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

***STAKEHOLDER PERSPECTIVES ON FEDERAL OVERSIGHT  
OF DIGITAL COMMODITIES***

**JULY 15, 2025**

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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.<sup>1</sup> 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

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<sup>1</sup> 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.