

**Written Statement of Rostin Behnam<sup>1</sup>**  
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**before the**

**United States Senate Committee on Agriculture, Nutrition, & Forestry**  
**“Stakeholder Perspectives on Federal Oversight of Digital Commodities”**

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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<sup>2</sup>, and easily accessible to the public.<sup>3</sup>

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.<sup>4</sup> This gap for non-security digital assets continues to constitute a majority of the market measured by market capitalization.<sup>5</sup>

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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<sup>1</sup> Chairman of the U.S. Commodity Futures Trading Commission (2021-2025); Commissioner of the U.S. Commodity Futures Trading Commission (2017-2021)

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

<sup>3</sup> <https://www.sec.gov/files/rules/sro/nysearca/2024/34-99306.pdf>

<sup>4</sup> Financial Stability Oversight Council, *Report on Digital Assets and Financial Stability Risks and Regulation* (Oct. 2022), [Report on Digital Asset Financial Stability Risks and Regulation 2022 \(treasury.gov\)](https://www.treasury.gov/press-releases/2022/10/2022-10-20-1)

<sup>5</sup> <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.<sup>6</sup> 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<sup>7</sup>; 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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<sup>6</sup> 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](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](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42) (Mar. 6, 2023)

<sup>7</sup> [https://www.cmegroup.com/media-room/press-releases/2017/10/31/cme\\_group\\_announceslaunchofbitcoinfutures.html](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<sup>8</sup>, 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<sup>9</sup>. As Vice-Chair, I saw major and developing economies establish regulatory frameworks for this new asset class.

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<sup>8</sup> Id. at 2

<sup>9</sup> International Organization of Securities Commissions, About IOSCO, [https://www.iosco.org/v2/about/?subsection=about\\_iosco](https://www.iosco.org/v2/about/?subsection=about_iosco)

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.