.pdf

Most of the market structure legislative proposals that have been made to date have the faults that former SEC Chair Jay Clayton and I spoke of two years ago. They would undermine existing regulation and not achieve clarity. This is especially evident with the latest proposal, the Digital Asset Market Clarity Act of 2025 or the Clarity Act. It is an extremely complicated, 236-page bill. It is difficult to comprehend fully how its various provisions will interact. It will incentivize lawyers to spend huge amounts of time developing ways to exploit its provisions and engage in regulatory arbitrage strategies on behalf of their clients, in order to take advantage of lesser compliance burdens. (I was a corporate lawyer for 25 years with one of the top firms in the world and am very familiar with how complex legislation can be very susceptible to regulatory arbitrage.) In addition, it will not bring adequate regulation to the spot market in digital tokens that are not securities, nor give regulators the flexibility to address its shortcomings as they become obvious.

I have attached an appendix describing this in detail. I will summarize some key points here:

Classification Scheme Will Undermine Securities Regulation and Fail to Provide Clarity. The Clarity Act proposes to distinguish digital assets that are securities from those that are commodities through a scheme that rests partly on circularity: it defines "digital commodities" in part by excluding most securities, which is appropriate, but it separately redefines securities so that some securities are now digital commodities. It does this by rewriting the definition of "investment contract" to exclude "investment contract assets."[11] Those are defined as digital commodities sold as part of an investment contract.

The distinction between an "investment contract" and an "investment contract asset" is one the crypto industry has long sought. Implementing it in the manner proposed in the Clarity Act will likely lead to evasion and regulatory arbitrage. Even SEC Commissioner Hester Peirce (who has called for more crypto-friendly rules) has counseled against this type of approach, as discussed in the Appendix. But if the two agencies are working together, then it is easier to develop rules or guidance that address these situations. That is, the agencies can address when does an offering of an investment contract involve something that is and should continue to be treated as a security, and when does it involve something that is or will become a digital commodity, and make sure the appropriate rules apply.

In addition, the Clarity Act's definition of digital commodity excludes other categories of tokens currently traded on crypto trading platforms such as Coinbase. This means that platforms will be able to list unregulated tokens alongside regulated ones, which will result in confusion and lack of investor protection in trading, as discussed below.

Given the plethora of use cases we have already seen, it is also unlikely that the Clarity Act's definitions will cover all the uses and questions that will arise.

Broad Exemption from Securities Registration Requirements. The Clarity Act creates an exemption from the Securities Act for offerings to raise funds for the creation of "mature blockchain systems."[12] The conditions on the use of this exemption are lax—for example, one

[11] Clarity Act, Section 201.
[12] See Clarity Act, Section 202, and text at note 43.

need only have an "intent" to create such a system. There is little consequence if one does not actually build such a system. There is not even be a prohibition on general solicitation (that is, making offers to the public) as a condition for utilizing the exemption, as there typically is for private offerings. This and other minimal conditions mean the exemption will likely be used to evade registration requirements (as Commissioner Peirce has warned, as discussed in the Appendix). Moreover, there is no need for such an exemption since there are plenty of other exemptions that can be used to raise money.

Overly Broad DeFi Exemption Will Lead to Migration of Regulated Activity to an Unregulated Zone. The Clarity Act creates an exemption from the Securities Exchange Act and the Commodity Exchange Act for certain "decentralized finance" or "DeFi" activities that is massive in scope.[13] It would exempt from regulation activities related to a blockchain system or a decentralized finance trading protocol. A decentralized finance trading protocol refers to a software protocol, but the exemption refers not simply to developing or publishing such a protocol. It includes "constituting, administering, maintaining or otherwise distributing" such a protocol or a blockchain system. Creative lawyers will surely push for very expansive interpretations of those words. Moreover, the exemption generally pertains to "digital assets," not simply "digital commodities". Digital assets are defined broadly to cover essentially any token, and could include tokenized securities. Thus, one could imagine a large intermediary like Goldman Sachs creating a platform for the trading of tokenized securities that would not be subject to the requirements of the Securities Exchange Act.[14] In short, it will permit and encourage the migration of activity that is currently regulated to so-called "DeFi" platforms that are unregulated.

Regulation of "Spot Market" in Digital Commodities is Weak in Several Ways. Although the Clarity Act gives the CFTC the authority to regulate the spot market in digital commodities and requires certain intermediaries to register, the regulation it creates is far weaker than what is needed or than what we have for securities and derivatives markets today. Here are a few examples:

a. *Platforms Could Trade Non-regulated Tokens*. Platforms like Coinbase or Kraken would be subject to regulation if they trade at least one "digital commodity." But the regulation is likely to cover only a small portion of all the tokens they currently list and trade (which today is in the hundreds) or could list and trade (hundreds of thousands of tokens are created each year). That is because the definition of "digital commodity" is narrower than what is currently listed and traded, and the platforms would not be prohibited from trading these other unregulated tokens.

b. *Platforms Aren't Required to Own What Their Customers Buy.* The Act doesn't require trading platforms like Coinbase or Kraken to own the digital assets that their

[13] See Clarity Act, Sections 309 and 409, and text at note 46

[14] An institution like Goldman Sachs would need to avoid having "unilateral control" of such a platform, but there are a variety of ways that could be accomplished as discussed in the Appendix. The latest version of the Clarity Act published just a few days ago proposes a very slight narrowing of the corresponding exemption from the Commodity Exchange Act in Section 409, but it did not change the Securities Exchange Act exemption in Section 309.

customers acquire.[15] Most crypto trading today is "off-chain" —that is, it occurs through such platforms, which keep ledger accounts for their customers. It is not actually on a blockchain. The Act does not require the platforms to actually hold all the bitcoin that their ledger accounts say their customers own—which was one of the fraudulent practices that led to FTX's collapse.

c. *Platforms Aren't Prohibited from Engaging in Proprietary Trading.* The Act does not prohibit such trading platforms from engaging in their own proprietary trading, which can result in taking advantage of customers' orders.[16] What appears to be a prohibition is toothless because of the many exceptions to it. Our regulated securities and commodity derivatives exchanges are prohibited from doing this.

d. *The Act does not prohibit other conflicts of interest.* The Act has a general provision on conflicts of interest but does not contain any specifics, and leaves it up to the platforms to implement.[17] This means, for example, that platforms can have economic interests in the tokens they list, or investments in other businesses that might pose conflicts. We impose much tighter conflicts regulation on securities and commodity derivatives exchanges.

Control Standards are Very Weak. The Act contains several provisions that provide exemptions from regulation if something is decentralized or not controlled by a person, but the standards used to measure control are lax and contrary to longstanding securities jurisprudence. They are also difficult to even measure. There are many aspects of this, discussed in detail in the Appendix.

An Alternative Approach[18]

The alternative approach envisioned would involve Congress passing legislation that is designed to achieve several objectives. The **first** is to establish federal regulatory oversight of the spot market for digital commodities without rewriting the securities laws. Congress would:

— mandate that any trading or lending platform that trades or otherwise deals in bitcoin or ETH would be subject to the new regulatory framework as would any broker or dealer and certain other intermediaries, unless the platform or intermediary is registered with the SEC or CFTC as a securities or derivatives intermediary. (There could be de minimus exceptions for small actors.)

— mandate the core principles of that framework, which would serve as the basis for rules developed by the agencies. The core principles would be similar to those used in our securities and derivatives markets and those in the Clarity Act (though with appropriate revisions to correct the weaknesses in the Clarity Act noted earlier, such as with conflicts

[15] See text at note 49.
[16] See text at note 53.
[17] See text at note 55.
[18] I have benefited from conversations with Prof. Howell Jackson of Harvard Law School regarding this section. The statements and any errors are my responsibility only.

of interest). This would include principles on preventing fraud and manipulation, protecting customer assets, ensuring adequate disclosure, reporting and record keeping requirements, governance standards and operational resilience, among others; [19]

— mandate that those rules would apply to *all* digital asset tokens traded or used on or by any such platform or intermediary; and

— authorize a self-regulatory organization or SRO, to be jointly supervised by the SEC and CFTC, to enforce those rules.

This approach enables Congress to fill the gap in regulation, and provide the SEC and CFTC with the necessary authority, by using a simple way of resolving what has otherwise been a difficult problem: how does one define "non-security digital asset tokens" in order to create regulatory oversight of that market, without rewriting securities laws in ways that undermine traditional protections? The way to do so is for Congress to require that any trading platform or other intermediary transacting in bitcoin or Ether would be subject to this new spot market regulation. This will ensure that any significant intermediary is covered. [20] The rules would then apply to *all* digital asset tokens in which any such intermediary transacts, subject to certain carve outs. Any digital asset token that is deemed a security would not be included, could not be traded on a digital commodity exchange and would remain subject to the securities laws.

The questions of classification—of when is a digital token a security or something else—would still be addressed, but the federal regulatory framework for the spot market can be effectively and immediately established without resolving all those line-drawing questions permanently. The development of regulations implementing the core principles could be the subject of joint rule-making by the agencies or by the CFTC with input from the SEC. A jointly-supervised SRO could enforce those rules, with the agencies still retaining their authority, as is the practice today in our securities and commodities markets.

Second, the legislation would set general principles for resolving classification questions but leave the task of developing rules and guidance to the agencies. Once again, a joint process would be ideal; but alternatively the SEC could be given the lead responsibility as it already is doing. (It could also have the equivalent of a "right of first refusal" to determine that a digital asset token is a security and therefore must be traded on an SEC-registered platform or by an SEC-registered intermediary.) The principles could include factors such as (i) does the token represent an interest in a business (whether debt, equity or voting); (ii) does the transaction involve capital raising; and (iii) is there an ongoing issuer who can provide disclosure.

The issues pertaining to the treatment of investment contracts incorporating tokens that do not have the characteristics of traditional securities (such as not representing an interest in a business) in particular deserve the more nuanced approach that the SEC is already trying to bring to bear, versus writing a hard and fast line in legislation. A process where the agencies work

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[19] See *also* Massad and Jackson (2022), *supra,* note 2, for a discussion of core principles for an SRO.

[20] Because bitcoin and ETH represent so much of the total crypto trading, any platform of consequence would be covered. But of course, other assets as to which there is a consensus that they are not securities could also be included for purposes of this jurisdictional provision.

together will be even better. If an investment contract incorporates something that is more like a digital commodity than a security, then we want to make sure that appropriate disclosure, trading and other rules apply to that "thing" particularly as it becomes more widely distributed. Regulatory requirements regarding a token might change over time or depending on context—disclosure and rules that apply to an initial offer and sale of a token, or to subsequent offers and sales where there is an issuer, may be different than in a resale context, particularly where the sale is not by a related person. But legislation should leave regulators with ample discretion to balance such factors and consider legitimate policy concerns, including the risk of cannibalization of traditional securities markets.

As noted above, the stakes of these classification choices will be much lower once a regulatory system for the spot market in digital commodities is in place. While the SEC would still rely on the Howey test and the other jurisprudence in this area, no longer will the choice be securities regulation or no regulation.

Although it is not expressly articulated as a fifth prong of the Howey test, Supreme Court cases have made clear that the existence of an alternative regulatory scheme can be an important factor in concluding that a financial instrument is not a security. For example, in Marine Bank v. Weaver, the Supreme Court held that neither a federally insured certificate of deposit nor a related agreement constituted a security in part because the CD was subject to a robust, alternative regulatory regime, and therefore it lacked the risk typically associated with a security.[21] Similarly, in International Brotherhood of Teamsters v. Daniel, the Supreme Court overturned a lower court ruling that held that participation in a non-contributory, compulsory pension plan was an investment contract and subject to the protections of the securities laws. The court said that the argument that securities regulation should apply was undercut by the fact that such plans are subject to extensive regulation under the Employee Retirement Income Security Act of 1974.[22] The existence of an alternative regulatory scheme reduces the importance, from an investor protection standpoint, of concluding that something is a security.

In addition to distinguishing between digital assets that are securities and those that are commodities, the agencies would also clarify when tokens are neither and are not financial instruments. This will minimize the risk that limited regulatory resources are focused on tokens that are not economically significant. The legislation should, however, consider to what extent consumer protection guidelines are needed for such other tokens, particularly given the scams and frauds that have occurred with meme coins.

The legislation would also create a process whereby entrepreneurs can receive clarity as to the appropriate classification of new digital assets within a reasonable period of time. This could be done through a joint SRO. For example, Lummis-Gillibrand provided that a member of a jointly-supervised SRO contemplated by the legislation could make a request of the SRO for "an initial determination of the legal character of a crypto asset as a security, an ancillary asset, a commodity . . .or as otherwise provided by law,"[23] which could be subject to review by the agencies.

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[21] Marine Bank v. Weaver, 455 U.S. 551 (1982)
[22] Teamsters v. Daniel, 439 U.S. 551 (1979)
[23] Lummis-Gillibrand, Section 603.

If the SEC and CFTC cannot reach agreement, the Secretary of the Treasury could be given authority to resolve disputes. Courts should be instructed to defer to these classification procedures.

Third, the legislation should direct the SEC and CFTC to develop technologically-neutral rules with respect to the use of tokenization and blockchain technology and to make such rules as consistent as possible between the agencies. Whether it is in the context of standards for the process of tokenizing an asset, reconciling blockchain and traditional ledger record-keeping, custody, clearance and settlement or AML/CFT compliance, securities and commodities rules should make it possible to utilize the technology efficiently. Rules should recognize the distinctive features of the technology and ensure that regulatory objectives are still met, even if in a different manner. But the rules need not promote the technology—let the market decide where it is useful.

Fourth, the legislation would authorize the creation of a new SRO and set forth provisions for its structure, governance and responsibilities. It would draw on the precedents that exist in both the Securities Exchange Act and the Commodity Exchange Act, except that this SRO would be jointly and closely governed by the SEC and CFTC. The board of governors should be diverse, and include not only representatives of digital asset market participants, but also traditional financial institutions, academics, public interest organizations, and others. The SEC and CFTC would approve the board of governors, the SRO's rules and its budget (though funding can be imposed on the industry consistent with our traditional SRO practice). Strong controls and governance provisions like these are critical to ensure the SRO is not vulnerable to capture by the industry. While a new SRO would be mandated, the SEC and the CFTC can draw on the expertise and staffing of existing SROs such as the Financial Industry Regulatory Association (FINRA) and the National Futures Association (NFA) in forming the entity.

Lummis-Gillibrand contained language for multiple "customer protection and market integrity authorities"—essentially SRO-like entities that would have been jointly overseen by the SEC and CFTC, and the bill drew on precedents in the Securities Exchange Act and Commodity Exchange Act regarding some issues of structure and governance.[24] While the purpose and responsibilities I am envisioning are somewhat different, those provisions could be a starting point for what is contemplated here. There could also be multiple SROs for the purpose of enforcing rules, as Lummis-Gillibrand contemplated, but the agencies may want certain functions left to a single, "head" SRO. This would be similar to what we have today with the Financial Industry Regulatory Authority and the National Futures Association, with exchanges often recognized as SROs as well for purposes of enforcing the rules on their own platforms.

Fifth, the legislation should not create a broad exemption for decentralized finance or DeFi. It should instead express the view that, because DeFi activity is a small part of the digital asset world today, the priority is the regulation of centralized intermediaries and the development of appropriate rules generally for the use of digital technologies. The legislation could also express the view that developing or publishing software is not in and of itself to be regulated. But because DeFi activity could grow quickly, we should put some broad guardrails around its

[24] See Lummis-Gillibrand, Title VI.

potential development. This could include making it clear that regulators have the authority to take action if decentralized protocols are being used as a means to evade rules that apply to centralized actors, or if such protocols are being used to migrate regulated activity to an unregulated sphere. It should also require the SEC and the CFTC to prepare a study and recommendations to Congress on the regulation of actors in the DeFi world. Ultimately, we should neither favor nor inhibit DeFi activity but make sure that regulatory objectives are achieved even if in a different manner. See also the discussion in the appendix.

Sixth, the legislation should address illicit finance risks, as discussed below.

The approach outlined above is a pathway to achieving investor protection quickly and comprehensively, and providing the necessary clarity to the industry. Congress would provide the overall direction and principles and give the agencies the authority and flexibility to carry out the job, building on the work the agencies are already doing.

Illicit Finance Risks

It is surprising to me how little is said about the risks of illicit finance in these three market structure proposals. When the GENIUS Act and STABLE Act were being considered recently, proposals were made to expand the authority of the Treasury Department to address illicit finance, particularly in decentralized finance activities. It is my understanding that sponsors of stablecoin legislation responded that those subjects should be addressed in market structure legislation instead. However, the Clarity Act did not do so. Similarly, Lummis-Gillibrand contains an entire title on combating illicit finance which calls for useful studies and research and creates an inter-agency working group, but it does not provide any significant new authority.[25]

The legislation should give the Treasury Department and market regulators ample authority with respect to preventing the use of digital assets for illicit finance or evasion of sanctions. This should include requiring crypto intermediaries to comply with the Bank Secrecy Act (BSA) and the International Emergency Powers Act (IEEPA), but it should not be limited to that because digital assets can be transferred on decentralized blockchains without the involvement of an intermediary. The authority needs to be broad and flexible for that reason.

In 2023, the Treasury Department proposed several ways in which its authority should be expanded, which could be included in this legislation. Among other things, it should make clear that Treasury has the authority to create a new sanctions tools, analogous to Correspondent Account or Payable-Through Account (CAPTA) sanctions, to deploy in the cryptocurrency space. Treasury's existing CAPTA authorities enable Treasury to prohibit U.S. correspondent accounts and transaction processing for certain financial institutions that have operated in the financial services sectors of certain economies or facilitated transactions for a designated entity, without requiring that all property and interests of the institution be blocked. Congress should make clear that these tailored authorities can be extended to foreign crypto exchanges and other crypto intermediaries.

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[25] See Lummis-Gillibrand, Title III.

In addition, Congress should give OFAC the ability to block stablecoin transactions to the same extent as its existing power to block US dollar transactions, and extend BSA and IEEPA jurisdiction to foreign crypto intermediaries with U.S. touchpoints (though with possible provision for substituted compliance in the case of BSA obligations). Treasury should also have flexible authority to require domestic crypto actors that are not registered as money service businesses to comply with the BSA and IEEPA where such actors have the necessary control or authority to achieve regulatory objectives, such as custodial wallet providers. It should have authority to address the role of mixers, tumblers and other devices used to disguise identity. That can be coupled with a recognition that rules must strike a balance between preventing illicit finance and respecting individuals' privacy.

We also need creative approaches in the context of DeFi protocols. One is that suggested by Rebecca Rettig and Michael Mosier (former Acting Director of FinCEN and former Associate Director of OFAC, respectively) which is to require certain businesses that (a) are necessary to the transmittal of communications about DeFi transactions, (b) transmit a material portion of such communications and (c) offer this service for profit to take on additional illicit finance risk management practices, without becoming "financial institutions" subject to the BSA.[26] Similar responsibilities could be extended to businesses that are "front-ends" to, or that otherwise facilitate use of, DeFi protocols.

In general, the authority needs to be broad and flexible also because we do not know exactly how the sector and technology will evolve.

Financial Stability Risks

A comprehensive regulatory framework is also needed to minimize potential risks to financial stability. While the digital asset sector may be small in relation to the entire financial system today, it can grow quickly, and certainly proponents of the technology believe it will. Moreover, financial stability risks can arise from interconnectedness or contagion risks even when the scale of activity is not that large. To date, crypto trading has been characterized by rampant speculation and high volatility, contributing to dramatic price swings. Highly leveraged activity multiplies the risk, as does the lack of transparency. These factors can contribute to the build-up of risks and exposures that can escape prudential oversight. The pseudonymity of the blockchain is not equivalent to a regulatory framework that provides regulators with sufficient knowledge as to leverage, exposures and interconnections among institutions. The lack of a regulatory framework also allows for trading practices that can amplify risks: excessively leveraged trades; wash trading and other fraudulent and manipulative schemes that distort prices; centralized exchanges that can engage in front-running of customer orders or have interests in the tokens they list; and exemptions from regulation for so-called decentralized activity that allow for migration of regulated activity to an unregulated sphere. While detection of potential financial stability risks is never assured, the absence of a comprehensive regulatory framework means the job is nearly impossible.

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[26] This proposal also contemplates designating truly autonomous DeFi protocols as "critical infrastructure" that would be subject to oversight. See Rettig, Rebecca, Michael Mosier and Katja Gilman, "Genuine DeFi as Critical Infrastructure: A Proposal for Combating Illicit Finance Activity in Decentralized Finance," January 29, 2024.

The President's Crypto Business Ventures

As we consider legislation to regulate the crypto markets, we cannot ignore the actions by President Trump to personally profit from crypto. These actions violate the ethical standards we have always expected our presidents to follow, and are especially of concern at a time when regulation of digital asset technology is such a prominent public issue.

The Trump meme coins were issued two days before inauguration and five days before the issuance of the Executive Order on Strengthening American Leadership in Digital Asset Technology.[27] It is hard to imagine an action that could have been more contrary to the spirit and opening words of that order, which is to "promote United States leadership in digital assets" and "responsible growth and use of digital assets."[28] The meme coins have been described as a "classic meme-coin pump and dump scheme."[29] They appear to serve no purpose other than the personal enrichment of the president. In the words of Vitalik Buterin, the creator of Ethereum, they are vehicles for "unlimited political bribery," because those seeking to curry favor with the Administration—whether they be individuals, companies or countries—may purchase the coins, knowing the President will profit from their actions, while they can still deny that seeking government favoritism was their purpose. Instead, they can claim they were merely speculating on a digital asset.[30] Crypto entrepreneur Justin Sun was reportedly one of the biggest investors in the token. He also is reported to have invested a total of $75 million in World Liberty Financial, including a $45 million investment in late January, 2025. The SEC lawsuit against him was dismissed in late February.[31]

Some have not even bothered to claim a purpose other than seeking influence. Texas transportation firm Freight Technologies Inc. announced the issuance of $20 million of bonds to finance the purchase of $TRUMP memecoins as an "effective way to advocate for fair, balanced, and free trade between Mexico and the US".[32] The reports concerning the dinner that the President held for the top 220 holders indicate he spent little time there and had little of substance to say, which suggests his crypto agenda is more about making a profit.

The Trump Organization's acquisition of World Liberty Financial and its issuance of a stablecoin is equally inappropriate and shocking, particularly as Congress works to pass

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[27] United States, Executive Office of the President [Donald J. Trump]. Executive Order 14178: Strengthening American Leadership in Digital Financial Technology. 23 January 2025. *Federal Register*, vol. 90, no. 20, pp. 8647-8650 ("Executive Order 14178").

[28] *Ibid.*

[29] Khalili, Joel. "The Trump Memecoin's 'Money-Grab' Economics." *Wired*, 20 January 2025 (citing interview with Jacob Silverman).

[30] Turner Wright, "Vitalik Buterin takes aim at "unlimited political bribery" using tokens," Cointelegraph, January 23, 2025, at https://cointelegraph.com/news/vitalik-buterin-unlimited-political-bribery-tokens

[31] Northrop, Katrina and Vic Chiang, "Who is Justin Sun, the Chinese Billionaire at Trump's Crypto Dinner?", The Washington Post, May 23, 2025, https://www.washingtonpost.com/world/2025/05/23/trump-crypto-dinner-justin-sun/

[32] "Freight Technologies Secures up to USD $20 Million to Create an Official Trump Token ($TRUMP) Treasury," Freight Technologies press release, April 30, 2025, https://fr8technologies.com/press-release/freight-technologies-secures-up-to-usd-20-million-to-create-an-official-trump-token-trump-treasury/

stablecoin legislation.[33] WLF's transactions are continuing at a fast pace: the investment firm MGX acquired $2 billion in WLF's stablecoin to make an investment in leading crypto exchange Binance. This took place shortly before the SEC dismissed its enforcement case against Binance and its founder Changpeng Zhao.[34] This purchase made the WLF stablecoin one of the largest in the market.[35] Another United Arab Emirates-related entity, Aqua 1 Foundation, recently invested $100 million in WLF tokens.[36] The various other business ventures that have been discussed in the press—such as the acquisition of bitcoin mining capacity—further suggest that the priority of the Administration is not promoting crypto innovation but promoting the President's personal enrichment.

This activity creates a cloud over the crypto industry, and over the enterprise of developing market structure legislation. Only Congress can address this and I strongly encourage Congress to do so.

Conclusion

The strength of our securities and commodities laws is in their flexibility, in their focus on function, and their ability to evolve with changes in financial markets and developments in new financial instruments. We need a new approach that builds on those strengths and does not undermine existing regulation.

Thank you for the opportunity to testify. I would be happy to take your questions.

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[33] The WLF stablecoin is technically issued by another firm, Bitgo, and thus WLF would likely not even be subject to the provisions of the GENIUS Act if passed. But that does not make the arrangement any less of a conflict of interest. See "USD-1, the Blueprint for Bitgo's Stablecoin as a Service," Bitgo press release, March 28, 2025, https://www.bitgo.com/resources/blog/usd1-the-blueprint-for-bitgos-stablecoin-as-a-service/

[34] Frederico Maccioni, "Trump's stablecoin chosen for $2 billion Abu Dhabi investment in Binance, co-founder says," Reuters, May 1, 2025, https://www.reuters.com/world/middle-east/wlfs-zach-witkoff-usd1-selected-official-stablecoin-mgx-investment-binance-2025-05-01/#:~:text=Speaking%20at%20a%20crypto%20conference,the%20world's%20biggest%20crypto%20exchange; Alexander Osipovich, "SEC Dismisses Lawsuit Against Binance," The Wall Street Journal, May 29, 2025, https://www.wsj.com/finance/currencies/sec-dismisses-lawsuit-against-binance-cce1dcae

[35] https://coinmarketcap.com/view/stablecoin/

[36] "Aqua 1 Announces $100M Strategic World Liberty Financial Governance Token Purchase to Help Shape and Accelerate Decentralized Finance Adoption," Reuters, June 26, 2025, https://www.reuters.com/press-releases/aqua-1-announces-100m-strategic-world-liberty-financial-governance-token-purchase-to-help-shape-and-accelerate-decentralized-finance-adoption-2025-06-26/

Appendix

How the Clarity Act Would Undermine Existing Regulation and Not Provide Adequate Regulation of the Digital Asset "Spot Market"

This Appendix provides more detail on the weaknesses of the Clarity Act discussed above. While I agree with certain goals of the Act—providing clarity in classification of the uses of digital technology and providing regulation of the spot market in non-security digital assets—I believe its provisions will not bring the desired clarity, nor sufficient regulation. Most important, I believe its provisions will undermine existing regulation of our securities and derivatives markets. The examples below focus in particular on that aspect. I also briefly note how other market structure proposals have addressed some of these issues for comparative purposes.

The "Classification Schemes" in these Proposals Will Not Provide Clarity Nor Sufficient Regulation of the Spot Market in Non-security Tokens. They Will Also Undermine Securities Regulation. The Clarity Act's classification scheme rests on circularity: it defines digital commodities so as to exclude most securities but separately redefines securities so that some securities are now digital commodities. It does this by rewriting the definition of "investment contract" to exclude "investment contract assets."[37] Those are defined as digital commodities sold as part of an investment contract.

Even SEC Commissioner Hester Peirce has recently warned of the dangers of carving out "investment contract assets" from the definition of securities in the context of secondary sales—and the dangers are obviously even greater if done generally:

> [T]reating all secondary sales of crypto assets as being free of the investment contract runs the risk of facilitating bad behavior: the dumping of crypto assets bought as part of an investment contract on retail investors while the crypto asset lacks function and its associated network or application remains centralized (and thus subject to information asymmetry concerns). If the initial holders are out of the picture because they have sold their crypto assets, the investment contract is unenforceable, and the issuer can dump its crypto assets too and walk away—wealthy and unaccountable—for completing the project.[38]

As noted earlier, it would be much better to develop guidance or rules as to when it is appropriate to distinguish between an investment contract and an investment contract asset, so

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[37] Clarity Act, Section 201.

[38] Commissioner Hester Peirce, "New Paradigm: Remarks at SEC Speaks," May 19, 2025, at https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks

that context, risks of regulatory arbitrage, appropriate disclosure rules and so forth can be taken into account.

It is worth noting that FIT 21 had an even more complicated classification scheme. It created two new categories of assets: restricted digital securities and digital commodities, the former to be regulated by the SEC and the latter by the CFTC. The test to determine how a token was classified had three components: the level of decentralization and functionality of the digital asset's associated blockchain system; how the digital asset was acquired by the holder; and who holds the digital asset (e.g., an issuer vs. an unaffiliated third party). This was an unworkable, subjective point-in-time test that would have bifurcated the market in particular tokens, could have meant the classification changed over time, and depended on information that wasn't available. It was roundly criticized and thus it is no surprise that it was discarded.

Lummis-Gillibrand created a new category called "ancillary assets" that were intangible assets issued in connection with an investment contract. It then classified those ancillary assets, subject to meeting certain criteria, as commodities.[39] It thus effectively carved out "investment contract assets" from the definition of investment contract.

The Clarity Act's definition of digital commodity is also vague, and its exclusions will likely mean the Act will only cover a small fraction of the tokens currently traded in the spot market—which means the regulation created by the Act will not be sufficient. The basic definition is a digital asset "intrinsically linked" to a blockchain and whose value "is derived from or is reasonably expected to be derived from a blockchain."[40] That could include just about any token. The exclusions, however, include one for "collectibles"—which likely includes meme coins—and digital assets that have value separately from their relationship to a blockchain system. In my conversations with staff involved in drafting the bill as well as experienced lawyers, no one knows for sure what the definition will cover, but they agree that universe is likely much smaller than what is listed and traded today.

Centralized platforms like Coinbase and Kraken each list several hundred tokens, for example. Although these platforms would be regulated as "digital commodity exchanges" under the Clarity Act, that Act does not prohibit them from listing and trading tokens that are not "digital commodities" and thus are not subject to regulation. That would mean a lack of investor protection and confusion on the part of the public: if you trade on a platform like Coinbase, some products are regulated and some are not, and you may not know which are which. Regulated platforms should not be allowed to trade products that are exempt from regulation.

Lummis-Gillibrand, which created a different classification scheme as noted above, also would have likely resulted in a regulatory scheme that would not cover all the digital tokens currently traded by existing centralized platforms.

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[39] Lummis-Gillibrand, Section 501.
[40] Clarity Act, Section 103(a)(4).

The problem would be even greater with respect to decentralized exchanges or trading protocols that are exempted from regulation under these proposals.[41] The number of tokens that can be traded on those platforms is much, much larger since hundreds of thousands of tokens are created each year—Coingecko estimated that 600,000 were created in January of 2025 alone.[42] The solution is to curtail the broad exemption for DeFi in the Act.

The Clarity Act Creates New Exemptions From the Registration Requirements of the Securities Act That Are Not Justified and Will Undermine the Basic Framework of the Securities Laws.
The new exemptions from registration under the Securities Act are meant to be used for offerings to raise funds for the creation of "mature blockchain systems." They are further examples of the weakness of the bill because (i) the exemptions give preference to such offerings without justification; (ii) the conditions to their use will not ensure that the intended purpose is achieved; and (iii) the exemptions can be used to evade securities law registration requirements generally.

The Act creates a new Section 4(a)(8) of the Securities Act which exempts the offer and sale of an investment contract containing a digital commodity for the development of a blockchain system that is, or is intended to become, a "mature blockchain system."[43] The amount of funds that can be raised is quite high—$75 million over a 12-month period, or $300 million over four years. There is no apparent reason to create this special exemption. We have not traditionally created exemptions that are solely for a particular technology or business. There are many other private offering exemptions that can be and have been used to raise money for digital asset projects. To the extent that there is insufficient clarity as to the status of a native token of a blockchain once created, that could be achieved without creating a special exemption for the offering.

It is particularly troubling, however, that the exemption is available simply if one "intends" to create a mature blockchain system. There is no requirement that the funds actually be used for that purpose, and there appears to be no significant adverse consequence if the issuer fails to create a mature blockchain system.

In the same speech noted above, Commissioner Hester Peirce has warned that this type of exemption can easily be used to evade the securities laws:

> Companies looking at capital raising options might even be tempted to use such crypto asset sales instead of other capital-raising methods: promise to build a network or functional product, do a crypto asset presale to venture capitalists, stop developing the network or product once they have sold out to retail, and plow the proceeds of the initial crypto asset sale into building their actual business.[44]

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[41] The Clarity Act has a very broad exemption for "DeFi" activities, as did FIT 21, as discussed below. Lummis-Gillibrand prohibited regulated crypto asset exchanges from using decentralized platforms for trading unless such platforms met certain "risk-management" standards, but those did not appear to pertain to the tokens traded, and as noted earlier it did not generally regulate decentralized platforms. See Lummis-Gillibrand, Section 404.
[42] https://www.coingecko.com/research/publications/bobbys-crypto-aggregate-2025-02
[43] Clarity Act, Section 202.
[44] See note 38.

Note that Commissioner Peirce's example pertains to a secondary sale. The risks are even worse under the Clarity Act because it specifically exempts primary sales based on such promises.

The conditions on use of the exemption do not limit its possible damage nor justify its existence. While there is a requirement to provide certain disclosures, the SEC could provide guidance of this sort without creating a new exemption. Another condition is that after the completion of the transaction, a purchaser does not own more than 10 percent of the outstanding units. This suffers from the many flaws in the Act's treatment of "control" discussed below. The exemption also does not prohibit a general solicitation—that is, making offers to the public—nor does it contain limits on type or number of investors.

Lummis-Gillibrand contained a different regime for offers and sales related to ancillary assets.[45] Ancillary assets could be distributed in connection with an offer or sale of a security under an investment contract and could then be classified as commodities and subject to different disclosure requirements. While this was a narrower exception, it would likely have given rise to similar efforts to use it for purposes other than what its authors intended.

"DeFi" Exemptions Will Undermine Existing Regulation. The Clarity Act creates an exemption from the Securities Exchange Act and the Commodity Exchange Act for certain "DeFi" activities that is massive in scope.[46] (FIT 21 had a very similar exemption.) It is not simply for the development, or autonomous operation, of a software program for which the code is public—the type of exemption that some in the crypto industry have argued for. Rather, it covers a broad range of activities "in relation to the operation of a blockchain system or in relation to a decentralized finance trading protocol." For example, the exemption covers "developing, publishing, constituting, administering, maintaining or otherwise distributing" a decentralized finance trading protocol, a "liquidity pool" or software that "facilitate[es] an individual user's own personal ability to keep, safeguard or custody" digital assets. It is unclear what "constituting, administering, maintaining" mean in this context but one can be certain that creative lawyers will push for expansive interpretations. Moreover, the exemption is generally not limited to activities related to "digital commodities" but is instead applicable to "digital assets," which are defined as "any representation of value" recorded on a distributed ledger or similar technology. That would include tokenized securities, tokenized derivatives and other tokenized financial instruments.

Thus, a variety of intermediation or trading activities pertaining to conceivably any financial instrument in tokenized form could become exempt from the securities and commodities laws. This will encourage migration of all sorts of activities that are currently regulated to so-called "DeFi" platforms, and regulators will be powerless to stop it.

Lummis-Gillibrand also had an exemption for certain decentralized activities, though not quite as broad. The proposal also imposed some obligations on regulated crypto asset exchanges and futures commission merchants that transacted with or routed orders through such decentralized

[45] Lummis-Gillibrand, Section 501.
[46] Clarity Act, Sections 309 and 409.

platforms. But it did not impose those obligations on all businesses that might facilitate use of such platforms, nor set standards for such platforms generally.

There is no justification for broad DeFi exemptions. A principal argument often made is that activity that is autonomous and does not involve human actors exercising custody or discretion does not pose the same risks. But there are several flaws in this argument.

The first is that such an exemption—as with the use of the term "DeFi" generally—can cover all sorts of protocols, processes, activities and services that can vary tremendously with respect to the degree to which they are automated, decentralized or distributed, and with respect to the degree to which firms or human actors exercise control or discretion. Even with so-called autonomous protocols, there are centralization vectors or means of exercising control and discretion, such as administrative keys that permit modification of code or restrictions on access.[47] But in addition, these exemptions include activities that facilitate the use, distribution and operation of those autonomous protocols and that are offered or run by businesses, including "front-end" services. Those businesses may exercise control and discretion in various ways and can and should be touchpoints for regulation where necessary to achieve regulatory objectives.

For example, under the Clarity Act, one could imagine Goldman Sachs or some other large institution "administering" or "maintaining" a decentralized finance trading protocol that is for the trading of tokenized securities. Such an institution would need to structure the platform so that it is not in unilateral control, but this could be done by vesting a veto or certain other limited control rights in members or participants of the platform. (See discussion below of control issues.)

Secondly, while automation and ability for users to control assets may reduce certain types of risks that are often the targets of regulation, they may introduce others, and we must ensure that the regulatory goals of consumer and investor protection, market integrity and transparency, financial stability and prevention of financial crime are achieved, even if in a different manner. A simple example is to imagine a "decentralized" or automated platform for the trading of Treasury securities that becomes a dominant, and indeed systemically important, platform given the importance of the Treasury securities market. Even if such a platform truly was automated and not subject to the control of a human operator, and even if participants engaged in self-custody, we would still want to make sure various regulatory goals were achieved.

Proponents of making wholesale exceptions for "DeFi" also often ignore the fact that the "trad fi" world has experienced waves of automation before. We developed regulatory responses to automation and can do so again, even if this is a somewhat different type of automation. Our securities and derivatives markets have gone from manual floor trading to highly automated

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[47] For an excellent discussion and analysis of the many ways that DeFi protocols and services are not decentralized, and instead have various types of what have been called "centralization vectors"—that is, ways in which some degree of control or discretion is exercised, including administrative keys that permit modification of code or restricting access, see Shuler, Katrin, et al. "On DeFi and On-Chain CeFi: How (Not) to Regulate Decentralized Finance." *Journal of Financial Regulation*, vol. 10, no. 2, 2024.

processes in just a few decades. Our rules have generally kept pace with an increasing diversity of trading platforms, faster speed, and less human involvement.[48]

Another argument that is made for a DeFi exemption is that the amount of "DeFi" trading of crypto is very small relative to trading on centralized platforms, so we should focus on the latter and not worry about the former. But the DeFi world could grow, and grow quickly, and an exemption written into a statute would be hard to change. The relatively small amount of activity today argues for regulators prioritizing the regulation of centralized platforms, not for exempting DeFi activity through legislation. Similarly, the right to self-custody of assets does not justify such a massive exemption.

DeFi protocols that engage in providing financial market services or transactions should meet, or have outcomes consistent with, the requirements we impose through regulation on similar "trad fi" services and transactions, even if the manner of meeting those requirements might vary.

These Proposals Fail to Create Adequate Regulation of the Spot Market for Digital Commodities in Many Other Ways as Well. Even to the extent that some tokens are deemed to be digital commodities, and platforms that trade even one digital commodity are required to register with the CFTC as a digital commodity exchange, the regulation that applies to those platforms is quite weak in numerous ways. Indeed, the drafters seem to have ignored the lessons of the collapse of FTX. Here are some examples:

These proposals do not appear to require the regulated exchanges to own the digital commodities (or other tokens) that their customers purchase and purportedly hold. The Clarity Act has a financial resources provision that requires exchanges to have "adequate financial. . . resources," including an amount "necessary to meet the financial obligations of the digital commodity exchange to all customers".[49] A separate provision requires the exchange to "treat and deal with all money, assets, and property that is received by the . . . exchange, or accrues to a customer, . . as belong to the customer".[50] Lummis-Gillibrand has similar provisions.[51] These provisions appear to mean that if a customer transfers a digital asset, such as bitcoin, to an exchange, the exchange must keep that digital asset or own a corresponding amount of it. But if the customer transfers dollars to the exchange and then purchases bitcoin, the exchange need only have value equivalent to the bitcoin so purchased.[52] Thus, a digital commodity exchange need not actually own the digital assets its customers think they own.

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[48] As an example, internalizers in the securities markets could be thought of as having certain similarities to the automated market makers of the digital asset world: they are large broker-dealers who fill orders from their own inventory rather than routing them to public exchanges. Internalizers have been made subject to order routing, best execution and payment for order flow requirements. Under Regulation SCI, an internalizer that operates a system critical to market infrastructure can be designated an SCI Entity which is then required to maintain robust cybersecurity, disaster recovery and reporting systems. While internalizers are centralized entities that provide a clear point of attachment for regulations, the regulatory response to them is an example of how we have responded to automation in the past and can do so again.

[49] Clarity Act, Section 404(c)(12).

[50] *Ibid.*, Section 404(d).

[51] Lummis-Gillibrand, Section 404.

[52] While the drafting is unclear, it may be that the exchange must have bitcoin in an amount equal to any *appreciation* on such bitcoin once purchased, but not for the original amount.

This risk reflects the fundamental characteristic of centralized platforms: trading is not "on-chain". That is, centralized platforms keep ledger accounts as to their customers' assets, much as a traditional exchange or bank would. They can have omnibus blockchain accounts in which they may hold—or claim to hold-- digital assets for multiple customers. But under these proposals the platforms need not actually own the assets. This is a significant risk.

Like its predecessor, the Clarity Act does not prohibit proprietary trading by digital commodity exchanges. Today's digital commodity exchanges often engage in their own proprietary trading, which leads to conflicts of interest with respect to the services they provide customers. They can front-run customer orders or take advantage of their customers in other ways. Our securities and derivatives laws generally prohibit securities and derivative exchanges from engaging in proprietary trading, and the same should be the case with digital commodity exchanges. Although the Clarity Act contains a prohibition on such activity, it contains an exception that swallows the rule. The exception covers trading that "is not solely for the purpose of the profit of the exchange," which an exchange could easily claim and regulators will be hard pressed to contest it. Indeed, transactions that "manage the credit, market and liquidity risks associated with the digital commodity business" as well as transactions "related to the operational needs" of the business of the exchange or its affiliate are explicitly excluded from the prohibition and thus eligible.[53]

Lummis-Gillibrand, issued in 2023, contained a prohibition on proprietary trading with only a "market-making" exception. FIT 21 contained a prohibition with a broader exception, and the Clarity Act broadened the exceptions even further.[54] The increasing breadth of the exceptions to the rule suggests the industry is getting its way.

The proposals do not prohibit other conflicts at digital commodity exchanges, such as having economic interests in the tokens they choose to list or in other ventures. Although the Clarity Act has general language requiring mitigation of conflicts of interest, exchanges are given substantial discretion in implementing the requirement.[55] Some crypto trading platforms have investments in other businesses, and this could mean they have investments or economic interests in the tokens (or issuers of the tokens) they list. This could lead to conflicts of interest in the determination of whether to list such tokens and how they should be traded or regulated. The other proposals have similarly not had strong prohibitions on conflicts of interest.

The Clarity Act's Control Tests Are Lax, Difficult to Verify and Contradict Longstanding Securities Law Principles. In addition to the control metric in the exemption for primary offerings to finance—or to promise to finance—mature blockchain systems, the Clarity Act has various other provisions related to showing the absence of control, such as the criteria for certifying a mature blockchain system.[56] All of these are flawed. Many of these flaws were also in FIT 21.

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[53] Clarity Act, Section 404. See proposed Section 5(i)(B)(2) of the CEA.
[54] Lummis-Gillibrand, Section 404; FIT 21, Section 504.
[55] Clarity Act, Section 404. See proposed Section 5(i)(c)(11) of the CEA.
[56] Clarity Act, Section 205.

The first problem is that the test for the absence of control in several places contradicts decades of securities law regulation by combining two concepts that are traditionally distinct, separate measures of control—that of a "group of persons" and being "under common control." A group can exist by virtue of an agreement (whether or not written) or other understanding, whereas common control refers to structural relationships among entities, such as sister subsidiaries. By combining these two concepts—in the Clarity Act, a group of persons must themselves be under common control to trip the standard—the Act creates a weak standard.[57] One could have an agreement or understanding among several persons to exercise control, but if they themselves are not under common control—i.e., not already part of the same corporate family—there would be no control, and no violation of the standard.

The measure of control is weak in another respect: a person or group of persons under common control must own or be able to direct the voting of 20% or more of the units of the digital commodity or voting power, respectively, in order for there to be control.[58] This 20% threshold also contradicts longstanding securities law interpretations, in which control depends on facts and circumstances, but a 5% threshold triggers a presumption of control for purposes of being required to file a form 13D or 13G.[59]

Moreover, the test further weakens the notion of control by providing that control does not exist unless a person or group of persons under common control has *"unilateral authority"* (emphasis added) to restrict access, alter the blockchain or direct the voting of 20% or more of the voting power.[60] A person or group could therefore have effective control simply by vesting a veto power or similar right in some other person or group that might be difficult or unlikely to ever be exercised. One could do this in multiple ways, such as requiring a supermajority where it is difficult to achieve such consensus or exercise such power, or vesting the right in friendly hands (particularly easy to do given the Act's ignorance of what a "group" traditionally is in securities laws), etc. Nevertheless, the mere existence of the veto would mean that "unilateral authority" did not exist.

Similarly, no person or group of persons under common control can have "*unique* permission or privilege to alter the functionality, operation or rules of the blockchain system" (emphasis added). This standard could also be avoided by creation of a veto right. In addition, the standard allows alterations that "address errors, regular maintenance or cybersecurity risks" or that are adopted through a "decentralized governance system" anyway.[61]

Perhaps the biggest—and certainly most ironic—problem in the whole construct of a "mature blockchain system" and the control standards in the Clarity Act is the assumption that control can even be measured when information as to the beneficial ownership of tokens is not available.

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[57] This change to basic standards of control in the securities laws runs throughout the Clarity Act. In addition to appearing several places in the definition and certification process for a mature blockchain system, it is also found in the definitions of a decentralized governance system (Section 101), a decentralized finance trading protocol (Section 103) and a blockchain control person (Section 412).

[58] This is in the context of certifying a mature blockchain system. *See* Section 205. The percentage for use of the primary offering exemption is 10%, which is still twice the 13D/13G standard. *See* Section 202.

[59] *See* Rule 405 under the Securities Act.

[60] Clarity Act, Section 205.

[61] Ibid.

How can one even apply the metrics when blockchain addresses are pseudonymous and beneficial ownership is not known? Ownership that exceeds the metrics or thresholds is therefore easy to disguise, which means the Act's requirements can be easily evaded.

TESTIMONY OF THOMAS W. SEXTON
PRESIDENT AND CHIEF EXECUTIVE OFFICER
NATIONAL FUTURES ASSOCIATION

BEFORE THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
UNITED STATES SENATE

STAKEHOLDER PERSPECTIVES ON FEDERAL OVERSIGHT OF DIGITAL COMMODITIES

JULY 15, 2025

Chairman Boozman, Ranking Member Klobuchar, and members of the Committee, thank you for the opportunity to testify at this important hearing to explore a legislative framework for the federal oversight of digital commodities. National Futures Association (NFA) is the industrywide independent self-regulatory organization (SRO) for the derivatives industry and a registered futures association (RFA) pursuant to Section 17 of the Commodity Exchange Act (CEA).

Before turning to my substantive remarks, I want to recognize the Commodity Futures Trading Commission's (CFTC) commitment and significant efforts in promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation. The CFTC's responsibilities are enormous, and its core principles regulatory approach has allowed it to adopt practical and sound regulations that safeguard the integrity of markets and foster innovation. We look forward to working with President Trump's nominee for CFTC Chairman, Brian Quintenz, once he is confirmed by the U.S. Senate. During his prior tenure as a CFTC Commissioner, Mr. Quintenz was always willing to thoughtfully engage with us to resolve the industry's regulatory issues.

I would like to address three points to hopefully help guide this Committee's consideration of a legislative framework for the federal oversight of digital commodities. First, I will introduce NFA and discuss the critical role we play in protecting customers and ensuring the integrity of the U.S. derivatives markets. Second, I will discuss what we see as the key principles for effective oversight of digital commodities. Third, I will address the potential role for an RFA in this regulatory framework and the benefits of self-regulation for digital commodity market participants.

NFA's Critical Role

Over fifty years ago, Congress enabled the creation of an RFA to support the CFTC's oversight of the commodity futures market.[1] NFA began operations in 1982 with a clearly defined mission: safeguard the integrity of the derivatives markets, protect investors, and ensure that NFA Members meet their regulatory responsibilities.

NFA is solely a regulatory body. We do not operate a market, and we are not an industry trade association. While our activities are closely overseen by the CFTC, we optimize the "self" in self-regulation. Our Board is primarily composed of representatives from NFA Member firms, and we leverage industry expertise in every aspect of our work. We do not receive any taxpayer dollars to operate.

Together, for over forty years, the CFTC and NFA have established an effective public-private partnership to oversee the derivatives industry. The CFTC provides front-line oversight of exchanges, clearinghouses, and swap execution facilities (SEFs). NFA provides front-line oversight of our global membership of CFTC-registered market participants, including futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators, commodity trading advisors, retail foreign exchange dealers (RFEDs), and swap dealers (SDs). NFA currently has 2,825 Member firms and approximately 37,000 Associate Members. NFA's primary responsibilities include registering all firms and professionals on behalf of the CFTC, developing rules for fair dealing with customers and counterparties, monitoring Members' compliance with those rules, taking enforcement actions in appropriate circumstances when Members violate the rules, offering an arbitration forum to resolve customer/Member disputes, and providing investor protection and education resources.

Key Legislative Principles

As the Committee explores a legislative framework for the federal oversight of digital commodities, we wholeheartedly agree with former CFTC Chairman Behnam and others who advocated for closing the regulatory gap for digital commodities. This market is not currently overseen by any federal financial regulator and there are past incidences of fraud involving digital commodities that have caused significant harm to retail customers. The CFTC is well-equipped to take on this new responsibility given its core principles regulatory approach, experience over the years integrating new asset classes into its oversight framework, and its current anti-fraud jurisdiction over digital commodities and oversight of related derivatives products. In establishing a federal oversight framework, we recommend the Committee focus on the following three key principles—clear lines of jurisdiction; strong customer protections; and flexibility to keep pace with innovation

[1] In 1974, Congress created the CFTC by passing the Commodity Futures Trading Commission Act of 1974 (1974 Act), which amended the CEA. The 1974 Act also contained the enabling authority to create RFAs, allowing for the opportunity to establish a private independent SRO. Section 17 of the CEA (7 USC 21) sets forth the standards for registration as an RFA.

1. *Clear Lines of Jurisdiction*

One of Congress's stated goals for market structure legislation is to develop clear rules and regulatory responsibility for the trading of digital commodities, which are distinct from securities. Today, market participants are well-served by the current, comprehensive framework, which draws clear lines between two distinct market regulators—the CFTC has exclusive authority over commodity derivatives and authority over fraudulent activities impacting commodities underlying those derivatives, while the Securities and Exchange Commission (SEC) has regulatory authority over securities. The SEC and CFTC have a long history of collaboration to develop cohesive customer protections and minimize regulatory burdens in the limited areas in which their missions may overlap.

This approach not only leverages each agency's expertise, but also their respective rules, which are tailored to the products under their jurisdiction. For example, futures contracts have been traded for several years on a variety of digital commodities, including Bitcoin and Ether. The CFTC therefore has developed experience monitoring these markets for fraud and manipulation and has a strong interest in ensuring the integrity of these markets given their direct relationship to the applicable futures contracts' prices.

Above all, we encourage Congress to avoid a framework in which jurisdictional lines become blurred and we have separate market regulators adopting and interpreting their own rules for their respective registrants who are engaging in the same activity. We believe this situation is unnecessary and would lead to confusion for customers, complexity for market participants, and opens the door to potential regulatory arbitrage. Moreover, a situation in which the CFTC lacks a holistic view into the operations of firms trading both digital commodities and digital commodity derivatives is neither efficient nor effective for identifying risks to customers and markets.

2. *Strong Customer Protections*

NFA is a resolute customer protection organization, committed to ensuring that our Member firms and their professionals deal fairly with customers and counterparties. As this Committee develops legislation for digital commodities, NFA recommends adopting the following time-tested, robust customer protections, which have served the derivatives industry extremely well over the years and will provide digital commodity customers with similar regulatory protections.

Safeguarding Customer Funds. Customer assets should be segregated from the firm's proprietary funds, separately accounted for in the name of the firm's customers, and held at a qualified custodian that acknowledges it is doing so. There should be limitations on how customer assets are invested, and customers should be prioritized ahead of creditors in bankruptcy. These protections have been informed by the Commission's experience with past bankruptcies and would maximize the likelihood that customers can be made whole in the event of a firm's failure. NFA ensures customer

assets are safeguarded by performing daily reconciliations between our FCM Member firms and the custodians holding firms' customer assets.

Customer Disclosures. Customer disclosures should be simple, standardized, and prominently displayed. At a minimum, they should disclose the nature and functionality of a digital commodity and the risk of loss, as well as provide transparency into fees. NFA, as part of our regulatory oversight program, ensures that Members provide customers with required risk disclosures relating to their derivatives activities.

Business Conduct Standards. Digital commodity firms should also be subject to clear standards governing their marketing, advertising, fair dealing, and solicitation activities to ensure that customers and counterparties are provided with information that is accurate and balanced. NFA examines Members to ensure that their marketing materials and other communications with customers adhere to these standards.

Anti-Money Laundering. Digital commodity firms accept and disburse customer money, property, and funds and therefore should be subject to anti-money laundering (AML) requirements built on existing requirements for financial institutions under the CEA. NFA requires FCM and IB Members to have an AML Compliance Program that satisfies the requirements of the Bank Secrecy Act, including requirements related to customer identification and suspicious activity reporting. We regularly examine Members for compliance with these requirements and take enforcement actions in the event of noncompliance.

In addition to the above-described key protections, NFA further suggests that Congress provide the CFTC with the authority to adopt other critical customer protection rules in the following areas: anti-fraud and anti-manipulation; minimum capital requirements; risk management procedures; managing conflicts of interest among affiliated entities; trade practice surveillance; and the maintenance of books and records.

3. *Flexibility to Keep Pace with Innovation*

Over the years, the CFTC has seen its regulatory remit broaden as market participants have offered customers and counterparties new products to manage risk. Initially, an agricultural futures regulator, the CFTC now oversees exchange-traded futures markets on metals, energy and power, financial instruments, and digital commodities, as well as an over $400 trillion global swaps market, retail foreign exchange (forex) trading, and event contracts. The agency therefore has significant experience with innovative products and building new regulatory frameworks for new categories of market participants, including RFEDs, SDs, and SEFs.

One of the reasons the agency is well-equipped to adapt quickly to the development of new markets is its core-principles-based regulatory approach. This means that its governing statute—the CEA—and the regulations adopted thereto provide broadly stated principles intended to achieve certain regulatory outcomes rather than detailed, prescriptive rules. The CFTC and NFA may, in appropriate circumstances, adopt

targeted guidance or more prescriptive rules tailored to certain activities or asset classes, allowing for flexibility based on firms' activities and operations. In addition, the CFTC can often accommodate new products and markets without revisions to the CEA. The CFTC's principles-based model has served the derivatives markets exceptionally well and Congress should retain this approach for the CFTC's oversight of digital commodities, for which the technology and market structure are rapidly evolving.

Benefits of Self-Regulation for Digital Commodity Oversight

As the derivatives markets have continued to evolve, Congress and the CFTC have entrusted NFA with additional responsibilities. Under the close supervision of the Commission, NFA is often able to act quickly to weed out bad actors via enforcement actions or by adopting rules to address novel risks or abusive practices. If Congress grants the Commission authority over digital commodities, NFA's experience developing customer safeguards for new categories of CFTC-registered market participants will be key to assisting the CFTC in achieving its mission.

Our coordination with the CFTC over the years has resulted in a strong track record of protecting retail customers and prosecuting retail trading abuses and fraud. Today, customer complaints and single-event customer arbitrations filed at NFA, as well as CFTC's reparations cases, remain near all-time lows.

Examples of this coordination include our work in the 1990s to shut down so-called "boiler rooms" that utilized misleading, high-pressure sales practices to entice retail customers to trade exchange-traded options. When the CFTC or NFA would shut down a firm for misconduct, a related firm would open shortly thereafter under a new name with many of the same brokers. In response, NFA enhanced its sales practice and supervision rules—approved by the CFTC—and large-scale boiler rooms that preyed on retail customers are now a thing of the past.

In the late 1990s and early 2000s, retail customers were victimized when firms offered trading in unregulated over-the-counter retail forex but absconded with their customers' funds or falsely promised them high profits. Entities that did not intend to engage in the usual FCM on-exchange trading activities registered as FCMs solely to act as counterparties to retail forex transactions and mismanagement was rampant. Although Congress gave the CFTC anti-fraud authority over these retail forex dealers, the CFTC lacked authority to regulate their activities. Since they were NFA FCM Members, however, NFA adopted—again, with CFTC approval—an anti-fraud provision, enhanced capital requirements and business conduct rules for these FCMs' retail forex activities. These efforts weeded out the bad actors, and Congress took additional supportive steps in 2008 to expressly grant the CFTC the necessary regulatory authority over these dealers' activities. Today, these firms account for very few of NFA's disciplinary and customer arbitration cases.

In 2010, the Dodd-Frank Act mandated the registration of SDs. This led to a significant change to NFA's self-regulatory role when the CFTC delegated the registration function

to NFA and required SDs to become NFA Members. NFA worked closely with the CFTC and the industry—including the SDs both before and after they became registered—to develop an oversight program, which has evolved over time and today includes an examination program and the review and approval of initial margin and risk models for calculating firm capital. NFA's fully mature SD oversight program is now over ten years old, and our work with the CFTC in this area allowed the U.S. to lead efforts globally in swaps regulation.

Finally, in the most recent—and topical—example, NFA has over 100 NFA Member firms that have reported to us that they engage in digital commodity activity. Two years ago, upon approval by the CFTC, NFA adopted Compliance Rule 2-51, which imposes anti-fraud, just and equitable principles of trade, and supervision requirements on NFA Members and Associates engaged in digital commodity activities. This action enhanced NFA's oversight of our Members' digital commodity activities while Congress prepares legislation to fill the gap in federal oversight.

Many of the market structure bills in both the Senate and House have included a significant role for an RFA, with oversight by the CFTC. We strongly recommend retaining this feature because this public-private framework has proven extremely effective over many years to overseeing our markets.

In conclusion, thank you again for the opportunity to appear before you today. We look forward to continued engagement with this Committee as you develop market structure legislation to regulate the trading of digital commodities.

Testimony of Walt Lukken
President and CEO of FIA
US Senate Committee on Agriculture, Nutrition and Forestry
Stakeholder Perspectives on Federal Oversight of Digital Commodities
July 15, 2025

Chairman Boozman, Ranking Member Klobuchar and Members of the Committee, thank you for the opportunity to testify about the regulation of digital commodities.

I am President and CEO of FIA, the leading trade organization for the futures, options and cleared derivatives markets globally. Prior to FIA, I had the honor of working for this Committee during the passage of the Commodity Futures Modernization Act (CFMA) of 2000. I then went on to serve as a Commissioner and Acting Chairman of the Commodity Futures Trading Commission (CFTC) for seven years, which included leading the agency during the financial crisis of 2008.

My testimony today will focus on the strengths of the CFTC and its regulatory framework and offer the following recommendations for the Committee's consideration:

- FIA strongly supports Congress' efforts to create a new regulatory framework for digital assets. This offers an opportunity for the US to regain leadership regarding this important innovation in markets technology.
- We believe the CFTC is well-suited for the oversight of the digital commodity markets for five main reasons: principles-based regulations, an innovation-forward mission, robust customer protections, strong enforcement and an effective cross border framework.
- We want to emphasize that futures commission merchants and the risk management expertise and financial resilience they bring to bear play an important role in fostering the growth and stability of the digital asset ecosystem.
- We strongly support provisions included in the CLARITY Act that incentivize prudent risk management and hedging activity across digital asset and traditional markets through the recognition of risk offsets in the margin and capital framework.
- Regulations to manage conflicts of interest when a single entity takes on multiple registration categories will be important to reduce risk and foster confidence in market integrity.

The futures model for regulation

Digital assets have come of age as an industry and are beginning to converge with traditional finance. Today, there are more than ten thousand types of blockchain-based[1] digital assets with a combined market capitalization of more than $3.4 trillion.

The digital asset industry deserves and requires a proper regulatory framework that will keep these markets safe, innovative and growing. The US has an opportunity to lead in the global

[1] FIA recently published a white paper on how blockchain technology could modernize the settlement and infrastructure of the post trade derivatives markets.

development of digital assets, but Congress must act quickly. Without this leadership, these markets will continue to expand overseas and outside of the reach of US influence.

Already, the US has the largest equity and derivatives markets in the world, the globe's reserve currency and the most sophisticated and mature capital formation channels that span from angel investing to the public markets. The US should harness these strengths in building a best-in-class regulatory system for digital assets.

Fortunately, we can leverage the expertise within America's existing regulatory framework and apply it to the new world of digital assets. And fortunately, the US has two strong markets regulators in the Securities and Exchange Commission (SEC) and CFTC that can collectively bring digital securities and digital commodities into a proper regulatory framework.

Based on my depth of experience on the Commission and Capitol Hill, I believe the Commodity Exchange Act (CEA) and CFTC are well-suited for the oversight of the digital commodity markets, which will be my focus today.

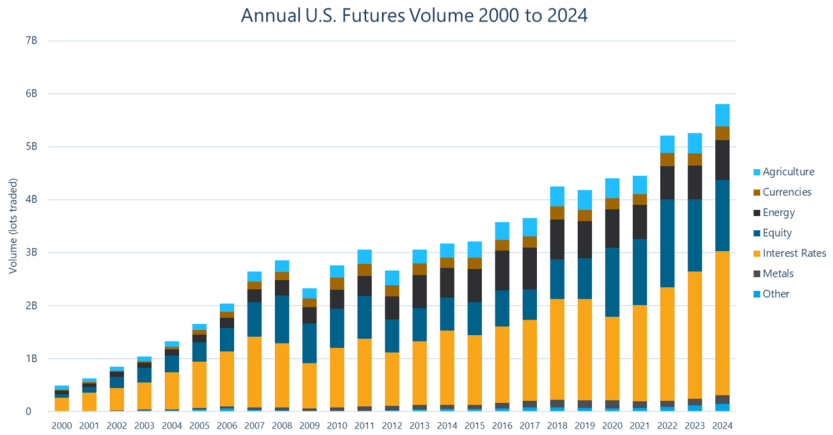
The CFTC's regulatory framework has several strengths I would like to highlight. These include principles-based regulations, an innovation-forward mission, robust customer protections, strong enforcement and an effective cross border framework.

Flexible legal framework

First, I would like to highlight principles-based regulation. This outcomes-based regulatory framework allows regulators to tailor rules and guidance for new products like digital assets without hampering innovation.

Congress enacted principles-based regulation as part of the CFMA in 2000, recognizing the value of this approach in helping the agency keep pace with technological advances and changing market dynamics.

This flexible structure, in combination with the CEA's broad definition of commodities, has enabled the futures industry to grow significantly through the introduction of new and innovative products. Since the enactment of principles-based regulation twenty-five years ago, the trading volume of futures on US exchanges has risen from 491 million contracts in 2000 to 5.809 billion in 2024, an increase of more than 1000%.



Principles-based regulation has unlocked significant growth in our traditional markets and is a well-suited framework for the evolving marketplace of digital commodities.

Innovation-forward mission

The CFTC also benefits from having innovation directly in its agency mission, which explicitly requires the Commission to promote "responsible innovation" in fulfilling its core tenants of protecting customers and upholding the financial integrity of the marketplace. The CFTC has balanced these duties, without sacrificing the safety of the markets, throughout its fifty years of existence by nurturing the development of new asset classes like interest rate futures, energy contracts, volatility indices, emission allowances, over-the-counter swaps, and most recently, crypto futures products.

The listing of *futures* on digital commodities has already provided the CFTC with significant experience regulating the cryptocurrency markets. In 2017, the CFTC first allowed exchanges to offer futures, options and swaps based on bitcoin. This decision brought these derivatives products into the CFTC regulatory framework for the first time. Since then, the range of products has expanded to include futures and options on Ether, Solana, Stellar, Avalanche, Hedera, Cardano and Ripple.

Today, more than 60 cryptocurrency futures and options contracts trade on seven CFTC-registered exchanges. Collectively these contracts make up the world's largest fully regulated market for derivatives on cryptocurrencies and one of the primary institutional gateways to this new asset class.

This experience, along with the CFTC's innovation-forward regulatory approach, positions the agency well for assuming more responsibility in the regulation of cash digital commodities.

Robust customer protections

Another area worth highlighting is the CFTC's customer protection regime, which has stood the test of time in protecting customer assets during various defaults in the futures markets. This regime consists of layers of protections around the segregation of customer funds. The CFTC requires that futures commission merchants (FCMs)—those brokers who serve as agents for customers—segregate, reconcile and confirm customer balances daily while providing a guaranty against shortfalls and losses should customers default.

The regime adds another layer of protection by requiring FCMs to contribute to a "rainy day" default fund should a single FCM not be able to cover its losses. The protections also empower clearinghouses to port – or transfer – segregated customer funds from a failing FCM to a healthy one to maintain the functioning of the markets. I experienced this firsthand with the Lehman Brothers crisis and its resolution that I helped oversee during my time at the CFTC.

These customer protections have held up as recently as the 2022 collapse of FTX, in which the only solvent part of that company was its CFTC-regulated derivatives clearing organization, LedgerX.

The CFTC's customer protection regime would benefit the cash crypto markets and provide needed safeguards for end users should Congress provide this authority to the agency.

Strong enforcement

It is also worth highlighting the CFTC's enforcement authorities that protect investors from fraud and manipulation and deter other market participants from wrongdoing. Over the years, the agency has used its enforcement authority effectively and aggressively.

For example, the agency utilized its enforcement authority to pursue firms that attempted to rig the Libor interest rate benchmark. This led to scrutiny of benchmarks across a range of other markets, as well as a transition to more rigorous methodologies for price calculations to avoid this manipulative conduct.

The CFTC has also used this enforcement authority to protect retail customers against highly-leveraged contracts based on currencies. The CFTC has effectively brought enforcement actions against those who prey on unsophisticated investors with get-rich-quick schemes. These actions have significantly reduced the amount of foreign currency fraud in our industry and deterred others from engaging in this corrupt activity.

The CFTC has aggressively punished firms that have attempted to manipulate our energy markets. For example, during my time leading the CFTC, the agency charged several energy companies with attempting to manipulate prices for natural gas, sending strong deterrence signals to other energy firms in that space.

Given this track record, I believe the CFTC would be an effective cop on the beat for this industry.

Effective cross border approach

Lastly, I want to highlight the CFTC's approach to cross border trading, which has allowed customers access to global risk management products without endangering the integrity of U.S. markets.

Futures markets have operated internationally for decades, with market participants in the U.S. accessing overseas markets for a wide range of commodity futures. With the global nature of commodity markets, the CFTC has developed a framework for allowing access if the overseas markets are subject to comparable regulation and supervision in their home countries.

This framework has struck the right balance between protecting US entities and customers from fraud and manipulation while providing them with access to a wide range of markets around the world. As Congress considers regulating this new asset class, it should consider the benefits of this cross border approach, given the global nature of digital commodities.

Beyond emphasizing these regulatory strengths, I would like to turn to specific stakeholder issues that would bring needed capacity and clarity for these new products.

The important role of futures commission merchants

As you consider the various models for regulating digital commodity markets, we urge you to carefully weigh the important role of intermediaries.

In the US futures markets, these are known as futures commission merchants, or FCMs. Under the futures model for regulation, they have a set of responsibilities critical to the integrity of futures markets.

Those responsibilities include preventing misconduct by their customers and assisting regulators in maintaining orderly markets and preventing fraud, abuse and market manipulation.

FCMs also are critically important to the financial stability of the clearing system as a whole. They provide the vast majority of the capital in the default funds maintained by the clearinghouses to absorb losses in case of a member default.

As of the fourth quarter of 2024, FCMs contributed 98.4% of the $34.2 billion held by the top five US clearinghouses registered with the CFTC. Without this contribution from intermediaries, I question who would provide the buffer in the event of another FTX-style collapse.

Cross product margining and cross product netting

The first issue involves the treatment of risk-reducing trades for margin and capital purposes. Like traditional markets, FIA supports digital securities supervised by the SEC and digital commodities supervised by the CFTC. These markets are highly interconnected; however, each agency has distinct margin and custody requirements for the products they regulate. Regulatory differences in margin regimes have complicated the ability to provide risk offsets that are usually available when one clearinghouse clears the same products.

Providing margin offsets when offsetting transactions are risk-reducing incentivizes prudent risk management and hedging activity in both digital and traditional markets. It also allows for margin efficiencies for participants. We support statutory language that instructs the CFTC and SEC to allow for cross margining between offsetting positions in their markets.

Additionally, we support legislative language that instructs prudential regulators to address their bank capital rules to recognize these offsetting risk positions through cross product netting. These related changes will bring important capacity to FCMs that provide client access to digital products and beyond, and it will help ensure the success of these markets.

Avoiding conflicts of interest

Another area worth highlighting is the need for clear rules around managing the conflicts of interest that arise when a single entity takes on multiple registration categories.

Traditionally, the CFTC has regulated its markets by functional registration category. Exchanges that bring together buyers and sellers must register as designated contract markets (DCMs). Clearinghouses, with their obligations to protect the financial integrity of the system, must register as designated clearing organizations (DCOs). Clearing members, those firms that guarantee and safeguard customer funds, must register as FCMs.

Given these targeted responsibilities, registrants have historically been housed in independent legal entities. Increasingly, however, we see more entities creating a "vertical stack." In other words, these entities are combining exchanges, clearinghouses, FCMs and trading arms all within the same legal structure.

This is particularly true for entities in digital asset markets. In our May 2022 comment letter about the FTX US Derivatives application before the CFTC, FIA expressed concern that collapsing the existing multi-tiered ecosystem—with its inherent checks and balances and customer protections—could undo the strong foundation of the listed derivatives markets and, ultimately, put customers at risk.

As such, we support legislative language that requires the CFTC to conduct a rulemaking on managing conflicts of interest when these various registration categories exist in the same firm. We believe the development of consistent rules around conflicts will ensure that customers are not faced with differing customer protections due to market structure design.

Conclusion

In closing, this committee has an opportunity to ensure these important markets continue to develop in a safe and innovative way – and one that protects customers and their funds.

The time has come to enact a regulatory framework for digital assets that allow the US to lead in this asset class. I look forward to working with this committee on the best approach to reaching this important goal.

Thank you for this opportunity to testify.

QUESTIONS AND ANSWERS

JULY 15, 2025

QFR Responses from: August 5, 2025

The Honorable Rostin Behnam
Distinguished Fellow, Psaros Center for Financial Markets & Policy
Georgetown University

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Stakeholder Perspectives on Federal Oversight of Digital Commodities
July 15, 2025
Questions for the Record
The Honorable Rostin Behnam

Senator Amy Klobuchar

1. **Financial Market Safety and Soundness**

   Mr. Behnam: The failure of major digital asset exchanges has at times triggered broader disruptions, highlighting the risk of liquidity shortfalls and contagion effects that can spill into traditional financial systems. As we have seen in past crises, ensuring that exchanges and clearinghouses are resilient under stress is central to maintaining market stability and protecting customers.

   a. What measures are necessary to ensure digital asset exchanges and clearing houses maintain sufficient liquidity and avoid cascading failures across financial markets?

      Given the growing interconnections between traditional financial markets and the digital asset market as a result of increased digital asset adoption by retail and institutional investors, it is critical that the Committee act expeditiously to fill the regulatory gap in spot digital asset commodity markets by authorizing the CFTC to comprehensively regulate these markets through an enforceable rule based system similar to that of the regulated derivatives markets. Most notably, the Commodity Exchange Act's core principles are a time tested regulatory framework that empowers the CFTC to implement prescriptive rules that protect against the cascading impacts of liquidity shortfalls and institutional failures at exchanges and clearinghouses. These core principles, native to traditional financial markets, can be similarly applied to digital asset exchanges and clearinghouses to ensure sufficient liquidity and protection against failures across digital asset markets during times of market stress. More specifically, related to resiliency, market stability, and customer protections, a non-exhaustive list of core principles that are necessary to achieving these ends include: (i) financial resources requirement; (ii) risk management; (iii) treatment of funds; (iv) governance; (v) contracts not readily subject to manipulation; and (vi) system safeguards.

The Honorable Rostin Behnam
Distinguished Fellow, Psaros Center for Financial Markets & Policy
Georgetown University

b. Are traditional safeguards in derivatives markets, such as capital and margin requirements, sufficient for digital assets, or do new tools need to be developed?

Traditional regulatory safeguards, like capital and margin requirements, are a necessary first line of defense against cascading exchange and clearinghouse failures resulting from liquidity shortfalls in times of market stress. Given the historic volatility of some digital assets, it is critical that capital and margin requirements are applied in a quantitative manner that sufficiently measures historic volatility as the baseline to ensure the capital and margin requirements applied to regulated exchanges and clearinghouses are sufficient to cover extreme, but plausible market movements. Related, policy supporting cross-margining and netting have historically served regulators and market participants well by creating efficiencies across assets classes where risk is non-correlated. Finally, given the unique nature of digital assets, particularly during the nascent years of the digital asset ecosystem, the Committee should consider any unique challenges related to the custody of digital assets and system safeguards, in order to complement capital and margin requirements.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Stakeholder Perspectives on Federal Oversight of Digital Commodities
July 15, 2025
Questions for the Record
The Honorable Timothy Massad

Senator Amy Klobuchar

1. **Conflicts of Interest and Vertical Market Structures:**

   Mr. Massad: The collapse of major crypto platforms has highlighted the risks of vertical integration, where trading, custody, and even token issuance are consolidated within a single firm. This concentration of functions raises serious concerns about conflicts of interest and self-dealing—particularly when exchanges have affiliated market makers or engage in proprietary trading that could disadvantage customers.

   a. How should Congress address the risk of exchanges favoring affiliated market makers or proprietary trades over customer orders?

      Congress should direct regulators to prohibit crypto trading platforms from engaging in trading for their own account. This prohibition could be subject to a limited exception for market making activities provided such activity complies with regulatory requirements to ensure that it does not conflict with customer interests. Regulators could be given the authority to consider an exception for other activity that is necessary for the protection of customer interests. Regulators should require platforms to provide the regulator with notice of such activity and information establishing that it complies with the regulatory requirements, as well as appropriate disclosures to customers.

   b. Should legislation explicitly bar digital asset exchanges from engaging in proprietary trading?

      As noted above, yes, with minimal exceptions.

Senator Michael Bennet

1. There are over 700,000 401(k) retirement plans in the U.S., which together held about $8.9 trillion in assets at the end of 2024. These are teachers and nurses and construction workers who have saved diligently over the years, with the expectation that their retirement managers are investing in smart, safe assets.

   In 2022, the Labor Department – which regulates retirement plans – warned fiduciaries to exercise "extreme care" before making digital assets available inside 401(k) plans. Now, that guidance has been rescinded.

   Retirement plans represent just one type of institutional investor that may enter the digital asset space. There is nothing inherently problematic with banks, or pensions, or other corporations holding cryptocurrencies – but we should all admit that this is an extremely volatile asset class.

   Since 2022, major cryptocurrencies have experienced sharp swings in price. In April 2021, Bitcoin reached an all-time high of over $60,000. But by the summer, prices were down by 50 percent. In November 2021, Bitcoin hit another all-time high of $69,000. By the end of 2022, it was under $20,000. These price fluctuations continue to characterize these assets – in April 2025, Bitcoin fell 10 percent before recovering. This week, it hit a record.

   a. What are the most important principles this committee should consider as we approach comprehensive digital asset regulation?

      The principles that are often cited are ones like providing clarity in regulation as well as investor protection and market integrity. While I support those, I would emphasize two principles that are often overlooked. The first is to do no harm to our traditional securities and derivatives markets. While digital asset technology is an important and promising innovation, we must remember that our existing markets--which are the foundation of the U.S. economy and the envy of the world—rest on a thoughtful and carefully developed regulatory framework. We must make sure that the development of regulation for digital assets does not undermine or weaken that framework by rewriting existing securities and commodities laws in ways ways that create inadvertent exceptions or loopholes.

      Second, Congress should keep it simple. That is, Congress should not write detailed, prescriptive rules or complex provisions where it can instead set general principles that direct regulators, and give regulators the authority and flexibility to write rules and respond to evolving market conditions.

      In addition, we must recognize that this is a technology, not a static asset class, and the applications and use cases of the technology are evolving rapidly. Proposals that attempt to create a simple binary classification scheme between digital assets that are securities and those that are commodities will fail. There

already are a variety of digital assets that have varying degrees of the characteristics of securities and commodities, and there will doubtless be more in the future. (See for example the recent White House report, Strengthening America's Leadership in Digital Asset Technology (the "White House Report), at pp. 45-51). This underscores the importance not only of flexibility, but also of creating mechanisms where the SEC and CFTC work together so that we develop rules that are reasonably consistent and work for products that cut across traditional jurisdictional lines.

b. How can we best protect consumers and investors while also preserving the stability of U.S. financial markets, which are the envy of the world?

It is critical to act in accordance with the two principles noted above. Many existing proposals violate those principles. For example, they propose rewriting the definition of securities in order to promote investment in the technology in ways that are likely to create incentives for regulatory arbitrage. They contain complex rules that respond to particular existing business models or desires of particular segments of the digital asset industry when what we should do is set general principles and give regulators sufficient authority to write rules that work as conditions change.

2. Bitrace, a blockchain analytics company, recently released its 2025 Crypto Crime Report. They found that crypto addresses associated with illegal activities received approximately $649 billion, and that addresses linked to money laundering received $86.3 billion in stablecoins.

   In June, the Financial Action Task Force, a global financial crime watchdog, called on countries to take stronger action to combat illicit finance in crypto assets, warning that gaps in regulation could have global repercussions. In particular, they highlight the growing use of stablecoins as the digital asset of choice for money launderers – including agents from North Korea, terrorist financiers, and drug traffickers.

   Any regulatory framework passed by Congress must ensure that the same anti-money laundering and illicit finance controls we apply to banks and traditional financial intermediaries also apply to digital asset providers. Doing anything less would be inviting more scams, more fraud, and more crime into our financial system.

   a. How should we consider designing a regulatory framework that extends existing illicit finance safeguards to digital assets – including decentralized finance?

   While we should, as you note, apply the same anti-money laundering and illicit finance controls to digital asset providers, that is not sufficient. Those traditional requirements work when transactions are effectuated through intermediaries that are subject to and that comply with such requirements. But digital assets can be transferred on decentralized blockchains from and to unhosted or non -custodial wallets, without the involvement of an intermediary such as a bank or digital asset

service provider. Therefore Congress needs to create additional tools and enforcement powers.

In 2023, the Treasury Department proposed several ways in which its authority should be expanded, which could be included in legislation. Among other things, Congress should make clear that Treasury has the authority to create a new sanctions tools, analogous to Correspondent Account or Payable-Through Account (CAPTA) sanctions, to deploy in the cryptocurrency space. Treasury s existing CAPTA authorities enable Treasury to prohibit U.S. correspondent accounts and transaction processing for certain financial institutions that have operated in the financial services sectors of certain economies or facilitated transactions for a designated entity, without requiring that all property and interests of the institution be blocked. Congress should make clear that these tailored authorities can be extended to foreign crypto exchanges and other crypto intermediaries.

In addition, Congress should give OFAC the ability to block stablecoin transactions to the same extent as its existing power to block US dollar transactions, and extend BSA and IEEPA jurisdiction to foreign crypto intermediaries with U.S. touchpoints (though with possible provision for substituted compliance in the case of BSA obligations). Treasury should also have flexible authority to require domestic crypto actors that are not registered as money service businesses to comply with the BSA and IEEPA where such actors have the necessary control or authority to achieve regulatory objectives, such as custodial wallet providers. The White House Report similarly recommends that Congress consider creating a bespoke digital-asset specific financial institution types or sub-types" that would have AML/CFT obligations (p. 105).

Treasury should also have authority to address the role of mixers, tumblers and other devices used to disguise identity. That can be coupled with a recognition that rules must strike a balance between preventing illicit finance and respecting individuals privacy.

With respect to decentralized finance activities, we must first not create overly broad exemptions from securities, commodities and other laws. Exemptions for DeFi are typically justified on the basis that autonomous software protocols do not involve an administrator capable of implementing administering KYC, AML or CFT requirements. But the exemptions often cover much more. For example, Sections 309 and 409 of the Clarity Act contain exemptions not only for the development, publication or operation of autonomous software protocols and transaction validation activities, but also for a wide range of activities consisting of administering or maintaining" such protocols or other activities that may faciliate or encourage the use of such protocols. Those activities are often offered by businesses that exercise some degree of control over value or the transaction and therefore could be touchpoints for regulation. We should therefore develop regulatory requirements proportionate to the degree of control, discretion or

other authority exercised by such actors, which could include responsibilities related to AML and CFT.

The White House Report similarly suggests that we must define what is true" DeFi and determine how obligations apply to entities that utilize smart contracts or have some characteristics of DeFi but do not meet all elements of a decentralized protocol. Congress should consider codifying language expressing which portions, if any, of the DeFi ecosystem should have AML/CFT obligations and the kinds of obligations actors should have by constructing the parameters of an AML/CFT framework appropriate to the class of activity." (pp. 106-107)

We should also encourage the development of digital identity tools that can strike the appropriate balance between verifying identity and preserving privacy, and ensuring that transactions are not processed except in accordance with AML and CFT requirements. (See also White House report pp. 111-112).

The passage of the GENIUS Act illustrates how we must do more. Although it made clear that stablecoin issuers are subject to traditional AML/CFT requirements, such issuers should also be required to monitor all on-chain transactions in their stablecoins, and engage in blockchain analytics and risk analysis of wallets to identify suspicious behavior. They should be obligated to report such behavior and take action to freeze stablecoins where appropriate.

b. How can we ensure the Treasury maintains its ability to combat sanctions evasion using dollar-denominated stablecoins?

The above measures are equally applicable to sanctions enforcement. See also my recent paper, Stablecoins and National Security: Learning the Lessons of Eurodollars, published by Brookings for an analysis of the risks that stablecoins pose to our ability to implement sanctions. As I explain in that paper, unless we take the types of actions I have described above, stablecoins could seriously weaken the framework we have built for implementation of sanctions.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Stakeholder Perspectives on Federal Oversight of Digital Commodities
July 15, 2025
Questions for the Record
The Honorable Walt Lukken

Senator Amy Klobuchar

1. **Regulatory Coordination:**

   Mr. Lukken: Several proposed bills contemplate having the Securities and Exchange Commission and the Commodity Futures Trading Commission separately regulating digital assets, which may create some complications as the two regulators have different sets of rules for similar products. Does this create any issues that could be resolved through legislation or the two agencies working together?

The digital asset industry – and its customers – deserve a proper regulatory framework that will keep these markets safe, innovative and growing. Fortunately, the US has two strong market regulators in the SEC and CFTC.

Investors will see benefits in using a wide array of products to deliver an investment strategy and hedge the risks of those investments. Some of those products may fall under the SEC, such as digital securities and cryptocurrency ETFs, while others may fall under the CFTC, such as digital commodities and futures on digital commodities. Since the SEC and CFTC treat similar products slightly differently, we suggest legislation that requires the agencies to recognize the off-setting risk positions of the other investments. Below are two areas where the Digital Asset Market Clarity Act would resolve this complication, and we would recommend the Senate bill do the same.

Cross Product Margining

Like traditional markets, digital assets and related products will fall under the jurisdiction of both the SEC and CFTC. Each regulator has distinct margin and custody requirements for the products they regulate, despite the products being highly correlated. This split jurisdiction makes the ability to cross product margin, or recognize the offsetting risks through margin, more difficult. The SEC and CFTC have had agreements in the past to allow for cross product margining between their two regimes. We suggest something similar for digital assets.

Cross Product Netting

The US banking agencies do not recognize the offsetting benefits between products under the bank capital rules. Absent action by the US banking regulators, US banks will not be able to fully recognize the risk reducing nature of products that offset each other, resulting in significant overcapitalization against the counterparty exposure.

The Clarity Act has two provisions mandating the SEC and CFTC work on a rule that allows for cross product margining and a complementary provision in the bill mandating the US banking agencies recognize cross product netting. Both of these provisions would resolve potential issues of the digital assets being regulated by different entities.

Senator John Hoeven

Senator John Hoeven

1. As former CFTC Chairman, your insights are especially valuable as we examine the digital commodities market structure. While the GENIUS Act addresses payment stablecoins, most digital assets remain governed by a fragmented mix of federal and state rules - creating confusion and risk for consumers. Though the CFTC lacks authority to regulate spot digital commodity markets, it can pursue fraud and manipulation in those markets. Please speak to how the CFTC used this authority during your tenue to protect consumers, and how the so-called "spot market gap" poses risks to them?

The CFTC's enforcement powers serve the markets and customer well. As you note, the CFTC lacks regulatory authority over the digital spot commodity markets, but it retains fraud and manipulation through enforcement cases.

During my time at the CFTC, the agency utilized its enforcement authority to pursue firms that attempted to rig the London Inter-Bank Offered Rate (LIBOR) interest rate benchmark. LIBOR was used in various financial contracts and served as a basis for setting interest rates on loans and other financial instruments. LIBOR was used as the underlying rate for some interest rate futures contracts as well, which gave the CFTC authority to pursue manipulation in the underlying LIBOR rate setting. The CFTC's successful enforcement of LIBOR led to scrutiny of benchmarks across a range of other markets, as well as a transition to more rigorous methodologies for price calculations to avoid this manipulative conduct.

The CFTC also has used this enforcement authority in the underlying cash market (or spot market) to protect retail customers against highly-leveraged contracts based on currencies. The CFTC effectively has brought enforcement actions against those who prey on unsophisticated investors with get-rich-quick schemes. These actions have significantly reduced the amount of foreign currency fraud in the industry and deterred others from engaging in this corrupt activity.

The CFTC has aggressively punished firms that have attempted to manipulate our energy markets. For example, during my time leading the CFTC, the agency charged several energy companies with attempting to manipulate prices for natural gas, sending strong deterrence signals to other energy firms in that space.

However, strong enforcement without authority to regulate the market is not enough in the digital asset space. The sheer number of fraud cases involving both novice and sophisticated investors in the digital asset market demonstrates the need for regulation here. The ability to regulate the digital commodity cash market will mean fewer enforcement cases. Entities will have to register, comply with fair and orderly trading, implement system safeguards, such as

segregation of customer funds, and implement financial resource requirements, just to name a few requirements.

Senator Raphael Warnock

1. Last week, the House of Representatives passed the *Digital Asset Market Clarity Act*.[1] If enacted, this bill will provide new authorities to the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). This may create some complications as two regulators develop different rules for similar products.

    a. Do you believe the *Digital Asset Market Clarity Act* ensures that the SEC and CFTC will work together to develop and promulgate joint rules?

    b. What else should Congress consider to ensure that rules and regulations passed by the SEC and CFTC are clear and not in conflict with one another?

Do you believe the *Digital Asset Market Clarity Act* ensures that the SEC and CFTC will work together to develop and promulgate joint rules?

Like traditional markets, FIA supports digital securities supervised by the SEC and providing the CFTC with exclusive jurisdiction over digital commodities. These markets are highly interconnected; however, each agency has distinct margin and custody requirements for the products they regulate. Regulatory differences in margin regimes have complicated the ability to provide risk offsets that are usually available when one clearinghouse clears the same products.

Providing margin offsets when offsetting transactions are risk-reducing incentivizes prudent risk management and hedging activity in both digital and traditional markets. It also allows for margin efficiencies for participants. We support statutory language that instructs the CFTC and SEC to allow for cross-margining between offsetting positions in their markets.

Additionally, we support legislative language that instructs prudential regulators to address their bank capital rules to recognize these offsetting risk positions through cross product netting. These related changes will bring important capacity to FCMs that provide client access to digital products and beyond, and it will help ensure the success of these markets.

The Digital Asset Market Clarity Act includes some of these provisions, and Congress must take pains to clearly articulate jurisdiction and the risk-reducing incentives of hedging activity in both digital and traditional markets.

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[1] *Digital Asset Market Clarity Act*, H.R. 3633, 119th Cong. (2025).

b.What else should Congress consider to ensure that rules and regulations passed by the SEC and CFTC are clear and not in conflict with one another?

My recommendation is clear lines of authority in legislation, joint rulemaking when appropriate and mechanisms to cooperate when there are differences or conflict. Each agency should be given explicit authority over certain types of assets or activities.

Legal ambiguity will create regulatory deadlock among the agencies, and it will create uncertainty for investors.

Regarding definitions, I strongly suggest the agencies embark on joint rulemaking, as was required for "swaps" and "security-based" swaps under the Dodd-Frank Act. This ensured that the products were split between the two agencies in a manner agreed to by the agencies.

I also strongly encourage the use of the Treasury – through the FSOC – to bring regulators together and resolve difficult issues when they arise between two agencies. I have witnessed joint advisory committees between the SEC and CFTC work effectively to resolve differences and collect industry input in a joint manner.

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