Testimony of Christine Parker

Vice President and Deputy General Counsel for Regulatory Legal

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Good morning Chairwoman Stabenow, Ranking Member Boozman, and members of the committee. Thank you for inviting me to testify about the importance of developing a comprehensive, robust regulatory regime for digital assets. My name is Christine Parker and I am the Vice President and Deputy General Counsel for Regulatory Legal at Coinbase.

Prior to joining Coinbase, I was a Partner at Reed Smith LLP, and Special Counsel at Sullivan & Cromwell LLP for more than 12 years. I also spent nearly five years working for Senate Majority Leader Chuck Schumer, where I developed a deep respect for policy and the work of the U.S. Senate.

While in private practice, my work focused on regulatory, enforcement and transactional matters related to commodities, derivatives, and digital assets. I spent the early part of my legal career advising clients on the legal, regulatory compliance obligations associated with the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. More broadly, I advised both registered and non-registered market participants in connection with matters related to the Commodity Exchange Act and Commodity Futures Trading Commission ("CFTC") regulations, as well as related Securities and Exchange Commission ("SEC") and prudential requirements. In particular, I focused on legal, regulatory and compliance matters related to trading platforms and exchanges. I have also advised both US and non-US market participants in the development of digital assets and related technologies including token sales, market infrastructure, trading, clearing, and settlement solutions on distributed ledger technology.

I believe we are at a crossroads when it comes to digital assets. Collectively, we have the opportunity to come together to ensure the United States remains at the forefront of innovation, by establishing a comprehensive federal legislative framework for digital assets that are not securities. The Digital Commodities Consumer Protection Act of 2022 does just that. It appropriately grants the CFTC authority to ensure that customers are protected and market participants have sufficient clarity to confidently innovate in a compliant way.

Crypto is the future of innovation. It is the foundation of Web3, which will define the next era of technological advancement across the globe. The United States is well poised to help drive that innovation, and we want to work with this Committee and other lawmakers and regulators to make sure it does.

What is Coinbase's role in the cryptoeconomy?

Coinbase is the largest and only publicly-traded crypto trading platform in the United States. Coinbase was founded in 2012 as an easy and trusted place to buy and sell

Bitcoin. Since then, Coinbase has helped fuel the development of an entire industry with thousands of different blockchains, tokens, and projects. Today, we offer much more than bitcoin trading, enabling 98 million verified users in over 100 countries to easily and securely invest, spend, save, earn, and use crypto. We currently list 219 assets for trading and 301 assets for custody on our platform, all of which undergo rigorous legal, compliance, and security review before being added to the platform. We have also invested in more than 300 teams and projects in recent years through Coinbase Ventures, building everything from layer 1 protocols, web3 infrastructure, centralized on-ramps, decentralized finance, NFTs, metaverse technologies, developer tooling, and more.

Our mission is to increase economic freedom in the world. In order to do that, we have worked to build a company that is the most trusted, secure, and compliant onramp to the cryptoeconomy. Our early focus on regulatory compliance, consumer protection, and innovation has helped build an active consumer base across the country that rely on us for a safe platform on which to transact. That focus has also been core to the development and growth of products and services. We are a leading provider of end-to-end financial infrastructure and technology for the cryptoeconomy. Coinbase Global, Inc. (COIN) is a public company registered with the SEC that began trading on the Nasdaq in April 2021. Our primary operating company, Coinbase, Inc., and our affiliates (collectively, "Coinbase") make up one of the largest digital asset financial infrastructure platforms in the world, which includes our trading platform for digital assets.

We power the cryptoeconomy by combining the best of both emerging blockchain technology and traditional finance to create trusted and easy-to-use products for the industry. We have built a robust backend technology platform to support the global, real-time, and 24/7/365 demands of crypto asset markets. We invest heavily in regulatory compliance, and have pioneered industry-leading security practices for safeguarding crypto assets. Our early focus on trust and usability has allowed us to become the primary onramp to the cryptoeconomy from the fiat-based financial system.

Nearly 100 million users around the world rely on Coinbase to provide a safe, trusted, and easy-to-use crypto account to buy, sell, store, spend, earn, and use crypto assets. We also offer a comprehensive solution that combines advanced trading, custody services, and financing for roughly 13,000 institutional customers. On top of our retail and institutional services, we provide technology and services, such as Coinbase Cloud, that enable more than 230,000 developers to build crypto-based applications and securely accept crypto assets as payment. These numbers reflect our belief that crypto can and will be based on the following three pillars:

Crypto as…

1. **A new financial system.** Crypto is opening up a new financial system, which will create new opportunities and benefits for consumers. For example, crypto can offer services that are lower cost, more widely accessible, less complex (due to fewer intermediaries), and more transparent. Crypto also has the remarkable capability to provide real-time settlement, which matters when consumers need immediate access to funds. The shift to this new system is already happening. On average, 54% of our monthly transacting customers engaged in activities beyond buying and selling crypto. We are building products accordingly, and supporting external projects that drive new financial use cases. Stablecoins as a payment method, decentralized finance, smart contracts, and other new technologies will drive innovation and exponentially expand opportunities to improve our financial system in the United States and across the globe.
2. **An app platform.** Crypto and blockchain technologies will provide the next app platform. Fundamental to crypto is the decentralization of ownership, which gives individuals the opportunity to develop new financial and non-financial applications, like non-fungible tokens (NFTs). Coinbase is building tools that enable individuals, institutions, and app developers to plug into the existing crypto infrastructure to create new products, as well as benefit from the distribution and use of these products. By supporting both the development of and access to these new applications, Coinbase can help fuel the development of web3.
3. **An Opportunity.** We want to empower everybody to achieve economic freedom through buying and using crypto. At Coinbase, we believe we can enable customers to buy, sell, and hold crypto in a safe, informed, and compliant way. The world of crypto has expanded far beyond Bitcoin to include assets with diverse use cases and characteristics, and we are working to give consumers the tools they need to make informed decisions, including participating in Earn campaigns to learn about new crypto assets.

How are we currently regulated?

Coinbase was founded on the principle that we would be the most trusted, safe, and secure platform for engaging in the crypto economy. We have taken regulation seriously from Day 1, including an early team dedicated to compliance and investigating illegal activities like scams and fraud. The current regulatory environment for digital assets is complex and disjointed. Laws and regulations for digital assets have emerged over the last decade at the state level with little consistency across jurisdictions, while the federal government has relied on laws that have failed to evolve as technology changes today's markets. As a result, we are currently regulated by more than 50 agencies in the United States alone, including:

- **45 state banking divisions**, who issue and monitor our money transmitter licenses;
- **15 state regulators**, who have authorized us to engage in consumer lending;
- The **New York Department of Financial Services**, which regulates our primary crypto trading entity (under a "BitLicense") and our primary custody entity (under a New York Trust Charter);
- The **Treasury's Financial Crimes Enforcement Network (FinCEN)**, which regulates us as a money services business;
- The **Commodity Futures Trading Commission (CFTC)**, which has anti-fraud and anti-manipulation authority over digital asset commodity spot markets, regulates derivatives markets, and regulates our Designated Contract Market, or futures exchange. We are also seeking registration as a CFTC-regulated Futures Commission Merchant, or futures broker; and
- The **Securities and Exchange Commission (SEC)**, which regulates our two broker-dealer entities.

In addition, Coinbase operates under the same rules as other businesses in having obligations to operate in a fair, transparent way. These requirements are administered by the above agencies, along with others that include:

- The **Federal Trade Commission (FTC)**, which enforces federal consumer protection laws to prevent fraud and unfair or deceptive business practices; and
- The **Department of Justice (DOJ)**, which has general law enforcement powers and which works with companies like Coinbase to use the blockchain for investigative purposes, including to prevent money laundering, illicit finance, and terrorist finance.

Despite the plethora of regulations, we often hear this is an unregulated space. That could not be further from the truth. The problem is these regulations are fragmented, inconsistent, and require extensive legal analysis to correctly apply.

At the root of the regulatory Gordian knot is the question related to **what is a digital asset: is it a currency, a commodity, a security, or something else entirely different?** This question matters because the United States has a bifurcated regulatory system at the federal level: the SEC regulates securities, while the CFTC regulates futures and derivative contracts for commodities and even some securities. But, there is no federal regulator for commodity spot markets. The CFTC's authority is limited to anti-fraud and anti-manipulation authority over commodity spot markets.

That is why we applaud Chairwoman Stabenow, Ranking Member Boozman, and Senators Booker and Thune for introducing the Digital Commodities Consumer Protection Act of 2022, which gives the CFTC the authority to regulate at the federal level commodity spot markets for digital assets. Coinbase would welcome this regulation, given we do not list

securities on the Coinbase platform. We make this determination using a rigorous listing process to determine 3 primary things:

1. Does this asset meet our **legal requirements**, meaning does it satisfy the key legal standards for determining whether or not an asset is a security?
2. Does this asset meet our **security requirements**, meaning does the technology protect consumers from harmful cybersecurity risks?
3. Does this asset meet our **compliance requirements**, meaning is it not associated with scammers, fraud, and illicit activity?

Our listing process gives us confidence that we do not list securities. But that means we are primarily regulated at the state level, with varying rules and requirements. This bill would help ensure centralized crypto platforms like Coinbase have a federal regulator with explicit Congressional authority and direction to apply consistent and comprehensive consumer and market protections to digital assets.

Commodities Futures Trading Commission

The CFTC currently has clear authority under the Commodity Exchange Act (CEA) to regulate futures and derivatives referencing digital assets. It also has anti-fraud and anti-manipulation authority over commodity spot markets, including digital asset commodity spot markets.

- As stated by CFTC Chairman Heath Tarbert in May 2020, "The CFTC has a unique history and tradition of being a principles-based regulator."[1] "Principles-based regulation is not intended to be ' light-touch'."[2] Rather, the focus on principles has enabled the CFTC to be relatively nimble and focus on promoting innovation, while being diligent about protecting the markets and their participants. Mandatory registration requirements for market participants, including designated contract markets (DCMs), futures commission merchants (FCMs), and designated clearing organizations (DCOs), among other registrants, helps ensure a level, efficient, and safe playing field. This structure can and does fit for digital asset futures and derivatives, and it can form the appropriate starting point for regulation of digital asset commodities.

The CFTC has shown early leadership in the digital asset space. We thank and applaud Chairman Behnam for his leadership and that of his fellow Commissioners in asking the right questions and working to ensure US global leadership and continued innovation in the US. Although we may not always see eye-to-eye, the CFTC has shown a commitment

[1]https://www.cftc.gov/PressRoom/PressReleases/8183-20#:~:text=%E2%80%9CThe%20CFTC%20has%20a%20unique,compliance%20with%20detailed%2C%20prescriptive%20rules.
[2]https://www.cftc.gov/PressRoom/PressReleases/8183-20#:~:text=%E2%80%9CThe%20CFTC%20has%20a%20unique,compliance%20with%20detailed%2C%20prescriptive%20rules.

to transparency, public engagement, and process. For example, the CFTC recently held a public roundtable on a direct clearing model in order to gather information and receive input from a wide variety of stakeholder groups regarding the impact the model could have on CFTC-registered exchanges and clearing organizations. We believe this reflects a commendable interest in gathering information from market participants and feedback from the public, while exploring the appropriate approach to regulating innovative structures.

Perhaps most importantly, the CFTC is well-equipped to directly regulate digital asset commodity cash markets. It has experience effectively regulating complex derivatives markets and ensuring their safety, even in times of extreme volatility. Since 2014, this has included derivatives referencing digital assets.[3]

The CFTC also has experience utilizing disclosures to equip customers with the information they need to understand the risks of trading a particular asset. When a DCM submits a new product to the CFTC for self-certification, it does so in a public filing that describes the contract and how it complies with the CEA, including why the contract is not readily susceptible to manipulation. The self-certification requires rigorous analysis that focuses on the characteristics and features of the asset and the underlying cash market, to ensure the financial integrity of the futures contract and the market, while deterring fraud and manipulation. By contrast, disclosures required by the SEC focus on disclosure about companies, their management and their financial results—topics that are largely irrelevant to the decentralized and open-source nature of blockchain-based digital asset[s]".

The CFTC has shown it is qualified to regulate new markets effectively, either by working within its existing authority or by implementing new regulatory frameworks that achieve participant and consumer protection. When DCMs started to list digital asset futures, the CFTC took several steps to address and better understand the nascent risks presented by this asset class.

They applied a heightened review process to DCM self-certifications of digital asset futures, including implementing mechanisms to ensure that DCMs and the CFTC are able to monitor settlement and other prices in digital asset cash markets to identify anomalies. The CFTC also worked with NFA to require FCMs that offer virtual currency futures to provide additional disclosure to customers specific to the risks of trading in that asset class.

[3]https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder_virtualcurrency01.pdf

Finally, the CFTC's global leadership and speed in implementing swaps regulation after the 2008 financial crisis demonstrate its capacity to undertake the important and exacting task of drafting a regulatory framework to address the risks in digital asset commodity cash markets. As noted by former CFTC Chairman Gary Gensler in 2013, "when the President was formulating his financial reform proposals, he placed tremendous confidence in this small agency, which for eight decades had overseen the futures market. This confidence in the CFTC was well placed."[4]

Given the CFTC's experience in effectively regulating existing markets, taking enforcement action that carries out the mandates given to it by Congress, and protecting customers and market participants, we believe the CFTC is well qualified to regulate the spot market for digital asset commodities. Before I talk further about the bill, I want to address three myths and talk a little about the role of the Securities and Exchange Commission. This is an important and relevant topic given the interconnectedness between the SEC and the CFTC.

Securities and Exchange Commission

The Securities Act of 1933 and the Securities Exchange Act of 1934 grant the SEC authority to regulate securities at the federal level. If an asset is a security, the SEC generally has federal authority over its offering and sale, and over the many functions that support these transactions. Notably, the federal securities regime is a disclosure-based regime. The SEC is not a merit regulator, meaning it does not decide what is a "good" investment. It is also not a prudential regulator, meaning that it is given the task of ensuring "safety and soundness." Rather, it is a regulator that ensure s fair, orderly, and efficient markets with appropriate investor protections, as well as and facilitates capital formation.

The SEC's broad authority turns on whether an asset is within the definition of "security" found in the relevant statutes. Yet, the definition is not precise. Some assets are seemingly self-explanatory, such as "stocks" or "bonds, while others like "investment contracts" and "notes" have required more consideration by the courts. Specifically, the Supreme Court has had to weigh in on both of these terms, resulting in the now well-known cases *SEC v. W. J. Howey Co.*[5] and *Reves v. Ernst & Young*,[6] which provided tests for determining whether a scheme is an investment contract or a note, respectively. Under *Howey*, a scheme is an investment contract if it (1) involves an investment of money (or value) (2) in a common scheme (3) with the expectation of profit (4) derived primarily from the managerial efforts of others. *Reves* stands for the idea that, in general, a note is presumed to be a security unless it "bears a strong family resemblance" to one

[4] https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-155
[5] 326 U.S. 293 (1946).
[6] 494 U.S. 56 (1990).

of seven non-security instruments. In determining whether such a "family resemblance" exists, the Court looked to four factors: the motivations of a reasonable buyer and seller in entering the transaction, the plan of distribution of the note, the expectations of the investing public, and whether there was another regulatory regime designed to reduce the risks so as to make the application of the securities laws unnecessary.

When viewed within the context of the Securities Act, which the Court was interpreting when issuing its opinions, the rationale for these tests becomes clear. The Securities Act of 1933 addresses the need for a means of ensuring that investors and the market have material information needed to evaluate an offering of securities. It is designed to take the information that company insiders have about the operations and condition of the company and push that information out into the public, remedying the information asymmetries that are inherent to the relationship between issuer and investor, absent issuer disclosures. A scheme that satisfies the *Howey* test has a number of insiders whose efforts are material to the question of whether the scheme is likely to produce a profit. Similarly the performance of a loan that is a note under *Reves* will depend on the operations of the issuing company and therefore investors need the material non-public information that the issuer's insiders uniquely can access and disclose.

While both notes and investment contracts involve investment of value with an expectation of profit, that is not dispositive in securities law. Other assets (e.g., precious metals, collectibles, fine art, and others with consumptive or utility function) are often bought with the expectation of profit. The connection between the security's value and the activities of the issuer is essential to the nature of a security, and creates the need for disclosure to potential investors of these activities. This connection is reflected in the "efforts of others" prong of the *Howey* test. The investors are not involved in creating the value and therefore require disclosures of those "others" whose activities are material. Additionally, the existing disclosure regime makes sense only when there is a single organization whose nonpublic activities drive the value of the asset. That entity therefore has the obligation, under the federal securities laws, to make necessary disclosures and to assume liability for their accuracy. Without a central entity, there is no unique access to material information or any connection between the quality of the disclosures and the assumption of liability for their accuracy.

I would also like to discuss three myths related to the SEC that might be helpful as this Committee moves forward with your deliberation.

Myth #1: This bill is taking authority away from the SEC.
As noted before, digital assets have different characteristics and different risks: some function like a currency used for payments, some perform like commodities that provide utility and functionality, some operate like securities, and some look like none of the above. Regulations should be designed to address the risks of specific types of assets;

applying a securities regime to commodities trading will not increase consumer protection and may even result in consumer harm. It is, therefore, critical that policymakers take a calibrated and targeted approach to the regulation of digital assets and apply rules relevant to the function of a particular digital asset, which in some cases may mean designing new rules and new requirements to address the specific risks presented by specific types of digital assets. The SEC has an important role to play in unlocking what could be a vibrant and sophisticated market for securities in the digital asset space, and we urge the SEC to engage in a transparent rulemaking process that considers input from a diverse set of stakeholders.

Myth #2: Every crypto trading platform should simply register with the SEC.
First, as mentioned above, the SEC's authority, structure, and mission is granted and effective solely for securities and security intermediaries. If something is not a security, then both the asset and its intermediaries should not be regulated as such. Second, registering with the SEC under its existing rules is a challenge because the SEC's existing rules do not align with the current market structure of digital assets (e.g., real-time settlement, custody) and were designed to meet security needs in an analog world.

Registration under the current regime, even if feasible, would not accomplish the goals of regulators, provide adequate consumer protection, positively affect capital formation, or assist the SEC in ensuring fair and orderly markets. It is not that there is no way to create rules that do fit. A tailored regulatory regime for digital assets is essential to ensure that all market participants can enter these markets confidently, enabling them to develop into the deep, liquid, and transparent securities markets for which the U.S. is known worldwide. Developing the right rules for registration will require regulators to develop an in-depth understanding of the unique characteristics of crypto and find ways to apply the rules to truly protect consumers and the markets. To be clear, this type of adjustment happens all the time as new technology creates new opportunities for efficiency. That is why Congress gives agencies the authority to make the rules and revise them as necessary. More on this in a moment.

Myth #3: All digital assets, except Bitcoin and Ether (maybe), are securities.
This is a false and misleading statement under any reasonable reading of existing securities laws. Despite news headlines and public statements to the contrary, it remains very much a fact and circumstances analysis under U.S. case law to ascertain if any digital asset is a security. Commodities, derivatives, and securities share certain features, such as investment opportunities and secondary market trading. However, like commodities, digital assets have a core consumptive function that is not found in securities. As a primary example, digital assets are used to reward decentralized nodes to confirm transactions that build out and operate decentralized blockchains. Without digital assets there are no decentralized blockchains. Furthermore, digital assets are the first instruments that combine proof of ownership, a bespoke mix of rights and

opportunities, the potential for increased value, and a number of other functions in a single asset, unlike traditional securities. Even if a token project may entail an offering of securities when first launched, it is not clear that remaining a security for the entire existence of the token is the correct outcome. Given the purpose of the federal securities laws–to ensure that insiders disclose material nonpublic information–it is hard to understand how continued disclosure obligations would promote investor protection or support orderly markets if there is no longer a central issuer.

Even as securities lawyers and courts have successfully applied the "Howey test" to determine if a digital asset is a security, the underlying facts of the case remain relevant today.[7] Parsing through the features of each asset and applying rigorous legal analysis is, indeed, a detailed process. Despite the work involved, we remain confident that Coinbase's rigorous asset review process keeps securities off our platform. But this approach is not ideal for innovation, and equally problematic, it can discourage compliance with the laws. While a large company like Coinbase can invest in such diligence, small projects, founders, and innovators who are developing the next big thing, may lack the legal expertise and funds to engage in this rigorous process. The challenge that we and others face is that even highly capable and reasonable lawyers can and do reach different good faith conclusions on whether a digital asset is a security, given the absence of clear statutory and/or regulatory guidance. To alleviate this burden, Congress should provide clarity around the definition of digital assets that reflects their consumptive value and provides much needed certainty to the market.

Securities and Exchange Commission

The myths noted above explain just a few of the challenges with the conventional notion that we should simply "come in and register" with the SEC. That is why Coinbase filed a petition for rulemaking on July 21, 2022 with the SEC requesting that the SEC propose and adopt new rules to govern the regulation of securities that are offered and traded via digitally native methods. The petition calls for public input through the notice and comment process, as many of the unresolved issues are complicated, and arriving at efficient and effective solutions requires a broad understanding of the technology underpinning developing market practices and products. Further, the petition calls on the SEC to work with market participants to consider how appropriately tailored rules, interpretive guidance and no-action relief could facilitate new activities within existing regulatory frameworks.

[7] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). There are two critical elements to the case - the orange grove and the service contract to manage the orange grove and provide the purchaser's with a percentage of the product from the sale of the oranges. The Supreme Court found the service contract and the land deed to the orange groves to be an investment contract and therefore a security. By itself, the land deed to the orange grove was not an investment contract. Thus, investment contracts contain both elements of securities and commodities.

The petition calls on the Commission to engage stakeholders in an open and transparent process. The petition asks 50 detailed questions that are critical to resolving these issues. Concepts highlighted in in the petition include:

Classification of digital assets as securities:

- Absent Congressional action, the SEC could help provide clarity, in the context of digital assets, as to what constitutes a security.
- This should be done through appropriate rulemaking, provided that the definition is true to the purposes of the Securities Act and Securities Exchange Act. Regardless of the means, it is critical to the future of the industry that the determining factors for what is a security (in relation to a digital asset) are predictable, consistent, replicable, and applicable by all market participants with reliable results.

Issuance of digital asset securities:

- Our petition asks the SEC to consider whether there is a need to establish appropriate registration rules for digital asset security issuers, particularly when the "issuer" is not structured in a manner similar to a traditional public company.
- The SEC should also consider tailoring the disclosure requirements for digital asset securities offerings so that investors are not unduly exposed to novel risks, which may mean requiring additional disclosures specific to digital asset linked securities.

Trading digital asset securities:

The SEC should consider what rules need to be adopted in order to ensure consumers can benefit from innovations enabled by blockchain technology and the trading of digitally native securities. For example:

- The SEC should consider what rules will need to be adopted to accommodate real time settlement, which significantly reduces (if not eliminates) the settlement and credit risk that generally exists in traditional finance.
- While blockchain technology provides a benefit in providing a transparent and immutable record of transactions, it also introduces the question of how regulation should address the immutability of transactions that cannot be reversed in the case of fraud or error.
- Existing custody rules assume certain physical characteristics of securities records that are not the same as digital assets. Therefore rules related to how custodians establish possession and control of traditional securities are simply inappropriate for establishing possession and control of digital asset linked securities, requiring different regulations to ensure the same level of protection.

I wanted to share this background, because we believe it can help the Committee distinguish between the important roles of the regulators. Both the CFTC and SEC need to engage on digital assets. Each oversees a regulatory regime tailored to the specific needs and risks presented by the assets and markets in each commission's jurisdiction. Ensuring that all U.S. markets have appropriately designed and administered regulations is

key to maintaining the U.S.'s leading role in world financial markets. Effective U.S. regulatory leadership in crypto will enable the sound principles underpinning U.S. markets to be disseminated globally as this new type of asset and markets develop.

This finally brings me to the most important part of my testimony – discussing the strengths of the Digital Commodities Consumer Protection Act of 2022 and highlighting the areas that could potentially be improved.

Why do we need the Digital Commodities Consumer Protection Act of 2022?

The Digital Commodities Consumer Protection Act amends the Commodity Exchange Act to create a much-needed comprehensive and robust regulatory framework for spot markets for digital asset commodities. This framework would fill an existing gap in federal oversight that would lead to more consistent consumer protection requirements across the country and enable more vigorous enforcement authority for bad actors. I would like to highlight several key areas that we believe should be the foundation of any law going forward, and note some areas that could be improved:

- **Defines Digital Commodities:** The bill defines digital commodities to include - but critically not limited to – Bitcoin and Eth. However, while the bill includes a carve-out for securities, it does not explicitly define what is or is not a security (through the application of the Howey test or otherwise). We *strongly* recommend including a specific definition for both digital asset commodity and digital asset security before the bill passes into law. I would also note the bill importantly allows for stablecoins to trade as a Digital Commodities, which is an appropriate characterization for stablecoins and which means that stablecoins can be used to purchase Digital Commodities.
- **Activities Covered:** Digital asset markets are evolving quickly and reflect many traditional financial activities. This bill recognizes this important point by identifying and covering a range of activities, including spot trading, lending, retail margin, and custody.
- **Applies to Digital Commodity platforms (DCPs):** The bill is comprehensive in that it creates a regulatory framework that is rooted deeply in the existing structures at the CFTC for market participants. It applies to entities that have an "identifiable business" (e.g., not occasional activity) as one or more of the following: trading facility, broker, dealer, and/or custodian (except for Insured Depository Institutions and Insured Credit Unions).
- **Registration with CFTC Required:** The bill includes mandatory registration when engaged in the activities listed above, and also appropriately preempts money transmission licensing registration regimes. This would resolve what could be

competing or duplicative regulatory requirements that could lead to confusion for both consumers and participants. The bill includes some important safeguards, including the ability of CFTC to permit an entity or affiliates to register in multiple capacities for multiple activities, subject to conflicts of interest requirements that will ensure customers are protected. The bill also includes registration fees to pay for the new regime. We support this measure.

- **Application of Commodity-Broker Insolvency Regime:** The bill applies the tested commodity broker insolvency regime to entities registered with the CFTC as DCPs. We know this regime works because it has effectively protected customer assets in FCM insolvencies.
- **FCM-like Segregation Requirements for Platforms that hold Customer Assets:** The bill currently requires books and records segregation, with operational commingling of funds of multiple customers permitted in a customer omnibus account or digital wallet held with a registered platform or an insured depository institution. The bill permits the CFTC to make rules that allow other assets to be added to the customer omnibus account under certain circumstances, but on the condition that funds held with customer assets are "treated as belonging to customers," ensuring that customers have a "super priority" claim on any funds held in an customer omnibus account or wallet in a platform's bankruptcy. This is a critical provision because it allows the CFTC to consider limited circumstances where a platform might need to add assets from its own inventory to the customer omnibus account to preserve the efficient and safe operation of digital asset markets (e.g., to facilitate order routing or real-time settlement). We believe this provision could be strengthened by providing example circumstances where it may be appropriate for the CFTC to exercise this authority in order to highlight how this provision may operate differently than equivalent language applied to cleared derivatives markets.
- **Principles-based Approach to Regulation:** We applaud the cosponsors for adopting the same principles-based approach currently employed by the CFTC and applying it to digital assets. This will help ensure the rules continue to evolve as the technology creates new opportunities and new risks. The bill enumerates the core principles for platforms, broker-dealers, custodians, and trading facilities.
- **Product Listings, Rules, and Rule Amendments for Trading Facilities:** The bill reflects a long-standing practice at the CFTC for DCMs to self-certify new products. Specifically, it allows a trading facility to list for trading a Digital Commodity and approve/implement a new rule or amendment via a self certification process, and gives the Commission 30 days to review contracts not yet listed on another exchange or 10 days if already listed. Like with DCMs, the Commission may stay a certification for 90 days because there is a novel or complex issue, inadequate explanation, or potential inconsistency with the Act. In considering the listing, the Commission can consider additional factors that are somewhat unique to digital assets, including:
  - Cybersecurity;
  - Functionality to protect holders from operational failures;

    - Digital Commodity is not susceptible to manipulation; and
    - For digital commodities that purport to have a fixed value (such as fiat-backed stablecoins), an identification and description of the issuer of the Digital Commodity, the collateral and reserves backing the Digital Commodity, the terms by which the issuer will redeem, and whether the Digital Commodity and the market for the Digital Commodity are not readily susceptible to manipulation.
- **Product listing for Digital Commodity Brokers and Dealers:** The bill establishes that brokers and dealers may only trade or arrange a trade that is not readily susceptible to manipulation, AND in assets that have met disclosure, listing and certification requirements above.
- **Consumer Protection:** We believe the consumer protection section is the heart of this bill. Key provisions include:
    - Requirements for platforms to disclose information on material risks and characteristics of Digital Commodity contracts and conflicts of interest that the platform may have;
    - A duty for platforms to communicate in a fair and balanced manner based on principles of fair dealing and good faith, similar to existing FCM requirements;
    - Standards governing platform marketing and advertising, including testimonials and endorsements, similar to existing FCM requirements; and
    - Other standards in the public interest as adopted by the Commission.

In summary, Coinbase believes the Digital Commodities Consumer Protection Act of 2022 creates a strong foundation for the regulation of digital assets. We understand the bill will continue to evolve, particularly as the full Senate considers the other issues and agencies that intersect with the regulation of digital asset commodities, and we hope to continue working with all interested parties to pass a law as soon as possible in this important area.

I'd like to commend Chairwoman Stabenow and Ranking Member Boozman for their leadership on crypto and their efforts to pass meaningful legislation that will truly help usher in a new era of innovation in a safe and reliable way. I look forward to answering your questions.