THE FUTURE OF DIGITAL ASSETS: PROVIDING CLARITY FOR DIGITAL ASSET SPOT MARKETS

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JUNE 6, 2023

Serial No. 118–9

Part 3 (Final)

Printed for the use of the Committee on Agriculture
agriculture.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE
53–287 PDF WASHINGTON : 2023

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THE FUTURE OF DIGITAL ASSETS: PROVIDING CLARITY FOR DIGITAL ASSET SPOT MARKETS

TUESDAY, JUNE 6, 2023

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Committee met, pursuant to call, at 10:01 a.m., in Room 1300 of the Longworth House Office Building, Hon. Glenn Thompson [Chairman of the Committee] presiding.

Members present: Representatives Thompson, Lucas, Austin Scott of Georgia, Crawford, LaMalfa, Rouzer, Kelly, Bacon, Bost, Johnson, Baird, Mann, Feenstra, Miller of Illinois, Moore, Cammack, Rose, Jackson of Texas, Molinaro, De La Cruz, Langworthy, Duarte, Nunn, Alford, Miller of Ohio, David Scott of Georgia, Costa, McGovern, Adams, Spanberger, Hayes, Brown, Davids of Kansas, Slotkin, Caraveo, Salinas, Perez, Davis of North Carolina, Budzinski, Crockett, Jackson of Illinois, Carbajal, Soto, and Bishop.

Staff present: Paul Balzano, Caleb Crosswhite, Nick Rockwell, Kevin Webb, John Konya, Emily German, Josh Lobert, Clark Ogilvie, and Dana Sandman.

OPENING STATEMENT OF HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

The CHAIRMAN. Well, good morning, everyone. Before we officially gavel in, I recognize the gentleman from Arkansas here, in our Agriculture Committee tradition, just to offer a blessing over our Members here, and, quite frankly, these proceedings, and our nation. Mr. Crawford?

Mr. CRAWFORD. Thank you, Mr. Chairman. Heavenly Father—thankful for every blessing of life. We are thankful for this Nation that you have given us, Father. I just—thankful for each Member that is represented here, and it is my prayer today that everything that is said and done here will bring honor and glory to your name, and it is in your name, Jesus Christ, I pray. Amen.

The CHAIRMAN. Thank you, sir. The Committee will come to order. Welcome, and thank you for joining today's hearing entitled, *The Future of Digital Assets: Providing Clarity for the Digital Asset Spot Markets.* After brief opening remarks, Members will receive testimony from our witnesses today, and then the hearing will be open to questions. And so I will lead with my opening statement.

Good morning, and welcome to our full Committee hearing on the future of digital assets. Thank you to our esteemed panel of witnesses for making the time to be with us today. Indeed, this is a rare opportunity to have so many established current and former regulators in one room. Chairman Behnam, we appreciate you for your, and your colleagues on the second panel for, providing us with your expertise, your knowledge, and thoughtful feedback on how Congress should develop a viable regulatory framework for digital assets.

It is no secret blockchain technology and digital assets hold real promise. From improving our banking and financial services to providing data privacy and improving supply chain logistics, these technologies have the potential to transform everyday lives for Americans. As we look to put up clear guardrails for digital assets, it is important consumers and market participants benefit from the same longstanding customer protections found in traditional financial markets.

For nearly a decade Congress has debated the treatment of digital assets, which has led to numerous hearings, bill introductions, and panel discussions, all trying to bring regulatory certainty and clarity to these novel technologies. These past activities have helped move the needle forward, but further thoughtful coordination between committees and Members is required. At the outset, I need to thank Chairman Patrick McHenry with the Financial Services Committee for his leadership and willingness to collaborate on this novel and challenging topic.

Late last year we agreed to embark on a joint effort to work collaboratively and craft a comprehensive digital asset market structure framework. We set our eyes to a bold plan, but one that was driven by logical and sensible principles for digital asset regulations, led by fostering American innovation, and bringing much needed customer protections to digital asset-related activities and intermediaries. We sought to put forward the best policies we could by developing them together. We held numerous Member and staff education events, including one-on-one meetings, roundtables, and hearings, to bring folks up to speed on how current market structures for commodities and securities operate, how digital assets fit and do not fit into existing regulatory regimes, and why Congressional action is needed.

Last month, Subcommittee Chairman Dusty Johnson and Subcommittee Chairman French Hill held a joint subcommittee hearing—the first one on digital assets that we are aware of—to examine digital assets with both our committees working together. From these events, it is not hard to conclude that current Federal laws and regulations provide few rules of the road for those who want to engage with these emerging technologies, leading to complicated enforcement actions by regulators and creating further confusion in the industry and markets.

To address these concerns, Chairman McHenry and I went to work and developed an initial discussion draft providing the contours of a statutory framework for digital assets that was released

last week. The discussion draft* intends to provide certainty, fill regulatory gaps, and bolster innovation. But, and I cannot reiterate this enough, this is a draft, and we plan to improve it through further vigorous debate, stakeholder feedback, and technical assistance. It is our intention to work with our Democratic colleagues on this proposal and continue this Committee's longstanding tradition of working in a bipartisan manner. It is our hope that we will have a bipartisan, joint committee legislative proposal.

The United States has always been a leader in financial and technological innovation, and we have the most liquid and robust markets in the world. It is incumbent on us to not miss this opportunity, and to bring certainty to digital asset markets. Other nations, like the European Union, Singapore, Hong Kong, and the United Kingdom, have already put pen to paper and have created frameworks and established themselves as hubs for the development of the digital asset ecosystem. It is time that we do our work here in the United States too, and build a framework for trusted, reliable, and useful markets for digital assets.

Before I close, I do want to address one more elephant in the room. Earlier today, the SEC filed a complaint against one of our witnesses, Coinbase. While I will not and cannot speak to any of the specific allegations against the company, I do want to note that this action is exactly why we are holding our hearing here today. Regulation by enforcement is not an appropriate way to govern a market, adequately protect customers, or promote innovation. And I hope that the Members of our Committee can work together to pull together a better framework for digital asset regulation that promotes customer protections, provides clear lines of authority to regulators, and allows the regulated to clearly understand their obligations under the law.

Again, thank you to each of our witnesses for their willingness to partake in today's hearing, and I look forward to our conversation.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

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It is no secret blockchain technology and digital assets hold real promise. From improving our banking and financial services, to providing data privacy and improving supply chain logistics, these technologies have the potential to transform everyday lives for Americans.

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***Editor's note:** the discussion draft, summary, and accompanying section-by-section are located on p. 109.

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Late last year we agreed to embark on a joint effort to work collaboratively and craft a comprehensive digital asset market structure framework.

We set our eyes to a bold plan, but one that was driven by logical and sensible principles for digital asset regulation, led by fostering American innovation and bringing needed customer protections to digital asset-related activities and intermediaries.

We sought to put forward the best policies we could, by developing them together.

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Again, thank you to each of our witnesses for their willingness to partake in today's hearing. I look forward to our conversation.

The CHAIRMAN. With that, I would now like to welcome the distinguished Ranking Member, the gentleman from Georgia, Mr. Scott, for any opening remarks he would like to give.

OPENING STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

Mr. DAVID SCOTT of Georgia. Thank you, Mr. Chairman, and welcome, Chairman Behnam. It is great having you. As you know, Chairman Behnam, I have a long history of fighting for more resources for the CFTC, so it shouldn't surprise you when you hear

me say that the CFTC needs and deserves more funding, particularly at this critical time.

The markets the CFTC regulates are ever evolving. The CFTC needs the resources to get the right talent and the right technology to continue its work. And this proposal that we are looking at now does not respond to the wants and the needs of the CFTC. Instead, this proposal establishes a number of complex and untested processes raising questions as to whether the provisions will meet the stated goals of the industry to establish clear regulatory and registration guidelines.

One example of this is the provisional registration process which would be in place while the CFTC and the SEC undergo a very resource-intensive joint rulemaking process. This is very critical. Anytime you must shift longstanding regulatory processes and practices, there is a chance that something will fall through the cracks. And this bill provides no additional staffing or funding resources, and it makes this even more likely.

As it currently stands, the digital asset industry, without a doubt, exposes all who choose to participate to serious potential financial risks and uncertainties. This is well established information we have gathered over the past several Congresses, this Committee has highlighted these risks both in hearings and proposed legislation.

The digital commodity spot market, where many of these assets are purchased and traded by market participants, are operated according to an ill-suited regulatory regime that varies substantially based on the state in which the trading platforms are operating. That alone lets you know the depth and the height of this critical issue that we are facing.

And over the past year alone we have observed firsthand the fragility and the vulnerability of this industry, and it has lost billions in customer funds due to questionable and insufficient business practices, from the collapse and bankruptcy of major digital assets trading platforms such as Terra, the FTX, to ineffective cybersecurity practices, and the inherent vulnerability of digital asset trading platforms to hackers, who stole a record $3.8 billion from cryptocurrency businesses in 2022. This is not sustainable and cannot go on.

I yield back the balance of my time.

The CHAIRMAN. Well, I thank the gentleman. The chair would request that other Members submit their opening statements for the record so the witness may begin his testimony to ensure that there is ample time for questions. Our witness today for our first panel is Rostin Behnam, who is the Chairman of the Commodity Futures Trading Commission. Chairman Behnam, we are pleased to welcome you back to the Committee. Thank you for joining us today, and we will now proceed to your testimony. You have 5 minutes. The timer in front of you will count down to zero, at which point your time has expired. Chairman Behnam, please proceed when you are ready.

STATEMENT OF HON. ROSTIN BEHNAM, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Mr. BEHNAM. Chairman Thompson, Ranking Member Scott, and Members of the Committee, thank you for the opportunity to be here before you today. Since my confirmation as CFTC Chair, I have consistently highlighted the need for Congressional action to address the lack of Federal regulation over the digital commodity market, intending to bring this volatile market out of the shadows and into the regulatory fold.

I have not done this alone. Last year the Financial Stability Oversight Council unanimously issued a landmark report calling on Congress to enact legislation to fill the clear regulatory gap over the spot mark for digital assets that are not securities. The events over the past year bring added urgency to these recommendations. The bankruptcy of several large digital asset platforms erased billions of dollars in customer funds. Multiple large market participants allegedly engaged in manipulative and abusive trading activity, including through opaque arrangements with affiliated trading platforms, undermining confidence in these nascent markets.

Simply put, we know how this ends. Leaving billions of dollars of customer funds in investments in largely unregulated entities is a recipe for disaster. But recent history can teach us many lessons. Following the 2008 financial crisis this Committee, working in a bipartisan basis, responded with reforms to the previously unregulated swaps market that were anchored in core principles of sound market regulation: transparency, reporting, and registration, to name a few. These tools are necessary to prevent future crises.

Indeed, one of the only FTX entities that avoided the broader FTX bankruptcy last year did so because of CFTC regulation that mandated that any registered entities maintain segregation of customer funds, sufficient financial resources, and proper governance. I believe the broader digital commodity market should be subject to similar time-tested regulations, focused on protection of customer assets, surveillance of trading activity, prohibitions on conflicts of interest, and imposition of cybersecurity standards.

I am encouraged by the continued interest of both parties in Congress and the Administration to address the regulatory gap over digital commodities, and generally support legislative efforts by this Committee to provide the CFTC with additional authority to do just that. That said, it is critically important that any new legislation considered by Congress does not undermine existing laws. Most notably, where securities laws apply, the Securities and Exchange Commission should use its robust authorities to protect customers and address information gaps.

I would like to highlight those areas that I think are particularly important for Congress to address in any legislation on this issue. For retail market participants, Congress should ensure that the CFTC is fully empowered to require registered entities to make necessary disclosures regarding a variety of matters, such as investment risk, cybersecurity risk, mining, settlement practices, and other related activities, ensure customers are receiving the best available prices, and segregate and safeguard assets in the event of a failure.

We also know that these markets are often promoted as a form of financial inclusion to populations that may be most vulnerable to the inherent risks in these assets, as well as to predatory financial schemes. Any legislation in this area should recognize this dynamic and require additional work and study to better understand how these populations interact with this market. In the absence of Federal market regulation, the digital asset market has been plagued by fraud and manipulation.

The CFTC has been aggressive and proactive in policing these markets, bringing over 85 cases, resulting in over $4 billion in penalties and restitution. But our legal authority in the spot market for digital commodity tokens is necessarily limited to acting only after the fraud has occurred. A key feature of any regulatory scheme should be authority for the CFTC to proactively establish rules to minimize fraud in the first place. This should include authority to set stringent standards for preventing conflicts of interest, establish rules for maintaining fair, open, and transparent markets, and actively monitoring trading by market participants.

Presently the CFTC is the only financial market regulator that relies on appropriated dollars from Congress for its funding. Other financial regulators have self-funding mechanisms in place that provide greater assurance that their fiscal year budget requests will be fully funded. For any regulator taking on new authority, it is imperative that the Congress provide the resources necessary to implement the new authority. Regulation of the digital commodity market will bring new responsibilities to the CFTC that cannot be managed by simply folding this newer market into our existing regulatory regime with existing resources.

I want to thank the Committee again for the opportunity to testify today. I am encouraged by the Committee's efforts to address difficult policy issues in the digital asset space, in particular addressing the existing gaps in regulation. I stand ready to engage with this Committee and Members of Congress on this legislation to ensure it addresses all key considerations in this emerging marketplace. I look forward to answering your questions. Thank you.

[The prepared statement of Mr. Behnam follows:]

PREPARED STATEMENT OF HON. ROSTIN BEHNAM, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Chairman Thompson, Ranking Member Scott and Members of the Committee, thank you for the opportunity to appear before you today.

The Need for Legislation to Fill the Regulatory Gap

Since my Senate confirmation hearing almost 2 years ago, I have consistently highlighted the need for Congressional action to address the lack of Federal regulation over the digital commodity market.[1] I have been clear in testimony before Con-

[1] *See* Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding "Examining Digital Assets: Risks, Regulation, and Innovation" before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Feb. 9, 2022) (*https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam20*); Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding the Legislative Hearing to Review S. 4760, the Digital Commodities Consumer Protection Act at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Sept. 15, 2022) (*https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam26*); Rostin Behnam, Chairman, CFTC, Testimony of Chairman Rostin Behnam Regarding "Why Congress Needs to Act: Lessons Learned from the FTX Collapse" at the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Dec. 1, 2022) (*https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam29*).

gress as well as in other public statements that bringing this volatile market out of the shadows and into the regulatory fold would protect customers, ensure market resilience and stability, and prevent contagion to the traditional financial system.

I have not done this alone. Last year, the Financial Stability Oversight Council unanimously issued a landmark report on the financial stability risks presented by the digital asset market.[2] One of the core recommendations called on Congress to enact legislation to fill the clear regulatory gap over the spot market for digital assets that are not securities.

The events over the past year bring added urgency to these recommendations. The bankruptcy of several large digital asset platforms erased billions of dollars in customer funds. Multiple large market participants allegedly engaged in manipulative and abusive trading activity, including through opaque arrangements with affiliated trading platforms, undermining confidence in these nascent markets. Cybersecurity vulnerabilities continue to be exploited in weekly hacks, resulting in billions of dollars in lost funds.[3]

Simply put, we know how this story ends. Leaving billions of dollars of customer funds and investments in largely unregulated entities is a recipe for disaster. But, recent history can teach us many lessons. Following the 2008 financial crisis, this Committee—working on a bipartisan basis—responded with reforms to the previously unregulated swaps market that were anchored in core principles of sound market regulation: transparency, reporting, and registration, to name just a few.

These tools are necessary to prevent future crises. They have served as tried and true rules of the road for the derivatives markets. Indeed, one of the only FTX entities that avoided the broader FTX bankruptcy proceedings did so because of CFTC regulation that mandated any registered entities maintain segregation of customer funds, sufficient financial resources, and proper governance. That is, the entity was able to protect customer funds while continuing to operate. I believe the broader digital commodity market should be subject to similar time-tested regulations focused on protection of customer assets, surveillance of trading activity, prohibitions on conflicts of interest, and imposition of stringent cybersecurity standards.

Key Provisions for Regulating the Digital Commodity Market

I am encouraged by the continued interest of both parties in Congress and the Administration to address the regulatory gap over digital commodities and generally support legislative efforts by this Committee to provide the CFTC with additional authority to do just that. That said, it is critically important that any new legislation considered by the Congress does not undermine existing laws. Most notably, where securities laws apply, the Securities and Exchange Commission should use its robust authorities to protect customers and address information gaps between securities issuers and investors in the market. I would like to highlight those areas that I think are particularly important for Congress to address in any legislation on this issue.

Customer Protections

For retail market participants entering a new and technically complex digital asset market, robust customer protections are paramount. Congress should ensure that the CFTC is fully empowered to require registered entities to make necessary disclosures regarding a variety of matters, such as investment risk, cybersecurity risks, mining, settlement practices and other related activities; ensure customers are receiving the best available prices; and segregate and safeguard assets in a way that protects customers in the event of a failure by the platform.

We also know that these markets are often promoted as a form of financial inclusion to populations that may be most vulnerable to the inherent risks in these assets as well as to predatory financial schemes. Any legislation in this area should recognize this dynamic and require additional work and study to better understand how these populations interact with this market and ensure they are adequately protected.

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[2] Financial Stability Oversight Council, R*eport on Digital Asset Financial Stability Risks and Regulation* (Oct. 2022) (*https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf*).

[3] *See* Chainalysis, *2022 Biggest Year Ever For Crypto Hacking with $3.8 Billion Stolen, Primarily from DeFi Protocols and by North Korea-linked Attackers* (Feb. 1, 2023), *https://blog.chainalysis.com/reports/2022-biggest-year-ever-for-crypto-hacking/; see also Web3 is Going Just Great, Hacks and Scams by Dollar Amount* (accessed on June 1, 2023), *https://web3isgoinggreat.com/charts/top*.

Market Integrity

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Funding

Presently, the CFTC is the only financial market regulator that relies on appropriated dollars from Congress for its funding. Other financial regulators have self-funding mechanisms in place that provide greater assurance that their fiscal year budget requests will be fully funded. For any regulator taking on new authority, it is imperative that the Congress provide the resources necessary to implement that new authority. Regulation of the digital commodity market will bring new responsibilities to the CFTC that cannot be managed by simply folding this market into our existing regulatory regime with existing resources.

I want to thank the Committee again for the opportunity to testify today. I am encouraged by the Committee's efforts to address difficult policy issues in the digital asset space, in particular, addressing the existing gaps in regulation. As always, there is more work to be done, and I stand ready to engage with this Committee and Members of Congress on this legislative proposal to ensure it addresses all key considerations in this emerging marketplace.

I look forward to answering your questions.

The CHAIRMAN. Well, Mr. Chairman, thank you so much. Thanks for your important testimony today. At this time Members will be recognized for questions in order of seniority, alternating between Majority and Minority Members, and in order of arrival for those who joined us after the hearing convened. You will be recognized for 5 minutes each in order to allow us to get to as many questions as possible, and I now recognize myself for 5 minutes.

Chairman Behnam, you have been discussing the regulatory gap with respect to the digital commodity cash markets for years now. Why is it so important for Congress to proactively work to close this gap?

Mr. BEHNAM. Thank you, Mr. Chairman. It is an extremely important question, and really, I think the reason why we are here. What we have observed over the past decade, if not more, is an emerging transition to commodity cash markets that retail participants can use. Traditionally markets, commodity markets that this Committee knows well, are wholesale-oriented and used for risk management. But because of technology, because of smartphones, and because of emerging access to markets reducing barriers to access, we are seeing retail participants have greater exposure to *commodity assets,* as they are defined by U.S. law.

So we are in this space where we have two market regulators, the Securities and Exchange Commission and the Commodity Futures Trading Commission. We regulate derivatives, this Committee knows that well. We do not regulate cash commodity markets. The SEC regulates security markets, both cash markets and derivatives markets.

So in this larger Venn Diagram of market regulation, the one area that is not covered is commodity cash markets. And as these financial assets are defined, and I will focus most notably on Bitcoin and Ether, these two assets make up 60 percent of the dig-

ital asset market. And at least Bitcoin, which we know has a determination by a Federal court—I have argued in the past that Ether is a commodity. We have a listed Ether futures contract. If you take these two tokens alone, you are talking about 60 percent of the digital asset market that potentially lives inside of this regulatory vacuum.

So I have been advocating, as you have said, for a number of years. As a market regulator, as the Chair of the CFTC, bringing all of these enforcement cases, seeing vulnerable communities being taken advantage of, losing money, customer money, obviously all of the bankruptcies we saw last year, which Congressman Scott mentioned, this is the area that I am highlighting advocating for, hopefully that Congress can address, so we can fill that gap, and ultimately protect customers.

The CHAIRMAN. In your testimony you mentioned the recommendations of the Financial Stability Oversight Council, FSOC, regarding the regulation of non-security digital assets in its 2022 report on digital asset financial stability risks and regulation. Would you briefly elaborate on the recommendations that FSOC made with respect to addressing the regulatory gaps in non-security digital asset cash markets?

Mr. BEHNAM. Thanks, Mr. Chairman. It will be brief, because, in short, the recommendation was that there is a gap for digital tokens that are not securities. So the FSOC report, as you noted, recognized the fact that, for commodity digital tokens, there is no regulatory authority or regulatory oversight. I would add the FSOC report also emphasized that all regulators utilize all enforcement tools to the extent they can. And as you know, and as I said in my statement, we are doing what we can with the authority that we have, which is, at this time, quite limited.

The CHAIRMAN. Does the discussion draft address the many concerns that the FSOC report raised?

Mr. BEHNAM. Mr. Chairman, it does. It does, in the sense that you are trying to target this gap, and essentially provide the CFTC with regulatory authority over commodity tokens.

The CHAIRMAN. And, Chairman, while we all know that the CFTC is a significantly smaller agency than the SEC, it has also shown itself to be a more nimble regulator. Do you believe that the Commission has the flexibility to expand and adapt to a change in its remit?

Mr. BEHNAM. Mr. Chairman, we have done this in the past, most recently after the 2008 financial crisis, and the implementation of the 2010 Dodd-Frank Law. To take on the swaps market, the previously unregulated swaps market, was a significant lift for the CFTC at the time. But I think if you ask anyone, both in the U.S. and globally, the CFTC was one of the most efficient and effective regulators in implementing a whole new regulatory scheme over a very large and very complicated market. So I don't think this situation that we are dealing with right now, in terms of digital asset commodities, is much different.

As Ranking Member Scott said, and as you mentioned yourself, with appropriate funding, given the expertise we have, and the experience we have with digital assets, I have no doubt that the Com-

mission, and our staff, will be able to implement a regulatory regime over digital asset commodities.

The CHAIRMAN. Very good. Well, thank you so much. I yield back, and I am pleased to recognize my good friend, the Ranking Member, for 5 minutes of question.

Mr. DAVID SCOTT of Georgia. Thank you. Chairman Behnam, what will be the effect of providing no additional funding resources to the SEC and the CFTC to implement this proposal according to the joint rulemaking process established in the proposal?

Mr. BEHNAM. Thank you, Ranking Member Scott. I appreciate you highlighting this point. It really would be ineffective, or we would not be able to appropriately and impactfully implement the law that you would ask us to do. We would need teams to work on the rule implementation, which is very complex, as you know. We would need resources both for IT purposes, hardware, and software. We would need new cyber-protections. And of course, as you point out, with the Joint Advisory Committee, we would have—as I understand the law requires *per diem* requirements for the members, all of these new financial burdens and responsibilities.

So, given all of the market issues we are facing today, new markets, emerging markets, and as you pointed out, a growing futures and options and swaps market, if we were given new authority to regulate the digital commodity markets, it would be critically important, in order to do it right, that the CFTC has new additional funding to match that responsibility.

Mr. DAVID SCOTT of Georgia. And, Mr. Chairman, can you estimate for me the amount of time that the joint rulemaking process would take without additional resources?

Mr. BEHNAM. Well, I would say that it is always difficult to estimate, but I have evaluated certain circumstances where we did get additional funding, and it would take at least 1 to 2 years to implement rules. So under your scenario, where we do not get additional funding, given all the existing responsibilities we have in traditional derivatives markets, I would estimate that this could take upwards of 3 to 4 years to implement, given the pull and the stress on staff to understand the law, and to write rules to implement over time.

Mr. DAVID SCOTT of Georgia. And let me ask you, can you share with us, are there any benefits to this provisional framework that provide the Commission with authorities or information to which you cannot currently assess?

Mr. BEHNAM. Congressman, I think the provision that outlines a period of provisional registration—the way I view it is it really is holding back the CFTC, and prohibiting us from utilizing our existing authority, which, again, is very limited, and, as you know, is very focused on anti-fraud and manipulation.

I think I understand the goal and the intent of what this provision is trying to accomplish, and I think there is probably a more efficient way to do it. And I would point to, again, after Dodd-Frank, when we had to implement Title VII of that bill, around the swaps market, the CFTC, in a very efficient manner, finalized rules in about 12 to 24 months for the core rules, which included the definition of a *swap,* and the framework around swap dealers, and swap execution facilities. Once those rules were finalized, we were

able to provisionally register swap dealers and swap execution facilities for a number of years after the rules were finalized.

And the idea was we had finalized the rules, but we had some work to sort of finish through before we could implement the rule, and that is when we had this provisional period. So I do think it is something the Committee should consider as this draft continues to be debated and discussed, is reworking that provisional section so that we don't handcuff the regulator from the start.

Again, we are dealing with a market that is unregulated, which is similar to what we were dealing with, with the swaps market. We would work efficiently, with appropriate funding, to get the rules done as soon as possible, and then I think it would be best to have a provisional period as we work through the details of the regime, and work with the registrants, who are either registered exchanges, brokers, or affiliate entities.

Mr. DAVID SCOTT of Georgia. Well, I will tell you, it is very important that we make sure that we provide you with sufficient funding to do this very much needed job. Thank you.

Mr. BEHNAM. Thank you.

The CHAIRMAN. I thank the gentleman. I now recognize Congressman Austin Scott from Georgia for 5 minutes.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman. Chairman Behnam, good to see you. I have mixed feelings about what the right thing to do here is, candidly. Crypto to me is clearly not a security. It is closer to a currency, and should be regulated by the CFTC, not the SEC. But my question is, we talk about fair, open, transparent markets, whether it be derivatives, or swaps, or contracts. There are over 20,000 different cryptocurrencies out there today. Is that number approximately correct?

Mr. BEHNAM. I believe it is.

Mr. AUSTIN SCOTT of Georgia. Have you done any type of analysis on the workforce that you would need at the CFTC if we gave you the authority to register or regulate the 20,000 crypto currencies?

Mr. BEHNAM. Congressman, what we have done thus far, and this has been as a result of numerous efforts that both the House and the Senate have put forward on bills over the past few years, is to estimate resource needs, and I have come up with the number, roughly, as an estimate, about $120 million over 3 years, and that is to build teams around rulemaking, and how we would implement something generally that we would suspect would require registration of exchanges, brokers, custodians, and others.

Mr. AUSTIN SCOTT of Georgia. And what is your current budget, if I could——

Mr. BEHNAM. Our current budget is $365 million.

Mr. AUSTIN SCOTT of Georgia. Per year?

Mr. BEHNAM. Per year.

Mr. AUSTIN SCOTT of Georgia. So you are talking about another ten percent?

Mr. BEHNAM. Yes.

Mr. AUSTIN SCOTT of Georgia. Approximately?

Mr. BEHNAM. Our current request for Fiscal Year 2024 is $411 million. I do think, regarding your question about the tokens, and the 20,000 tokens, our markets—what—we focus on Bitcoin and

ETH most commonly because they are listed futures contracts. We have brought a number of enforcement cases which mention other tokens, including Litecoin and others.

Mr. AUSTIN SCOTT of Georgia. Yes.

Mr. BEHNAM. There are dynamics, which I am sure we will talk about throughout the course of the hearing, about what constitutes a *security* and a *commodity,* and I think this is what the draft bill is trying to target, because there are, in fact, some tokens that, from the legal precedent we have now, resemble securities, but there are certainly many that look like and act like commodities.

Mr. AUSTIN SCOTT of Georgia. Yes. I guess one of the questions I have is, as we identify, of the 20,000, which ones are, for lack of better terminology, of the regulatory framework? I mean, does it have to be a certain dollar value, a certain number of individual owners of the different cryptos? And how do you keep somebody from manipulating it? Obviously, if you could buy into an unregulated one and somehow manipulate the price that it became regulated, you would make yourself wealthy, because once you became regulated, then you are going to be part of the—for lack of better terminology, the chosen ones that actually are able to engage in transactions.

Mr. BEHNAM. Yes. The vast majority of these 20,000 tokens you mentioned are largely not trading. You probably see very little to probably no trading on a daily basis. The vast majority of the trading occurs in a small handful of tokens, in the dozens at most, and probably smaller than that. The idea and the concept around the regulatory regime wouldn't be any different than what you mentioned on futures, or options, or swaps, or equities, is that you have registered exchanges, and in order to trade those tokens in a regulated way, you would have to list the tokens on the exchange. If they remained off exchange, then that would be a violation of either the Commodity Exchange Act, as refined or amended, and then, of course, the Securities and Exchange Act as well.

I do think a lot of these tokens, given where they are right now, and the activity that we have seen over the past few years, would probably, over time, disappear, both because of the weight of regulation, and because they have largely become obsolete.

Mr. AUSTIN SCOTT of Georgia. Yes. I agree with you on that. I do think that you have the ability of one or two or three famous people to manipulate that. I mean, we have seen that with some of the other coins as it is, but I appreciate you. I have a tremendous amount of faith in your leadership and your ability to advise us as we push forward on this, and I appreciate you being here. With that, I yield back.

The CHAIRMAN. The gentleman yields back. I now recognize the gentleman from California for 5 minutes, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman. Chairman Behnam, you stated, I believe, in a hearing before the Senate Agriculture, Nutrition, and Forestry Committee, that, following the collapse of FTX, that, without any new authority, the CFTC, there would remain gaps in the Federal regulatory framework. I think you kind of outlined them, even if other regulators acted in their existing authority. What do you think are the lessons to be learned

here from the collapse of FTX, and how we prevent that from occurring again in the future?

Mr. BEHNAM. Congressman, thanks for the question, and, as I stated in my opening remarks, we regulated an FTX entity, LedgerX, and when I look at the scope of the bankruptcy, which was very significant globally, there were over 130 entities that had to file for bankruptcy.

Mr. COSTA. Could you have anticipated beforehand of its downfall?

Mr. BEHNAM. Yes, it is a good question, because the lens with which we saw FTX was LedgerX, which was a highly regulated, well-resourced, well-governed entity, and that was the entity that we regulated, and we focused on. To your point, and your question, could we have anticipated, or could we have seen, the answer is no, and the answer is because—it is the reason I am here today, and what I have advocated, it is because we don't have authority over digital commodity tokens. And a lot of that activity occurred overseas, which is a first sort of primary barrier to our jurisdiction offshore, but the larger barrier, of course, is the fact that we don't have regulatory authority over entities that trade cash commodity tokens. So it is the area that we are here for today, and hopefully we can change so we can prevent those crises from happening again.

Mr. COSTA. Well, you talk about overseas, and I remember when we were going through this challenge with the swaps a number of years ago, the Committee actually went to Europe, and we met with a number of the financial institutions in London and Frankfurt, and were trying to get a sense of what the Europeans were doing. And are there any lessons to be learned that you would cite from the framework that exists there today?

Mr. BEHNAM. Yes, Congressman, it is another great question. Our derivatives markets are global in nature, and that is the way they function, because we have large institutions needing to manage global risk.

Mr. COSTA. Right. Yes. We are not an island here.

Mr. BEHNAM. Yes. And I think the—this is—in many respects the nature of digital assets is global. There are no barriers like there are in traditional markets, and I think it is important. I am the Vice Chair of IOSCO, which is the International Organization of Securities Commissions. I participate in the Financial Stability Board. There are a lot of efforts at the global level to coordinate rules of the road. And, as was mentioned by the Chairman, Europe has moved on crypto regulation in the UK, Singapore, Hong Kong, and I think it is important that we gel our rules across more——

Mr. COSTA. So you think there are models there that we can follow what those——

Mr. BEHNAM. Every jurisdiction is unique, and certainly in the U.S. market we are the largest, deepest, and we have a variety and diverse set of institutions and market participants, but, at a high level, they are certainly—looking at the European model is a good mark, and some of the work that the UK and Singapore is doing as well is a good mark to start off with.

Mr. COSTA. What fears do you have most, in terms of if we continue to go as we are, without the additional authorities that you

outlined, and that the Chairman and the Ranking Member discussed? If we just continue with the *status quo,* what is your biggest fear?

Mr. BEHNAM. Congressman, I mean, the evidence is in our enforcement record, and I would even point to the SEC's enforcement record as well. We brought 82 cases over about 8 years, and this—82 cases for an agency that doesn't have regulatory authority. These are all cases that we have been—having—coming inbound, people have been telling us. And these are individuals and institutions that are losing money, that are getting hurt and getting duped, and my fear is, if we don't address this issue from a legislative standpoint, we will continue to bring these cases.

But, as I point out, we are bringing these cases because of a very small authority that Congress provided. And my fear is that this is, I have said this in the past, the tip of the iceberg. And as this market ebbs and flows in size—which it has largely stabilized over the past 6 to 9 months. If it starts to peak and move into a direction of growing, you could potentially have financial stability risks, and other concerns for financial markets.

Mr. COSTA. Well, my time has expired, but, Mr. Chairman, and Ranking Member, I think there obviously is work for us to do, and I think there is an opportunity here to establish a bipartisan framework in which we can accomplish that end, to deal with the issues that have been presented, and I look forward to continuing to work on this effort.

The CHAIRMAN. I thank the gentleman. I now recognize the gentleman from Arkansas, Mr. Crawford, for 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman. Chairman Behnam, thanks for being here. You may recall the last time you were here we had a conversation about whether or not Sam Bankman-Fried was a CFTC registrant, and, of course, he wasn't. And so that was my concern, and it is my concern now. I am kind of like—I share the sentiment of my colleague here, Mr. Scott, that—I am not really sure how I feel about this. In a way I guess I am kind of, like, standing on a platform, watching the train leave the station, and there may be time for me to jump on the last car, I don't know, but that is just sort of how I feel right now.

But I am concerned about—you mentioned LedgerX, and you had a view into what was taking place through the lens of LedgerX. Talk about what regulatory authorities existed then, and what would—how that would change now, as it applies to LedgerX. Were they a CFTC registrant? Obviously, I am assuming they were because you had authority, so talk about that a little bit.

Mr. BEHNAM. Yes. LedgerX was a clearinghouse and a trading platform that offered fully collateralized futures options and swaps. FTX bought LedgerX in the fall of 2021, and shortly after they purchased them—LedgerX has been licensed with the CFTC since 2017 or 2018.

Mr. CRAWFORD. Okay.

Mr. BEHNAM. Shortly after FTX bought LedgerX, they submitted an application, which is why I was here before, at least in part, to change their model from fully collateralized to margined.

Mr. CRAWFORD. Okay.

Mr. BEHNAM. But the unique nature of it was that it was non-intermediated.

Mr. CRAWFORD. So you can see how that might be a problem, fully collateralized *versus* margin. I mean, I have some concerns about that, but I want to move on. On that topic—so as we start to see your regulatory authority expand, and we have talked about the financial needs that would accompany that, the resources you would need, what about the licensure? I am talking about, are IBs going to be able to now be brokers from digital currency, and are they going to be Series 3 license holders, what is the regulatory requirement going to be, what is the licensure going to be, and what role does NFA play in that?

Mr. BEHNAM. Right. So NFA is going to play a critical role, assuming it is NFA. I don't want to make any assumptions, this could change, but we have a great relationship with the National Futures Association. They are, I often say this, the boots on the ground, the direct intersection between retail participants, other market participants, and markets. We would certainly need an SRO to sort of facilitate this market regulatory scheme.

I would say a lot of the questions you raise, we would have to decide, both in legislation and in the rule context, would we want a traditional FCM, or a broker type who offers futures and options, to also be able to offer digital assets? And the question might be yes. The answer to the question might be no. Or would we want a registered futures exchange, under a CFTC license, to be able to offer cash digital commodities? I think the draft bill proposes a new entity, a digital commodity contract market, which is parallel to what we have for futures and options. So I think there are things that we have to work through, and this is why it is a draft, but certainly would welcome your steer on whether or not you would want those responsibilities to be held jointly by a single entity.

Mr. CRAWFORD. Well, here is where I am going. I mean, there are at least three vape shops in my hometown that say "Buy crypto here." That is problematic. And so, on that—and on that score, I would say that is why we have to do this regulatory measure, because we don't need just Joe Schmoe at a vape shop selling crypto. But this seems to be widespread, and so to Austin Scott's point, I mean, you have 20,000+ currencies. How are you going to get your arms around this and determine which ones are valid, which ones are going to fall under your umbrella, and which ones are going to be sort of operating in this sort of unregulated Wild, Wild West space?

Mr. BEHNAM. I don't think any of the tokens should be operating in the unregulated space. They all needed to be—they need to be in the regulated space. We do have to figure out which tokens are commodities, which tokens are securities. And then the next layer to your point, about us working with state regulators and the NFA, is to weed out all of these local distributors, sellers, individuals who are often scammers.

And this is not unique to our Ponzi schemes and pump-and-dumps that we face every day in the futures space and in the stock market. It is just a different underlying asset, and this is what has made our 82 enforcement cases. But we need the policing authority to proactively go after these individuals.

Mr. CRAWFORD. And then finally, in the last seconds I have, are you engaging with stakeholders in the banking world, and soliciting their input? Because, so far, I can't find any bankers that are real warm and fuzzy about this right now.

Mr. BEHNAM. Well, I am having conversations with the leaders of large banks, and other brokers, and asset managers, and I think the general consensus is a bit of skepticism, but also a bit of: "I am going to stay on sidelines as long as this market remains unregulated." I do think a number of the heads of these organizations and institutions view this as a viable, or at least some of the tokens, as a viable financial instrument, and one that their clients want exposure to, but they certainly don't like the idea of getting involved in markets that are unregulated. As much as they may complain about U.S. regulation, they, in fact, like U.S. regulation because it is clear, it is predictable, and there is law enforcement behind it.

Mr. CRAWFORD. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. I now recognize the gentlelady from Ohio, Congresswoman Brown, for 5 minutes.

Ms. BROWN. Thank you, Chairman Thompson and Ranking Member Scott, and thank you, Chairman Behnam, for being here to talk about digital assets again. Mr. Chairman, this is the third hearing this Committee has held on digital assets this Congress. Meanwhile, tomorrow will be the first time this Committee talks about an issue that affects 34 million Americans, and I am talking about food insecurity.

Chairman Thompson, I would certainly hope that in a farm bill year this Committee would be holding hearings on topics that we have yet to focus on, like specialty crops, Black and Brown farmers, and USDA operations, rather than visiting digital assets multiple times. When Chairman Thompson and Representative Henry presented their draft legislation on digital asset regulation late last week, written without Democratic voices at the table, it became evident why the Majority is so committed. So, Mr. Chairman, I know you and your team have even less time to sift through the 162 pages of text than we have, but I am hoping that you can speak to some of my concerns.

So, Mr. Chairman, just a few weeks ago the House Appropriations Subcommittee marked up a bill that would dramatically cut funding to Commodity Futures Trading Commission, or CFTC. How would spending cuts like this impact the CFTC's ability to implement legislation like that we are discussing today?

Mr. BEHNAM. Thank you, Congresswoman. As you noted, our current budget is $365 million, our request for FY 2024 is $411 million, and the proposal that came out of the Appropriations Committee a few weeks ago was $345 million. given our responsibilities, given the growing interest from new stakeholders, given new risks around cyber, and just the growing nature of markets, and the diverse set of constituents that are starting to come into our markets, if we were to go to $345 million, coupled with elevated costs, which we are all facing, this would be, quite frankly, devastating to the agency.

We would have to probably furlough quite a number of our staff, and it would really restrict our ability not only to provide the serv-

ice we do through a regulatory lens, but more importantly, and one that I know you care about, is to properly implement our enforcement program, which I believe is the gold standard globally, and it is a statement—or a statistic I like to share often, for the past 10 fiscal years we have largely returned to the General Treasury Fund about $8 for every $1 that we are appropriated.

So I say this often, the CFTC is a good investment by the American taxpayer, and the return on investment is even better. So you can imagine a cut in our budget is really, in fact, a reduction of money going to the General Treasury.

Ms. BROWN. Thank you for that. And the correlation you frequently address is the relationship between climate and cryptocurrencies, which is not addressed in this bill. So could you describe the kinds of climate provisions that should be addressed in a digital assets bill that come out of this Committee?

Mr. BEHNAM. Thanks, Congresswoman. Given the issue you raised, and this really is focused on the energy usage around mining for tokens, there have been efforts by some in the industry to change the method of mining, which I applaud, but it doesn't necessarily remove the issue that you raise, and it is one that we have to be very focused on. So I do think, as this Committee considers this draft, two thoughts come to mind, is further studying the issue, and getting a better sense of what the mining capacity is, and what the energy usage really is here domestically, what types of energy sources are used to actually mine the tokens, whether it is fossil fuels or renewables. I know there has been a shift in that as well.

And then ultimately I think the best—or one of the best solutions to this problem is disclosures. It is transparency. It is giving the community of investors information about the tokens that they are investing in. And I am hopeful that with more information, transparent information about energy usage or mining techniques, that will push the market towards more—I will say less energy intensive practices around mining.

Ms. BROWN. All right. Well, thank you for that. With that, Mr. Chairman, I yield back the balance of my time.

Mr. AUSTIN SCOTT of Georgia [presiding.] Thank you. The chair now recognizes Mr. Bost for 5 minutes.

Mr. BOST. Thank you, Mr. Chairman. Chairman Behnam, futures commissions merchants play an important role, enabling farmers to participate in futures markets, hedge the risks, provide them with access to exchanges and clearinghouses. I think we can both agree that it is important to understand the risk with futures trades. Can you talk about the obligation that the FCMs have to disclose these risks to their clients?

Mr. BEHNAM. There are a number of requirements that both the CFTC and the NFA, the National Futures Association, require of the FCMs to provide disclosures to their customers. I would say, generally speaking, though, Congressman, a lot of disclosures in the derivatives, and more importantly the commodity markets, are around risk of loss, and the actual contract specifications themselves. And I will—I want to very—be targeted in my response to you. This really goes to the heart of the discussion we are having today, is, when you have a commodity asset, and you have a regu-

lated market structure around it, which we set, and this Committee implements, it is really about creating fair, transparent, and orderly markets for the financial asset to trade on.

And then there are important disclosures around risk of loss, and other information about the contract specifications. This is unique, and very distinct, from what happens in the securities market, because there is a requirement around disclosures for securities that is far greater and deeper, in terms of what the asset is, who is the individual, or group of individuals, that are managing the company or the institution that is generating those securities, and what information the investor needs to know about that issuer, in this case.

So, getting back to your question, the FCM has serious and significant responsibilities around disclosures, but they are unique in the sense of what a commodity asset needs to—what needs to be disclosed about a commodity asset.

Mr. BOST. Okay. You may have answered what I was going to go with—the follow-up question, would it be helpful to require brokers, dealers, and exchangers in the digital commodity to do the same, though?

Mr. BEHNAM. Yes, absolutely, and there would be a number of different areas we would need to focus on. We would certainly look for a steer from this Committee, but this would be the analysis that the agency does with a new law, is to think about what types of disclosures an investor would need to know about a digital commodity token. Certainly risk of loss, certainly some information about the token itself, and other information about the regulated entity that is facilitating the trading of the token.

Mr. BOST. So the—what we are discussing in this draft that we are providing is just—the CFTC and the National Futures Association will have the authority to require similar disclosures on CFTC registered digital commodities, correct?

Mr. BEHNAM. Correct, yes.

Mr. BOST. So my second question, and I will try to get it in here, in 2010, when Dodd-Frank—and I think you brought this opening—Dodd-Frank significantly—or maybe it was one of the other questions—expanded the jurisdiction of the CFTC from the futures and options market to the $500 trillion swap markets, that increased jurisdiction required the agency to undertake a significant number of rulemakings. Having the experience, and knowing exactly what the transition process, and the time could take if the CFTC is given authority over digital commodities and cash market, and do you—do you believe that it would be a complex or difficult process, and how long and how costly do you think it would be?

Mr. BEHNAM. Congressman, thank you for the question. As I said earlier, I have estimated that a similar regulatory regime to the one in this draft bill would cost about $120 million over 3 years. It would require standing up multiple rulemaking teams, it would require hardware and software, from an IT perspective, and increased cyber protections. These are just estimates, but it gives you a sense of what we would need over a period of time to implement the rules.

I do think the rulemaking process would take between 6 and 24 months, roughly. We have the experience, you noted this. We did

this in 2010. I stand by what I said earlier. We were one of the most efficient, quick, and effective regulators across the globe to implement over-the-counter derivatives regulation. It was difficult, it was complicated. But I think, with a mandate, and appropriate funding, the agency is well-suited, has the expertise, and the competency to do it in a very efficient manner.

Mr. BOST. Yes. I just want to say thank you for being here today. I want to thank the Chairman for putting this together, because I know some others were saying that we have hit on this pretty hard. This kind of explains why we have to hit on this, why we have to have the oversight. And believe me, I am not a big regulation person, and believe me, I am also an old guy that just kind of watches from the side on Bitcoin, and all of the others, but this is a real concern, and I think we have to be ready for it, so thank you for being here. I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair recognizes Ms. Caraveo, for 5 minutes.

Ms. CARAVEO. Thank you, Mr. Chairman, and thank you to Chairman Thompson and Ranking Member Scott for today's hearing, and to you, Chairman, for being here this morning. Recently, this industry has seen the collapse and bankruptcy, as we have talked about, of large market players, and enforcement actions taken by the CFTC, and other Federal financial regulators to go after abusive and manipulative trading practices. The framework envisioned in this discussion draft is incredibly complex, but the harms posed to customers by this industry are very real.

This framework is also a departure from the current regulatory approach, and would require an extensive joint rulemaking process, and establishing a new provisional registration framework while the rulemaking is underway. So I want to reiterate, just as the Ranking Member did, and as I have in previous hearings, that funding would be needed to support this process, which this proposal lacks, as has been pointed out.

In addition to the provisions included in this proposal, I would like to discuss what has been left out. The CFTC has been engaged in digital asset conversations going back to as early as 2014. Over that time, the Commission has developed significant expertise, participating in interagency discussions, and reports concerning the appropriate regulatory framework of these assets, and you have been active in enforcement as well. So, given the CFTC's expertise, Chairman Behnam, and work in this area, are there any considerations missing from this proposal?

Mr. BEHNAM. Thanks, Congresswoman. Yes, I would say that I agree with you. I have concerns around the provisional registration scheme. I do think there is probably a path forward, and one that we can look to the past on to sort of dictate what would be an effective way to have provisional registration without handcuffing the agency. Funding, you raise that. I mean, I—that is certainly the number one—if we wanted—if we want to get—be successful in this endeavor, the agency is going to need more resources, given our core responsibility in the futures, options, and swaps market, and our enforcement actions in the digital asset market.

I would also point out that there are a number of things, and I mention this around disclosures to make sure that we are pro-

viding appropriate disclosures, both on the energy usage side, there is a huge debate about digital assets and financial inclusion which can be a very positive thing, but we have to do it, again, in the right way because with opportunity comes risk, and the risk in this space is fraud. And there is no doubt in my mind that there are fraudsters out there taking advantage of financially illiterate people, and often that happens in lower-income communities. So we would need to be very focused on making sure we have the resources to get information out to the investment community.

I think, from a larger perspective, the bill does include many of the core responsibilities and requirements that you would want of a market regulator around registration, surveillance, monitoring trading practices, having requirements around conflicts of interest, and governance, and financial resources. I say all that with caution because—like, you were just looking at the bill right now, so I do think there is a lot of work to be done, but I think structurally, and from a foundational level, many of the core elements that I have been asking for, and that you would want in a market regulatory structure, exist in the bill. It is just a matter of doing a deep dive analysis, and making sure it jives with our existing laws, and we can get it right, given the nature of these digital assets.

Ms. CARAVEO. Yes. I really appreciate that. I think it is important to have these conversations continue, especially on a bipartisan basis, and to know if there are any gaps there. This proposal also changes how *commodities* and *securities* are defined, focusing on how a digital asset is traded, rather than the characteristics of the asset being traded. Do you think that there are any implications to this definition, and do you have any thoughts and concerns on this approach, which prioritizes the technology, and not the classification, necessarily?

Mr. BEHNAM. Congresswoman, thanks for the question. As I said in my statement, and I will just repeat it, we need to make sure that this does not compromise any existing law, both the CEA or the Securities Exchange Act of 1933, 1934, or other laws from our Prudential Regulators. I think, from a definitional standpoint, it is critical to—when we think about this question about a commodity *versus* a security, what the bill does well is focuses on decentralization as a key characteristic of what would constitute a *commodity* or a *security*. I have said this for years. This really goes to the heart of any definitional discrepancy between the two financial assets, whether it is wheat, crude oil, or copper, or in this case, a digital asset. So that really should be the nucleus of how we define and how we start the conversation.

I also think it is really important to think about where the investor is getting the asset from, and is he or she getting the asset from an issuer, which, given the securities laws, that would most notably represent or reflect a security, or is the investor purchasing the token from a registered CFTC exchange? In that case, you have that more decentralized connection between the investor and the issuer. And I am not suggesting you can't have a token on an exchange that is not a security. It just is in this complex arc of tokens, which can transition from securities to commodities. We have to think about these very difficult questions.

So, improvements, for short, I think need to be made. I think you are asking the right questions. We certainly look forward to working with you and helping you with this. But I do think, at its core, some of the key questions are included. We just need to make sure that we are getting all of them wrapped around our head.

Ms. CARAVEO. I appreciate that, and look forward to continuing to work with you.

Mr. BEHNAM. Thank you.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thanks for being here, Mr. Chairman. We have had a number of subcommittee hearings on these topics over the last few months, and seemingly everybody, whether it is a Majority witness or a Minority witness, indicates that the lack of regulatory clarity is pushing market activity and pushing innovation overseas. Despite that fact, there are some who argue that the SEC's got this. We don't need to muddy the waters with new legislation, SEC has got the authority they need, they will take care of it, you don't worry your pretty little heads. I find myself pretty skeptical of that argument, that inaction is what the day calls for. Give us your sense.

Mr. BEHNAM. Congressman, thanks for the question. And, I think shared sense of facing headwinds, because there is a lot of criticism out there, and that is fine. That comes with the job. But ultimately, as I said to the Chairman, and I have repeated many times in the past, this is not a zero-sum game. For anything that the CFTC might get in legislative authority or legal authority, I am not taking it from someone else. There is a regulatory vacuum. There is a gap in regulation over digital commodity assets. And as much as I agree that the SEC has authority over security assets, the fact of the matter is the largest token, Bitcoin, is a commodity, and that has been determined by a Federal court, and that, under U.S. law, is unregulated.

Mr. JOHNSON. Yes.

Mr. BEHNAM. And there are at least a number, I know one of—exchanges that list very few tokens where there has been legal clarity, around whether or not they are commodities or securities, so you can imagine an exchange just veering towards a few tokens, and that living in a regulatory vacuum. So that is why we are here. We have to fill this gap.

Mr. JOHNSON. So the discussion draft envisions that it would be the SEC that would ultimately deal with this rebuttable presumption of decentralization, but you are an expert market regulator, so as you reviewed the discussion draft, and I know you haven't had weeks to do it, but—did the meat on the bone around the Howey Test regarding some of these factors that would be considered for decentralization, did that make sense to you?

Mr. BEHNAM. Congressman, as I said earlier, the general framework, I think, is right, and can be built on with some tweaks and technical assistance. Certainly we would want to dig into the bill a bit more before we give our clear opinion on where to go. But as I have articulated over the past few years, and as the Howey Test has articulated for the better part of 70 years or so, maybe even

80, we have to think about decentralization as the core question when we are asking is an asset a commodity or a security?

The other thing that I do like about the bill as a—again, on a foundational level, is the question around where is the investor getting the asset from, which I think is also a critical question.

Mr. JOHNSON. Yes.

Mr. BEHNAM. Is the investor getting the asset from an issuer, which obviously makes it much more like a security, or is the investor getting the asset from a third party exchange or trading venue, which doesn't eliminate the chance of it being a security, but certainly puts it in a much clearer lens around the commodity space.

Mr. JOHNSON. Yes, and that is why I like there are a couple of different provisions in that decentralization test that calls that are specifically. So what about—you talked about wanting to make sure that the—some of these new concepts that we have in the bill, some of this intermediary registration jives with existing—your existing statutory authority. We very purposely didn't want to just try to make these folks *brokers* and *dealers* as already defined. We created new definitions, *digital commodity broker, digital commodity dealer,* and so on. Do you feel like we struck the right balance there, with making it similar to, but not exactly the same as the existing intermediary regime?

Mr. BEHNAM. Congressman, I have a lot of faith in our existing regulatory framework for futures, options, and swaps. I think it is—as I said in my statement, it is time-tested, it has worked well. We are constantly amending it, to the extent markets evolve and change. But ultimately, when we think about transparent, fair, orderly markets, where investors have access to information, and they know who they are dealing with, whether it is at the broker level, the exchange level, the custodian level, or, on the back side of a trade, a clearinghouse or a settlement agency, these are the core components of market structure that have worked for many, many decades. And I think that is where the bill focuses on, and that is a great starting point.

Mr. JOHNSON. So, Mr. Chairman, we tried not to just grab all these digital asset folks and fit them into your existing buckets. We created new buckets. Is that an approach that you are comfortable with?

Mr. BEHNAM. Yes. I think they are—I think over time we will probably learn how you can—the two—or traditional assets can intersect with digital assets. But at this point, I do think the approach in sort of siloing them, and having unique classifications for both the entities that would facilitate trading or brokering is the right approach at this point.

Mr. JOHNSON. Very good. Mr. Chairman, I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair now recognize Ms. Salinas, for 5 minutes.

Ms. SALINAS. Thank you, Mr. Chairman, and thank you to Chairman Thompson and Ranking Member Scott, and thank you, Chairman Behnam, for being before us today. So I am going to take it back to the people who have really been harmed by a lot of this. So fraud, scams, and manipulation in cryptocurrency markets are growing increasingly rampant around the nation, and particularly

in my home State of Oregon. That false promise of easy money, combined with folks' limited knowledge and experience with cryptocurrency sets up that perfect storm for scammers to take advantage of people.

In the first 10 months of 2022, the FBI reported that Oregonians were swindled out of about $13.6 million in cryptocurrency scams. And in February a Federal grand jury in Oregon indicted four Russian nationals, founders of a purportedly decentralized cryptocurrency investment platform, for their roles in a global Ponzi and pyramid scheme that raised approximately $340 million from victim investors. The impact of all this malicious activity on everyday Americans is heartbreaking to hear, and I have a local Fox 12 news story that showed a Portland man in his 60s fell into depression and anxiety after losing over $200,000 of his hard-earned life savings in a crypto scam.

So in your most simplest terms, again, trying to take this back to my constituents, Chairman Behnam, can you identify what the CFTC and other Federal Government agencies are doing right now to protect Americans from fraud and manipulation in the digital asset arena, and what should the complimentary roles for those agencies look like moving forward?

Mr. BEHNAM. Thanks, Congresswoman, and I am going to start with the very—we have multiple regulatory agencies in the U.S. government, and there are benefits to that. There are some flaws as well, one could argue, but the fact of the matter is, from a market regulatory standpoint, we have two types of financial assets, securities and commodities, just speaking generally, and many of these tokens fall within the securities bucket, but I will focus on the commodities side, which at least one has been determined, as I said to Congressman Johnson, as a commodity. I believe others are commodities as well, and this creates this gap.

The authority that we have right now, which is extremely limited, allows us to police cash markets. We are a derivatives market regulator, but we can police cash markets if there is fraud or manipulation. The biggest Achilles heel to this authority is we have to wait for individuals to come to us and tell us, "You should check out this individual, or this scam, or this fraud." So of these 82 cases we have brought for the better part of 8 years, nearly all, if not all of them, have been because people have come to us.

And I can tell you unequivocally, that is not how we want to run a regulatory scheme. We need proactive regulation, we need registration, we need surveillance, we need monitoring of markets, of individuals, of institutions who are offering these assets to vulnerable citizens in Oregon, and across the country. So we are doing what we can with what we have. I am very proud of what we have accomplished under many Chairs and Commissions, and we will continue to do that, but ultimately, as I have said this earlier today and in the past, we are probably dealing with the tip of the iceberg, and we need to address that larger problem here. And, regardless of what some may say, this technology is here, the markets exist, they trade, and every day they trade, someone is likely getting taken advantage of.

Ms. SALINAS. Yes. Thank you. Thank you, Mr. Chairman. I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Mr. Baird, for 5 minutes.

Mr. BAIRD. Thank you, Mr. Chairman, and I appreciate this opportunity to have this discussion, so, Mr. Chairman, Ranking Member ——

Mr. AUSTIN SCOTT of Georgia. Pull that microphone closer.

Mr. BAIRD. I appreciate the opportunity to have this discussion, and, Mr. Chairman, I really appreciate you being here and sharing your observations and experience with us so that we can make good decisions on this Committee. My first question deals with the fact that segregation of customer funds has really been the bedrock of security and so on and protecting customers in the derivatives market. So can you explain to us how these funds might be separated and segregated, and explain what is appropriate, in your opinion, for protecting customers?

Mr. BEHNAM. Thanks, Congressman. You use the word *bedrock,* and I think I am going to repeat that, because, when I think about the CFTC, and I know when others who are in the CFTC markets, either in a regulatory perspective or a registrant perspective, customer funds are sacrosanct, and it is because the rules that the Commodity Exchange Act—that—the law the Commodity Exchange Act has and the rules behind it have set that focus, as the highest priority, segregating, as you point out, customer funds. And really the idea is to ensure that customer funds are completely separate and siloed from an intermediary or a broker that is facilitating the trading of futures options or swaps.

And ultimately, what we are trying to also protect is that, if there is a bankruptcy or a failure of an intermediary or a broker, or in this case an FCM, which does happen periodically, thankfully not often, we need to make sure that any claims against that broker are walled off to the customer, right? So that the customer funds are completely walled off and protected from any third party claims against the broker that the customer uses. And I think what the draft bill does well is largely mimics, or at least uses the customer segregation regime that the CFTC has right now to use, and to think about, as a baseline or a foundation for this digital asset market.

One of the biggest issues and concerns we are facing in this new nascent, but growing, marketplace is the segregation of customer funds. And we saw that last year with FTX, we have seen that more recently with cases against Binance, both from the SEC and the CFTC, all allegations at this point. but bottom line is this customer segregation and commingling of customer funds is one of the most important issues that needs to be addressed. And I am encouraged by the effort of the draft bill to do this, and certainly look forward to working with the Committee to make sure that we get it right.

Mr. BAIRD. Thank you. My other question deals with the CFTC's relationship with the National Futures Association. Can you describe that, and see how that partnership benefits this situation?

Mr. BEHNAM. Yes. Thank you, Congressman. The NFA is a partner, and they have been a close partner as long as both the agency and the NFA have been around about 45 and 40 years, respectively. And we are—well, I view them, as I said earlier, as our

boots on the ground partner, right? They are the entity, the SRO, the self-regulatory organization, that has the closest intersection and relationship with our registrants and our stakeholders. They provide invaluable disclosures, protections, education and literacy around our markets for all users down to retail farmers and ranchers, to swap dealers, and other institutions, like FCMs.

We are—thinking about the depth and breadth of the markets we oversee, both here in the U.S. and overseas, an SRO like the NFA is an absolute necessity. So I am also encouraged by the fact that the draft bill considers a relationship with a self-regulatory organization and building off of some of the principles and foundations that have worked quite well for the CFTC in our traditional markets to use in this digital asset market.

Mr. BAIRD. So I determine from that that you think that there is—this working relationship between the NFA and the CFTC is a good one, and it will provide additional customer protections?

Mr. BEHNAM. Absolutely.

Mr. BAIRD. Thank you very much. I appreciate that.

Mr. BEHNAM. Thank you.

Mr. BAIRD. And with that, I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Ms. Budzinski, for 5 minutes.

Ms. BUDZINSKI. Thank you, Mr. Chairman, thank you, Ranking Member, and thank you, Chairman Behnam, for being here today. I appreciate it. The digital asset industry has framed these products as a tool to support increased financial inclusion. Though we have yet to see the effect come to fruition, we have observed in recent years that persons of color are, in fact, more likely to own these types of assets. Despite the industries touting these assets as paths toward a more inclusive financial system, and the Administration's proposal to study in more detail the effect of the digital asset industry on financial inclusion, there is no mention of this in the proposal. Could you speak to the utility of these assets to support financial inclusion? Should effects on financial inclusion of particular digital assets be considered by the CFTC and the SEC in their registration and approval process?

Mr. BEHNAM. Congresswoman, thank you. It is an extremely important issue that I think we at the CFTC level have thought about, and we are doing everything we can, through our Customer Education Office, to get as much information out, mostly through the internet, to users of digital assets. Unfortunately, that probably doesn't really hit as many people as we would like. But you are right to sort of articulate this friction between the opportunities that are highlighted, in terms of providing under-banked individuals with more banking services, and those in low-income communities with access to financial services, *versus* really what are the use-cases, and what are we seeking in terms of the actual development of this technology, and is it actually benefitting these communities?

And I think in principle, given some of the challenges and issues around banking services to lower-income communities, you can certainly see how being able to download an app on your phone to essentially swap cash for a stable coin, or some other digital asset, and instantly transfer that asset across the globe—and what I

mean—when I say *instant,* I mean instant. So we can think about a lot of individuals and families who have relatives overseas, or in different parts of the world, where this technology can actually facilitate opportunities that currently don't exist.

All that said, it comes with risks, right? Because—risks of information about these assets, volatility of these assets, and whether or not there is fraud occurring behind the institutions that are facilitating some of these tokens and some of these services. And that is where I think a disclosure regime is critical, customer education regime is critical, and ultimately, to your point, more examination by the agency in partnership with other agencies to see what are, in fact, the use-cases. Are we seeing a development in this space that is helping and supporting financial inclusion, or is it, in fact, just a mirage, and are we not seeing it?

And I think we shouldn't dismiss it, but we also shouldn't embrace it as a success story quite yet. So we can do things at the agency level, and certainly would like your support to do more work so we can really figure out what is behind all this, and make the best of it.

Ms. BUDZINSKI. Yes, thank you. And maybe I could take a little bit of a deeper dive on this topic. And I appreciate in your testimony you allude to this, we need to be doing more studying around this to really learn more of the facts, the hard facts around this, and what the real results have been. But could you explain a little bit more in detail about who these populations are, and how any legislation in this space should address this dynamic to ensure that these populations are protected?

Mr. BEHNAM. Thanks, Congressman—Congresswoman. I would say that what we are seeing—and there are statistics, you pointed to some of them. There have been some studies, and it is low-income communities, it is racially diverse communities that are living in traditionally under-banked areas, and, as I said, find these tools that are being facilitated by technology much easier to have access to.

So much of the discussion that we are having today is about barriers to access, and really a reduction in access to financial markets and banking services, because it really is just a phone, as opposed to having to go to a bank, which may or may not exist in your community, and then to provide a credit score, and information, and an address, and financial history. All of these requirements that we have in our traditional system can act as barriers for individuals who don't have credit history to have a banking account. This eliminates many, if not all, of those barriers.

So, again, there is an optimistic way to view this, but I think with high caution, because with all of these opportunities comes risks, and we have to focus on these vulnerable communities, which tend to be the ones using these banking services or these technologies for these types of services.

Ms. BUDZINSKI. Thank you, I really appreciate that, and I will yield back my time. Thank you.

Mr. AUSTIN SCOTT of Georgia. The chair recognizes Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. Thanks, Mr. Behnam, for being here. Currently, what we see under the National Futures

Association, is a set of requirements and regulations that are already in play, that they are used to, but in the discussion we are having here, that the CFTC would become subject to new requirements for all digital commodities, *et cetera,* registered with CFTC. So this—it would risk disclosures to customers, and conflict of interest requirements. So these would be new to the digital asset industry coming from CFTC, as—but they are not—they are current with the—with futures. So how does it actually work these days? How well is it working with CFTC, working with the Futures Association, as a parallel towards what it would look like for digital commodities?

Mr. BEHNAM. Thanks, Congressman. In principle, we want to replicate—and I think the draft bill does a good job in this, in replicating what we do now in our traditional markets. And to your point, we work closely with the National Futures Association, which is our self-regulatory organization, and a body that, as I have said before, acts as a more direct intersection with investors, and with market participants, whether retail or institutional.

And it is all of these attributes that you mention, which it is disclosures about assets and risks of loss, conflicts of interests, AML or KYC, and it is—anti-money laundering and Know Your Customer, these are core components of markets and information that an investor should, and needs, to know, and has been built over decades because of experience, and often because of fraud, and learning from fraudulent activities. So it is these core principles—or it is this, like—this base layer that we know works, we know protects markets, creates resilient markets, and creates information flow to investors that allows them to make informed decisions. And what we want to do, in essence, is cut and paste that same layer into the digital asset market. Now——

Mr. LAMALFA. Do you see any issues with it applying towards a completely different style of market? Is it—do you see it readily adaptable?

Mr. BEHNAM. Well, I feel like it is adaptable, but we will certainly have to take a look, and make sure that we make appropriate tweaks and adjustments to reflect the unique nature of digital assets.

Mr. LAMALFA. And you think the relationship with CFTC and NFA would work well together to meld those?

Mr. BEHNAM. We work hand in glove. We have a great relationship from the top down, and I have no doubt that we would be able to accomplish this.

Mr. LAMALFA. Okay. You mentioned early on the importance of fair, open, and transparent markets, so what are your—how do you strive with CFTC to maintain these fair, open, and transparent derivatives markets at this time?

Mr. BEHNAM. So mostly we work through the registration regime we have to register the exchanges, to register the FCMs that—introducing brokers, the associated persons, the commodity pool operators, trading advisors. And through the registration scheme we get information about key personnel, about governance, about compliance, about conflicts of interest. We surveil markets on a regular basis. We collect data. We work closely with the exchanges, and also the self-regulatory organization, to ensure that we are moni-

toring markets. We have a very strong and robust whistleblower program which incentivizes individuals to come and tell us about bad actors. And ultimately we use the civil enforcement authority we have, through our enforcement division, to create, of course, disincentives, and, hopefully, an incentive to act within the bounds of the law.

So, comprehensively, the regime focuses on registration, surveillance, and enforcement, among other things, which focuses on a number of things around cyber, compliance, governance, as I mentioned. And I think, in sum, this has worked well for our markets, and can be replicated in the digital asset market.

Mr. LAMALFA. If CFTC had full regulatory authority over the spot market for digital, how would that have helped with consumer protections, when we go back to this FTX issue? For segregation of assets that would have been important.

Mr. BEHNAM. Yes. And, Congressman, it is a great question, because, as I have articulated, I look at what happened to LedgerX, which was an FTX entity, or affiliate entity: 132 bankruptcy—bankrupt entities in the FTX entity, and John Ray, who is the CEO of FTX now, has said that LedgerX has responsible management, valuable franchise, and was recently optioned for $50 million. And that, I think speaks louder than words. That is CFTC regulation. That is regulation working. That is what we need in order to prevent future crises.

Mr. LAMALFA. I appreciate it. Thank you. I will yield back, Mr. Chairman.

Mr. AUSTIN SCOTT of Georgia. Before I recognize Mr. Jackson, I want to just—I am showing Mann, Moore, De La Cruz, Duarte, and Rouzer, in the order, on the other side. Mr. Jackson, you are recognized for 5 minutes.

Mr. JACKSON of Illinois. Thank you, Chairman Thompson, in your absence. Thank you, Ranking Member Scott. Thank you, Chairman Behnam. In my earlier career, I ran on the Chicago Board of Trade, I ran on the New York Stock Exchange, other financial institutions. I appreciate the work that you do, and all—what the CFTC has to do. This conversation repeats itself on is this a *commodity,* is this a *security,* how do we get it—I have some basic questions. How are the deposits assured?

Mr. BEHNAM. Deposits insured?

Mr. JACKSON of Illinois. Assured. Like, when someone opens an account how do we know the money is on account?

Mr. BEHNAM. Yes. Well, we have a number of regulations and requirements when we deal with mostly the FCMs, the futures commissions merchants, that they have relationships with either banking entities, or they have relationships with custodians. And we do get daily reports about customer funds, and customer balances, sent to the CFTC to ensure that customer funds are where they are supposed to be, available, and available to be withdrawn or used for trading activities.

Mr. JACKSON of Illinois. Second part to the question is what transparency is there in bidders and bids?

Mr. BEHNAM. Sorry, I didn't hear the last part?

Mr. JACKSON of Illinois. What transparency is there in bidders and bids? When the bid is in and they are asked——

Mr. BEHNAM. Sorry. Yes, sure. So we have an order book, which is really what you are articulating, and we have rules around transparent markets and settlement, and ensuring that bids are real, and that they are going to be offered, they are going to be filled. And this is—really goes to some of the disruptive trading practices that we prohibit, whether it is spoofing or wash sales, which we see often, and is really, unfortunately, systemic in this unregulated digital asset market.

But to your point, in the regulated market, when we have a central limit order book, we have bids and offers, and we are—we have rules at the agency level, and then, more importantly, at the exchange level to ensure that every bid and every offer is valid, and will be executed if it is on the order book.

Mr. JACKSON of Illinois. Because this is at the heart of what the problem is. They pride themselves on being opaque, and it is somewhere out there in the ether that this happens, but then, when there is a cash draw, people are trying to chase the funds, and where are they? So how would you say the bids get processed? Because I have a concern on what happened with some of the other beats—places—it is Coinbase, tomorrow is Bitcoin, and Coinbase is not coinable, there is nothing tangible, and then, poof, billions of dollars seem to go away. How is this processed for the bids, so that way we can make sure people aren't setting up—faking an account raising a bid against themselves, and washing a trade?

Mr. BEHNAM. Congressman, I mean, this—you are raising the—really the most fundamental and important question, and I hope the reason we are here today is—we can set up a side by side of regulated markets and unregulated markets, and all these concerns you raise about bids, and offers, and customer funds being secure, and siloed from other customers and other brokers, *versus* an unregulated market, where you don't have those legal and regulatory requirements, and you have that incentive, or that ability, for some market participants to conduct themselves in a way that is essentially contradictory to what we have traditionally done, and know that works in U.S. financial markets.

So, yes, a lot of the cases we brought over the past 8 years, 82, 84, I think I have mentioned multiple times, are talking about wash sales, and spoofing, and commingling funds, and conflicts of interest, and all these things that go to the heart of your concerns. And my request to you and the Committee is we have this space that is unregulated in the commodity digital area that is a huge part of the larger market cap of the entire digital asset space, and absent are all of these core requirements that have made U.S. financial markets the best, most liquid, and deepest in the world.

Mr. JACKSON of Illinois. Now, my time is limited, but ultimately, who has the custody of the asset?

Mr. BEHNAM. In the unregulated digital asset space?

Mr. JACKSON of Illinois. Correct.

Mr. BEHNAM. Well, that would depend on the entity, and who is facilitating the trading. But, I do know that some of the larger entities that facilitate trading and digital assets have custodians, and comply with state regulations around custody. They require—or they comply with some requirements from Treasury around AML and KYC. So I don't want to suggest that the entire industry is

void of regulation. There are quite robust state regulatory requirements, and some OFAC requirements around AML and KYC, but really what we are focused on at the CFTC are markets, and market regulation.

And some have used existing structures to impose on their businesses, but ultimately, that doesn't give me comfort at night. There are too many bad actors, and too many individuals and institutions who are willing to cut corners because it cuts costs, and potentially gives them more resources and money, and that is when we have implosions, bankruptcies, and lost customer funds.

Mr. JACKSON of Illinois. I yield back my time. Thank you very much for your service and your work.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes the former Chairman of the Committee, Mr. Lucas from Oklahoma.

Mr. LUCAS. Thank you, Mr. Chairman, and thank you, Mr. Chairman, for agreeing to testify today. I always appreciate that. When we discuss a digital asset market structure framework, consumer protection is, of course, front and center. I am confident you agree that any proposal should not undermine existing laws that provide for robust consumer protections. So, to this end, could you discuss why it is important that any legislative framework be consistent with both our securities laws and the Commodity Exchange Act, that balancing act?

Mr. BEHNAM. Thank you, Congressman Lucas. We have an existing framework around securities and commodities markets that are time-tested and have proven to be quite efficient and effective in capital formation and risk management. And I think that the clearest reflection of that success is the fact that, when I work with my colleagues globally, there is no question that U.S. financial markets are the strongest and most desirable in the world. And I do think in part it is because of the entrepreneurial spirit of our fellow citizens, but really it is about the markets that provide clarity, certainty, and a legal framework behind the market so that market participants can be assured, if there is a bad actor, that individual or institution will be held accountable.

So I feel like, as we think about, and as you think about, a new regulatory regime, we have a playbook that has worked, and we have to think about it in the context of a new financial asset. This is not a new concept or a new exercise. We have done this in the past. You can largely say we did it with the swaps market, which you were very much a part of. We used the traditional futures and options market, and the structures around those markets, and essentially superimposed them on the swaps market, with some tweaks, understanding that swaps are very unique and different than futures and option. I don't think it needs to be any different with this asset.

Mr. LUCAS. Did you know the proposed market structure draft attached to this hearing is the result of a collaborative effort between Chairman Thompson and Financial Services Chairman McHenry to bring a much-needed regulatory framework to digital assets? Just as the Agriculture Committee and Financial Service Committee must work together, so too must CFTC and SEC. There are notable cases of disagreement between the SEC and CFTC regarding which digital assets are considered securities and which

are considered commodities. could you discuss the current collaboration between the two agencies regarding the treatment of digital assets and their intermediaries? And while you are thinking about the—and how the legislation would help in this process?

Mr. BEHNAM. Thanks, Congressman. From top to bottom, including myself and Chair Gensler, we talk frequently, we discuss these issues, among other issues. Staff are constantly discussing these issues, and how we are seeing markets evolve and change, and new participants. Our intersection with digital assets has gone back for the better part of 8 years now. We have had listed futures contracts on Bitcoin since 2017, on Ether since 2020. And as you point out, there is a bit of difference, which is fine, it is healthy, on what might constitute a security or commodity.

But, from my standpoint as Chairman of the CFTC, when I think about these particular two assets, Bitcoin and Ether, I have to think about what is listed on exchanges that I regulate. And as you know well, whether it is corn or soybeans, or crude or natural gas, if there is a commodity listed with the CFTC, I care about the underlying physical market. Because any manipulation, or fraud, or disruptive trading that might occur in that cash market is most likely going to be reflected in the markets we oversee.

So I have been very vocal in my belief that Bitcoin and ETH are commodities, and that is in part because they are listed on my exchanges, but in part because we did the legal analysis. We will continue to do that, if that is the case. Thus far no other participant has come and tried to list a contract, a different token, on our exchange. But as we think about this bill, and what it provides, and what is suggests, and proposes, in terms of more cooperation, I certainly welcome that. I know there is an advisory committee that is proposed, and these are the types of things that I have embraced as long as I have been at the Commission, since 2017, and I think can certainly benefit the agencies as we think through these issues.

Mr. LUCAS. And I thank you those answers, and I yield back, Mr. Chairman.

Mr. AUSTIN SCOTT of Georgia. Thank you. The chair now recognizes Mrs. Hayes, for 5 minutes.

Mrs. HAYES. Thank you. And thank you, Chairman Behnam, for your testimony today. I apologize for bouncing back and forth. I have another hearing that is going on at the same time. But, I am happy to talk to you, and to hear your opening remarks today.

Following many years of uncertainty in the digital asset space, it is promising to see draft legislation circulated to Members of this Committee. As trading in cryptocurrencies continues to grow, it is critical that Congress provide regulatory authority and clarity that protects consumers and fosters a safe, reliable marketplace. Last month it was revealed that Bitcoin of America had failed to obtain proper licensing for Bitcoin ATM kiosks in my State of Connecticut. Several customers lost tens of thousands of dollars in a scam involving these kiosks. These scams have cost Connecticut residents millions of dollars, most of those people being senior citizens. Chairman Behnam, how does the CFTC hold scammers and other bad actors accountable in the digital assets marketplace?

Mr. BEHNAM. Congresswoman, thank you for the question, and it really raises a lot of the issues that we have discussed today, and

I—and the reason I think why we are here today is so much of this market remains unregulated, and particularly, we have heard examples about kiosks and local vendors trying to sell Bitcoin to some of our most vulnerable citizens. And, in a continually unregulated space, we are going to have to anticipate that these types of activities will continue.

The enforcement or legal authority we currently have is very limited. It really—it is a—not a new authority, but it is reflective of the fact, as I said to Congressman Lucas, that if a contract or a commodity is listed on a CFTC exchange, the agency has a very clear and vested interest in the health of the underlying commodity. Again, whether that is wheat, crude, natural gas, or palladium, but it also includes Bitcoin or Ether. So when citizens or individuals are offering Bitcoin to folks in Connecticut at kiosks, we have an interest in what manipulation or fraud might be occurring in these underlying cash markets.

And we have used this limited enforcement authority to police cash markets, and in the end I think we have been very successful, bringing over 80 cases, $4 billion in penalties and restitution, with essentially no authority. And when I say essentially no authority, it is because, unfortunately, we can't use traditional market regulatory tools, like registration, surveillance, and oversight. We have to wait for individuals to come to us and report wrongdoing.

And that is what concerns me the most, is we have been very successful in bringing enforcement actions, but nearly every single one of those enforcement actions has been because someone has come to the CFTC. And I don't think anyone in this room agrees that is how to conduct an effective regulatory scheme or regime. So I am hopeful that, as this bill moves forward, we can get to a place to fill this gap around commodity tokens, and in that case, or scenario, we can prevent or eliminate some of these less than savory offerings to vulnerable citizens.

Mrs. HAYES. That actually leads me to my next question, and ranking Member Scott mentioned this in his opening. Does the lack of a funding mechanism in this discussion draft limit the CFTC's ability to enforce the law and assure accountability? My concern is that, by having legislation that gives the impression that we are now beginning to regulate this with no funding mechanism for enforcement, I don't see how we would improve outcomes in anyway. Thoughts on that?

Mr. BEHNAM. Yes. I could not agree with you more, and I fully support any effort to fill this gap, but it must be met with appropriate resources and funding. We simply will not have the personnel, the technology, both hardware and software, to fulfill the responsibility that this Committee is contemplating. We have a huge responsibility as it is in our traditional markets. We have received generous funding increasement—increases over the past 3 or 4 fiscal years, which we appreciate, and it has put us on a much leveler playing field than we were in the past.

But I am unsure and always wary of the budget sort of ebbing and flowing over time because our markets are growing, the number of our constituency, our registrants, is growing, and we are starting to see new products and new individuals because of technology want to be registered by the CFTC. So, if we were to layer

on top of that new legislation with new authority, as you point out, unless there was funding backing and supporting that authority, it would be a little bit of smoke and mirrors.

Mrs. HAYES. Well, thank you. My time has expired, but I would love to hear more from you on what you could do with funding to actually support this legislation.

[The information referred to is located on p. 160.]

Mr. BEHNAM. Thank you.

Mrs. HAYES. With that, I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair now, 25 minutes later, recognizes Mr. Mann.

Mr. MANN. Thank you. And Chairman Behnam, thank you for being here, thank you for your testimony. This Committee this morning a few times have referenced Dodd-Frank, and how that expanded CFTC's jurisdiction. Clearly the discussion draft would do the same thing. Big picture, what do you think the CFTC learned from overcoming the challenges posed by the expansion of your authority under Dodd-Frank?

Mr. BEHNAM. Thanks, Congressman. One, I would say that the—this was—I think some in this Committee faced—and even the CFTC faced at the time, when we had these inflection moments in financial markets, whether it is as a result of a crisis or technology, and we have to think about, from a policy perspective, what is our infrastructure, regulatory infrastructure, right, to market regulators and Prudential Regulators? Where do we put these new markets, or these previously unregulated markets? The swaps market had a long history, certainly in financial markets, going back to the 1980s. There were debates in the 1990s about whether or not to regulate them, and ultimately we came upon 2008, and the swaps market played a role in the financial crisis. And with that came Dodd-Frank.

And I think, legitimately, the question is can the CFTC manage it? But ultimately, to answer your question more directly, not only did we manage it, we were very successful. We did it quickly, efficiently. The swaps market now is transparent—more transparent, is orderly, and continues to serve its purpose of risk management and price discovery for institutional investors.

Mr. MANN. Thank you for that. And, from a regulator's point of view, knowing what we now know about the implementation of Dodd-Frank, and as you look at the discussion draft that is before you today, are there are any pitfalls that you would recommend that Congress avoid as this Committee continues the conversation about expanding CFTC's authority?

Mr. BEHNAM. Congressman, one, as I was just mentioning, funding is key, and I know that is always difficult in an environment where we are all tightening our belts here. But, as I said earlier, the CFTC has been a return on investment for U.S. taxpayers. We are returning $8 for every $1 invested in us over the past 10 fiscal years. I do think that in, if you are—and I am not suggesting—I am—I know a lot think about this market from an innovative, and a technological, and a perspective of what it could lead to from a U.S. growth perspective and competition perspective. This is an investment in markets, and I think anything that comes with this

legislative authority or legal authority should be paired with funding.

And also, as I said before, using some of the same fundamental principles that have worked in the past. We don't need to rewrite the playbook. It has worked, we can do it again. We are going to have to adjust for unique technology, and we will make those adjustments, but the foundation should be similar, and it has worked.

Mr. MANN. Great. And last—and I think I know the answer to this, but I just want to make sure I give you a chance to respond. Do you believe that granting the CFTC regulatory jurisdiction over the cash or spot—commodity markets is just the natural extension of the enforcement authority that you have been doing already?

Mr. BEHNAM. Yes. I mean, we have been dealing in this market, as I said, for the better part of 8 years. We have a level of experience, and more notably expertise at the staff level, which impresses me every day, mostly driven through the Enforcement Division, but that naturally sort of permeates itself through our other policy divisions. We have listed futures contracts, we deal with entities that are more traditional, or native digital asset firms. So I would say, arguably, more so than any other regulator on the globe, we have been one step ahead, in terms of our intersection with the digital asset market.

So when it comes to commodity digital assets, as you point out, I do think this is a natural next step, and as we continue to see this market at least stabilize and maintain its current price level—and it will change over time—this is actually a good time to be having this policy discussion, so we can get ahead of a next move, or a next growth in the market, and not be caught on our back feet here.

Mr. MANN. Yes. No, I agree. Thank you. With that, I yield back.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Mr. Moore, for 5 minutes.

Mr. MOORE. Thank you, Mr. Chairman. Thank you, Mr. Behnam, for being here today. I think you have done a fine job, as far as answering questions. Been very informative for me. One of the questions I want to ask is—it is our job, obviously, on this Committee and Financial Services, to make sure we kind of build a good structure for you to work with and within. It is sometimes difficult, however, for us to strike a balance between what is sufficient oversight and over-regulation. And—so how do we strike a balance between overly prescriptive and too broad while defining what an *asset* is, and how do we regulate this space to ensure consumer protections without hindering growth in the industry?

Mr. BEHNAM. Congressman, thanks for the question. One of the hallmarks of CFTC regulation is the fact that it is driven by—it is a principles-based regulatory scheme. And that actually invites some criticism, but ultimately, I think if people took a deeper dive and understood the complexity of our ruleset, they would appreciate that the principles-based regime, which is about 23 years old now, is a base layer.

I have used that term a couple times, but if you look at our statute, we have the law, and then our regulations. And the statute is fairly thin, and it is these core principles, but the rules are quite thick, and the rules are where the rubber hits the road, and where

we get, at the agency level, a bit more prescriptive in terms of how we regulate brokers, and exchanges, and custodians, individuals who are offering services, or individuals who are managing money.

And I think that that regulatory system has worked quite well. It has allowed the market to innovate, it has allowed the market to grow, but it has empowered the CFTC over the better part of 2 decades to be flexible, and to adapt to essentially an ever-changing marketplace. I think, as you approach this draft bill using that foundation and that history, these core principles, is a good place to start, where it creates essentially guard rails, and a bit of a steer for us at the agency to say: "This is what we expect you to do, in terms of custody, in terms of registration, in terms of surveillance, cyber, conflicts of interest, governance," and then let us fill in the details. I think that serves both the Committee and the agency well, and ultimately allows us, at the agency level, to adapt to a marketplace that will likely evolve and change, potentially in the near-term, but certainly in the long-term.

Mr. MOORE. So you—I—the top three things—I know silos for assets, it sounds like, is one of them. More funding, obviously, that is always an ask, especially with inflation, and the things you have to tackle. But—so what are the top two—I was going to ask for the top three. Is—silos of assets, is that one of the top—if you had said: "This is my wish list, this is my Christmas list, this is the structure, here are my top three asks," what would they be?

Mr. BEHNAM. Yes. So I think the—fundamentally, it has legal authority to police the commodity digital token market, right? But with that, yes, customer segregation, which is essentially what you said, being able to silo customer money from house money. Really, it is—that is what it is. Conflicts of interest, we have seen this become a pervasive issue in this space, in the unregulated space, where there isn't a recognition among many different entities about what potential conflicts might exist, and this is something that is core to our traditional markets, that, if you are offering a service that is a broker/dealer function, but you are also a bank, but you are also a custodian, these things have to be very separate, and there needs to be clear, defined conflicts of interest rules so that there is no intermingling, is what we want.

Mr. MOORE. Not too much vertical integration in the process?

Mr. BEHNAM. And, it is a great point, Congressman, because we continue to see the market moving towards vertical integration, and I think mostly because of technology. Traditionally, you would have to call up your broker at the local level, who would make a phone call to Chicago to run an exchange, or to run an order, and you would have to go to the floor broker. All of that is being compressed now because of technology, and it is just raising new questions about market structure, which I have shared with this Committee in the past, and we continue to see, at the CFTC, new developments, and new requests for more vertically integrated structures.

And I don't want to pre-judge, say it is right, it is wrong, but what it does do, it deserves thought and a debate among lawmakers and regulators. So that is another thing we have to focus on, is the conflicts, the governance, and I will say the third thing is financial resources. This has proven to be a key component to

make sure these entities have financial resources to operate for some time in the period—in the future.

Mr. MOORE. You said earlier, based—it might take you 48 months to stand this thing up if you lacked funding. If you had the funding in place, how long before we could have a framework? I know we would have to send something for you to work with; but, do you think, as far as staffing and getting relevant?

Mr. BEHNAM. I am going to use 2010 as a little bit of a barometer, and knowing what this Committee is——

Mr. AUSTIN SCOTT of Georgia. Be quick, Mr. Chairman, please.

Mr. BEHNAM.—contemplating draft bill, I would say 12 to 24 months.

Mr. MOORE. Thank you. I appreciate it, Mr. Chairman.

Mr. AUSTIN SCOTT of Georgia. All right. The chair now recognize Mr. Rose. Let us try to keep it to 5 minutes, if we can. I know we are running over.

Mr. ROSE. Thank you, to Chairman Scott, and thanks to Chairman Thompson, and Ranking Member Scott for calling this hearing, and thanks to our witness for being here with us today. Chairman Behnam, I am sure you saw the news this morning that the SEC has filed a lawsuit against Coinbase for listing unregistered securities. Similarly, earlier this week, yesterday, the SEC also filed a lawsuit against Binance. In each of the two filings the SEC argues that Solano, Cardano, Matic, Filecoin, Sand, and AXS are all securities. Do you agree with Chair Gensler's assessment that these tokens should all be classified as securities?

Mr. BEHNAM. Congressman, I am going to ask you—the—I am not going to answer that question, and I do it out of due respect just because it is active litigation, and I want to be mindful of ongoing litigation. Certainly there are components of interpretation about what constitutes a *commodity* and *security,* and without getting into details about the specific tokens you raise, I will just say this, this is the reason we are here. There is confusion, there is uncertainty, and there are a number of active cases that are going on, and hopefully we can resolve some of these differences in the future.

Mr. ROSE. Thank you. And, Mr. Chairman, do you think the timing of Chair Gensler filing these lawsuits is at all coincidental.

Mr. BEHNAM. I don't know. Knowing enforcement cases, we deal with this all the time. You are building a case, and—when the time is right, because you are—for whatever reason, you have to file the case, you have to file the case. So I——

Mr. ROSE. So does the CFTC take into account political or media considerations in filing lawsuits, like the SEC seems to be doing?

Mr. BEHNAM. We do not.

Mr. ROSE. Thank you. That is good to hear. Chairman Behnam, at our joint hearing with the Financial Services Committee, Ranking Member Waters stated that both the SEC and the CFTC are aligned on the fact that the SEC is the regulator to determine if crypto assets are securities, and the SEC has made clear that nearly all crypto assets, in their view, are securities. Chair Gensler has declined to say, however, whether Ethereum is a security of a commodity, and that: "everything other than Bitcoin" falls under securities laws. Chairman, is Ethereum a commodity or a security?

Mr. BEHNAM. Congressman, I have said this many times before, I believe, Ether is a commodity. We have it listed on our exchange, multiple exchanges, CFTC exchanges, for a number of years. There are certainly situations—I think—as I have said before, the situation that led us to this point—and Ether was listed as a futures contract in 2020—there was robust legal analysis that occurred at the time.

And I was not Chair, I was a Commissioner then, but I know what the process is. I know the deliberation and the cooperation between the two agencies. and, given the legal precedent, and the law that we follow currently, and how we are driven by certain characteristics around what is a security and a commodity, I have faith and confidence that the decision back in 2020 was correct, and we continue to have Ether futures contracts listed on our exchange without any question.

Mr. ROSE. Thank you. Mr. Chairman, do you believe requiring registered entities to disclose greenhouse gas emissions may fall under CFTC statutory authority under the Commodity Exchange Act?

Mr. BEHNAM. No.

Mr. ROSE. Thank you. Good answer. Chairman Behnam, at the SEC Chair Gensler has insisted that digital assets' legal status depends on individual facts and circumstances, and that projects should come in and talk to the SEC to identify a path towards compliance. Only about four crypto projects have been able to come into compliance as defined by the SEC. Chairman Behnam, is there a path towards compliance at the CFTC for registration, specifically for exchanges, and what does that look like?

Mr. BEHNAM. Well, there is a path for exchanges as it relates to derivatives, so futures options and swaps. And we historically and—continue to do our best to facilitate either incumbent exchanges from listing digital asset derivatives, or even newer exchanges from registering an exchange, and being able to list these contracts. I stand by what we have done historically in the past, and I think we have created a system where we engage, we are transparent, and to the extent that we can, we facilitate a path forward for registrants.

Mr. AUSTIN SCOTT of Georgia. The gentleman's time has expired.

Mr. ROSE. Thank you. Mr. Chairman, I——

Mr. AUSTIN SCOTT of Georgia. The chair now recognize Ms. Crockett, 5 minutes.

Ms. CROCKETT. Thank you, Mr. Chairman. And thank you, to the witness, for your time. First, I just want to express my concern for the process that produced the discussion draft of this cryptocurrency regulation bill. For months last year House Democrats held hearings to build understanding and establish a consensus around the regulatory gaps with this emerging technology. Then House Republicans continued this work in a bipartisan fashion, capping off months of work with a fact-finding subcommittee hearing on the issue. So far, so good.

Unfortunately, now we are holding a full hearing to discuss a highly technical bill almost half the Committee saw for the first time at the end of last week. This is not how the Agriculture Committee is supposed to work. I sincerely hope that this Committee

can return to its bipartisan traditions, and that we engage in meaningful hearings that address the concerns many of us have. It is essential that a bill addressing these regulatory gaps is passed this Congress. Just today the SEC sued Binance, demonstrating the urgent need for this regulation. In addition, blockchain technology in general, and it is Syntech specifically, hold so much promise that we are missing out on.

There is a bipartisan consensus that government regulation is what is needed to create jobs, build wealth, and protect our constituents. Sadly enough, one hand doesn't seem to know what the other is doing. I am referring to the fact that while everybody in here agrees on the need for this regulation, and we have heard from the testimony that this requires more funding, that is precisely the opposite of what our colleagues on the Approps Committee did. As we are putting more on their plate, the Appropriations Committee has cut their budget by almost $9 billion, down to the lowest level since Fiscal Year 2006.

To be clear, we are asking the CFTC to take on a whole new regulatory process while simultaneously cutting their budget by 33 percent. So my first question is what the impact would be if the current budget were passed, and the agency was asked to take on these tasks with equal or lesser funding, particularly the impacts on consumers and the industry?

Mr. BEHNAM. Thanks, Congresswoman. Focusing just even on our traditional markets, if our funding levels were to drop from $365 million to $345 million, given increased costs, given increased level of, I would say, participation of new registrants, and new entrants into our markets, it would be extremely difficult, and, quite frankly, and I have used this word before, *devastating* to the agency. Given all that we are all facing in terms of, as I said, increased costs, we would probably have to furlough quite a number of our staff. We have about 680 full time equivalents right now, and if we were to drop down about $20 million, that would be a huge challenge.

And I say this often, I said it earlier, and I will repeat this for the Committee, the CFTC is a good return on investment for the U.S. taxpayer. We return nearly $8 for every $1 invested in us over the past 10 fiscal years, and this is through enforcement, this is through protecting customers, this is through information to financial illiterate individuals who are being taken advantage of. So I would hope that we can at least hit our full funding and get our request so that we can continue to do our job, especially if this new authority is provided to us.

Ms. CROCKETT. Thank you so much. Mr. Behnam, you mentioned in your testimony, and it was also brought up in the Subcommittee, the potential of creating an independent funding source for administrating these regulations. Could you expound upon how such a model could fit into this bill?

Mr. BEHNAM. Thanks, Congresswoman. We are the only financial regulator to not have a user be—a user fee-based system—sort of mixed up those letters there—and it has proven to be a huge challenge for the agency, quite frankly, for quite some time, a number of decades. And I think since 2010, after the financial crisis, as our responsibilities significantly increased, we faced quite a bit of

strain, from a budget perspective, because of flat funding over a number of years.

So I think, with respect to this new authority, it would be very important for this Committee and the Congress to consider a user fee based system, where it would essentially be a fee for services system. So those who are registered with us would have to pay a proportional fee over the course of a year to fund the services that we provide.

Ms. CROCKETT. Thank you so much. And with that, I will yield back.

Mr. AUSTIN SCOTT of Georgia. Thank you. The chair now recognizes Mr. Feenstra, for 5 minutes.

Mr. FEENSTRA. Thank you, Chairman Scott, and Ranking Member Scott. And I want to thank Mr. Behnam for being here today. Thank you. I find this conversation so fascinating. I was a professor teaching business courses at a university several years ago——

Mr. AUSTIN SCOTT of Georgia. I am on. The chair now recognizes Mr. Feenstra, for 5 minutes.

Mr. FEENSTRA. Thank you again, Chairman Scott, Ranking Member Scott, and obviously thanks to our—thank you very much for being here, Mr. Behnam. I greatly appreciated your testimony. As I was noting, I taught at a university, teaching business classes, and what I would do in the morning is I would talk about the events of the day. And at one point I know we were talking about cryptocurrency, and it was valued at $2.5 trillion or $3 trillion. Obviously the value today is probably—as of March I think it was $1.1 trillion. And I have always thought back to all these kids. These kids were so fascinated and so intrigued by cryptocurrency. I know a lot of them were using or buying it. And there is just something that—I worry about how that all went.

In 2009, obviously, when crypto started, and through today, we have over 23,000 different cryptocurrencies. Imagine that, all right? Just in that amount of time, to have 23,000 different cryptocurrencies. And since then, as I think through my—all these kids that have moved on, that—at the same time, some of these largest crypto exchanges that trade these currencies have collapsed and have been sued by various security—or have been sued by—for security violations. Obviously, CFTC and SEC has filed active lawsuits, but I really don't want to get into that. But instead I want to talk about what has happened, and uncertainty of these exchanges in acting as the middleman for these commodities.

So I look at this discussion draft that we have, and my question would be, what would the oversight impact be in this draft legislation if this would become law? How would this affect the intermediaries and exchanges as we move forward? And I look at these students that were so excited, that were probably blinded by the hope of making money, and how this all plays out. So if you could just answer that, I would greatly appreciate it.

Mr. BEHNAM. Sure. Thanks, Congressman. We have had some experience in the retail foreign exchange market over the past 15 years, where—and this was a law that this Committee and Congress passed in 2008 to provide authority for the CFTC to regulate retail forex, which you wouldn't normally think of. But, my point

being is, prior to that legislation, you had a market that was totally opaque, a lot of fraud, a lot of manipulation, and a lot of retail investors losing money. This is, like, late night commercial forex, right?

Mr. FEENSTRA. Yes, exactly right.

Mr. BEHNAM. And I don't want to say we are in exactly same position, but it is similar, and there was a lot of skepticism back then about why would you even want to regulate it, why would you validate this? Like, retail people should not be buying and selling forex, right? That is an institutional market. But ultimately, as a market regulator, you have to think about what is out there, and what people, like, your students, or others are investing in, and how they are allocating their money.

And ultimately I think it is incumbent on all of us to think about that stark reality. And not about whether we believe in it, or we don't believe in it, or what the future might hold, or can hold, but the fact of the matter is technology has enabled commodity assets to be traded on their—on phones and other easy sort of portals, and we have a responsibility to provide disclosures and transparency to market.

So you ask what is going to happen? We are going to register and regulate brokers, we are going to register and regulate asset managers, we are going to regulate and register exchanges. All the things that we do that are core components in our traditional markets. And there will be a cost associated with that, there is no doubt. But with that cost comes transparency, fairness, and hopefully, and I believe history has proven this, less abuse, fraud, and manipulation.

Mr. FEENSTRA. Well, I appreciate that, and that is very important. I mean, when I was a professor I could talk about a stock, and the costs, and what it would look like. I could do that with commodities. And they always ask me, how do you evaluate a cryptocurrency? That was always very baffling to me. But where do you see—as this is implemented, and you just noted this, but five to—if you could picture out, 5 to 10 years from now, what do you see this arena look like?

Mr. BEHNAM. Well, I don't want to get into the prediction game here; but, as I said before, and I said earlier, I feel like I have the responsibility right now, as Chair of the CFTC, to inform everyone on this Committee about what I see and what the agency sees on a regular basis, and how that intersects with existing law and what authorities we have now, and where I feel like we could use new authority.

Mr. FEENSTRA. Right.

Mr. BEHNAM. So, as I have said this earlier, I believe U.S. markets, financial markets, are the strongest, deepest, and most sought after in the world because of our regulatory structure and the certainty, and the legal authority—the enforcement authority behind those regulatory structures.——

Mr. FEENSTRA. I agree.

Mr. AUSTIN SCOTT of Georgia. The gentleman's time has——

Mr. BEHNAM. So it is unforeseen to think that, with this market relatively stable over the past few months, particularly after 2022,

if you had a regulatory structure over the markets, hopefully we would eliminate, the fraud, the manipulation——

Mr. FEENSTRA. Okay.

Mr. BEHNAM.—and more of a stabilization in the markets in the future.

Mr. FEENSTRA. Thank you. I——

Mr. AUSTIN SCOTT of Georgia. The gentleman's time has expired.

Mr. FEENSTRA. I yield back. Thank you.

Mr. AUSTIN SCOTT of Georgia. The chair now recognizes Ms. De La Cruz, for 5 minutes.

Ms. DE LA CRUZ. Thank you, Mr. Chairman. Thank you, Chairman, and thank you, Chairman Behnam, for joining us today. I have some, there are some of the opinion that all digital assets are securities, and that they should be regulated solely by the SEC, and therefore there is no need for the CFTC to play a role in overseeing digital asset markets. Do you agree with that statement?

Mr. BEHNAM. I don't.

Ms. DE LA CRUZ. And, notwithstanding any arguments that all digital assets are securities, almost everyone seems to agree that Bitcoin is not a security, but instead a commodity. Because Bitcoin is a commodity, and entities which offer trading in Bitcoin are not subject to the SEC's regulation of securities. Additionally, SEC regulated entities are not permitted to offer trading in Bitcoin because it is not a security. Despite that, Bitcoin trading accounts for around 70 percent of digital asset trading activity. If we don't legislate, would it be sufficient, or even possible, for regulators like the CFTC and SEC to simply use its existing authorities to cover the gap?

Mr. BEHNAM. Congresswoman, no. I mean, the fact of the matter is this gap is so significant, as you point out, on a sort of statistical basis how Bitcoin relates to the larger market capitalization of the digital asset market. And we would use, as I have said earlier, the tools that we have, from an enforcement perspective, at the CFTC, but these tools are so limited. They are powerful, but limited, and I know that sounds like a little bit of a contradictory statement. But the fact of the matter is we have to wait for individuals to come to us and to raise alarm bells or flags about wrongdoing or violations of the law. And I don't think any of us believe that that is how a sound, effective, impactful regulatory scheme should function.

I think we are just leaving a lot out on the table when it comes to fraud and manipulation, and legal authority to police commodity tokens, as you point out, is the right decision to ensure safety and soundness in these markets and protecting customers.

Ms. DE LA CRUZ. So, that being said, just a moment ago we talked—I asked you the question about—if there was no need for the CFTC to play an oversight role, and you said you did not agree with that comment. So let me ask you, in your opinion, at what point do you see our digital assets moving from a commodity to a security, or *vice versa?*

Mr. BEHNAM. Well, I don't want to get too down in the weeds on the technical side of things. I will be the first to tell you, I am not a technologist, and I don't fully embrace or understand some of the processes that might take place, but you could imagine just sort of

mixing it with the legal frameworks we understand, and how you define a *security* or a *commodity*. That you could have a promoter or a group of individuals offering tokens in exchange for cash, trying to build or establish some protocol, or a ledger, or some sort of blockchain. And then at some point you would see the value of those tokens increase. That is, and sort of resembles, a security.

Under your hypothetical, it is not unforeseen, and we have seen this happen, where there would be a—sort of break in the linkage between that issuer, the individual or institution that is collecting the cash and issuing the tokens, and when you had that break, there wouldn't be that centralized body conducting business or operations that would impact the value of the token. And it is really, at that point, where you have that decentralization over some period of time, and that interaction between a purchaser of a token and a trading market or an exchange, as opposed to an issuer that the asset would most likely become or be a commodity and not a security.

And this is, in many respects, very unique to this digital asset space, but, as I said earlier, what I am encouraged by, in terms of the draft bill, is focusing on centralization and decentralization, because that is really the core arguments around what is a security and what is a commodity. And then the other component is where is the investor getting the token from? Is it a direct issuance by—or an issuance by an issuer of the token, or is it, in fact, the investor is going to an exchange, a third party, to purchase the token. But details should certainly be worked out. I look forward to working with you. Imperfect system, but one that sort of uses the foundation of what a security is.

Ms. DE LA CRUZ. Thank you. I yield back.

Mr. FEENSTRA [presiding.] I now recognize the gentleman from Ohio, Mr. Miller, to be recognized for 5 minutes.

Mr. MILLER of Ohio. Thank you. And thank you for holding this hearing as we seek to develop a digital asset market structure framework to ensure the next generation of financial innovation develops in the United States. Any functional legislative strategy should provide digital asset firms with regulatory certainty, and prevent the regulatory turbulence created by jurisdictional uncertainty.

In the absence of the United States' leadership, other countries are rushing to build frameworks and become developmental hubs for the digital asset ecosystem. Currently the largest trading platform issuers are based outside the United States. Many entrepreneurs are advocating for digital asset companies to move offshore. The ability of other countries to successfully build digital asset frameworks and technology into their market infrastructure further demonstrates the need for action.

Currently there is no comprehensive Federal regulatory regime for the spot trading of commodities. I appreciate the efforts of this Committee, working with the House Committee on Financial Services, to address these shortcomings by establishing a functional framework that works for both market participants and consumers. This guidepost is meant to provide digital asset firms with regulatory certainty and fill the gap that exists between the authorities

of the Commodity Futures Trading Commission and the Securities and Exchange Commission.

Chairman, please share how the current lack of regulatory certainty for digital assets may hinder innovation and not provide adequate consumer protection.

Mr. BEHNAM. Thanks, Congressman. I would certainly focus on the commodity side of things, but—understanding that, without further guidance from Congress, and a sense of where the two market regulators and the financial regulators should go, how we are going to define these assets as they relate to existing law. And in many respects, as I said earlier to the Congresswoman, we use decades-old precedent to decide how these financial assets should be bucketed and defined, but there are enough unique characteristics that I think we have to think about things differently.

And certainly we can make those decisions, we try to, but given the way technology is advancing, and markets are evolving, it is not necessarily the best idea to lean on a decades-old legal decision about what is a security and then *de facto* what is a commodity if it is not a security. So I think the draft bill takes steps, as I said earlier, focusing on some key elements around decentralization, and where a customer and investor gets the asset from.

And then further we are—and I don't want to dismiss the legal precedent that we have leaned on over many years, because fundamentally what we are trying to accomplish is, on the securities side, bridging information gaps between someone who promotes and issues a security, and on the commodities side, making sure that we are establishing and operating fair, orderly markets.

And I use—as you know, in Ohio, many of the agricultural analogies. I am not sure what type of information you would share with an investor in a corn or a soybean contract, because you don't have central entities controlling the price of corn or soybeans, right? Global markets decentralize numerous factors impacting the price. This is very distinguishable from a centralized security, where you have a group of individuals with financial statements, a headquarters, *et cetera,* that impact the price of the security. So, we lean on those fundamentals, I think we can get this right.

Mr. MILLER of Ohio. I don't disagree. In your view, how would the functional framework, as outlined in today's discussion draft, provide digital asset firms with regulatory certainty and fill the gap that exists between the authorities of the Commodity Futures Trading Commission and the Securities and Exchange Commission?

Mr. BEHNAM. Congressman, thanks for the question. I think for us, fundamentally giving us authority to fill this gap is my primary concern, and this is because we want to root out this fraud and manipulation that is occurring. The draft does a very good job in essentially replicating some of the core fundamental market requirements around registration and surveillance, cybersecurity, conflicts of interest, governance, many of these things that you have heard me say today. If we can replicate those requirements, I think we can create a very transparent and orderly digital asset market. We will certainly have to make some adjustments to reflect the unique nature of the asset itself.

On the definitional side, I do think the bill does a good job. Certainly will require a bit more look—sort of—technical assistance and examination around how do we decide what is a security, what is a commodity, and if, in fact, there is a transition between a security and a commodity, what that transition looks like, who makes those decisions, and what are the core characteristics of that transition to say, you know what, now this asset is a commodity, as opposed to what it was originally in a security.

Mr. MILLER of Ohio. Thank you. Thank you, Mr. Chairman. And, Mr. Chairman, I yield back. Thank you.

Mr. FEENSTRA. Thank you. I now recognize the gentleman from Iowa, Congressman Zach Nunn, for 5 minutes.

Mr. NUNN. Thank you, Mr. Chairman, also from Iowa. Privileged to get to sit with you on this. And, Chairman Behnam, thank you so much for joining us. I know testifying in Congress, is never the highlight of anybody's week, but we are learning a lot from you on this front, so very much appreciate it.

I want to begin the, I get to serve in two roles, both here on the Agriculture Committee with digital assets, as well as on the Financial Services Committee, looking at what the SEC is doing in this space as well. From a national security perspective that I grew up in, Europe, the United Kingdom, Singapore, have already laid out frameworks for digital asset corporations, and how to operate proficiently within their areas of jurisdiction, something we are still trying to get our arms wrapped around here in the United States.

In fact, MiCA, the European version—VC investment in European crypto projects are up ten percent—or tenfold in one year. To my Iowans back home, these are American jobs, American corporations, American innovation that are fleeing offshore because, in my opinion, a rogue SEC Chair is trying to expand his overreach, arguably, for maybe a specific role in the SEC ahead of this legislative body, and I find that concerning.

To make this point crystal clear, I met with a founder earlier this week who was contemplating moving his workforce to Europe because the U.S. is too unpredictable as a result of what Chair Gensler has done. Additionally, we saw, just in the last quarter alone, nearly 25 percent of capital in this market flow outside the United States. This should be concerning for every American, and it clearly means that there is a lack of understanding what the regulatory environment looks like today and could look like in the weeks ahead.

So as we move forward, I would like to just begin with some of the challenges that we have seen here. We highlight that there is a lack of clarity in this area, but ultimately we should be able to pinpoint pretty directly—I have asked two of your colleagues this, and I have gotten different answers, so I would like to begin with kind of the easy question here at the beginning, Mr. Chairman, Ethereum. Commodity or security?

Mr. BEHNAM. Congressman, I have said repeatedly I believe Ether is a commodity.

Mr. NUNN. Very good. And what is the analysis that you had in leading you to that decision?

Mr. BEHNAM. Well, we look at some of the core fundamentals that have driven this analysis over many decades, as I have said,

including the Howey Test, and it is the characteristics that are driven mainly by decentralization, and the fact that you don't have a single individual, or a group of individuals, taking action that dictates the value of the underlying asset, right?

Mr. NUNN. Yes.

Mr. BEHNAM. And this is where I am going to probably get into an area that I am not necessarily an expert, but you have a large group of individuals who are on—or who are validating the network itself, and when you have that dispersion among individuals, you don't have those traditional—what is, at least how we define a *security,* central group of individuals——

Mr. NUNN. I would very much agree with you on that, Mr. Chairman. In fact you mentioned some other ones today, Litecoin among them, Stablecoin as a highlight of this, as digital asset commodities. My concern here is that by having this non-defined regulatory space, the SEC is, in effect, picking winners and losers in this attempt to innovate in this space. Wouldn't you agree with that assessment?

Mr. BEHNAM. Well, it—Congressman, the issues are difficult, and I—you could say that even—with any of these tokens, and given the way the market is evolving, you could package them, and utilize them, and offer them in many different ways. So——

Mr. NUNN. I would offer that everybody in this space ultimately ends up being a loser, at least in the U.S. market, because there is no regulatory regime, and they are forced to find other places where there is clear definition for them to be winners in this space. So I want to change to some of the legislation that we are working on here. Do you believe it is possible for a digital asset to start as a security initially, and then transition to a commodity?

Mr. BEHNAM. I do.

Mr. NUNN. All right. Very good. Do you believe that Congress should be the driving force enacting clarity in this space or the SEC?

Mr. BEHNAM. Given the nature of the markets that are evolving, and changing, and growing, I think this Congress should have a hand in sort of dictating the future of policy in this country.

Mr. NUNN. I would agree. Do you believe it is necessary to save digital asset innovation and let it prosper here at home instead of going overseas?

Mr. BEHNAM. Of course.

Mr. NUNN. Absolutely. And do you believe that regulatory coordination between your agency, both in the CFTC and the SEC, is possible?

Mr. BEHNAM. Of course.

Mr. NUNN. Do you have a good history of doing this?

Mr. BEHNAM. We have a long history of working closely with the SEC, and I have no doubt we will continue to do that——

Mr. NUNN. And I think, working together on this, you guys have proven a pathway to be successful. What I do not want to see is one agency taking the lead for its own intent before the actual legislation comes to the floor. So, with that, Mr. Chairman, I really appreciated the opportunity today. Thank you very much, Mr. Chairman.

Mr. BEHNAM. Thank you.

Mr. NUNN. I yield my time.

Mr. FEENSTRA. I now recognize the gentlewoman from Florida, Kat Cammack, for 5 minutes.

Mrs. CAMMACK. Well, thank you, Mr. Chairman. Thank you to our witness for being here today. Yes, we will have to do this head game real fast. Zach, duck. We will jump right into it, and I actually would like to do a follow-up, talking about the jurisdiction issues that we have between the SEC and CFTC.

So, in your testimony, you had discussed the importance of not undermining existing laws, most notably the security flaw in the jurisdiction of the SEC. I think you have already outlined why you think this is important, but the discussion draft does not amend the definition of *securities,* but it set up a process to help market participants work with the SEC to determine when an asset is no longer part of an investment contract. Does that modification disrupt the SEC's authority to protect customers and address information gaps between digital asset issuers and investors?

Mr. BEHNAM. Congresswoman, thanks for the question, and just a little bit of context before I answer the question more directly, and I said this earlier. We are not here because we are trying to, this is not a zero sum game. And what I mean by that is, if this Committee and the Congress were to provide the CFTC with more authority over the cash commodity markets, we are not pulling that authority from another agency, the SEC or otherwise. It doesn't exist. There is a vacuum. No one regulates cash commodity markets, and I think this is the most important thing this Committee should think about, and has thought about, as it drafts, or continues to work on, this draft bill.

As it relates to the SEC, I was very intentional, obviously, in including that statement—or that sentence in the statement. We have a very robust, very effective, very impactful set of laws around markets in the United States, both on the commodity side and then on the security side, and what I would not want to see is this bill, or any bill, addressing digital assets undermine existing law. And I am not suggesting the bill does.

And to now turn to a more direct answer to your question is—I do think, we haven't had too much time with the bill, but more importantly, I would just encourage you and your colleagues to work closely with the SEC to ensure that the bill does not undermine the securities laws. And I know that is not your intention, but with legislation comes unintended consequences, and I think we should always be very mindful of what we do, what we are intending, and what the outcomes are.

Mrs. CAMMACK. Thank you. And I know that FTX has been touched on quite a bit here today, but I wanted to make sure that I just did a quick follow-up on that. If there is no Federal oversight of digital commodity intermediaries and exchanges, if Congress doesn't act, is the CFTC's anti-fraud and anti-manipulation authority sufficient currently to prevent an FTX-like debacle, like what we saw in the U.S. cash or spot digital commodity markets?

Mr. BEHNAM. Short answer, Congresswoman, is no. And, I have said this many times, but it might not happen next month, it might not happen next year, but if we continue to keep *status quo,* these

markets will rise and fall in value, and these implosions, bankruptcies, will occur again.

Mrs. CAMMACK. It is an interesting perspective, me being someone who is very much against the heavy hand of government bureaucrats and regulators. It tends to have one extreme to the other, so—there has been criticisms that CFTC is a bit of a light touch, right? How do you strike that balance?

Mr. BEHNAM. Well, I obviously don't agree with that statement at all, and my thought is folks who want to——

Mrs. CAMMACK. You could take it as a compliment.

Mr. BEHNAM. No, I don't. But I would say that I have thought about this, and this is just a product of individuals who, they are pundits, they want to be critics. This is what they do. But also just not willing to take time, and—to really examine the agency and the impact that we have on financial markets. And I will briefly give you two examples, one on enforcement. I have said this multiple times, last Fiscal Year 2022, $320 million budget, $2.5 billion in penalties and restitution. Eight times return, roughly. Over the past 10 years, consistent factor, eight times return on our appropriated dollar. So every dollar you appropriate, we are returning $8 to the General Treasury.

Second thing I will say, and I mentioned this earlier, we are a principles-based regulator, so I think it is easy for critics, which there are always critics, to say they are a "light touch" regulator because they are a principles-based regulator. That couldn't be farther from the truth, and as I said earlier, we, in fact, through the law, the Commodity Exchange Act, are a principles-based regulator. But if you look at our statute, and to your point earlier, the rules that we draft, driven from the law, are quite extensive, are more prescriptive, and are very specific to protecting customers and protecting markets. So we are the farthest thing from a light touch regulator, and I think if you ask any of our registrants what they would say, I think they would agree with that.

Mrs. CAMMACK. Well—and I had a couple follow-ups to that administrative and enforcement actions, but I will submit those for the record. My time has expired, Mr. Chairman. I yield back. Thank you.

Mr. FEENSTRA. At this time we have completed all our questions for our first panel witness, Chairman Behnam. The Committee thanks you for your testimony today. Thank you for spending the time with us. The witness is excused.

The Committee will take a brief recess to allow Chairman Behnam to depart and allow our second panel of witnesses to take their seats. The Committee stands in recess at this point, subject to the call of the chair.

[Recess.]

Mr. FEENSTRA.—Legal Officer of Coinbase. Our third witness today is Dan Gallagher, who is the Chief Legal Compliance and Corporate Affairs Officer for Robinhood Markets, Incorporated. He is also a former Commissioner of the Securities and Exchange Commission. Our fourth witness today will be Mr. Dan Berkovitz—sorry I abused that name there—who is a former Commissioner of the Commodity Futures Trading Commission. Our fifth and final witness today is Walt Lukken, who is the President and Chief Ex-

ecutive Officer of the Futures Industry Association. He is also the former Acting Chairman of the Commodity Futures Trading Commission. I thank you all for joining us today.

We will now proceed to our testimony. You each will have 5 minutes. The timer in front of you will count down to zero, at which point your time has expired. Mr. Giancarlo, please begin when you are ready. You have 5 minutes.

STATEMENT OF HON. J. CHRISTOPHER GIANCARLO, FORMER CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, NEW YORK, NY

Mr. GIANCARLO. Thank you, Mr. Chairman, Ranking Member, and Committee Members. It is an honor to speak to this great Committee once again. I am Chris Giancarlo, former Chairman of the CFTC. I appear today in my individual role, and not on behalf of any entity. Five years ago I sat on the other side of the Capitol and testified to the Senate Banking Committee. The topic was a rather obscure one at the time, cryptocurrency.

Well, that hearing turned out to be one of the more noticed Congressional hearings to—in certain corners of the Twitter-sphere, because in the prior year the price of Bitcoin had risen almost 20 times. Our U.S. derivatives exchanges knew there was commercial demand for Bitcoin price hedging, and they wanted to launch exchange trading of Bitcoin futures.

In response, my administration at the CFTC drew on existing authority, and innovated a unique process of heightened review for crypto derivatives to facilitate, rather than hamper, their market debut. In the 5 years since, the U.S. crypto derivative markets, and the CFTC's oversight of them, have been quite successful. Today Bitcoin continues to grow in transactional volume, adoption, network strength, and code execution, despite increasing politicization and hostility.

Now, some may recall that the original decision to greenlight Bitcoin futures sparked controversy. There were calls to stop their launch. Yet my team knew that blocking these new futures products would not stop the rise of Bitcoin or other virtual currencies. It would only deprive Americans of smart regulation. Doing nothing would have been irresponsible.

At that February 2018 Senate hearing I spoke about a new generation's interest in crypto. I explained that the energy and momentum behind digital assets was not just driven by technological efficiencies and benefits. There was something else going on, something generational, and cultural, and social, and human. And I told the Senate that we owe it to this new generation to respect their enthusiasm about digital assets with a thoughtful and balanced response, not a dismissive one. And here we are today, 5 years later, still seeking that thoughtful and balanced response from Congress.

Americans, especially innovators, investors, and younger Americans, await Congressional action to create a sound legal framework for this innovation. And so I commend this Committee and this Congress for undertaking this unique joint effort at lawmaking. The bill before us addresses an important public interest in closing gaps in CFTC oversight. And Chairman Behnam is right that there

are elements of cash markets for digital commodities suitable for direct CFTC oversight.

Weeks before that 2018 Senate testimony I went to Switzerland and spoke to the Financial Stability Board, the chief standard-setting body of the global financial system. The assembled global regulators were skeptical of the CFTC's decision to greenlight Bitcoin futures. I said to them, crypto is not going away. Digital assets and other network technology is like a roaring wind. You can take shelter from it, get blown away by it, or hitch a sail and ride it. And I added that we Americans prefer to ride the wind.

Well, in the 5 years since, many of the countries represented in that Swiss conference room are now trying to hitch their sails to crypto innovation. They are hoping to benefit from America's early lead. And yet we know the American Dream was created by innovators riding winds of innovation. And as it did 3 decades ago, Congress needs to support innovation today. Thank you for the thoughtful legislation before us, thank you for your leadership, and I look forward to your questions.

[The prepared statement of Mr. Giancarlo follows:]

PREPARED STATEMENT OF HON. J. CHRISTOPHER GIANCARLO, FORMER CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, NEW YORK, NY

Thank you, Chairman Thompson, Ranking Member Scott, and Committee Members. It is an honor to appear before this Committee once again.

I am Chris Giancarlo, former Chairman of the U.S. Commodity Futures Trading Commission (CFTC). I appear before you today in my individual capacity as an industry professional and former member of the Commission.[1] The views I express are mine and mine alone.[2]

Five Years Perspective

A little over 5 years ago, I sat on the other side of the Capitol and gave testimony to the Senate Banking Committee. The topic was a rather obscure one at the time: the oversight roles of the SEC and CFTC over crypto.[3] That hearing turned out to be one of the more noticed Congressional hearings on digital assets, at least in certain corners of the Twitter-sphere.

In the year just prior to that hearing, the price of Bitcoin had risen almost twenty fold. Respected U.S. derivatives exchanges, CBOE and CME, sensed commercial demand for Bitcoin price hedging and sought to launch exchange trading of Bitcoin futures. In response, my administration drew upon existing authority and innovated a unique process of heightened review for new crypto derivatives products to facilitate rather than hamper their market debut.[4] Our approach was a balanced one. In the 5 years since, these crypto derivatives markets and the CFTC's oversight of them have been quite successful.

Some may recall that our original decision to greenlight these products sparked some controversy.[5] There were calls to prevent their launch.[6] Yet, my team felt that attempting to block new futures products would not stop the rise of Bitcoin or other

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[1] My professional affiliations are listed in Schedule A attached hereto.

[2] This testimony contains my professional thoughts on the issues discussed herein; it neither contains legal advice nor establishes an attorney-client relationship in any form. The opinions expressed herein are attributable to me alone, and they do not reflect the views, positions or opinions of any commercial, professional or nonprofit organization with which I am affiliated, including Willkie Farr & Gallagher LLP or other attorneys at the firm.

[3] U.S. Senate Committee on Banking, Housing and Urban Affairs, Hearing: "Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission," (February 6, 2018), (hereafter: Virtual Currency Hearing), available at *https://www.banking.senate.gov/hearings/virtual-currencies-the-oversight-role-of-the-us-securities-and-exchange-commission-and-the-us-commodity-futures-trading-commission*.

[4] Remarks of CFTC Chairman J. Christopher Giancarlo to the ABA Derivatives and Futures Section Conference, Naples, Florida (January 19, 2018), at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo34*.

[5] *See generally,* "CryptoDad—The Fight for the Future of Money," (Wiley) 2022, (Chapts., 8–10).

[6] *Id.*

virtual currencies, but just push them offshore. Doing nothing would have been irresponsible.

At that February 2018 Senate hearing, I talked about a new generation's interest in crypto. I explained that the energy and momentum behind digital assets was not just driven by technological efficiencies and benefits. There was something else going on—something generational and cultural, social, and human.

I told the Senate that,

> ". . . *we owe it to this new generation to respect their enthusiasm about digital assets with a thoughtful and balanced response, not a dismissive one.*" [7]

And here we are today—over 5 years later, still seeking that thoughtful and balanced response. Americans—especially innovators, investors and younger Americans—await Congressional action to create a legal framework for this innovation.

I commend this Committee and this Congress for undertaking this unprecedented joint effort at law making. I support the goal of "*finding workable solutions that provide much-needed regulatory clarity and certainty, while still adhering to time-tested principles that protect market participants.*" [8] Addressing the complex aspects confronting this innovation, including the concept of decentralization is no simple feat, but one that deserves the attention of this Committee. For this, American investors and innovators should be grateful.

I applaud the leadership of Chairman Thompson of the House Agricultur[e] Committee and Chairman McHenry of the House Financial Services Committee to work together on this landmark bill. The coordination between these important Committees has produced a robust piece of legislation that advances consideration of an appropriate regulatory framework for crypto. The scope of regulation of financial services in the United States is unmatched by the rest of the world, thus making the coordination between these Committees necessary. This coordination has produced an impressive piece of legislation that could not have been achieved by either Committee on its own. Such coordination is difficult and time-consuming and deserves recognition and appreciation.

The CFTC Was Built for Innovation

As Congress contemplates an appropriate legal and regulatory framework for digital assets it is appropriate that attention is directed to the CFTC. In fact, the CFTC was reformulated over forty years ago into an independent body specifically to safeguard a breakthrough in financial innovation—financial futures—that enabled the global economy to hedge the risk of moving interest and exchange rates ensuring the U.S. Dollar's primacy as the world's reserve currency.[9] As you well know, the CFTC has been at the forefront of U.S. financial market innovation since its inception. During the past decades, the CFTC has deftly overseen more new financial product innovation than almost any other market regulator.[10] And yet, amidst such innovation, CFTC regulated markets have safely mitigated financial risk in an orderly manner without faltering or failing even during the great financial crisis.

The CFTC engaged early with digital assets, finding in 2015 that Bitcoin was properly defined as a commodity under its authority.[11] In the spring of 2017, the agency unanimously launched LabCFTC, a dedicated office to serve the Commission, Congress and innovators in furthering promising fintech and digital asset technology.[12] The CFTC's greenlighting of the self-certification of bitcoin futures later that year initiated the world's first significant, fully regulated market for digital assets. Since then, other commodity-based, digital asset products including ether futures have come under CFTC oversight. Today, derivatives on digital asset commod-

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[7] Written testimony of J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission Before the Senate Banking Committee, Washington, D.C. (February 6, 2018) (hereafter: Senate Banking Testimony), at: *https://www.banking.senate.gov/imo/media/doc/Giancarlo%20Testimony%202-6-18b.pdf*.

[8] *Thompson, McHenry, Johnson, Hill Issue Joint Statement on Digital Assets Partnership* (April 27, 2023) at: *https://agriculture.house.gov/news/documentsingle.aspx?DocumentID=7613*.

[9] Leo Melamed, "Man of the Futures: The Story of Leo Melamed & the Birth of Modern Finance" (Harriman House 2021).

[10] *See generally,* Senate Banking Testimony.

[11] "CFTC Orders Bitcoin Exchange Bitfinex to Pay $75,000 for Offering Illegal Off-Exchange Finance Retail Commodity Transactions and Failing to Register as a Futures Commission Merchant," CFTC press release, (June 2, 2016), available at *https://www.cftc.gov/PressRoom/PressReleases/7380-16*.

[12] "CFTC Launches LabCFTC as Major Fintech Initiative" (May 17, 2017), at: *https://www.cftc.gov/PressRoom/PressReleases/7558-17*.

ities (the largest digital asset category by volume)[13] trade in orderly and transparent markets under close CFTC supervision, fostering Dollar-based pricing, with healthy liquidity and high levels of open interest despite volatile current economic conditions.[14] These markets provide the CFTC with regulatory visibility supporting robust enforcement that is second to no other market regulator in prosecuting perpetrators of digital asset fraud, abuse, and market manipulation. Yet, perhaps most importantly, the CFTC's early and unhesitant engagement with digital assets has *reduced* regulatory risk and uncertainty for responsible financial market innovation paving the way for an important new ecosystem of retail and institutional digital asset investment generating economic activity here in the United States.

The bill under consideration by this Committee addresses the important public interest in closing a gap in CFTC oversight. As you know, spot markets facilitate immediate physical delivery of tradable goods in contrast to markets for futures, forwards and options deliverable in the future. In spot markets, the CFTC has only limited authority over trading of digital asset commodities. As a result, there are no platform registration, operator supervision or standard investor protection measures in the spot markets that are common in U.S. derivatives markets to police against fraud, manipulation, and abuse.

In testimony to this Committee's Subcommittee on Commodity Markets, Digital Assets and Rural Development, the CFTC's former General Counsel and my former colleague, Dan Davis, calculated that ⅔ and ¾ of crypto currencies traded in spot markets are digital commodities, not digital securities.[15] This bill would bring the CFTC's practical and seasoned oversight to spot trading in these most popular cryptocurrencies.

CFTC Chairman Rostin Behnam has stated that there are elements of the digital commodity cash markets suitable for direct CFTC oversight that are distinguishable from traditional cash commodity markets. I agree with Chairman Behnam and I support the provisions in the bill that extend the CFTC's oversight to cover spot digital commodity markets.

Observations on Proposed Legislation

I would like to offer some observations on the draft bill being considered by this Committee.

First, the bill takes the appropriate step of enshrining LabCFTC into the Commodity Exchange Act. LabCFTC was a bipartisan initiative of the Commission created with the active support of then Democratic Commissioner Sharon Bowen.[16] Its purpose was to promote responsible financial innovation by serving as a non-partisan resource for all stakeholders including Congress, a purpose that is all the more critical today. To serve as such a resource, it is important that LabCFTC be a resource to each Commissioner, not just the Chair. I was delighted to see that the bill codifies the independent and non-partisan nature of LabCFTC. This independence should promote one of the foundations of LabCFTC—to promote education within the Commission and externally with other stakeholders allowing the agency to have its finger fully of the pulse of innovation and its appropriate oversight.

Second, the coordination between the House Agriculture and Financial Services Committees affords an opportunity for this bill to address an issue that has challenged regulators and the digital asset industry: the distinction between a security and a commodity. I commend the Chairs of each Committee for pushing toward a level of clarity in what often has been an difficult distinction, especially in the area of digital assets. More clear rules of the road help provide a map to compliance, and in my view, the purpose of regulation is to promote compliance. Reviewing and modernizing the existing rules applicable to securities markets in order to facilitate compliance for the digital assets industry, as this bill seeks to do, is important and overdue. While admittedly not easy to achieve, the desired outcome should be a business knowing what rules apply, and in turn, fostering a culture of compliance around

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[13] Testimony of Daniel J. Davis Before the U.S. House Agriculture Committee, Subcommittee of Commodity Markets, Digital Assets, and Rural Development, "The Future of Digital Assets: Identifying the Regulatory Gaps in Spot Market Regulation," at: *https://docs.house.gov/meetings/AG/AG22/20230427/115803/HHRG-118-AG22-Wstate-DavisD-20230427.pdf*.

[14] CME Bitcoin Liquidity Report (May 26, 2023), at: *https://www.cmegroup.com/reports/bitcoin-futures-liquidity-report.pdf*.

[15] *Id.,* Dan Davis Testimony.

[16] In public remarks acknowledging the active support of former CFTC Commissioner Sharon Bowen in the creation of LabCFTC, I noted that, "Our work together is an example of how Federal officials can serve the American people productively and without destructive partisanship." "LabCFTC: Engaging Innovators in Digital Financial Markets," Address of CFTC Acting Chairman J. Christopher Giancarlo Before the New York Fintech Innovation Lab (May 17, 2017), at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-23*.

those rules. By contrast, we should work to avoid a system that leaves responsible market participants guessing as to the appropriate rule set, only to face enforcement if, after rigorous analysis, they reached a different conclusion than regulators.

Last, and notwithstanding that this bill reflects extensive effort and thoughtful deliberation to create a regulatory framework for crypto, I would suggest a limited number of enhancements to the bill. Native to all starting points is an opportunity to digest potential areas for improvement. I would welcome an opportunity to discuss each of these suggestions, and any other contemplated changes as Congress and the greater public contemplate the bill.

- **The bill should impose a deadline for the CFTC and SEC to complete the joint definitional rulemakings.** Section 104(a) of the bill requires that the CFTC and the SEC engage in joint rulemakings to further define numerous definitions contained in the bill. Given that these definitions impact both agencies, I support the prospect of joint rulemakings to further define the terms that would become part of the Commodity Exchange Act and Federal Securities Laws. In my view, these definitional rulemakings would benefit from a deadline to complete the further definitions within a specified amount of time after the passage of the bill. A deadline directs the agencies on the urgency for action, and helps deliver on the promise of clarity. The length of the deadline should take into consideration the number of definitions and the resources of the respective agencies to dedicate staff to the necessary rulemakings.
- **The list of joint rulemakings should include a joint CFTC–SEC rulemaking on the process to certify that a blockchain network is decentralized.** Under Section 204 of the bill, any person may certify to the SEC that a blockchain network to which a digital asset relates is a "decentralized network." The certification carries with it a presumption that the network is decentralized that the SEC can rebut upon making a determination that the network is not decentralized. One consequence of the SEC approving a certification that a blockchain network is decentralized is that a digital asset related to the decentralized network is treated as a digital commodity subject to the regulatory oversight of the CFTC. Given that any certification might involve the transition of regulation from the SEC to the CFTC, both agencies should inform the process that governs the certification. This process includes the materials necessary for the SEC to consider a filing complete, the relevant factors for the SEC to consider in evaluating a blockchain network, and how the SEC determines that a particular blockchain network raises novel and complex issues that warrant lengthier consideration. The definition of a decentralized network also references various time periods (*e.g.,* 12 months and 3 months) where certain facts cannot exist for the network to be considered decentralized. For example, a digital asset issuer or an affiliated person cannot market the blockchain network "during the previous 3 month period."[17] A joint rulemaking could further clarify how to interpret these time period, in particular, how these time periods apply once a blockchain networks has been certified as decentralized. Last, Section 204(g) establishes a process for the SEC to reconsider a prior determination that a blockchain network is decentralized. If the SEC were to determine that a network was no longer decentralized, a digital asset might transition from being a digital commodity back to a security. A joint CFTC–SEC rulemaking surrounding the process for reconsideration would help promote a clear and transparent methodology for a reconsideration, which would shed light on the impact that a change to a blockchain network might have on its regulatory classification.
- **Both the CFTC and SEC should determine that a blockchain network is no longer decentralized.** As noted above, Section 204(g) establishes a process for the SEC to reconsider whether a blockchain network is no longer decentralized, and the impact of any change in classification would mean the transition of regulation from the CFTC back to the SEC. Given that any reclassification necessarily involves digital assets currently regulated by the CFTC, a reconsideration determination should require a joint determination with each agency approving the reclassification. To be clear, if both agencies did not agree to a reclassification, the network should remain certified as decentralized. A joint determination should help foster clear rules regarding whether a blockchain network is decentralized.

[17] *See* Section 101 (definition of "decentralized network").

Conclusion—The Time to Act is Now

The world is once again experiencing a fundamental new innovation in finance. The same digital network technology—the internet—is doing to banking, finance and money itself what it has already done to information gathering, personal communications, social networking, entertainment and retail shopping. That is: increase efficiency, lower costs, increase inclusion and challenge a whole lot of existing market structures.

Today, despite growing U.S. politicization and Administration hostility,[18] Bitcoin continues to grow in transaction count,[19] adoption,[20] network strength,[21] and code execution.[22] Ignoring or attacking digital assets does not make them go away. Nor is it prudent public policy.

We need not be naïve. The cryptocurrency universe contains its share of get-rich-quick fraudsters, shady entrepreneurs, and outright criminals. Yet, crypto is also supported by a growing contingent of professional and institutional users and real everyday believers, including advocates for the poor and the unbanked, libertarians, pacifists, earnest tech geeks, mathematicians, sound-money aficionados, long-term investors, and many idealistic Americans. Whatever their interests, they deserve to be taken seriously, not dismissed or disparaged as fools or idiots. They deserve well-conceived, crypto-native legal and regulatory frameworks.

Financial market regulators also need digitally-native legal frameworks to prosecute bad guys, while giving certainty to everyone else who desire to follow clear rules, well-tailored for digital innovation. Prudential regulators need to accept that financial stability is not sustained by shoring up legacy financial technology and staunchly defending the status quo. Responsible innovators need to believe that digital asset technology is as welcome here in America as it increasingly is abroad.

Weeks before my 2018 Senate testimony, I went to Switzerland and spoke to the Financial Stability Board—the chief international standard setting body of the global financial system. Many in the assembled group of global regulators were skeptical about the CFTC's decision to greenlight bitcoin futures. I told them that, "crypto is not going away." Technology including digital assets "is like a roaring wind." I said, "you can take shelter from technological change, get blown away by it, or hitch a sail and ride it." Adding, "We Americans prefer to ride the wind."[23]

In the 5 years since, many of the countries represented in that Swiss conference room are now trying to hitch their sails to crypto innovation.[24] They are hoping to benefit from the United States' early lead.

This Committee knows that the American dream was created by innovators riding the wind of innovation. As it did 3 decades ago during the first wave of the internet,[25] Congress needs to support American innovation today.

Thoughtful, clear-eyed and unbiased leadership is needed. American crypto consumers, investors and financial innovators alike deserve the benefit of the market supervision, expert analysis and oversight of the world's most experienced and far-sighted financial regulators: the CFTC and the SEC.

Thank you.

APPENDIX A

J. Christopher Giancarlo, *Professional Affiliations*

Willkie Farr & Gallagher, *Senior Counsel,* New York, NY—Jan. 2020–Present
Nomura Holdings, Inc., *Independent Director,* Tokyo, Japan—Jun. 2021–Present

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[18] Michael J. Casey, "Biden Administration is Politicizing Crypto," (March 31, 2023), at: at: *https://www.nasdaq.com/articles/biden-administration-is-politicizing-crypto*.

[19] Will Clemente, "Bitcoin Transactions are Increasing at Fast Pace," referring to Reflexivity Research, The Pomp Letter (paid subscription) (May 4, 2023).

[20] Anthony Pompliano, "Bitcoin Fundamentals Keep Getting Stronger," The Pomp Letter (paid subscription) (February 7, 2023).

[21] *Id.*

[22] *Id.*

[23] *Id., CryptoDad,* pp. 164–68.

[24] The Atlantic Council has assembled a global database of cryptocurrency regulation. *See* "Cryptocurrency Regulation Tracker," Atlantic Council at: *https://www.atlanticcouncil.org/programs/geoeconomics-center/cryptoregulationtracker/*. Of 45 national regulatory systems considered, many have or are developing regulatory frameworks conducive to cryptocurrency innovation, including such U.S. economic allies and competitors as: Australia, Brazil, Canada, the EU (including France, Germany and Italy), Japan, Mexico, Singapore, South Korea and the UK.

[25] In February 1996, Congress recognized that "the Internet . . . ha[d] flourished, to the benefit of all Americans." The Telecommunications Act of 1996 together with the ensuing Clinton Administration's "Framework for Global Electronic Commerce" are well recognized as the enlightened regulatory underpinning of America's early leadership in the Internet of Information.

Digital Asset Holdings LLC, *Independent Director,* New York, NY—Jan. 2022–Present
Digital Dollar Project, *Co-Founder & Exec. Chairman,* New York, NY—Jan. 2020–Present
Chamber of Digital Commerce, *Member, Board of Advisors,* Washington, D.C.—Oct. 2019–Present

Mr. FEENSTRA. Thank you, Mr. Giancarlo, for your testimony. Mr. Grewal, please begin when you are ready, and you have 5 minutes.

STATEMENT OF PAUL GREWAL, J.D., CHIEF LEGAL OFFICER, COINBASE GLOBAL, INC., OAKLAND, CA

Mr. GREWAL. Thank you, sir. Good afternoon. I want to thank Chairman Thompson, Ranking Member Scott, and Members of the Committee for inviting me to testify about the future of digital assets, and the need for a clear rulebook in the United States. My name is Paul Grewal, and I am the Chief Legal Officer at Coinbase. Coinbase was founded in 2012 with the goal to be the world's most trusted, secure, and compliant on-ramp for the crypto economy. We went public in 2021 and are currently the largest crypto platform in the United States. Our mission is to increase economic freedom in the world, and our products and services do just that. We enable millions of consumers, institutions, and developers around the world to buy, sell, and use crypto in a meaningful way.

Since our founding over a decade ago, we have embraced regulation. We take seriously our obligations to our customers, our investors, and our regulators, and we are proud of the robust consumer protection controls, prudent risk management, and industry-leading security practices implemented over the years. I am pleased to speak with you today about our views on regulation and legislation, but before I proceed with my scheduled remarks, I would like to address the litigation filed this morning by the Securities and Exchange Commission as mentioned earlier.

It is disappointing, but not surprising, that the SEC has decided to bring legal action against Coinbase today, the day of our testimony before this Committee's critical hearing on creating a workable framework for digital asset regulation. The SEC's reliance on an enforcement-only approach in the absence of clear rules for the digital asset industry is hurting America's economic competitiveness and the companies most committed to compliance. The solution is legislation. It allows fair rules for the road to be developed transparently and applied equally, not litigation. Despite today's complaint, we will continue to operate our business as usual.

For today, there are three main points I would like to highlight. First, the United States is falling behind. Distributed ledger and digital asset technology is, as the White House has stated, critical and foundational to the future of the United States. Yet the United States is pushing the technology and innovators overseas due to lack of regulatory clarity. The rest of the world is taking advantage of our absence. The EU, UK, Australia, Singapore, and Hong Kong, just to name a few, are writing rules that are making room for innovation while also protecting consumers. We shouldn't want any country to leapfrog the United States in a foundational area of

technology. It is not just bad for our economic future, but bad for our national security.

Second, crypto is solving real world problems, and we need a clear path forward to protect responsible innovation. Digital assets are creating new ways to store and transfer value. They are making existing systems, like the financial system, better. Today's crypto use-cases range from cheaper, faster, and more reliable international payments, to digital IDs, to healthcare records on the blockchain. But digital assets don't fit into any single existing regulatory box. Some are commodities, some are securities, and some simply don't map onto existing categories. With more than 20 percent of Americans owning and using crypto, we need a regulatory framework that will protect American consumers and enable innovation.

Third, the digital asset market structure discussion draft is a strong step forward in providing overdue regulatory clarity. Congress alone has the power to draw clear, comprehensive lines for digital assets, specifically when digital assets are regulated as commodities or securities, or when the regulatory structure simply makes no sense. We are excited about the discussion draft because it builds on existing and workable regulatory precedent, while also recognizing the unique properties and opportunities of digital assets. The discussion draft also thoughtfully draws from many of the key findings of President Biden's Executive Order and the agency reports that came out of the EO, most notably that we need a Federal regulator for the spot trading of crypto commodities.

Specific to the CFTC and the jurisdiction of this Committee, the bill would create a regulatory framework that is rooted in the existing CFTC structures for commodity markets and market participants. The bill recognizes that centralized intermediaries, like Coinbase, should be regulated, and it creates transparency through mandatory registration, disclosure requirements, and inspection and examination authority. Importantly, this is a fit for purpose registration regime that doesn't attempt to shoehorn market participants into pre-existing but ill-suited requirements that are not mapped to actual risks and consumer needs. And critically, the bill provides a framework for those registration pathways to work in practice, not just in theory.

The bill also allows for side by side trading, and creates clear consumer protections, like conflicts of interest disclosures and limitations, requirements to segregate client funds, and bankruptcy priority. With respect to the SEC, it provides necessary adaptations to existing rules, like Regulation A, Rule 144, and the regulations related to alternative trading systems, in order to create a regime for all crypto market participants. Similar to the proposed CFTC regime, the discussion draft would establish a fit for purpose framework for the regulation of restricted digital assets, or more specifically, digital assets regulated as securities. This framework does not exist today. The bill articulates guardrails and requirements to protect investors, and ensure transparency and consistency for all market participants.

In closing, Coinbase strongly supports creating a robust, comprehensive regime for the regulation of digital asset commodities and digital asset securities. Only Congress can do this. Although

legislation can always be improved around the edges, the discussion draft would create a workable foundation for consumers, investors, and market participants alike. We urge Congress to act as soon as possible. We welcome the opportunity to continue participating in this dialogue, and I look forward to your questions.

[The prepared statement of Mr. Grewal follows:]

PREPARED STATEMENT OF PAUL GREWAL, J.D., CHIEF LEGAL OFFICER, COINBASE GLOBAL, INC., OAKLAND, CA

Good afternoon. Thank you, Chairman Thompson, Ranking Member Scott, and Members of the Committee for inviting me to testify today about why we need a clear rulebook for crypto in the United States and also about the bill you recently released with Financial Services Chairman McHenry, and Subcommittee Chairmen Johnson and Hill.

My name is Paul Grewal and I am the Chief Legal Officer at Coinbase. I joined Coinbase in August 2020 following 4 years as Vice President and Deputy General Counsel at Facebook, Inc. Prior to Facebook, I served for 6 years as a U.S. Magistrate Judge for the U.S. District Court of the Northern District of California, a partner at Howrey LLP, and a Judicial Law Clerk for the U.S. Court of Appeals for the Federal Circuit and the U.S. District Court for the Northern District of Ohio. As Coinbase's Chief Legal Officer, I am responsible for assessing, mitigating, and addressing American and international regulatory risks associated with operating the largest U.S. crypto platform.

I am pleased to speak with you today about Coinbase and our views on regulation, as well as our thoughts regarding the Digital Asset Market Structure Discussion Draft, as released on Friday. There are three main points I would like to share with you today in my testimony. At a high level:

1. **First, the U.S. is falling behind.** Distributed ledger and digital asset technology is—as the White House has stated—critical and foundational.[1] Despite being identified as potentially critical to U.S. economic and national security, the U.S. is pushing the technology and the innovators overseas due to lack of clear rules and regulations for crypto. The rest of the world is not waiting for us, and they are taking advantage of our absence. The European Union, the UK, Australia, Singapore and China—through Hong Kong—just to name a few, are putting in place regulatory frameworks that are creating room for innovation while also protecting consumers. Allowing others to leapfrog the United States in a foundational area of technology is not just bad for our economic future, but also our national security as a broad range of use cases emerge in the years ahead.
2. **Second, crypto is solving real-world problems and we need a clear path forward to protect responsible innovation.** Digital assets are unique and diverse. They are creating new ways to store and transfer value, while also making existing systems—like the financial system—better. Today's digital asset use cases range from cheaper, faster, and more reliable international payments to digital IDs to healthcare records on the blockchain. But digital assets do not collectively fit into any single existing regulatory box: some are commodities, some are securities, some are neither, and some simply don't map onto existing categories. With more than 20 percent of Americans owning and using crypto, we need a regulatory framework that will protect consumers and enable the critical uses of this new technology to continue and grow.
3. **Third, the Digital Asset Market Structure Discussion Draft is a strong step forward in providing overdue regulatory clarity.** Congress needs to draw the lines between when digital assets and the technology that underpins them should be regulated as commodities, when they should be regulated as securities, and when financial regulations should not apply or simply would make no sense. As the legislative process unfolds this bill will no doubt evolve, but we believe it already offers a strong foundation on which to build a workable and balanced regulatory framework for crypto innovation within the U.S. In addressing both CFTC and SEC authority, the Discussion Draft builds on existing regulatory frameworks, while also recognizing the unique

[1] *https://www.whitehouse.gov/wp-content/uploads/2022/02/02-2022-Critical-and-Emerging-Technologies-List-Update.pdf*

properties and opportunities of digital assets. It would also provide much-needed Congressional authority and guidance to allow our financial system to evolve. With respect to the CFTC, the bill draws from portions of the existing framework of the Commodity Exchange Act, and also builds on 5 years of deliberations in the House Agriculture Committee on the Digital Commodities Exchange Act and a similar Senate bill, the Digital Commodities Consumer Protection Act. With respect to the SEC, it provides necessary adaptations to the existing frameworks of Regulation A, Rule 144, and the regulations related to Alternative Trading Systems to create a regime that could be used broadly by crypto market participants. The Discussion Draft also thoughtfully draws from many of the key findings of President Joe Biden's Executive Order and the agency reports that came out of the EO, most notably by ensuring that we will have a Federal regulatory framework over the spot trading of crypto commodities. Overall, it is a thoughtful effort and represents a major step forward. We urge Congress to move swiftly to consider and pass digital asset legislation.

I'd like to share more background on why I am here, and Coinbase's approach to our customers, our regulators, and compliance overall.

Coinbase Introduction

Coinbase has embraced regulation since we were founded over a decade ago, and we have extensive experience building and implementing robust consumer protection controls, prudent risk management, and industry-leading security practices. The SEC allowed us to become a public company in April 2021, which makes us unique in the crypto industry. We believe we are uniquely qualified to discuss the Discussion Draft and why we need a clear Federal framework of crypto regulation in the U.S.

Coinbase was founded in 2012, with the goal of being the world's most trusted, secure, and compliant onramp to the crypto-economy. Our mission is to increase economic freedom in the world, and our products enable tens of millions of consumers, institutions, and developers around the world to discover, transact, and engage with crypto assets and web3 applications. We enable our customers to trade and custody assets, but we list assets only after they have been through a rigorous legal, compliance, and information security review.

Coinbase is currently regulated by more than 50 regulators in the U.S. alone: we are a money services business registered with the U.S. Treasury Department and subject to FinCEN rules, we have 45 state money transmission licenses, and a BitLicense and state trust charter from the New York Department of Financial Services ("NYDFS"). Somewhat less known is that Coinbase also has two broker-dealer licenses (both of which are dormant at this time) and that Coinbase Asset Management is a registered investment advisor under the SEC. We are a licensed designated contract market ("DCM") regulated by the CFTC and our Coinbase Financial Markets, Inc. subsidiary has applied for registration as a futures commission merchant ("FCM") with the National Futures Association.

Coinbase also strives to be the market leader when it comes to consumer protection. We hold our customer assets 1:1 at all times, which means we do not lend or rehypothecate customer assets without being directed by them to do so. We safeguard customers' assets—both crypto and fiat—using bank-level security standards. Our security technology is designed to prevent, detect, and mitigate inappropriate access to our systems by internal or external threats. We have developed and maintain administrative, technical, and physical safeguards designed to comply with applicable legal requirements and industry standards. At all times, we also appropriately ledger, properly segregate, and diligently maintain separate accounts for our corporate crypto assets and customers' crypto assets.

In addition to safeguarding customer assets on the platform, Coinbase is focused intently on the prevention and detection of illicit activity and keeping Coinbase customers and the U.S. financial system safe from bad actors. We have implemented a comprehensive Financial Crimes Compliance program that adheres to U.S. BSA/AML and sanctions requirements as is required under our existing licenses. It is also consistent with the standards required of traditional financial institutions.

Coinbase also rigorously assesses each and every crypto asset before listing it on our platform to ensure it meets our legal, information security, and compliance requirements. Our legal review is particularly relevant to this Committee's work because our process includes an analysis of whether the asset could be considered to be an SEC-regulated security or a commodity. Coinbase does not list securities on our platform and our processes are so rigorous that we reject the vast majority of assets considered for listing. But we are eager to work with this Committee, the House Financial Services Committee, the CFTC, the SEC, other industry partici-

pants, and the public to help advance legislation and regulations that help develop a market for the offering of digital asset securities in the future.

The U.S. is Falling Behind

Thirty years ago, the U.S. made a historic and strategic decision to not only embrace, but become a leader, in the development and deployment of a new technology, collectively known as the World Wide Web. The World Wide Web is not just one technology—it's the amalgamation of numerous software programs working together to give users a seamless experience today. Thirty years ago the terms "Uniform Resource Locator (URL)", "HyperText Transfer Protocol (HTTP)", and "Hyper Text Markup Language (HTML)" were new to the American public. Today, these protocols fit seamlessly into our everyday lives.

At the time, the approach of President Clinton's Administration to the internet—as an issue of U.S. national interest—was not intuitive given that its economic and social applications were only beginning to emerge. The decision needed in 2023 on crypto is no different; digital asset technology represents the next critical evolution of the internet. Crypto is a revolutionary technology that allows ownership interest and value to be recorded on a distributed ledger that anyone can hold or transmit simply and cheaply, and without needing to use an intermediary. This simple innovation is profound in its implications, particularly as we increasingly manage our lives in ways enabled by the internet.

Crypto technology can both modernize our financial system and transform other systems like livestock management, pharmaceutical distribution, car titles, and healthcare. Crypto enables low cost and rapid transfers of value and enables capital market trades to settle instantaneously, rather than the 2–3 days common today.

Major economies and financial centers like the UK, European Union, Canada, Japan, Singapore and Hong Kong have taken significant steps to embrace crypto through adoption of both the technology and new rules and regulations specifically tailored to the unique characteristics of crypto. The EU, for example, is working to implement the Market in Crypto-Assets ("MiCA") regulation, which created a comprehensive regulatory framework intended to close the gaps in existing financial services legislation and establish a harmonized set of rules designed for crypto asset issuers, intermediaries, and others who participate in the crypto ecosystem.

While the rest of the world is moving ahead, the U.S. has struggled to keep pace in terms of a clear and workable Federal regulatory framework.

I want to share a few statistics that inform and drive the work we do at Coinbase, and also underscore the importance of the bill now being considered:

- According to research from *Morning Consult,* 80% of Americans think the current financial system is unfair, and 61% believe providing access to cryptocurrency helps democratize finance; 52% think it makes the financial system more fair.[2]
- Crypto is also responsible for thousands of jobs in the U.S. and overseas. According to recent reports, crypto will produce more than a million jobs by 2030. Those jobs will inevitably develop in regions and countries where clear regulatory frameworks exist.[3]

But we are behind in the race to build the kind of regulatory infrastructure that will foster innovation here at home and serve the growing number of Americans who are part of the crypto-economy. We know the risks associated with sending innovation offshore: while we once dominated the semiconductor industry, the shifts that pushed development offshore in the 1980s and 1990s still haunt us today. For the past few years, chip shortages have negatively impacted industries across our economy. We should keep these lessons in mind as we consider the modern rules and regulations that will define breakthrough technologies like crypto and the blockchain, and we should ensure the power to shape them stays here in America.

We believe the U.S. still has the opportunity to take the reins to ensure we lead from the front on crypto and reap the geopolitical and economic benefits the leadership provides. But we are on the clock. If Congress fails to act, other countries will continue to quickly step in to attract new legitimate builders and innovators, while certain overseas actors in the crypto industry will continue to dodge American values and our commitment to the rule of law.

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[2] Morning Consult. Crypto Currency Perception Study. Commissioned by Coinbase. 24 Feb 2023. *https://assets.ctfassets.net/c5bd0wqjc7v0/WvuOkBwNXZsqhd6EWtkEL/7f94f8b6fbb222f3faf4d0346e473012/Morning_Consult_Cryptocurrency_Perception_Study_Feb2023_Memo__1_.pdf.*

[3] *Developer Report.* Electric Capital. *https://www.developerreport.com/.*

Crypto is Solving Real-World Problems and We Need a Clear Path Forward to Protect Responsible Innovation

Congress alone can address this urgent need for the U.S. to create a comprehensive regulatory framework for digital assets. The Discussion Draft is a significant and commendable step toward doing just that. The Discussion Draft begins by establishing definitions for digital commodities, and delineating between the types of assets that will be regulated by the CFTC ("digital asset commodities") and those that will be regulated by the SEC ("restricted digital assets").

Starting with definitions is critical because digital assets are diverse and fuel diverse use cases. Although many *existing* use-cases today are related to improving our financial system, such as smoothing international transfers and allowing real-time settlement of transactions, we are seeing developers leverage digital assets and the blockchain to create new projects every day related to agriculture, rural WiFi access, energy management, climate and conservation, social media, privacy, and many more. That is why being clear as to how and when digital assets are subject to certain regulatory requirements is critical. Many of the digital assets available today are designed to enable simple functions that provide economic gates to commercial applications and services. They are not securities. They are commodities and their value is determined by adoption and use. And adoption of these assets will grow as the crypto-economy grows.

For example, decentralized identification or DiD is a use case that will provide countless benefits to American consumers. DiD technology is growing rapidly, with public and private innovations poised to integrate DiD tokens into our everyday lives. There are companies and blockchains today that use naming services and token attestation to provide the convenience of cloud-based, internet login services while also letting users retain control over the information they share with other websites. This means centralized Web2 sites can verify a user's identity and other relevant information without needing to store sensitive personal or financial information on their own servers. In a world where information is regularly stolen from centralized servers as a result of cyber attacks and data breaches, storing that information on fewer servers provides tangible value.

Governments are also starting to embrace DiD. A project sponsored by the European Commission is *developing interoperable DiD solutions*[1] that would facilitate faster and more reliable security checks for EU citizens.[4] And as part of its national blockchain strategy, India is building a *decentralized, digital platform*[2] that will host IDs and documents related to education, healthcare, and agriculture.[5] Cities like Buenos Aires are also spearheading efforts to construct DiD platforms in order to give residents access to *city services*[3] and financial service providers.

All of these projects run on blockchains, and all blockchains need digital assets or tokens to operate. These digital assets are used to govern, manage, and reward participation in a blockchain protocol or project—in other words, these digital assets have utility. They often function like oil or gold. For example, bitcoin is a store of value just like gold. It fluctuates based on market forces and its value is rooted in the belief that it can be used globally as a payment mechanism, a way to hedge against inflation, and a protective layer between fiat and value in a volatile country.

ETH works much like Bitcoin as a way of sending, receiving, or storing value. But it also has a special role on the Ethereum network. Because users pay fees in ETH to execute smart contracts, it is the fuel that keeps the entire network running. It is also why those fees are called "gas". If Bitcoin is "digital gold," then ETH can be seen as "digital oil." They are commodities and should be regulated as such at the Federal level. It's the power of innovation and market forces combining to create new ways to store and move value.

As discussed above, the Digital Asset Market Structure Discussion Draft would help create a regulatory line between digital commodities and securities. In the absence of this kind of legislative clarity, regulators have disagreed with one another and at times themselves about how to categorize specific digital assets under exist-

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[1] *https://essif-lab.github.io/framework/docs/essifLab-project*.

[4] *See The European Self-Sovereign Identity Framework Lab* (*https://essif-lab.github.io/framework/docs/essifLab-project*). The selective sharing capability of DiD is especially useful for federated governments like the United States, EU, and others, where personal information is often stored by multiple countries or states with varying security infrastructures.

[2] *https://www.biometricupdate.com/202110/india-reportedly-moving-toward-decentralized-digital-id-platform*.

[5] *See National Strategy on Blockchain, Ministry of Electronics & Information Technology* (*https://www.meity.gov.in/writereaddata/files/National_BCT_Strategy.pdf*), Government of India (Dec. 2021).

[3] *https://www.biometricupdate.com/202205/buenos-aires-planning-ambitious-decentralized-digital-identity-system-with-biometrics*.

ing standards. The bill is thorough and detailed, and aims to help resolve this uncertainty plaguing the industry and consumers.

The Digital Asset Market Structure Discussion Draft is a Strong Step Forward in Developing Regulatory Clarity

The Discussion Draft as introduced builds on existing regulatory frameworks, while recognizing the unique properties and opportunities for digital assets that are not and cannot be addressed without Congress. Given the jurisdiction of this Committee, I will first focus on the role of the CFTC and the regulatory framework established for digital asset commodities.

The bill, as drafted, would amend the Commodity Exchange Act to create a much-needed and robust Federal regulatory framework for the CFTC to oversee the spot markets for digital asset commodities. This framework would fill an existing gap in Federal oversight and would lead to more consistent consumer protection requirements across the country and enable more vigorous enforcement authority for bad actors. The bill builds upon the CFTC's existing authority under the Commodity Exchange Act to regulate futures and derivatives referencing digital asset commodities, and its anti-fraud and anti-manipulation authority over commodity spot markets, including digital asset commodity spot markets.

The CFTC is equipped to regulate spot markets for digital commodities. It has experience utilizing disclosures to equip customers with the information they need to understand the risks of trading a particular asset. For example, when a DCM licensee 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 Commodity Exchange Act, 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 assets. It is appropriate that the bill borrows from the existing DCM self-certification process and requires different and tailored disclosure requirements for digital commodities.

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.

The agency 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 the National Futures Association to require FCMs that offer virtual currency futures to provide additional disclosure to customers specific to the risks of trading in that asset class.

The CFTC has been diligent in policing the digital commodity cash markets for fraud and manipulation and has pursued enforcement actions against actors in the digital commodities derivatives markets for failure to comply with existing derivatives regulations. It has brought over 70 enforcement actions involving digital commodities. As Chair Behnam testified in March, more than 20 percent of the CFTC's enforcement actions in the last fiscal year related to digital commodities.

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 8 decades had overseen the futures market. This confidence in the CFTC was well placed."[6]

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 and support the new framework laid out in the Discussion Draft that allows crypto companies to operate and innovate within reasonable, understandable parameters. I'd like to highlight a few specific aspects of the Discussion Draft that are particularly important to delivering a workable regulatory framework for crypto:

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[6] *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-155.*

- **Defines Digital Commodities:** As I have shared, drawing clear and workable jurisdictional lines is critical to ensuring that customers are appropriately protected, and understand the regulatory framework that applies to their activities.
- **Creates a Comprehensive Regulatory Structure:** The bill creates a regulatory framework that is rooted in the existing structures at the CFTC for market participants and the market as a whole. It applies to entities that act as an exchange, broker, or dealer for digital commodities. The CFTC's existing regulatory model established pursuant to the Commodity Exchange Act for futures contracts and swaps works. It serves as a good model for regulating digital commodity spot markets, and is appropriately the foundation for the Discussion Draft. The current model also demonstrates that joint rulemaking between two primary regulators—the SEC and CFTC—can and does work when Congress provides a proper mechanism for it.
- **Workable Registration Pathways:** The bill recognizes that centralized intermediaries should be regulated, and it creates transparency through registration, disclosure requirements, and inspection and examination authority. The bill includes mandatory registration as a digital commodity exchange ("DCE"), digital commodity broker ("DCB"), or digital commodity dealer ("DCD") for entities engaged in the activities listed above. Importantly, this is a fit-for-purpose registration framework that doesn't attempt to shoehorn market participants into preexisting but ill suited frameworks that are not mapped to actual risks and consumer needs. And critically, the bill provides a framework for those registration pathways to work in practice, not just in theory. It also appropriately preempts money transmission licensing registration regimes to resolve what could be competing or duplicative state regulatory requirements that could lead to confusion for both consumers and market participants.
- **Multiple Registrations Permitted:** The bill allows certain entities that are already registered with the CFTC for their futures and swaps activities to register as a DCE, DCD, or DCB. It also allows for entities to register in multiple capacities for the digital commodity activities. In each case, multiple registrations are subject to important safeguards, including conflicts of interest requirements that will ensure customers and the markets are protected. These rules apply to all market participants—and not based on targeted settled enforcement actions or bespoke exemptive relief—which creates a level playing field, consistent application of consumer protections.
- **Side by Side Trading:** Entities registered with the CFTC are also permitted to register in parallel with the Securities [and] Exchange Commission. This would be a new path created by Congress to enable companies to offer side-by-side trading of digital commodities and digital securities.
- **Segregation Requirements for Entities that hold Customer Assets:** The bill requires the CFTC to designate certain entities subject to supervision by the CFTC, SEC, a Federal banking agency or a state banking supervisor as qualified digital commodity custodians. DCEs, DCBs and DCDs must hold customer digital commodities at a qualified digital commodity custodian and segregated from the DCE, DCB, or DCD's own assets. The segregation requirement in the bill mirrors the segregation requirements for FCMs that protect futures customer funds today.
- **Application of Commodity-Broker Insolvency Regime:** The bill applies the tested commodity broker insolvency regime to entities registered with the CFTC as DCEs, DCBs and DCDs. We know this regime works because it has effectively protected customer assets in insolvencies of FCMs.
- **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 futures products. The specific requirements of the digital commodity self-certification regime are tailored to digital commodities and cover areas such as the digital commodity's purpose and use, consensus mechanism, and governance structure, among others.

I would also like to take the opportunity to briefly discuss the important role of the SEC, and our support for creating a comprehensive approach that spans both the CFTC and the SEC. Similar to the CFTC regime, the Discussion Draft would establish a fit-for-purpose regulatory framework for restricted digital assets—those that may be determined to be securities—under the jurisdiction of the SEC, which does not exist today. The bill articulates guardrails and requirements to protect investors, and ensure transparency and consistency for all market participants.

The Securities Act of 1933 and the Securities Exchange Act of 1934 grant the SEC authority to regulate securities in the U.S. If an asset is a security, the SEC gen-

erally has Federal authority over its offering and sale, and over many functions that support these transactions. If the asset is not a security, the SEC does not have that authority. Notably, the Federal securities regime is a disclosure-based regime. The SEC is not a merit regulator, so it does not decide what is a "good" investment or a "bad" investment. Rather, it ensures fair, orderly, and efficient markets with appropriate investor protections, while facilitating capital formation.

The Discussion Draft is grounded in this authority, directing the SEC to create new market structure rules that would work for digital asset securities more broadly based on the principles that have been the foundation of our unmatched capital markets for 90 years. Coinbase has long supported a regulatory framework for digital asset securities, as we do not currently list securities but would like to do so in the future when a workable regulatory framework becomes available. Last July, we filed a formal petition with the SEC asking for rulemaking for digital asset securities.

The Discussion Draft addresses many of the questions we raised in the petition. Specifically, Coinbase supports the aspects of the Discussion Draft that:

- Provide the needed Congressional authorization for side-by-side trading of digital commodities and securities, and establish a dual registration structure once CFTC has spot authority.
- Allow registration for digital asset securities trading platforms as an Alternative Trading System, which better aligns with the technical realities and consumer benefits of how crypto transactions work, including real-time settlement on the blockchain.
- Create a principles-based approach to disclosure obligations for digital asset securities that accommodates the practical realities of the industry. For example, many asset issuers have no intention of growing into large companies, nor should they. Disclosure obligations should reflect that. There also should be a path for exiting those disclosure obligations when a project decentralizes and disclosures no longer serve any purpose for consumers.
- Acknowledge that tokens themselves are and should continue to be used for non-securities functions and transactions, even if initially offered through a securities offering.

Closing

In closing, Coinbase strongly supports creating a fit-for-purpose, comprehensive regulatory regime for digital asset commodities, securities, and market participants with strong consumer protections. Only Congress can do this. Although legislation can always be improved around the edges, the Discussion Draft would create a workable foundation for consumers, investors, and market participants alike. We urge Congress to act on it as soon as possible. We also welcome the opportunity to continue participating in this dialogue and serving a resource to you as you move forward.

Mr. FEENSTRA. Thank you, Mr. Grewal, for your testimony. Mr. Gallagher, please begin when you are ready. You have 5 minutes.

STATEMENT OF HON. DANIEL M. GALLAGHER, J.D., CHIEF LEGAL, COMPLIANCE, AND CORPORATE AFFAIRS OFFICER, ROBINHOOD MARKETS, INC.; FORMER COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION, MENLO PARK, CA

Mr. GALLAGHER. Thank you. Chairman Thompson, Ranking Member Scott, Chairman Johnson, Ranking Member Caraveo, and Members of the Committee, thank you for inviting me to testify today on the important topic of digital asset regulation. My name is Dan Gallagher, and I am the Chief Legal Compliance and Corporate Affairs Officer at Robinhood Markets. I have worked in the financial services industry for over 25 years, and served as a Commissioner of the United States Securities and Exchange Commission, and as Deputy Director of the SEC's Division of Trading and Markets.

Robinhood was formed in 2013 with a single mission, to democratize finance for all, regardless of a customer's background, income, or wealth. Robinhood is an American company, with over 2,000 employees in the United States, serving millions of American customers. At Robinhood we pioneered a commission-free, no account minimums investing model that has helped open the stock market to tens of millions of new retail investors and saved them billions of dollars.

We have also worked to democratize access to other corners of the financial markets. Since 2018 Robinhood Crypto, which is proud to operate in the United States, has offered customers the ability to buy, sell, store, and transfer certain cryptocurrencies at low cost, with no trading commissions, and no account minimums. Innovation is at Robinhood's core. We are committed to working with policymakers to foster the development of blockchain technology and digital asset markets through tailored, responsible regulation. But the reality is that, in the United States, market participants face a patchwork of inconsistent state frameworks, and a lack of regulatory clarity at the Federal level. This unpredictable landscape stifles innovation and hampers responsible firms like Robinhood.

To be clear, we believe Robinhood Crypto has a qualitatively different model than other digital asset platforms. We are not an exchange that matches customer orders. We offer 18 digital assets, compared to hundreds on other platforms. We don't offer yield-generating products, like staking or lending. And Robinhood Markets is a publicly traded company, subject to SEC disclosure rules, and we operate to highly regulated registered subsidiary broker/dealers that are our primary business.

Some in senior regulatory positions maintain that the law is clear, and no further guidance for digital assets is necessary. We disagree. In fact, it often feels like we are facing what Lewis Carroll called a Humpty-Dumpty view of the world, a world where Federal regulators believe words, like the word *security,* "mean just what one chooses them to mean, nothing more, nor less." For example, regulators look to a 1946 Supreme Court case concerning orange groves to define whether a digital asset is an investment contract subject to the securities laws. There are legitimate questions about whether certain digital asset transactions involve investment contracts, and the application of a decades-old case addressing orange groves is hardly clear when applied to today's digital asset ecosystem.

The lack of Federal regulatory clarity is bad for American consumers who want access to digital assets, bad for innovation, and bad for the competitive position of the United States, which is already losing out to Europe and other foreign jurisdictions. Regulatory clarity would allow market participants to provide products and services their customers want, without the constant threat of crippling enforcement actions, and would help ensure that the U.S. remains a global leader in this space. Today's discussion draft provides that much-needed regulatory clarity.

I would also like to thank Financial Services Committee Chairman McHenry, Ranking Member Waters, Chairman Hill, and Ranking Member Lynch for their work on this important matter.

It is important to get the details right, and I have provided additional thoughts and recommendations in my written testimony. For too long the digital asset economy, and millions of Americans who wish to participate in it, have had to contend with stifling regulatory uncertainty. The discussion draft is a positive step forward and will finally bring clarity to the market. I look forward to working with Members and staff to further enhance this important legislation. Thank you, and I look forward to your questions.

[The prepared statement of Mr. Gallagher follows:]

PREPARED STATEMENT OF HON. DANIEL M. GALLAGHER, J.D., CHIEF LEGAL, COMPLIANCE, AND CORPORATE AFFAIRS OFFICER, ROBINHOOD MARKETS, INC.; FORMER COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION, MENLO PARK, CA

I. Introduction

Thank you, Chairman Thompson, Ranking Member Scott, Chairman Johnson, Ranking Member Caraveo, and Members of the Committee for inviting me to testify today on the important topic of digital asset regulation. I'd also like to thank Financial Services Committee Chairman McHenry, Ranking Member Waters, Chairman Hill, and Ranking Member Lynch for their attention to this topic.

My name is Dan Gallagher. I am Chief Legal, Compliance and Corporate Affairs Officer of Robinhood Markets, Inc. ("Robinhood"). I was formerly a Commissioner of the U.S. Securities and Exchange Commission ("SEC" or "Commission") from 2011 to 2015, and Deputy Director of the SEC's Division of Trading and Markets from 2008 to 2010. I have been an active legal practitioner in the financial services industry for twenty-five years.

Robinhood is a NASDAQ-listed company formed in 2013 by Vlad Tenev and Baiju Bhatt with a single mission—to democratize finance for all, regardless of a customer's background, income, or wealth. Robinhood employs over two thousand individuals working remotely and in offices across six states—California, Colorado, Florida, Illinois, New York, and Texas—and the District of Columbia. Robinhood pioneered the commission-free, no-account-minimums investing model that has helped open the stock market to tens of millions of new retail investors and saved them billions of dollars in the process.[1] Robinhood has two wholly-owned subsidiary broker-dealers, Robinhood Financial LLC and Robinhood Securities, LLC. Our brokerage customers can invest in and trade thousands of publicly-listed stocks and exchange-traded funds using fractional or whole shares, as well as options.[2] Established in 2018, Robinhood's wholly-owned subsidiary Robinhood Crypto offers customers in 48 states and the District of Columbia the ability to buy, sell, store, and transfer (depending on the jurisdiction) up to 18 cryptocurrencies—in contrast to hundreds of listed tokens at other firms—at low cost with no trading commissions and no account minimums.[3] As described below, Robinhood Crypto employs a rigorous review process designed to ensure that it does not list digital asset securities.

Robinhood shares the goal of policymakers who seek to foster the development of blockchain technology and digital asset markets in the U.S. through tailored, responsible regulation. Unfortunately, Robinhood and other digital asset market participants in the U.S. face a patchwork of state regulatory frameworks, not all of which are consistent, as well as a lack of regulatory clarity at the Federal level. In

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[1] A 2021 study by Professors Kothari, Johnson, and So commissioned by Robinhood found: "Since the industry adopted Robinhood's zero commission model in late 2019, retail investors have saved tens of billions in [equities] trading commissions, with Robinhood customers alone saving $11.9 billion during 2020–2021." The same study also found: "During 2020–2021, Robinhood customers benefited from more than $8 billion in price improvement compared to the national best bid and offer prices." Kothari, S.P., Travis L. Johnson, and Eric C. So, *Commission Savings and Execution Quality for Retail Trades* (Dec. 2, 2021), at 1, available at *https://ssrn.com/abstract=3976300* or *http://dx.doi.org/10.2139/ssrn.3976300*.

[2] Options are for eligible customers only. Robinhood Financial does not offer over-the-counter ("OTC") stock trading, with the exception of select American Depositary Receipts ("ADRs"). Robinhood Financial does not allow naked options trading or short-selling.

[3] Aave (AAVE), Avalanche (AVAX)*, Bitcoin (BTC), Bitcoin Cash (BCH), Cardano (ADA)*, Chainlink (LINK), Compound (COMP)*, Dogecoin (DOGE), Ethereum (ETH), Ethereum Classic (ETC), Litecoin (LTC), Polygon (MATIC)*, Shiba Inu (SHIB)*, Solana (SOL)*, Stellar Lumens (XLM)*, Tezos (XTZ)*, Uniswap (UNI)*, and USD Coin (USDC)**. *Note: "*" means it is not available for trading in New York, and "**" means it is not available for trading in New York or Texas.*

many ways, the regulatory landscape for digital assets is like it was for the equities markets in 1932.

The lack of Federal regulatory clarity in particular has created an unlevel playing field for market participants and hindered the broader adoption of digital asset products and services in the U.S. While some view existing regulations as sufficient to regulate digital asset markets, we disagree. The Federal securities laws have been remarkably flexible in response to many forms of technological innovation in the financial services space, but they were enacted in the 1930s at a time when the idea of blockchain technology and cryptocurrencies was unimaginable. And likewise, the Federal commodities laws are inherently principles-based and flexible, but they arose decades ago and were geared towards markets very unlike today's digital asset markets. As a result, serious gaps in existing statutes and regulations exist when it comes to digital assets.

The most fundamental problem in digital asset markets is that there is no clear guidance on which digital assets the SEC and Commodity Futures Trading Commission ("CFTC") deem to be securities and commodities, respectively, and how cryptocurrency platforms and digital asset securities can be appropriately registered under Federal law.[4] For example, without the provision of additional regulatory relief addressing, among other things, exchange listing requirements; SEC custody requirements, including capital and accounting requirements for custodians; the trading of non-security digital assets and digital asset securities on the same platform; the application of SEC trading rules, such as those under Regulation NMS and Regulation SHO; the application of SEC disclosure rules; and SEC clearing agency and transfer agent requirements, exchanges, market intermediaries, and other market participants are unable to register with the SEC.

The SEC bases its analysis of whether a digital asset is a security on decades-old Supreme Court cases. The primary case, *SEC* v. *W.J. Howey Co.,* 328 U.S. 293 (1946), which was decided in 1946, establishes a four-part test to define an "investment contract." As a threshold matter, there are legitimate questions around whether certain digital asset transactions involve contracts and therefore should be governed by the *Howey* test. Moreover, *Howey* involves interests in orange groves, a markedly different context compared to today's digital asset markets. Yet some in senior Federal regulatory positions maintain that the law is clear and no further Federal guidance is necessary. Again, we disagree. As my dear friend and mentor, the late Harvey Pitt, SEC Chairman from 2001 to 2003, said in a 2022 television interview, "there is a need here for a concise and considered national policy that lays out the rules of the road."[5]

Given this lack of Federal regulatory clarity for digital assets, it is no wonder that SEC Chairman Jay Clayton and CFTC Chairman Chris Giancarlo called for coordination with Congress in regulating digital assets, and why CFTC Chairman Rostin [Behnam] has called for Congress to provide additional authority to regulate digital asset markets.[6]

The current environment is bad for American consumers who want greater access to digital assets, bad for innovation in the blockchain and digital asset industries, and bad for the already-eroding competitive position of the U.S. with regard to digital asset markets.[7] Regulatory clarity for digital assets is, therefore, critical: it would allow token issuers, exchanges, intermediaries, and other market participants to provide products and services their customers want without the constant threat of crippling enforcement actions, and would help ensure that the U.S. remains the

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[4] *See* "Regulating cryptocurrencies is a national concern, not a political issue, says former SEC Chair Harvey Pitt," CNBC (Dec. 13, 2022) ("It's reminiscent of the old recipe for rabbit stew—first you have to start with a rabbit and it's not clear to me that these are securities. And in any event FTX wasn't registered with the SEC and there is a need here for a concise and considered national policy that lays out the rules of the road."), available at *https://www.cnbc.com/video/2022/12/13/regulating-cryptocurrencies-is-a-national-concern-not-a-political-issue-says-former-sec-chair.html*.

[5] *Id.*

[6] SEC Chairman Clayton's testimony entitled "Virtual Currencies: The Roles of the SEC and CFTC" before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Feb. 6, 2018), available at *https://www.sec.gov/news/testimony/testimony-virtual-currencies-oversight-role-us-securities-and-exchange-commission*; CFTC Chairman Giancarlo's testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Feb. 6, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37#P21_6885;* CFTC Chairman Behnam's testimony entitled "Why Congress Needs to Act: Lessons Learned from the FTX Collapse" before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (Dec. 1, 2022), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam29*.

[7] Browne, Ryan, "EU lawmakers approve world's first comprehensive framework for crypto regulation," CNBC (Apr. 20, 2023), available at *https://www.cnbc.com/2023/04/20/eu-lawmakers-approve-worlds-first-comprehensive-crypto-regulation.html*.

global leader in responsible blockchain and digital asset innovation, as well as vibrant, appropriately regulated digital asset markets.

The Digital Asset Market Structure Discussion Draft (the "Discussion Draft") is an important step in providing the necessary regulatory clarity with regard to the market structure for digital asset commodities and digital asset securities. I commend the coordination and diligence of the Agriculture and Financial Services Committees under the strong leadership of Chairmen Thompson and McHenry in acting quickly to introduce this important Discussion Draft. In particular, as I describe below, the intent of the Discussion Draft to establish regulatory regimes to register digital asset securities offerings and to register intermediaries under both the Securities Exchange Act of 1934 (the "Exchange Act") and the Commodity Exchange Act is critical to establishing a rational Federal system that will protect customers, allow responsible market participants to innovate and serve their customers' needs, and ensure fair, efficient, and globally competitive digital asset markets in the U.S.

II. Robinhood's Customers

For decades, economic and non-economic barriers to entry kept millions of hard-working Americans from participating in the stock market, which has been one of history's primary drivers of wealth creation. Robinhood changed that. Our innovative model helped spur a retail investor revolution. By eliminating costly trading commissions and account minimums, by providing innovative products like fractional shares and recurring investments, and by offering an easy-to-use mobile platform, the "have nots"—blue-collar workers, younger Americans with smaller amounts to invest, women and people of color, first-time investors, people from rural communities and inner cities alike, gig-economy workers and freelancers—now have access to markets historically reserved for the wealthy few. Similar to its equities business, Robinhood has provided broad access to digital asset markets through a low-cost, intuitive platform that forgoes many of the fees charged by other cryptocurrency companies.

Today, Robinhood has over 23 million net funded accounts, about half of which report being first-time investors, and $78 billion in assets under custody. Our customers hail from every state in the country and are a representative cross-section of America. With a median age of 33, Robinhood's customers are younger, have smaller account balances, and are more diverse than customers at incumbent firms.[8] We believe the trend of rising retail investor participation, particularly by younger people and historically underserved demographics, is good both for individual Americans looking to generate long-term financial security and the continued strength of U.S. capital markets and our economy.

We believe allegations from some policymakers and commentators that digital assets are too complex and risky for individual Americans are overly paternalistic and unproductive. These critics often ignore the fact that millions of Americans—including millions of Robinhood customers—*want to participate and are participating responsibly* in the digital asset economy, and they will continue to do so whether in the U.S. or through foreign platforms. We believe policymakers should support policy solutions that encourage Americans to engage in digital asset markets through responsible, appropriately-regulated U.S. firms, rather than incentivizing people to participate through often unregulated or lightly regulated foreign platforms.[9] At Robinhood, we stand behind our customers' ability to access digital asset markets and transact in tokens that meet our robust listing criteria—which require, among other things, significant liquidity, valid use cases, and strong developer networks—and we accompany this access with a well-developed compliance infrastructure, strong cybersecurity controls, digestible educational content, and multiple channels for customer support.

III. Robinhood Crypto's Business

Unlike many platforms in the digital asset industry, Robinhood Crypto is proud to be headquartered in the United States. As noted above, Robinhood Crypto allows customers in 48 states and the District of Columbia to buy, sell, store, and transfer

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[8] Median age as of February 2023. Demographic Data comes from a monthly Robinhood survey, powered by Dynata. Sample is representative of the U.S. population with brokerage accounts across age, gender, income, race/ethnicity, and regional residence. Incumbent firms include Charles Schwab, E*Trade, Fidelity, TD Ameritrade, Vanguard.

[9] This appears to be happening in greater numbers as a result of recent U.S. Government actions targeting the cryptocurrency industry. See Chipolina, Scott, "US crypto clampdown pushes exchanges to go offshore," *Fin. Times* (May 16, 2023), available at *https://www.ft.com/content/10979399-ba25-45b9-b85d-776c1b75bfea;* Osipovich, Alexander, "U.S. Crypto Traders Evade Offshore Exchange Bans," *Wall Street Journal* (July 30, 2021), available at *https://www.wsj.com/articles/u-s-crypto-traders-evade-offshore-exchange-bans-11627637401.*

(depending on the jurisdiction) a select number of cryptocurrencies—currently up to 18 tokens—at low cost without trading commissions, account minimums, and many other fees charged by our competitors.[10] Robinhood Crypto is federally-registered as a money services business with FinCEN, licensed as a money transmitter in 27 states, and holds a "BitLicense" from the New York Department of Financial Services. Robinhood Crypto was the first in the industry to provide customers 24/7 voice support, with chat support also available as of October 2022.

Robinhood Crypto is a marketplace, not an exchange. It does not match customer buy-and-sell orders directly—rather, it sends customer orders to liquidity providers who compete for the opportunity to execute these orders. Robinhood routes customer orders to its liquidity providers based on the best price and has established an execution quality committee that monitors the quality of cryptocurrency order execution on behalf of its customers. This generally results in highly competitive, low-cost executions without the fees charged by some competitors. In fact, some competitors charge both a commission/fee *and* a markup for providing trade executions to customers.

Robinhood Crypto also enables customers to deposit and withdraw cryptocurrencies to and from our custodial platform ("Crypto Transfers").[11] With Crypto Transfers, customers have full access to their digital assets and can use this service to participate in the cryptocurrency ecosystem—by tipping on social media, paying for non-fungible tokens ("NFTs"), and more.[12] Unlike some other digital asset platforms, Robinhood Crypto does not charge an extra fee to withdraw cryptocurrency from the Robinhood Crypto platform. With Crypto Transfers, we aim to offer a seamless and intuitive way for customers to use their digital assets by scanning QR codes to easily send digital assets to a wallet address. Robinhood Crypto has enhanced security and fraud protection mechanisms, including mandatory two-factor authentication to help protect customers' cryptocurrency and validate most wallet addresses so customers can make sure they are sending assets to a valid wallet address.

Robinhood Crypto is committed to providing access to digital assets for users across all demographics. Robinhood Learn ("Learn")[13] is at the center of our efforts to make trading digital assets more accessible and provide financial education both to our customers and to those who have not yet started their digital asset ownership journey. Learn is available to everyone (not just our customers) on the Robinhood website. Through Learn, Robinhood provides an extensive hub of educational articles for customers of every experience level in an easy-to-read format. We regularly collect feedback from readers to understand whether the content is helpful, and this feedback helps guide updates to our Learn articles. Educational articles on Learn received around four million page views throughout 2022. We even offer educational content specific to digital assets on Learn.[14] We have also partnered with the U.S. Hispanic Chamber of Commerce to continue Robinhood's Opportunity Crypto program that brings crypto education workshops to local communities across the country.[15]

Additionally, we offer Crypto Learn and Earn, an exclusive in-app educational module available to all Robinhood Crypto customers via Robinhood Learn to teach customers the basics about cryptocurrency.[16] Customers who complete the free learning modules related to either Avalanche or USDC are eligible to receive rewards, paid out in the applicable cryptocurrency (either AVAX, if customers have completed the Avalanche module, or USDC, if customers have completed the USDC module). Among the topics included are content discussing how cryptocurrency works, how cryptocurrency is different from traditional currency, and "what are stablecoins." Robinhood also has a site within our Help Center dedicated to

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[10] Unlike other digital asset platforms, Robinhood Crypto does not charge any extra fees to send or receive digital assets, and in fact Robinhood Crypto covers users' gas fees for network trading (but not for withdrawals).

[11] Due to local regulations, Crypto Transfers are not yet available in New York. We will inform customers in New York when this changes.

[12] Robinhood Crypto does not offer NFTs on its platform.

[13] Robinhood Learn, available at *https://learn.robinhood.com/*.

[14] Robinhood Learn: *What is a Cryptocurrency?,* available at *https://learn.robinhood.com/articles/1thUPqVffWfMYJvxthNrHn/what-is-a-cryptocurrency/*.

[15] Robinhood Blog: *Taking a Safety First Approach to Crypto,* available at Education *https://blog.robinhood.com/news/2022/10/11/taking-a-safety-first-approach-to-crypto-education-through-opportunity-crypto*.

[16] Robinhood *Crypto Learn and Earn,* available at *https://robinhood.com/us/en/support/articles/crypto-learn-and-earn/*. Robinhood does not earn direct revenues from Learn and Earn.

cryptocurrency education.[17] Some examples of the cryptocurrency-focused educational content vary from explanatory information about cryptocurrencies and the blockchain to "what is a hashrate." We warn our customers that trading in cryptocurrencies comes with significant risks, including volatile market price swings or flash crashes, market manipulation, and cybersecurity risks. We also make available a Robinhood Crypto Risk Disclosure.[18] We recognize and highlight for our customers that cryptocurrencies are a risky asset class, which should be carefully researched and evaluated by anyone thinking about purchasing a particular cryptocurrency.

Finally, the Snacks newsletter, produced by Sherwood Media, LLC, is yet another avenue for educating our customers and the general public about investing and buying digital assets in a very approachable and accessible format. Snacks is a curated digest of business news stories, including stories related to digital assets, delivered both daily and weekly via a newsletter that allows subscribers to start their days with the top business news of the day in an accessible, digestible medium. The Snacks newsletter has around 40 million subscribers as of December 2022, reinforcing our belief that Snacks is one of the most widely consumed newsletters in the U.S.

IV. Robinhood Crypto's Safety-First Approach

In contrast to many cryptocurrency platforms, Robinhood has extensive experience operating in highly-regulated industries with two broker-dealer subsidiaries registered with the SEC and FINRA. We apply this experience operating highly-regulated entities, as well as industry best practices, to Robinhood Crypto's business. Indeed, Robinhood Crypto has taken a thoughtful, incremental approach to building its cryptocurrency business—an approach we call "Safety-First."

For example, despite consistent customer demand, Robinhood Crypto does not offer yield-generating products, such as lending and staking. Robinhood does not and has never facilitated ICOs or issued its own native tokens, nor does it engage in proprietary trading. And, unlike some of our competitors that have grown quickly and now list hundreds of digital assets on their platforms, Robinhood Crypto has taken a more conservative approach to supporting digital assets.

Prior to 2022, Robinhood Crypto supported seven cryptocurrencies, including Bitcoin, Ether, and certain forks of these tokens. Robinhood Crypto has since incrementally added 12 additional assets and de-listed one asset for a total of 18 available to customers today (depending on the jurisdiction). Robinhood Crypto employs a robust process for reviewing digital assets designed to ensure that it does not make digital asset securities available to customers, which includes conducting thorough due diligence and receiving listing guidance from Robinhood stakeholders across, among other areas: (1) technology; (2) security; (3) legal; (4) compliance; (5) finance; (6) operations; and (7) anti-money laundering.[19] This process is overseen by Robinhood Crypto's Listing Committee, which includes the entirety of Robinhood Crypto's Board of Managers, including its General Manager and President, COO, CFO, and CISO. Other compliance, legal, and technical subject-matter experts contribute to the Committee's decision making process. The Committee also seeks the advice of outside counsel both on its listing process and methodology, as well as on each individual digital asset under consideration.

In addition to engaging in a thorough review before deciding whether to support a digital asset, the Committee also conducts periodic reviews of the assets available on the Robinhood Crypto platform to ensure the assets continue to meet the listing requirements. As noted above, the Committee determined to cease support for one asset in 2022 as a result of this periodic review.

As a Safety-First company, Robinhood Crypto has robust risk controls and monitoring in place to protect customer assets. Robinhood Crypto holds all settled cryptocurrencies in custody on behalf of customers, and closely monitors its wallet balances to ensure that the majority of customer assets are held in cold storage. Robinhood Crypto also has strict controls around any wallet movements.

Since Robinhood Crypto's inception in 2018, it has pursued appropriate licenses required to be fully operational in the states in which it operates. Moreover, although Robinhood Crypto is confident that it does not list digital asset securities among the select group of 18 assets supported on the platform, it has nevertheless

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[17] Robinhood Help Center: *Cryptocurrency Education,* available at *https://robinhood.com/us/en/support/articles/cryptocurrency-education/*.

[18] Robinhood *Cryptocurrency Risk Disclosure,* available at *https://cdn.robinhood.com/assets/robinhood/legal/Robinhood%20Crypto%20Risk%20Disclosures.pdf*.

[19] Robinhood does not accept payments from third parties in connection with any decision to support digital assets on its platform.

proactively pursued registration as a digital asset special purpose broker-dealer at the Federal level.

In 2021, SEC Chair Gensler called on market participants in digital asset markets to "come in and register."[20] In testimony before the Senate Banking Committee in September 2021, Chair Gensler stated, "I've suggested that platforms and projects come in and talk to us. . . . I believe that the SEC, working with the CFTC and others, can stand up more robust oversight and investor protection around the field of crypto finance."[21] Robinhood Crypto heeded the Chair's call, notwithstanding its current business model and its robust policies to ensure that it does not support digital asset securities on its platform.

In fact, in December 2021, I announced on CNBC that Robinhood Crypto would attempt in good faith to register with the SEC, or what we at Robinhood call "crypto the hard way."[22] Over the next year and a half, we had over a dozen meetings and calls with the SEC to discuss our cryptocurrency business, including our listing process, as well as our targeted, written request for relief for a registered special purpose broker-dealer that would be able to support both digital asset commodities and digital asset securities in compliance with Federal law. While these discussions with the SEC staff have always been cordial and often deeply substantive, we have unfortunately not been able to make any progress with the Commission on our request for relief to register. While we are disappointed with this lack of progress, we continue to attempt to engage with SEC staff regarding our efforts to register and remain open to further dialogue if given the opportunity.

V. The Discussion Draft Provides Much-Needed Regulatory Clarity

Following the SEC's crackdown on fraudulent ICOs, the SEC under Chairman Clayton engaged in a commendable (though ultimately limited) effort to provide tailored relief to the digital asset industry *without* sacrificing important investor protections. Three actions by the SEC during this period are worth highlighting:

- First, on October 28, 2019, the SEC's Division of Trading and Markets provided "no-action" relief for Paxos' blockchain settlement platform to process transactions for a limited number of broker-dealers in certain listed U.S. equity securities.[23]
- Next, on December 3, 2020, Chairman Clayton converted the SEC's Strategic Hub for Financial Innovation and Technology into a standalone office to formally spearhead the agency's efforts to "encourage responsible innovation in the financial sector, including in evolving areas such as distributed ledger technology and digital assets."[24]
- Finally, on December 23, 2020, the SEC released its policy statement on the "Custody of Digital Asset Securities by Special Purpose Broker-Dealers" (the "Commission Statement"), which articulated the SEC's position that, for a period of 5 years, a broker-dealer that satisfies the conditions set forth in the Commission Statement would not be subject to a Commission enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer—fully-paid and excess margin digital asset securities for the purposes of the Customer Protection Rule.[25]

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[20] Wieczner, Jen, "Gary Gensler on Crypto, SPACs, and Robinhood Wall Street's top cop wants to police new finance with old rules," *New York Magazine* (Sept. 13, 2021), available at *https://nymag.com/intelligencer/2021/09/gary-gensler-sec-chair-crypto-spacs-robinhood.html*.

[21] Testimony of Gary Gensler Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs(Sept. 14, 2021), at 6, available at *https://www.banking.senate.gov/imo/media/doc/Gensler%20Testimony%209-14-21.pdf*.

[22] *See* "Crypto legislation likely won't come anytime soon: Robinhood's chief legal officer," CNBC (Dec. 8, 2021), available at *https://www.cnbc.com/video/2021/12/08/crypto-legislation-likely-wont-come-anytime-soon-robinhoods-chief-legal-officer.html*.

[23] *See* Paxos Trust Company, LLC No-Action Letter, available at *https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf*. As a former SEC Commissioner and practitioner, I cannot emphasize enough the importance of the Paxos no-action letter. At a policy level, it demonstrates the proper role of government—allowing for innovation in a controlled manner without sacrificing investor protections. From a practitioner level, it plainly lays out the broad need for regulatory relief if we are to allow SEC-regulated digital asset securities trading in the U.S.

[24] *See* SEC Release No. 2020–303, "SEC Announces Office Focused on Innovation and Financial Technology," available at *https://www.sec.gov/news/press-release/2020-303*.

[25] SEC Release No. 2020–340, "SEC Issues Statement and Requests Comment Regarding the Custody of Digital Asset Securities by Special Purpose Broker-Dealers," available at *https://www.sec.gov/news/press-release/2020-340; see* SEC Proposed Rule, "Custody of Digital Asset Securities by Special Purpose Broker-Dealers," 86 *Fed. Reg.* 11627 (Feb. 26, 2021).

This short-lived period of innovation at the Commission ended with Chairman Clayton's term. Rather than work with Congress to pass comprehensive legislation governing digital assets or issue a generally applicable proposed rule, the SEC's current approach to addressing digital asset regulatory issues is now largely through enforcement actions and by attempting to shoehorn cryptocurrency into proposed rules primarily addressing other discrete areas of traditional finance, such as communications protocols for trading government securities (definition of an exchange), investment advisor custody requirements (qualified custodians), and equity market structure (best execution).[26]

Robinhood Crypto remains committed to engaging with the SEC (if possible) and operating in a fully compliant manner to provide our customers with low-cost access to the cryptocurrency products and services they want. At the same time, however, the persistent lack of Federal regulatory clarity and recent enforcement actions against individual cryptocurrency platforms have created an environment in which a firm that is truly committed to regulatory compliance and investor protection, such as Robinhood Crypto, is working at a competitive disadvantage. Regulatory uncertainty has at times rendered Robinhood Crypto unable to meet the demands of our customers for additional digital asset products and services (*e.g.,* certain additional cryptocurrency tokens or yield products, including lending and staking). As a result, the Discussion Draft comes at a critical time for Robinhood Crypto and other responsible digital asset market participants seeking to grow their businesses and serve customers in a manner fully compliant with applicable Federal commodities and securities laws.

The Discussion Draft is a significant step toward providing regulatory clarity to market participants and authority to regulators in key areas where neither exist today. As described below, Robinhood Crypto generally supports the intent of the Discussion Draft and recommends additional matters to consider as the legislative process continues.

A. Title II—Digital Asset Exemptions

While Robinhood Crypto does not issue tokens, we generally support the intent of Title II of the Discussion Draft to provide a path for issuers of digital asset securities to offer such assets to the public in a compliant manner, including with appropriate disclosures to investors that take into account the unique issues presented by digital asset issuers and the assets themselves. Importantly, the Discussion Draft recognizes that traditional securities-offering rules should not apply to decentralized digital assets and that the secondary trading of these assets is more appropriately regulated under the Federal commodities laws.

B. Titles I & III—Digital Asset Intermediaries

Robinhood Crypto generally supports the Discussion Draft's provisions allowing broker-dealers to register with the SEC as digital asset intermediaries. As described above, Robinhood Crypto and other digital asset intermediaries have no viable path to register with the SEC as broker-dealers and thus cannot offer digital asset securities to customers. Importantly, the Discussion Draft provides both provisional and full registration categories for broker-dealers offering digital asset securities, as well as dual CFTC registration for platforms that also offer or seek to offer digital asset commodities. Robinhood Crypto respectfully suggests that the Committees clarify that dual registrants are able to offer both digital asset securities and digital asset commodities to customers on the same platform.

The Discussion Draft also grants provisionally registered digital asset intermediaries with limited relief from enforcement action. Robinhood Crypto believes this relief is an essential component of any viable path to registration for digital asset intermediaries, particularly where the classification of a digital asset as a security *versus* a commodity is unclear.[27] We respectfully request that the Committees consider expanding the scope of the proposed relief to include other alleged violations, including alleged violations of the "specified regulations" identified in Section 306.

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[26] SEC Proposed Rule, "Amendments Regarding the Definition of 'Exchange' and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities," 87 *Fed. Reg.* 15496 (Mar. 18, 2022); SEC Proposed Rule, "Safeguarding Advisory Client Assets," 88 *Fed. Reg.* 14672 (Mar. 9, 2023); SEC Proposed Rule, "Regulation Best Execution," 88 *Fed Reg.* 5440 (Jan. 27, 2023).

[27] *See, e.g.,* Press Release, "Hagerty Introduces Legislation to Provide Crucial Regulatory Clarity for Digital Assets" (Sept. 29, 2022), available at *https://www.hagerty.senate.gov/press-releases/2022/09/29/hagerty-introduces-legislation-to-provide-crucial-regulatory-clarity-for-digital-assets/*.

Robinhood Crypto also respectfully encourages the Committees to address the predicament created for broker-dealer custodians of digital assets by SEC Staff Accounting Bulletin ("SAB") 121. Issued by Commission staff without public notice and comment, SAB 121 requires that customer digital assets custodied by a broker-dealer—and potentially even customer digital assets custodied by an affiliate of the broker-dealer—be recorded as a liability on the broker-dealer's balance sheet. We believe this requirement would result in few, if any, broker-dealers being sufficiently capitalized to operate as digital asset intermediaries under existing SEC rules. Robinhood Crypto respectfully requests that the Committees consider clarifying that (1) a broker-dealer affiliated with a non-broker-dealer digital asset custodian, in the ordinary course, is not obligated to record the custodied digital assets on the broker-dealer's balance sheet and (2) a broker-dealer digital asset custodian is permitted to consider the custodied digital assets to be allowable assets that offset the liabilities that result from recording the custodied digital assets on the broker-dealer's balance sheet.

C. Title III—Alternative Trading Systems for Digital Asset Securities

Robinhood Crypto generally supports the provisions of Title III of the Discussion Draft allowing platforms to register with the SEC as alternative trading systems for digital asset securities. The Discussion Draft provides a practical path for digital asset securities to trade on SEC-registered platforms that match customer orders without the complications of certain requirements prescribed for national securities exchanges that do not easily apply to digital asset platforms.

D. Title IV—Commodity Exchange Act Amendments

Robinhood Crypto generally supports the Discussion Draft's amendments to the Commodity Exchange Act, including spot market authority for the CFTC, as well as provisions in Section 406 establishing a system for registering and regulating digital commodity brokers and dealers. In particular, we support the efficiencies created by allowing intermediaries to satisfy the registration requirements of digital commodity brokers by registering either as a futures commission merchant or an introducing broker.

E. Title V—SEC Modernization

Robinhood Crypto supports Section 504's amendments to the Securities Act of 1933 and the Investment Advisers Act of 1940 requiring the Commission to consider whether its rulemaking promotes innovation. The proper role of the SEC should be to encourage innovation in our financial markets, and this can and should be done in harmony with the SEC's statutory mission to protect investors; ensure fair, orderly, and efficient markets; and facilitate capital formation.

There are additional matters that we believe the Committees should consider addressing with regard to digital asset securities (including, for example, clarifying whether digital asset securities are covered by the Securities Investor Protection Act and provisions governing clearing firms and transfer agents), and we look forward to working with Members and staff to further enhance this productive Discussion Draft.

VI. Conclusion

Robinhood Crypto commends the Agriculture and Financial Services Committees for their work on this important legislation. For too long, the digital asset economy and millions of Americans who wish to participate in it have had to contend with stifling regulatory uncertainty. The Discussion Draft is a positive step forward in finally bringing more clarity to the regulations governing U.S. digital asset markets.

Mr. FEENSTRA. Thank you for your testimony, Mr. Gallagher. Mr. Berkovitz, you now have 5 minutes. Begin when you are ready.

STATEMENT OF HON. DAN M. BERKOVITZ, FORMER COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION; FORMER GENERAL COUNSEL, U.S. SECURITIES AND EXCHANGE COMMISSION, BETHESDA, MD

Mr. BERKOVITZ. Thank you, Mr. Chairman, Ranking Member Scott, Members of the Committee, for the invitation to appear here to discuss gaps in the regulation of the digital asset markets. My appearance today is in my own personal capacity. I am not rep-

resenting or speaking on behalf of any other person, governmental agency, or private-sector entity.

This Committee's hearing today is timely. Digital assets and the associated blockchain technologies have the potential to transform the availability, scope, and efficiency of financial services to American consumers and businesses. As the events of the past year have demonstrated, however, certain of these unregulated markets are operating in a manner that presents significant risks to customers and investors in these markets, including risks from information asymmetries, abusive trading practices, manipulation, and conflicts of interest.

The SEC regulates the trading of digital assets that are securities. The CFTC regulates the trading of derivatives on digital assets. Neither the CFTC nor the SEC has regulatory authority over the cash or spot markets for non-security digital assets. This gap needs to be closed. The CFTC presently regulates the futures markets for digital assets, conducts surveillance of the underlying spot markets as part of its oversight of the futures markets, and can bring enforcement actions for fraud or manipulation in the spot market. Providing the CFTC with regulatory authority over these non-security spot markets would leverage its current enforcement authority and surveillance program.

Legislation to provide the CFTC with regulatory authority over these markets should require that trading facilities for non-security spot digital assets be licensed by the CFTC. The legislation also should provide for the regulation of intermediaries in these markets. The legislation should establish core principles for the operation of a non-security digital asset trading facility.

The legislation should establish a dual track for the review of applications to trade specific digital assets on the facility. On one track, the SEC would review the asset proposed to be traded to determine whether the digital asset is a security. Digital assets determined to be securities would continue to be regulated under the securities laws, and not be eligible for trading on a CFTC licensed facility. On the other track, the CFTC would review the proposed listing to determine whether the digital asset will be traded in accordance with the CFTC's core principles, including disclosure requirements.

The CFTC should be provided with a dedicated source of funding for the regulation and oversight of the non-security digital asset spot market. Current CFTC resources are not sufficient to undertake this new responsibility without undermining the CFTC's ability to oversee the traditional commodity markets, including agricultural commodity markets. The legislation otherwise should maintain existing agency jurisdictions and authorities. The CFTC and SEC have the necessary and appropriate authorities to regulate the derivative and security markets.

Amendments to the SEC's authorities over one particular asset class, such as digital assets, would be unnecessary and counterproductive. Carving out of the SEC's authority a particular type of asset based upon its particular technology of creation or distribution, or degree of centralization in the market for its distribution, would disrupt decades of settled securities law, create uncertainty about the meaning and interpretation of new and existing statutory

terms, delay compliance with security and commodities laws for years while agencies are conducting numerous rulemakings to define new terms and establish new requirements, hinder current enforcement of securities laws to protect investors, and generate opportunities for regulatory arbitrage in the capital markets based upon the technology for which the asset is created or distributed, rather than the functional nature of the instrument or asset to raise capital from investors.

Legislation, as outlined in my testimony, would close the regulatory gap in a straightforward manner. It would provide critically needed protections to investors. The dual track process for the review of digital assets would provide regulatory certainty as to the legal status of a digital asset prior to the trading of the asset on any facility. Together, these reforms would enable the U.S. to maintain its global leadership in financial technology and markets. Thank you, I am happy to answer questions.

[The prepared statement of Mr. Berkovitz follows:]

PREPARED STATEMENT OF HON. DAN M. BERKOVITZ, FORMER COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION; FORMER GENERAL COUNSEL, U.S. SECURITIES AND EXCHANGE COMMISSION, BETHESDA, MD

Chairman Thompson, Ranking Member Scott, and Members of the Committee, thank you for the invitation to appear before you today to discuss gaps in the regulation of the digital asset markets. I offer you my perspective on the regulation of digital asset markets after having spent the past 20+ years in various regulatory, oversight, and private-sector advisory capacities related to the commodity and financial asset markets. My appearance before you today is in my own personal capacity. I am not representing or speaking on behalf of any other person, governmental agency or private sector entity.

This Committee's series of hearings on the gaps in the regulation of digital assets is timely. Digital assets and the associated blockchain technologies have the potential to transform the availability, scope, and efficiency of financial services to American consumers and businesses and across the globe. As the events of the past year have demonstrated, however, as currently structured certain digital asset markets present significant risks to American consumers and business and even to the stability of banks and the overall financial system. It is critical that these markets operate in a manner that does not present undue risks to market participants and the financial system.

In this testimony I will describe the gaps in the regulation of the digital asset markets in the U.S. and offer a blueprint for how to close these gaps. Closing the gaps in the regulation of these markets would improve the protections for investors in the digital asset markets, bolster the integrity of these markets, reduce potential systemic risks to the financial system, provide greater clarity and certainty regarding the legal status of digital assets traded in these markets, and thereby foster our nation's leadership in financial markets and technologies.

Summary

There is a significant gap in the regulation of the digital asset markets. No Federal agency has regulatory authority over the trading of non-security, non-derivative commodities. The U.S. Securities and Exchange Commission (SEC) regulates the trading of digital assets that are securities. The U.S. Commodity Futures Trading Commission (CFTC) regulates the trading of derivatives on digital assets. Neither the CFTC nor the SEC has regulatory authority over the cash or "spot" market for non-security digital assets.

There is an urgent need to close this gap. These unregulated markets are operating in a manner that present significant risks to customers and investors in these markets, including risks from information asymmetries, abusive trading practices, manipulation, and conflicts of interest in the operation of trading infrastructures. These unregulated markets also present broader risks to the financial system.

Although both the SEC and the CFTC have the expertise to regulate the non-security spot digital asset markets, the CFTC already regulates the futures markets for digital assets and conducts surveillance of the underlying spot markets as part of its oversight of the futures markets. Providing the CFTC with regulatory author-

ity over these spot markets would leverage its current enforcement authority in these markets.

Legislation to provide the CFTC with this additional CFTC regulatory authority over non-security spot digital markets should require that trading facilities for non-security spot digital assets must be licensed by the CFTC. The legislation also should provide for the regulation of intermediaries in the non-security spot digital asset markets, similar to the CFTC's regulation of intermediaries in the derivative markets.

The legislation should establish a set of core principles that provide basic standards for the licensing and operation of a digital asset trading facility. These core principles should be consistent with best practices for trading facilities in other CFTC-regulated asset classes, such as the CEA sets forth for designated contract markets for the trading of futures contracts and swap execution facilities for the trading of swaps.

The legislation should establish a dual track for the review of applications by the trading facility for the approval of digital assets proposed to be listed for trading. On one track, the SEC would review the proposed listing to determine whether the digital asset proposed to be traded on the facility is a security. Digital assets determined to be securities would not be eligible for trading on the CFTC-licensed facility and would continue to be regulated under the securities laws. On the other track, the CFTC would review the proposed listing to determine whether the digital asset will be traded in accordance with the CFTC's listing standards, disclosure requirements, and trading facility core principles.

The CFTC should be provided with a dedicated source of funding for the regulation and oversight of the non-security digital asset spot market. Current CFTC resources are not sufficient to undertake this additional responsibility without compromising the CFTC's ability to oversee the traditional commodity markets.

Apart from closing the gap in this manner, the legislation otherwise should maintain existing agency jurisdictions and authorities. The CFTC and SEC have the necessary and appropriate authorities to regulate the derivative and security markets. Amendments to the SEC's authorities over one particular asset class, such as digital assets, would be unwarranted, unnecessary, and potentially counterproductive. Creating new authorities based on a particular technology or newly defined asset class could disrupt decades of securities law precedent, create additional uncertainty about the meaning and interpretation of both new and existing statutory terms and classifications, and generate opportunities for regulatory arbitrage in the capital markets based upon technology upon which the asset is created or distributed rather than the functional nature of the asset or instrument.

Legislation as outlined above, confined to closing the gap, would provide important protections to members of the public and other investors in digital assets, as well as to the financial system more generally. It would eliminate much of the regulatory arbitrage that currently exists between CFTC- and SEC-regulated markets due to regulatory gaps. Further, the proposed dual track process for the review of digital assets proposed to be traded on the facility would provide regulatory certainty as to the legal status of a digital asset prior to the trading of such asset on the facility. Together, these reforms would enable the U.S. to maintain its global leadership in financial technology and markets.

The Regulatory Gap in Digital Asset Markets

Under the Commodity Exchange Act (CEA), the CFTC has exclusive jurisdiction over most transactions involving commodity derivatives, such as contracts for future delivery and swaps whose value is based on the price of an underlying commodity.[1] This jurisdiction includes authority to prescribe requirements for transactions involving commodity derivatives—generally called "regulatory authority"—and authority to bring enforcement actions for violations of such requirements.

The CFTC's authority over the spot market for commodities is much more limited. The CFTC does not have regulatory authority over the spot market for commodities. In these spot markets the CFTC only has enforcement authority to bring post-event enforcement actions for fraud or manipulation.

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[1] CEA § 2(a)(1), 7 U.S.C. § 2(a)(1). The CFTC's jurisdiction over commodity derivatives is not exclusive if the instrument is a future or swap on a security, in which cases jurisdiction is joint with the SEC. For a fuller description of the CFTC's jurisdiction over commodities, including how it relates to the SEC's jurisdiction over securities, *see* Letter from Robert A. Schwartz, Deputy General Counsel, CFTC, to The Honorable P. Kevin Castel, U.S. District Judge, *Re: SEC* v. *Telegram Group, Inc., et al.,* No. 1:19–cv–09439 (PKC), Feb. 18, 2020 ("Schwartz letter"); available at: *https://storage.courtlistener.com/recap/gov.uscourts.nysd.524448/gov.uscourts.nysd.524448.203.0.pdf*.

The CEA defines commodity broadly. It includes specified agricultural commodities, called "enumerated commodities," "all other goods and articles, except onions . . . and motion picture box office receipts," "and all service, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in."[2] Since 2015 the CFTC has asserted that digital currency is a commodity.[3]

CFTC Chair Behnam recently summarized the limited nature of the CFTC's authority over the spot market for digital assets:

> [T]he CFTC does not have direct statutory authority to comprehensively regulate cash digital commodity markets. Its jurisdiction is limited to its fraud and manipulation enforcement authority. In the absence of direct regulatory and surveillance authority for digital commodities in an underlying cash market, our enforcement authority is by definition reactionary; we can only act after fraud or manipulation has occurred or been uncovered.[4]

The SEC's authority under the securities laws is comprehensive with respect to securities, but does not extend generally to non-security instruments or assets. Hence, neither the CFTC nor the SEC have comprehensive regulatory authority over non-security digital asset spot markets. This is a major regulatory gap.

Need to Close the Gap

In its recent report on Digital Asset Financial Stability Risks and Regulation, the Financial Stability Oversight Council (FSOC) identified a variety of risks to investors and financial stability that arise as a result of the gap in the regulation of non-security digital assets.[5] The FSOC noted that "[t]he spot market for crypto-assets that are not securities provide relatively fewer protections for retail investors compared to other financial markets that have significant retail participation."[6] The FSOC observed that the trading platforms in these non-security digital asset markets "engage in practices that a commonly subjected to greater regulation in other financial markets." These include the operation of order-book style markets that typically are subject to trading rules regarding trade execution and settlement, custody requirements, and operational security and reliability requirements.

Overall, the FSOC concluded, "[s]ignificant market integrity and investor protection issues may persist because of the limited direct Federal oversight of these spot markets, due to abusive trading practices, inadequate protection for custodied assets, or other practices."[7] The FSOC warned that if the scale of crypto asset activities increased rapidly, these issues could pose broader financial stability issues. The FSOC recommended that Congress pass legislation to provide for regulatory authority over non-security digital assets.[8]

These concerns are widespread. The Financial Stability Institute of the Bank of International Settlements issued a recent paper that warned more generally that the digital assets markets "pose risks which, if not adequately addressed, might undermine consumer protection, financial stability and market integrity."[9] The International Monetary Fund published a study that identified numerous risks with cryptocurrency exchanges, including "market abuse risks," information asymmetries, "high risk of market manipulation," weak price discovery functions, and, more specifically, wash trading, pump-and-dump schemes, and whale trades.[10]

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[2] CEA § 1(a)(9), 7 U.S.C. § 1(a)(9).

[3] *CFTC* v. *My Big Coin Pay, Inc.,* 334 F. Supp. 3d 492, 495–98 (D. Mass. 2018) (citing cases); *In re BFXNA Inc. d/b/a Bitfinex,* CFTC Dkt. No. 16–19, 2016 WL 3137612, at *5 (CFTC June 2, 2016) ("Bitcoin and other virtual currencies are . properly defined as commodities."). *See* Schwartz letter, *supra.*

[4] Testimony of Chairman Rostin Behnam Before the U.S. Senate Committee on Agriculture, Nutrition & Forestry, Oversight of the Commodity Futures Trading Commission, March 8, 2023 (footnote omitted); available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam32#_ftnref10.*

[5] FSOC, *Report on Digital Asset Financial Stability Risks and Regulation 2022* (Oct. 2022); available at: *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[6] *Id.* at 113.

[7] *Id.* at 114.

[8] FSOC Report, at p. 111.

[9] Denise Garcia Ocampo, Nicola Branzoli and Luca Cusmano, Financial Stability Institute, Bank of International Settlements, *Crypto, tokens and DeFi: navigating the regulatory landscape,* May 2023, at p. 4; available at: *https://www.bis.org/fsi/publ/insights49.pdf.*

[10] Parma Bains, Arif Ismail, Fabiano Melo, Nobuyasu Sugimoto, International Monetary Fund, FINTECH NOTES, *Regulating the Crypto Ecosystem, The Case of Unbacked Crypto Assets,* Sept. 2022, at pp. 18–19; available at: *https://www.imf.org/en/Publications/fintech-notes/Issues/2022/09/26/Regulating-the-Crypto-Ecosystem-The-Case-of-Unbacked-Crypto-Assets-523715.*

The risks to participants in the U.S. digital asset markets are real. "[B]asic customer protections are often missing in the crypto industry"[11] Many customers that have been exposed to practices that are prohibited in regulated markets have been harmed as a result. These practices include the use of customer funds to support trading by affiliates,[12] the use of funds of one customer to satisfy an exchange's liabilities to another customer,[13] and trading against customers by exchanges.[14] Although in some instances agencies have been able to bring retrospective enforcement actions for fraud or misappropriation of customer funds, these retrospective actions have been brought after customers have been harmed. A regulated trading environment where customer safeguards are mandatory will significantly increase customer protections that will help prevent those harms from occurring.

Additional CFTC Authority Over Non-Security Digital Assets

The CFTC is well-positioned to undertake regulation and oversight of the non-security digital asset spot market. The CFTC already regulates the futures markets for key digital assets, such as Bitcoin and Ether. The spot markets for these assets provide the settlement prices for these futures contracts, so as part of its oversight of the futures markets for these assets the CFTC currently conducts surveillance of the spot markets. The CFTC already has experience and is familiar with these spot markets.

Legislation expanding CFTC authority to regulate the non-security digital asset spot markets should include the following:

- **Registration and regulation of trading facilities.** Trading facilities for non-security digital assets must be licensed by the CFTC.
- **Registration and regulation of intermediaries.** The CFTC's authority over intermediaries in the futures and swaps market for digital assets should be extended to include intermediaries who perform similar intermediary functions in the non-security spot digital asset markets.
- **Core Principles for trading facilities.** CFTC-licensed trading facilities for non-security digital assets must operate in accordance with core principles for facility licensing and operation.
- **Digital asset listing standards.** To be eligible for trading on a CFTC-licensed trading facility, the trading facility must submit a proposed digital asset listing in accordance with digital asset listing standards. The digital asset listing standards should include disclosures regarding the nature of the digital asset to be listed for trading and other information demonstrating the digital asset will be traded in compliance with the core principles.
- **Dual track review of proposed digital asset listings.** On one track, the SEC would review the proposed listing and determine whether the digital asset to be traded is a security subject to SEC regulation. Digital assets determined by the SEC to be a security would need to be traded in accordance with the security laws and would not be eligible to be listed or traded on the CFTC facil-

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[11] Keynote address by Commissioner Christy Goldsmith Romero at the Wharton School and the University of Pennsylvania Carey Law School, *Crypto's Crisis of Trust: Lessons Learned from FTX's Collapse,* Jan. 18, 2023 (cataloging abusive practices, governance failures, inadequate disclosures, deficient recordkeeping, and conflicts of interest); available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/oparomero5*.

[12] *See, e.g., CFTC* v. *Samuel Bankman-Fried, FTX Trading Ltd. d/b/a FTX.com,* and Alameda Research LLC, Case 1:22–cv–10503 (SDNY Dec. 13, 2022) ("Throughout the Relevant Period, at the direction of Bankman-Fried and at least one Alameda executive, Alameda used FTX funds, including customer funds, to trade on other digital asset exchanges and to fund a variety of high-risk digital asset industry investments."), at p. 3; available at: *https://www.cftc.gov/PressRoom/PressReleases/8638-22*. Mr. Bankman-Fried has contested the charges, but several of his associates have entered guilty pleas in the related criminal cases. *See, e.g.,* Corinne Ramey and David Michaels, *Caroline Ellison, Associate of FTX Founder Sam Bankman-Fried, Pleads Guilty to Criminal Charges,* WALL STREET JOURNAL, Dec. 21, 2022.

[13] *See, e.g.,* Final Report of Shoba Pillay, Examiner, *In re Celsius Network LLC, et al., Debtors,* United States Bankruptcy Court, Southern District of New York, Chapter 11, January 30, 2023, at p. 12; available at: *https://cases.stretto.com/public/x191/11749/PLEADINGS/1174901312380000000039.pdf*.

[14] *See, e.g.,* Eva Szalay, *Crypto exchanges' multiple roles raise conflict worries,* FINANCIAL TIMES, Nov. 14, 2021 ("Rather than being a neutral party to transactions, like a stock exchange, a crypto platform can trade against customers, creating a situation where, for one side to win, the other must lose—meaning that retail clients are at risk of being treated unfairly."); available at: *https://www.ft.com/content/8b8e6d72-b1d2-435c-88c1-4611e3a98da5; see also* Allyson Versprille and Olga Kharif, *SEC's Gensler Says Crypto Exchanges Trading Against Clients,* BLOOMBERG, May 10, 2022; available at: *https://www.bloomberg.com/news/articles/2022-05-10/sec-chief-questions-whether-crypto-exchanges-bet-against-clients?sref=DzeLiNol*.

ity. On the other track, for non-security digital assets, the CFTC would review the proposed listing to determine whether the digital asset will be traded in accordance with the listing standards, core principles, and CFTC regulations.

- **Dedicated funding source for expanded CFTC responsibility.** The legislation should provide a dedicated source of funding for these additional CFTC responsibilities.
- **Maintain current authorities over digital asset markets.** The legislation should otherwise maintain the existing authorities of the SEC and CFTC, respectively, over the securities and derivative markets.

Each of these features is explained more fully below.

Registration and regulation of trading facilities. Any trading facility that provides for the trading of non-security spot digital assets must be registered with the CFTC and operate in accordance with its license. Registration and regulation of these trading facilities in accordance with core principles established by the legislation and implemented by the CFTC can address many of the risks currently presented by the trading of non-security digital assets in unregulated spot markets.

Registration and regulation of intermediaries. Brokers, dealers, associated persons of brokers and dealers, commodity pool operators, and commodity trading advisors in non-security spot digital assets should also be regulated. To the extent that these types of intermediaries facilitate customer transactions and investments in non-security spot digital assets, they should be regulated in a similar manner as other types of intermediaries performing similar functions with other CFTC-regulated asset classes. In the Dodd-Frank Act Congress added swaps to the types of instruments to which these categories of registration for intermediaries applied. Congress could similarly expand these categories of registration to include non-security spot digital assets.

Core principles for trading facilities. Similar to the licensing requirements for a designated contact market (DCM) or swap execution facility (SEF), the legislation should establish core principles for facility licensing and operation. As with the DCM and SEF core principles, the CFTC should be provided with authority to prescribe the manner in which these core principles must be implemented by the trading facility. Consistent with the best practices reflected in the DCM and SEF core principles, and in light of the specific risks presented by digital assets, the core principles should establish the following:

- Listed digital assets should not be readily susceptible to manipulation;
- A competitive, open and efficient market for executing transactions;
- Protection of market participants and markets from abusive practices, including fraud and manipulation;
- Monitoring, surveillance, and enforcement to prevent manipulation, price distortions, and disruptions;
- Recordkeeping and public disclosure of trading information;
- Public disclosure of general information about trading rules, regulations, fees, disciplinary procedures, and dispute resolution;
- Governance standards, including fitness standards for directors and officers;
- Prohibitions of conflicts of interest in the management of the facility, including conflicts of interest with customers;
- Adequacy of financial resources for facility operations;
- System safeguards, including operational resilience, disaster recovery, back-up resources, and cyber security;
- Protection of customer assets, including segregation requirements and bankruptcy protections;
- Emergency authority;
- Know-your-customer and anti-money laundering requirements; and
- Disclosure requirements for listed digital assets.[15]

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[15] The list here is consistent with list presented to the Committee's Subcommittee on Commodity Markets by former CFTC Chairman Massad. *See* Written Statement of Timothy G. Massad before the Subcommittee on Digital Assets, Financial Technology and Inclusion U.S. House of Representatives Financial Services Committee and the Subcommittee on Commodity Markets, Digital Assets and Rural Development 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, at pp. 9–10; available at: *https://docs.house.gov/meetings/AG/AG22/20230510/115893/HHRG-118-AG22-Wstate-MassadT-20230510.pdf*.

Consistent with its current authorities over DCMs and SEFs, the CFTC also should be provided authority to conduct examinations of licensed facilities, including inspections of books and records.

Product Listing standards. The core principles for a non-security digital asset trading facility should include a requirement providing for the disclosure of key information about the digital asset. These disclosures could include information about the issuer of the asset, the risks presented by the asset, the technology underlying the asset, rights and obligations that may attach to the asset, and the market capitalization of the asset. Providing disclosures about the key features of the digital assets to be traded will promote market integrity and fairness by reducing information asymmetries in the trading of these assets. These disclosures could be modeled on the disclosures currently required for the registration of digital asset securities, but potentially modified as appropriate to take into account the non-security nature of these assets.[16]

Dual track review of proposed digital asset listings. A proposed listing of a digital asset for trading on a trading facility for non-security digital assets should be subject to a dual track review by the SEC and the CFTC. On one track, the SEC would review the proposed listing to determine whether the digital asset to be traded on the facility is a security subject to the SEC's regulations. Digital assets that are securities would continue to be subject to the securities laws and not eligible for trading on the facility. Proposed listings that are determined not to be securities could be traded on the facility.

On the other track, the CFTC would review the proposed listing to determine whether the required disclosures have been provided and the digital asset would be traded in accordance with the core principles and CFTC regulations. The SEC and CFTC would consult with each other during their respective reviews to minimize duplication and maximize efficiency.[17] The final determinations of the CFTC and SEC with respect to proposed product listings would be subject to judicial review.

The dual track review process for digital asset listings would address the criticisms of the current regulatory process whereby SEC determinations regarding the status of a digital asset generally occur *retrospectively,* in the context of enforcement actions after trading has commenced. The process outlined above would provide for *prospective* SEC determinations of the status of a digital asset prior to trading. This would provide regulatory certainty for market participants and infrastructures regarding the status of digital assets traded on the facility.

For this process to be effective, the SEC should be provided sole responsibility for the determination as to whether the digital asset is a security. Under current law the SEC has the sole responsibility and expertise to determine whether a particular instrument or asset is a security.[18] Authorizing another agency to make this determination with respect to a digital asset proposed for listing on a trading facility would create a significant risk of conflict and confusion with SEC determination re-

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[16] *See, e.g.,* Chris Brummer, *Disclosure, Dapps and DeFi,* STANFORD JOURNAL OF BLOCKCHAIN LAW & POLICY, Vol. 5.2, at p. 137 (2022); available at *https://assets.pubpub.org/efeeza8o/01656289809141.pdf.*

[17] Under current law, the CEA specifies a timeframe for the CFTC to make a determination on a request for prior approval of a contract to be traded on a DCM, CEA § 5c, 7 U.S.C. § 7a–2, and the Securities Exchange Act specifies a timeframe for the SEC to approve or disapprove a rule (which could specify a new product to be traded on an exchange) submitted for approval by an exchange, SEA § 19(b), 15 U.S.C. § 78s(b). The ability of each agency to approve a contract or rule depends upon each agency having complete and accurate information about the proposed contract or rule in a timely manner. For the SEC and CFTC to make their respective determinations on a proposed digital asset listing in a timely manner, it would be necessary to ensure that each agency has the authority to request and obtain in a timely manner complete and accurate information regarding the digital asset, including ensuring that the SEC has the authority to obtain such information as may be necessary from the issuer of the digital asset, in addition to such information as may be need to provided by the trading facility proposing to list the asset. Failure of an issuer or trading facility to provide information necessary to determine the digital asset can be traded on the facility would be a basis for a negative determination.

[18] The status of a digital asset as a commodity does not affect whether or not that asset is a security. As the CFTC's Office of General Counsel has explained, "the Commodity Exchange Act [] provides that many securities are commodities to which the securities laws apply. Thus, any given digital asset may or may not be subject to the securities laws, but that does not depend on whether the asset is a commodity. It depends on whether the asset is a 'security' within the meaning of the [Securities Act of 1933]." Schwartz letter, *supra,* at pp. 1–2. Whether an asset is a security subject to the SEC's jurisdiction is a matter to be determined by the SEC under the securities laws. *See also* CFTC Commissioner Dawn D. Stump, DIGITAL ASSETS AUTHORITY INFOGRAPHIC, *Digital Assets: Clarifying CFTC Regulatory Authority & the Fallacy of the Question, "Is it a Commodity or a Security?"* August 23, 2021 ("[T]o say that a particular digital asset is a 'commodity' is unremarkable".); available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement082321.*

garding the underlying asset. In addition to a determination of the status of the digital asset to be traded on the trading facility, it still would be necessary to preserve the SEC's authority and responsibility to make determinations regarding the status of the digital asset in its primary and other distributions, which may be integrated with the distribution of the asset on a trading facility. Splintering the authority to make determinations regarding the status of a digital asset as a security based on the manner of its secondary distribution would be inconsistent with current law and a recipe for future conflict, confusion, and uncertainty, as multiple agencies would have the authority to make determinations regarding the legal status of a particular digital asset. Such an approach would not provide any regulatory certainty as to the legal status of the digital asset.[19]

It also has been suggested that the SEC and CFTC could jointly regulate digital asset spot markets. In my view and experience, joint regulation is cumbersome, diffuses accountability, is inflexible, and should be used sparingly only in the narrow circumstances where there is a significant likelihood the two agencies, acting within their respective authorities, would issue inconsistent or conflicting determinations on the same issue or matter.

Dedicated source of funding. The CFTC should be provided with a dedicated source of funding so that it can undertake these significant new responsibilities without compromising its current responsibilities for regulation, oversight, and enforcement of the derivative markets currently within its jurisdiction. If legislation to close the gap along these lines is enacted, the CFTC will be required to conduct a number of rulemakings to implement the new statutory requirements for digital asset infrastructures and intermediaries, review licensing applications, review proposed digital asset listings, and conduct surveillance of the non-security digital asset spot markets. It will need significant additional resources to perform these new responsibilities in a timely manner.

Most other Federal financial regulatory agencies are funded at least in part by a dedicated source of funding. A dedicated funding source can help provide stability to an agency's budget, and help ensure that the beneficiaries of the regulated activities pay the costs of regulation rather than the general taxpayers.

Maintain current authorities over other digital asset markets. Apart from closing the current gap regarding the regulation of the non-security digital asset spot markets, legislation should maintain existing agency jurisdictions and authorities. The CFTC has the necessary and appropriate authority to regulate the derivative markets. The SEC has necessary and appropriate authority to regulate the securities markets. There is no demonstrated need to alter or amend these basic authorities, including with respect to digital assets.

Amendments to the CFTC's or the SEC's authorities over derivatives or securities in general, or digital assets in particular, are not only unwarranted and [unnecessary], they would be counterproductive. The CEA and the securities laws are technology neutral. The Supreme Court has made it clear that in determining whether something is a security "form should be disregarded for substance."[20] Amending existing authorities based on a particular technology would disrupt decades of precedent, create additional uncertainty about the meaning and interpretation of both new and existing statutory terms and classifications, and generate opportunities for regulatory arbitrage in the capital markets based upon technology upon which the asset is created or distributed rather than the functional nature of the asset or instrument.[21] Legislation to close the gap with respect to the regulation of non-security digital asset spot markets should stay focused on closing that gap and not disrupt current law and create new uncertainties where there is no gap.

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[19] Authorizing another agency to make determinations regarding the status of an instrument as a security also could undermine the SEC's regulation and enforcement of the securities laws more generally. To the extent that another Federal agency opines on the application of the securities laws to one class of assets in a manner that differs from the manner in which the SEC applies and enforces the securities laws, the SEC could have more difficulty enforcing those requirements more generally.

[20] *Tcherepnin* v. *Knight,* 389 U.S. 332, 336 (1967). Further, "the emphasis should be on the economic realities underlying a transaction, and not on the name appended thereto." *United Housing Found.* v. *Forman,* 421 U.S. 837, 849 (1975).

[21] *See also* Massad Statement, note 15, at 5 (Amending the existing securities or commodities laws, or changing the definition of security, "might not only fail to bring clarity to crypto; that might unintentionally undermine decades of regulation and jurisprudence as it applies to traditional securities and derivatives markets. . . . [T]he law should make clear that the SEC and CFTC would retain their existing authority.").

Conclusion

Cryptocurrencies are bought and sold by a significant number of persons in the U.S. Last week, the Federal Reserve reported that in 2022 one in ten adults surveyed held or used cryptocurrency.[22] Extrapolated to the public-at-large, this means millions of American consumers and households may be conducting transactions in the spot digital asset markets. The American consumers and households transacting in these markets are currently exposed to numerous market risks, including abusive trade practices, market manipulation, conflicts of interest, governance deficiencies, the failure to segregate customer funds, and inadequate disclosures.

Extending the CFTC's regulatory authority over the non-security digital asset spot market would help protect customers and investors in these digital asset markets and reduce potential systemic risk. Authorizing the SEC to review proposed listings for the trading of spot market digital assets on these licensed trading platforms would provide market participants with regulatory certainty regarding the legal classification and status of those assets prior to the trading of those assets on the facility. Protecting American consumers and investors and providing market participants with regulatory certainty would help maintain our nation's leadership in financial markets and technologies.

Mr. FEENSTRA. Thank you for your testimony, Mr. Berkovitz. Mr. Lukken, please begin when you are ready. You have 5 minutes.

STATEMENT OF HON. WALTER L. LUKKEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FUTURES INDUSTRY ASSOCIATION; FORMER ACTING CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Mr. LUKKEN. Thank you, Mr. Chairman, Ranking Member Scott, Former Chairman Lucas, and Members of the Committee. Thank you for the opportunity to testify about the need for a strong regulatory regime for the spot digital asset market. Prior to my role at FIA, I had the honor of serving as Commissioner and Acting Chairman of the CFTC over a 7 year period of time, as well as working on the Senate Agriculture, Nutrition, and Forestry Committee involved with the passage of the Commodity Futures Modernization Act of 2000 (Pub. L. 106–554, Appendix E—H.R. 5660) that created the current CFTC principles-based regulatory system.

Next year we celebrate the 50th anniversary of the Commodity Futures Trading Commission Act of 1974 (Pub. L. 93–463). This Act created the CFTC, providing it with exclusive jurisdiction over futures trading, and greatly expanding the definition of *commodities* beyond ag products. This was done to capture the financial products that were beginning to be listed on boards of trade, but the definition's catch-all language also served to future-proof the law for innovative new products. Indeed, over the last 5 decades, we have seen futures contracts launched on interest rates, energy, weather, carbon offsets, volatility, and even digital assets, as my colleague, Chairman Giancarlo had noted.

In 2000, Congress passed another major reform, the Commodity Futures Modernization Act, that provided the CFTC with a new principles-based regulatory regime. In its 2 decades of existence, the CFTC's core principles framework has proved effective due to its flexible but clear approach. The Act provides the CFTC with the ability to issue rules and guidance on core principles, but provides built-in flexibility for entities to take a different approach if they can prove the core principles are still being met. Such flexibilities

[22] Board of Governors of the Federal Reserve System, *Economic Well-Being of U.S. Households in 2022,* May 2023, at p. 41; available at: *https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf.*

has allowed for innovative new products and market approaches. It has also helped the CFTC extend its regulatory regime cross-border, given the global nature of many benchmark futures products. This cross-border framework, built on regulatory cooperation and comparability, would align well with the cross-border nature of digital commodities.

The CFTC also has a strong track record of protecting customer funds and stamping out fraud and abuse affecting retail customers, which could benefit the spot digital asset market. The CEA contains strong disclosure and money segregation requirements aimed at protecting customer funds. These protections include risk disclosures, capital and anti-money laundering requirements, customer grade guarantees, and Know Your Customer obligations.

Like digital assets, the CFTC and NFA have analogous experience in the regulation of spot markets where retail participants were experiencing abuse. I was Acting Chair of the CFTC in 2007 and 2008, and we saw an enormous increase in retail spot foreign currency fraud due to a gap in regulatory authority. Congress, with this Committee's leadership, closed this loophole in 2008, granting additional protections to retail participants in the spot forex market.

With these changes, the CFTC and NFA were able to set limits on leverage, require brokers to register, and be well capitalized, and aggressively enforce rules against fraud. Ultimately, the CFTC and NFA eliminated significant fraud and abuse in those retail spot markets. While the CFTC does not currently have statutory authority to regulate spot digital markets, as this legislation would contemplate, it does have broad enforcement powers over spot markets and commodities, and it has used those powers aggressively to bring more than 80 enforcement actions involving wrongdoing in digital asset commodities.

Beyond digital assets, the CFTC has a proven track record of preserving market integrity through enforcement, using its expertise on market manipulation. The agency has brought forward successful manipulation cases against energy and agricultural companies, as well as the precedent setting case on the manipulation of the LIBOR benchmark. Given the potential for disruptive trading and manipulation in the spot digital asset market, the CFTC's enforcement powers make the Commission well positioned to protect customers in this space.

Thank you again for the opportunity to testify about the CFTC, and the benefits of the Commission's principles-based regulatory system.

[The prepared statement of Mr. Lukken follows:]

PREPARED STATEMENT OF HON. WALTER L. LUKKEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FUTURES INDUSTRY ASSOCIATION; FORMER ACTING CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Chairman Thompson, Ranking Member Scott, and Members of the Committee, thank you for the opportunity to highlight some of the benefits of the Commodity Futures Trading Commission's (CFTC's) principles-based regulatory framework as you deliberate providing the Commission with expanded regulatory jurisdiction over digital asset spot markets.

I am the President and Chief Executive Officer of the Futures Industry Association (FIA). FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets. FIA's membership includes clearing firms,

also known as futures commission merchants (FCMs), exchanges, clearinghouses, trading companies, and commodities specialists from more than 48 countries as well as technology vendors, law firms and other professionals serving the industry.

Our industry's primary market regulator in the United States is the CFTC and many of our industry's market participants are also registered with the National Futures Association (NFA), the independent self-regulatory organization (SRO) for the U.S. derivatives industry. It's worth highlighting that our markets are global in nature and that many of our members are registrants with not only the CFTC, but also the Securities [and] Exchange Commission (SEC) in the U.S. as well as other regulators in jurisdictions around the world.

Prior to serving as the President and CEO of FIA, I had the honor of serving as a Commissioner of the CFTC from August 2002 to June 2009. During that time, I served as Acting Chairman from June 2007 to January 2009 during the height of the financial crisis. Prior to the CFTC, I also served as a member of the professional staff of the Senate Agriculture Committee where I was involved with the passage of the Commodity Futures Modernization Act of 2000 that created the principles-based regulatory system we have in the futures markets today.

FIA and its members look forward to reviewing the Committee's draft digital asset market structure legislation and providing feedback. Today, I am honored to testify about my significant experience with the Commodity Exchange Act (CEA) and the exchange traded derivatives markets both inside and outside the government.

I believe the CEA is uniquely positioned to keep pace with our ever-changing markets, including digital assets. As this Committee deliberates about the oversight of the spot digital asset market, it would be well-served to study the three pillars of the CFTC's regime: its flexible principles regulatory framework, its battle-tested customer protection regime, and its strong enforcement capabilities.

I hope my testimony will be helpful to Members of this Committee as you consider whether the existing framework for the regulation of the exchange-traded and cleared derivatives markets in the U.S. should be extended to spot digital asset markets.

A Flexible Principles-Based Regulatory Framework

Next year, we celebrate the 50th anniversary of the Commodity Futures Trading Commission Act of 1974. This bill, and subsequent reforms over the following 5 decades, have given the CFTC a powerful regulatory framework that allows the agency to police fraud, abuse, and manipulation in the markets while encouraging responsible innovation and fair competition among participants. This Committee should be commended for its foresight in developing this flexible regulatory structure that has allowed these markets to grow and develop while protecting market participants and the public from harm.

The CFTC Act of 1974 modernized the regulatory structure for the U.S. futures markets, creating the independent agency of the Commodity Futures Trading Commission and giving it exclusive jurisdiction over futures contracts traded on commodities. The Act also broadened the definition of "commodity" beyond agricultural products to include financials, energies, and "all other goods . . . articles . . . services, rights and interests . . ."

This expansion was done to capture financial products that were beginning to be listed on boards of trade, but this catch-all language also served to "future-proof" the regulation of new products that may not have been contemplated when the Act was first drafted.

This flexible definition, combined with Congress's grant of exclusive jurisdiction, became a powerful "one-two" punch for the agency, allowing the CFTC to provide clear rules of the road for futures markets and enabling new products to develop without duplicative regulations that could harm innovation. Indeed, over the last 5 decades, we have seen innovative futures contracts launched on interest rates, equity indices, carbon offsets, volatility, and even digital assets.

The CFTC Act of 1974 also authorized the creation of an independent self-regulatory organization (SRO), known as a Registered Futures Association, that would help the CFTC oversee the registration, auditing, and policing of market participants who interact with customers and their funds. In 1982, the National Futures Association was launched. Over its 40 years of existence, it has greatly contributed to preserving the integrity of U.S. derivatives markets, protecting retail investors and ensuring registrants meet their regulatory responsibilities.

In 2000, Congress passed another major reform of the futures markets, again with the aim of providing the agency with powerful tools aimed at keeping pace with innovation and growth. The bipartisan Commodity Futures Modernization Act of 2000

provided the CFTC with a new principles-based regulatory regime for exchanges and clearinghouses, among other reforms.

In its 2 decades of existence, the CFTC's core principles regime has been a resounding success due to its flexible but clear approach. The Act provides the CFTC with the ability to issue guidance and rules on how a regulated entity complies with the various core principles. However, there is also built-in flexibility for entities to take a different approach if they can prove the core principles are still being met.

These core principles include such directives as requiring exchanges to only list contracts that are not readily subject to manipulation, and ensuring exchanges have the capacity and responsibility to prevent manipulation, price distortion, and disruptions through market surveillance, compliance, and enforcement practices.

Such flexible regulations have helped the CFTC extend its regulatory regime cross-border over the preceding 3 decades. Many benchmark products listed on regulated futures markets are global in nature and serve as global reference prices for companies trying to manage their risk exposures in our markets. FIA estimates that a significant amount of CFTC-registered exchange trading volume comes from cross border transactions.[1] To meet this global demand from the marketplace, the CFTC has used its flexible regulatory regime to develop an effective cross-border regulatory framework built on foreign authority cooperation and regulatory comparability and recognition. This global framework aligns well with the cross-border nature of the digital commodity markets and could represent an effective approach for ensuring these global markets abide by comparable standards of regulation.

For new and innovative entrants, like digital asset trading platforms, this flexible and global approach to regulation is an extremely attractive framework that allows for new models and approaches to develop organically without compromising oversight.

Customer Protections Under the CEA

While the futures markets are largely institutional, the CFTC and NFA have a strong track record of protecting customer funds and stamping out fraud and abuse affecting retail customers in our markets.

The CEA contains strong disclosure and money segregation requirements aimed at protecting customers utilizing our markets. Since the passage of the CEA in 1936, FCMs have been required to segregate customer funds on behalf of customers, and their interactions with customers have been heavily regulated to protect customers and market stability. These protections include risk disclosures, capital resources, credit and collateral management, anti-money laundering requirements, guaranteeing customer trades, and "know your customer" obligations.

Another key customer protection afforded by the current CFTC regulatory framework is the compartmentalization of risk inherent in the intermediated, and leveraged, nature of the futures markets. As agents for their customers, intermediaries serve to protect the interests and funds of their clients. Advancements in technology have enabled various roles within our markets, including exchanges, intermediaries, and market makers, to be combined into one platform. While there may be some efficiencies in this model, there are also inherent conflicts of interest and risks that may arise, and we saw this with the demise of FTX. While FIA is continuing to review the Committee's draft bill, we appreciate that it includes language that seeks to address these conflicts of interest that could arise on certain digital asset trading platforms.

In addition to these preventive measures, the CFTC and NFA have taken strong enforcement actions over the years against boiler rooms and fraudulent players that have targeted retail customers. One prime example is in retail foreign currency trading, known as forex. In 1974, Congress excluded the interbank foreign currency markets from the CFTC's jurisdiction, given the fact these institutional markets were already overseen by prudential regulators. This exclusion, known as the Treasury Amendment, carved out transactions involving foreign currencies that were not "for future delivery" and "conducted on a board of trade."

This language created a gap in the oversight regime for retail participants transacting in off-exchange foreign currencies. In many cases, these contracts were leveraged, margined, and financed, much like futures contracts. I was Acting Chair of the CFTC in 2007 and 2008, and we saw an enormous increase in retail forex fraud. Unfortunately, this legal uncertainty, and adverse court decisions, prevented the CFTC from taking decisive action against this abuse.

To close this loophole, Congress approved amendments to the CEA in 2008 that granted additional protections to retail participants in the forex market. These

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[1] *https://www.fia.org/fia/articles/statement-united-states-house-representatives-committee-agriculture-subcommittee*.

changes, known as the "Zelener Fix," required all margined, financed and leveraged retail transactions to occur on a CFTC regulated exchange and required retail customers to use a registered broker to access these markets. In addition, the CFTC promulgated regulations introducing a new category of registrant called a retail foreign exchange dealer (RFED) to complement the existing categories for futures brokers, in addition to requiring RFEDs to register with NFA.

Once Congress provided legal clarity for retail forex, the CFTC and NFA were able to step in and set limits on leverage, require brokers to register and be well-capitalized, and aggressively enforce rules against fraud. Ultimately, this new authority in the hands of the CFTC and NFA eliminated significant fraud and abuse in these retail markets, driving many of the bad actors out of business.

While the CFTC has recently noted a rise in retail participation in the futures markets, the customer protection regime in place appears to be working as we are not seeing an increase in customer complaints and retail fraud cases. NFA highlighted this in a May 2022 CFTC comment letter[2] that "customer complaints and single-event customer arbitrations filed at NFA, as well as CFTC reparation cases, remain near all-time lows." This demonstrates that the Congressionally established regulatory framework, and the efforts of the CFTC and NFA, have contributed greatly to ensuring that robust customer protections are in place and being enforced.

If Congress decides to provide similar regulatory oversight of the spot digital asset markets to the CFTC, and NFA, I am confident they would be well prepared to provide the same level of protections that customers receive on U.S. exchange-traded and cleared derivatives markets.

Strong Enforcement

To complement the CFTC's principles-based regime, the agency has exercised its expansive enforcement authorities to punish wrongdoing and to serve as a powerful deterrent for other bad actors.

While the CFTC does not have statutory authority to regulate spot digital asset markets, it does have certain enforcement powers over all spot markets in commodities, and it has used those powers to bring more than 80 enforcement actions involving wrongdoing in digital asset commodities. CFTC enforcement actions related to digital assets have primarily targeted exchanges that illegally offer derivatives and leveraged, margined, or financed virtual currency transactions. The agency has also targeted businesses that engage in fraud and manipulative behavior, as well as foreign platforms that do not establish adequate safeguards and controls to prevent U.S. persons from accessing their platforms.

It should also be noted that, beyond digital assets, the CFTC has a proven track record of preserving market integrity through its enforcement actions, including its expertise on policing market manipulation. The agency has brought forward successful enforcement manipulation cases against energy and agricultural companies as well as the precedent-setting case on the manipulation of the LIBOR benchmark. The agency has also successfully used its authorities to root out disruptive trading practices, including illegal spoofing. Given the potential of disruptive trading and manipulation in the spot digital asset marketplace, the CFTC's enforcement authorities and proven track record make the Commission well-positioned to protect customers in this the space, should Congress decide to provide that authority.

Conclusion

Thank you for the opportunity to testify about the history of the CFTC and the benefits of the Commission's principles-based regulatory framework and how its flexible approach to regulation protects customers, promotes innovation, and preserves market integrity.

I hope my testimony will be helpful to Members of this Committee as you consider whether the existing framework for the regulation of the exchange-traded and cleared derivatives markets in the U.S. should be extended to spot digital asset markets.

Mr. FEENSTRA. Thank you for your testimony, Mr. Lukken. At this time Members will be recognized for questions in order of seniority, alternating between Majority and Minority Members, and in order of their arrival for those who have joined after the hearing has convened. You will be recognized for 5 minutes each, in order to allow us to get to as many questions as we possibly can. I now recognize myself for 5 minutes.

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[2] *https://www.nfa.futures.org/news/newsComment.asp?ArticleID=5476.*

Mr. Giancarlo, since you stepped down from the CFTC chairmanship, you have continued to focus on digital assets, or, for our purposes here today, digital commodities. For those Members still on the fence on the merits of digital commodities, could you please describe their value today, and their potential value in the future for the United States businesses and main street Americans, beyond trading them on the exchange? To put it another way, why should we, Congress and the Agriculture Committee, care about digital commodities?

Mr. GIANCARLO. Thank you for the question. I think the answer to it depends somewhat on how one views the value of this innovation. If one views this simply as some funky new investable asset class, *à la* some precious metals, or Treasury repo, or something, then the dollar—measured in dollars, the value is circa $1 trillion, down from as much as—close to $3 trillion as much as a year ago. But if you view this more broadly, as I have come to view it in the 8 years that I have been studying it, as really a new architecture of value, an architecture of finance, and banking, and money itself, then it is really harder to estimate the value, but I want to take a crack at it.

The existing architecture of value is one where we store value on the balance sheets of proprietary commercials firms. It is kind of a strange way of doing it: 90 percent of the value is housed as liabilities. My checking account with Bank of America, my 401(k) with Fidelity, are not stacks of $100 bills in their vault. They are IOUs to them. And as we have seen, just in the last 120 days, those institutions can go down. This new architecture says, "Let us use the internet, let us use digital networks as a way of storing value."

That old architecture, as venerable as it is, is rather slow, it is expensive, it is unstable, and it is exclusive. This new architecture of an internet of value—well, in 30 years the internet has never gone down. And it has brought more people around the globe into information gathering, into communications than ever before. So what is the value of this new innovation? Well, it is hard to say, but to think that somehow the same internet that has changed everything we know about communications, information, and retail shopping is not going to do the same thing to banking and finance I think is somewhat naïve.

So the real question is, what are the values of this innovation? What can we do as Americans to make sure that this new innovation, as it goes forward and weaves its way, reflects the values of our society? And I think that is what this Committee has done with this legislation. It has made a statement that says this new innovation is going to reflect American values brought together by Congress. So——

Mr. FEENSTRA. And I would agree. Wouldn't you agree, though, that it also establishes a regulatory framework for trading digital commodities to protect millions of citizens? I mean, to me, this is very paramount.

Mr. GIANCARLO. Critically paramount. And as my other colleagues have mentioned, our European competitors, our Asian competitors, are moving forward with putting those frameworks in place, and as they put those frameworks together, they are putting

their values on this innovation. America led the first wave of the intimation because we stamped our values on it, and this is the opportunity today to make sure this new innovation reflects those American values as well.

Mr. FEENSTRA. Thank you. Mr. Lukken, in your testimony you talked about how the CFTC's principles-based regulation is flexible, and designed to future-proof regulation of new products that were not considered prior to drafting the Commodity Exchange Act. Can you talk about how this approach can be beneficial to the CFTC's regulation of the digital asset markets?

Mr. LUKKEN. I think Congress, in its foresight, figure out how the principles-based system could give flexibility not only to market participants who may be innovating—and the CFTC, as noted earlier, has innovation, promoting innovation, in its mission, actually, and the principles-based system helps that, but importantly, it allows the regulator to keep pace with these innovations, so the flexibility goes both ways. It goes—both to market participants as well as the regulators to make sure that those core principles, those 23 core principles of our markets, are being met, no matter what innovations may be happening.

Mr. FEENSTRA. Yes. Yes. Thank you. Thank you for that. Mr. Grewal, why do you think it is beneficial that the discussion draft is based on existing law and regulations for securities and commodities derivatives?

Mr. GREWAL. The benefit of relying upon the existing structures, Congressman, is that it allows the investing public, and, of course, regulators and this body, to have confidence that we are working with standards, practices, and histories that are well understood, and that have served the American public reasonably well. No system is perfect, but the Commodity Exchange Act, the CFTC's long history of regulating underlying markets where there are listed futures, all suggest that this Commission is more than capable of rising to the new challenge for the new asset class.

Mr. FEENSTRA. Thank you. Thank you for those comments. I now recognize Ranking Member David Scott for 5 minutes for questions.

Mr. DAVID SCOTT of Georgia. Thank you very much. I appreciate that. Gentlemen, I want to get to the real essence of this debate here this morning. It is so important for us to find out what all this is going to cost to do what it is we are here discussing to do with this emerging digital asset. And so, in my 5 minutes, I want to hear from each of you as to what amount of funding is all this going to take to do it impactfully? We have our users here, and we have our SEC and CFTC, whom I have worked with for my 21 years on this body. Give us this. This is the missing piece in this whole debate. What about the—funding SEC and CFTC, and to the users, is it going to work, how it is going to work? Mr. Lukken, let me talk with you, and I want to hear from each of you, and I think I have about 4 minutes left. So please.

Mr. LUKKEN. No, I would be very simple and say that the CFTC needs appropriate funding to make sure we are taking on these markets. It is difficult for me——

Mr. DAVID SCOTT of Georgia. When you say *appropriate,* tell me, what would you say? How much?

Mr. LUKKEN. Yes. Well, I mean, I think you should look back at what happened during Dodd-Frank in this—and the—for them to take on those markets, and the appropriate teams that the Chairman outlined in his testimony, they are going to have to hire new additional people with expertise.

I would say that the market, although it is enormous, there are—the legislation consolidates a lot of this regulation into entities, we—either exchanges——

Mr. DAVID SCOTT of Georgia. Mr. Lukken——

Mr. LUKKEN.—or brokers.

Mr. DAVID SCOTT of Georgia.—I hate to interrupt you, I want to hear from some of the others, but you have been around. The bulk of this is going to fall on the CFTC, I am sorry. How much? Give us about a ballpark figure of what you feel it is going to take to do what is in this regulatory piece of legislation.

Mr. LUKKEN. I would be guessing. I think Chairman Behnam mentioned ten percent in his testimony. And you also have to bear in mind that the NFA is going to be extremely involved in this to do as well, and they are going to be levying fees on the industry to raise money to do it, so those things have to be thought of in conjunction.

Mr. DAVID SCOTT of Georgia. Okay. Do you agree with that, SEC? And give us a figure.

Mr. BERKOVITZ. Well——

Mr. DAVID SCOTT of Georgia. Look, we have to put an amount in this bill. And now you have a chance——

Mr. BERKOVITZ. Well——

Mr. DAVID SCOTT of Georgia.—to tell us what you think you need. Tell us.

Mr. BERKOVITZ. Yes. I mean, I can't speak for the SEC. What this bill would do—one of the things—it would shift a lot from the SEC to the CFTC over—certain types of assets that are now considered securities would be—under this bill would be digital commodities over in the CFTC's jurisdiction. Well, I would think Chair Behnam's $120 million over 3 years would be at least as much you would—as you would need, because this is a substantial responsibility over a substantial new class of assets that are currently regulated under a different agency. $120 million, right.

Mr. GALLAGHER. Ranking Member Scott, I had the great pleasure of not being Chairman of the SEC, just one of the regular Commissioners, and part of that pleasure was not getting involved in the budget process, so I wouldn't even be able to guess, unlike my former Chairman colleagues up here on the panel.

One thing I would call out, though, too, the cost of not moving forward. From our perspective—you called us users. We are representing customers, right? We are agents here? But the cost of having regulation, and these markets go off, sure, which is happening, it is real. It is not some boy crying wolf issue. It is migrating offshore. It is going to be massive to the U.S., to U.S. investors, lost opportunity. And then the cost of the vagueness of the current regulatory structure is real, and that is being borne by American investors.

Mr. DAVID SCOTT of Georgia. Okay, Tim. Yes?

Mr. GREWAL. Ranking Member Scott, I would just add that the costs go even further than my colleague to my left has properly identified. There is an important cost to a lack of standards that industry, and investors, and consumers can understand and follow. And that cost comes in the form of lost innovation here in the United States, so I think that is also important to bear in mind in weighing whatever resources would be appropriate in order to allow the CFTC to do its job here.

Mr. DAVID SCOTT of Georgia. I think I will get to all five. Go——

Mr. GIANCARLO. I would take Chairman Behnam at his word. If he estimates $120 million over 3 years, I think he has done his numbers.

Mr. DAVID SCOTT of Georgia. $120 million? Thank you.

Mr. FEENSTRA. I now recognize the gentleman from Oklahoma, Frank Lucas, for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman, and thank you, for the panel, to be—to agreeing to testify and spending your day with us here in the Agriculture Committee. Mr. Giancarlo, it is good to see you again, and I will direct my first question at you.

Earlier today I discussed with Chairman Behnam how the CFTC and SEC will need to collaborate during the rulemaking process proposed under the market structure draft. In his response, the Chairman reflected on the history of CFTC's intersection with SEC as it related to digital assets. As you reminded us in your testimony, CFTC approved regulated future contracts tied to Bitcoin back in 2017. So, Mr. Giancarlo, I would like to call upon your expertise in this space with this question. Could you discuss the history of CFTC's collaboration with the SEC regarding digital assets, and how Congress can help this process going forward? Share with us your scars and calluses.

Mr. GIANCARLO. Thank you very much. It is good to be back in the saddle once again before you and this great Committee. I can't speak to the history prior to my arrival at the CFTC, although it was rumored not to have been terribly good in prior Administrations. One of the things that Chairman Clayton at the SEC and I vowed to do was to improve that. And we felt that, as people who had come from the business sector, we had an imperative to work our—to make sure our two agencies worked well together.

And in the area of digital assets, we formed an *ad hoc* working group between our two agencies that met roughly every 2 weeks to go through innovations and digital assets thoughtfully, intelligently, with no particular agenda to get anything done this month or next month, but to work through the emerging issues. And the very first one we focused on was Bitcoin, and that support that we had from the SEC at the time in 2017 allows us to move forward with the decision to greenlight Bitcoin futures. So the collaboration between the two agencies was very important.

When, at the end of my 5 year term, I met with Chairman McHenry, and he asked me to reflect on those 5 years, and I mentioned the work the two agencies had done together. And I think some of that has led to some of the Title V provisions for an advisory group, working group, between the two agencies growing out of the work that Chairman Clayton and I, and that was continued

by Chairman Tarbert and Chairman Clayton during their terms as well.

Mr. LUCAS. It has already been discussed at this hearing that other jurisdictions, such as the European Union and Japan, have frameworks for digital assets, and countries like the United Kingdom are working towards their own regulations. So I address this question first to Mr. Lukken, and then to you, Mr. Giancarlo. Could you each discuss how it makes our job of writing our own rules here at home more difficult if we see digital asset regimes flourishing outside of the United States?

Mr. LUKKEN. No, it is important that the U.S. show leadership in this area, because the rest of the world is starting to fill the void, and so you are going to see markets develop overseas if the U.S. doesn't step up and develop a regulatory regime. You cannot regulate by enforcement alone. It needs the regulatory system in place to make sure that there are standards of good conduct, and that these are happening on well-regulated lit exchanges.

So it is incredibly important that we show that leadership, and make sure that we coordinate with our regulatory colleagues, because, as I mentioned, the CFTC has a regulatory system that is global, so if we fill this gap, we can actually show leadership in this—in these global markets.

Mr. GIANCARLO. Professor Bradford of Columbia University has written extensively on what she calls the Brussels Effect. Brussels—the European Union looks at new legislation as an opportunity to develop European standards, and then get the rest of the world to have to follow those standards rather than any others because, if they want to sell into the European Union, they adopt those standards, and then they say, what the heck, we will adopt it for the whole world.

And it is a way of exporting their values, which is why, in response to an earlier question, I spoke about the importance of stamping American values on this new innovation, very much the way we did with the first wave of the internet. That is why this legislation is so important. Values of consumer protection, values of transparency, values of openness, values of sound, but practical, principles-based regulation. And I think that is what this legislation attempts to do as a first step.

Mr. LUCAS. Thank you very much. Very insightful, gentlemen, as always. With that, I yield back, Mr. Chairman.

Mr. FEENSTRA. I now recognize the gentlewoman from Colorado, Ms. Caravero—Caraveo? For 5 minutes.

Ms. CARAVEO. Caraveo, yes. Thank you. Thank you, Mr. Chairman, and thank you again, gentlemen, for taking time to provide testimony today. I think you were all probably sitting in the back earlier when I spoke to Chairman Behnam, and I would like to ask you the same initial question. Based on your various experiences and expertise, are there any considerations that may be missing from this proposal? And that is for anybody on the panel.

Mr. GALLAGHER. Yes, I will go first. As I mentioned earlier, Congresswoman, I have laid out a few additional considerations to think about. I think it is very sound in its initial architecture. I think there are some things around the edges that could help. And

I do think, just as a general matter, when legislating in this space, Congress should speak very clearly to the agencies.

This is an issue—I lived the post-Dodd-Frank world as an SEC Commissioner, so we had about 110 rulemaking mandates that came from Congress, and some were very prescriptive, and some less so, and where we saw problems with implementation is where we had less prescriptive guidance coming from Congress. And some things that seemed like they should be easy turned into a bureaucratic quagmire, and I would just caution you against that. If you have real strong views on a specific issue, make it more prescriptive.

Mr. BERKOVITZ. I would like to note that the CFTC—as Chairman Behnam outlined in his testimony, the CFTC markets are different from the SEC regulated markets. The function of the CFTC regulated markets is generally price discovery and risk management. The function of the SEC regulated markets is capital formation. And the regulatory regimes—each agency has a regulatory regime fit for purpose.

The SEC's regulatory regime, as Chairman Behnam explained, is really designed for the wholesale market. Moving into the retail is something the CFTC hasn't traditionally done. That is where the SEC regulatory regime really is based. There is a lot—much more robust retail protection in an SEC regulated market because you are dealing with people's retirement funds, you are dealing with their life savings. You are not dealing with cattle or whatever.

And the cattle markets deserve protection too, the farmers or whatever, but it is a different standard. There is a disclosure standard, and there is anti-fraud in the CFTC markets. But the brokers in the securities markets, they have to ask in—act in the best interest of their customers. The investment advisors have a fiduciary duty. Many of those duties are not present in CFTC regulated markets.

If you take an instrument that is a type of digital asset that has those protections in the security market, and you move it into a CFTC market, as is, the CFTC markets do not have those protections. CFTC is a market regulator. The SEC is much more on the investment side. You would need to supplement the bill, I believe, the way it is drafted, with those additional protections because they are not—as I read it, and I have only had a few days, so maybe they are there, and I need to study it further, but my initial read, I do not see that same level of investor protection that currently exists in the security markets for these instruments as they would be regulated in a CFTC market. You can't just move an instrument from one agency to another and say they are both market regulators. It is a lot more complicated than that.

Ms. CARAVEO. Thank you so much. That actually answered my other question. But anybody to the first? Mr. Lukken?

Mr. LUKKEN. Yes, I would just mention, one unique thing about this legislation is it does contemplate a disintermediated marketplace, where people are going directly to the marketplace. The futures markets have brokers that deal with the customer, and a lot of the current CFTC law is—customer protections are with the brokers themselves, the FCMs. And so those protections now will be

placed with the exchange itself to segregate money, to disclosures, those sorts of things.

There may be conflicts, I think we saw this with the FTX debacle, that—because you conflated all these things into one entity, there weren't the compartmentalization of risk that typically are in these markets. The legislation does contemplate conflicts of interest, and making sure there is that—those firewalls, but I think it is something worth studying, whether they actually need to be separate or not, or registered differently than the exchange itself, and it is just something unique that this legislation does differently.

Mr. GREWAL. Congresswoman, the other thing that the draft recognizes appropriately is a dual role for both the CFTC and the SEC on a going forward basis, and in particular recognizes that the SEC will continue to have a role, its primary role, in regulating digital asset securities.

Ms. CARAVEO. Thank you, so much, gentlemen. That was very valuable feedback.

Mr. FEENSTRA. I now recognize the gentleman from Indiana, Mr. Baird, for 5 minutes.

Mr. BAIRD. Thank you, Mr. Chairman, and I want to thank the witnesses for being here. It is really helpful to have the kind of expertise that you represent to share with this Committee as we try to make decisions. My first question goes to Mr. Giancarlo. In your written testimony, you make three recommendations to improve the discussion draft. And I know you haven't had a lot of time to look at that either, but this—the first is that the bill should impose a deadline on the CFTC and the SEC to complete the joint direct and—definition rulemaking. Why do you think that is important?

Mr. GIANCARLO. Deadlines focus the mind. Deadlines focus the attention of the staffs. Deadlines force organizations to marshal the resources necessary to get something done, and not just add it to the list of to-dos. So—there is nothing like—I have learned in business—30 years in business, there is nothing like a deadline to get something done, and without a deadline, one tends to go to other things on one's priority list.

Mr. BAIRD. Thank you. Mr. Lukken, the Commodity Exchange Act specifically identifies one of its purposes as promoting responsible innovation and fair competition. Would this proposal promote responsible innovation and fair competition to bring the digital commodities into the CFTC's regulatory sphere?

Mr. LUKKEN. Absolutely. I think the contemplated draft that has been put out would develop exactly the system we have been talking about, responsible, principles-based regulation. And remember, competition is a way of policing the marketplace. It is the free market system policing itself, and that is what we want to unleash. We want to be referees to make sure there is a fair system here, but allow the competitors to compete, and I think this legislation would do that.

Mr. BAIRD. Thank you. Do any of the other witnesses have any thoughts about either of these questions? The first one being the complete joint definitional rulemaking, why you think that is important, and then the last one here was about the digital commodities into the CFTC's regulatory sphere. So just——

Mr. GREWAL. Congressman, if I may speak to that—speak further to value and virtue of deadlines, the only other point I would encourage this Committee to consider is that this market, and these technologies, are changing very quickly. And so while I think it is absolutely the case that deadlines impose a certain clarity and discipline regardless of the underlying innovations that may be taking place, here it is critical, given just how quickly the landscape is changing.

Mr. BERKOVITZ. If I could have a comment on what Mr. Grewal just said? And that is a concern potentially with the approach. The approach fixes certain classifications, such as digital assets, what agency gets what jurisdiction on a specific technological way it is currently traded, or a specific characteristic of a blockchain network, particular characteristics of who owns how much of that network, and exactly how it is structured. This technology is changing very rapidly. I would just urge some caution into freezing these regulatory categories as a state of this technology as it exists in June of 2023.

These instruments are changing very rapidly, the markets are changing very rapidly. Fixing these categories to particular technology definitions at a fixed point in time may not allow for the innovation that this technology needs. The current system is, as former Chair Lukken said, under the SEC, principles-based. There are principles as to what a security is. It is not fixed to a technology. So I would just urge caution in getting too technologically focused on the definition of a *security*.

Mr. GALLAGHER. I would like to jump in on that one. Congressman Baird, I, like, Mr. Grewal here, and former Chairman Lukken, agree deadlines—and that was you, Mr. Giancarlo, wasn't it? Sorry. Deadlines are important. We—in Dodd-Frank—I already referenced our work in Dodd-Frank at the SEC. We had 110 mandates. Many of them had 1 and 2 year deadlines. I remember telling Chair Shapiro at the time, "This is going to take a decade." And I had been a staffer, I have worked on rules, I knew what they were like. And she was very upset when I said that, but 12 years later, they are still finishing some of those rules.

And so the idea that you are not going to put a deadline on this, and prioritize ahead of what many, I would say, are sort of extraneous rules that are being worked on right now at the agencies I think would not be a good use of your time, and the agencies' time, so please do proceed.

Mr. BAIRD. I see I am out of time, and thank you very much for your comments. I appreciate it. I yield back, Mr. Chairman.

Mr. FEENSTRA. I now recognize the gentlewoman from Illinois, Ms. Budzinski, for 5 minutes.

Ms. BUDZINSKI. Thank you, Mr. Chairman. And thank you to the panelists for being here today. I appreciate it. My questions are really more around consumer protections, and they are really to any of the panelists. Many have questioned how consumer protections will be enforced against a fully decentralized blockchain. Do you believe adequate consumer protections could be achieved by regulating the exchanges platforms according to the established CFTC core principles? What other protections could provide—could

be—could we provide under the CEA principle-based regulation, in your opinion?

Mr. BERKOVITZ. Well, Congresswoman, as I stated here, I don't think, as currently structured, the CFTC regime provides the same level of investor protection or customer protection as the SEC regime provides. It is not just the exchange trading. It is the advisors and the brokers that are also part of the infrastructure and the securities market. If you go and you want to buy a security, you want to buy Apple stock, chances are—well, you could do it on Mr. Gallagher's platform. You could just buy it on his on his.

Mr. GALLAGHER. Please do.

Mr. BERKOVITZ. But if you want to go to an advisor, if you want to get some advice from an investment advisor, how should I plan for my retirement, what should I do, is this a good investment, you go to an investment advisor, and they have a fiduciary duty to act in your best interest. That doesn't exist in the CFTC world. You go—you can go to a commodity trading advisor, and there is a duty of disclosure. They don't have the same clear duty in the CFTC space that you do in the security space. A broker too. In the securities world, the brokers have a duty to act in the best interests of the person they are trading for, and that many times includes the duty of best execution, to get the best deal, wherever it is, on whatever platform it is.

Ms. BUDZINSKI. Yes.

Mr. BERKOVITZ. In the CFTC, you go to the futures commission merchant or whatever, and they have a duty not—to tell you the truth.

Ms. BUDZINSKI. Yes.

Mr. BERKOVITZ. They can't commit fraud, and they have to safeguard your money, but they don't have that same best execution duty.

Ms. BUDZINSKI. Yes.

Mr. BERKOVITZ. If you are moving something from a SEC world into a CFTC world, there is a lesser duty, and the—there are lesser investor protections. You—the SEC system provides that to the investors, where just a CFTC market it is a wholesale market. It assumes a level of sophistication on the CFTC side that is there, not the retail. So you need to bolster that.

Ms. BUDZINSKI. Okay.

Mr. GALLAGHER. Congresswoman, could I just jump in?

Ms. BUDZINSKI. Yes.

Mr. GALLAGHER. From the SEC registered broker perspective—and, of course, we have our affiliate, Robinhood Crypto, that is not registered—it is doable today to provide these customer protections. That is what we strive for everyday at Robinhood. Let us take these learnings that we have, some of the learnings that Mr. Berkovitz was talking about from our registered broker side, apply them to this platform.

For platforms that want to do it right, that care about their customers, that care about customer protection, it is absolutely doable now, without legislation. So the idea of—that it is not doable without SEC oversight, I don't necessarily agree with. I think, within the construct that the bill sets out, the CFTC has all the capabilities. And I think Chairman Lukken pointed out a really good point,

it remains to be seen at the role of the FCM here in this role, and I think that is where the heavy work of this customer protection could possibly be handled. But it is entirely doable, and, quite frankly, for a platform like us, we would say we are already doing that. We could comply tomorrow, to provide not only the basic investor protections, but what we view as enhanced protections.

Ms. BUDZINSKI. Yes.

Mr. GREWAL. Congresswoman, we could and would absolutely comply tomorrow, as Mr. Gallagher suggests. And, to the extent there are concerns you or others on the Committee may have about the sufficiency of consumer protections, I would encourage you to consider that the discussion draft speaks specifically to important restrictions that protect consumers in important ways. For example, requirements for asset segregation. For example, restrictions on commingling. For example, requirements that there be full disclosure of any conflicts arising out of affiliated entities. So the draft does do a very good job of assuring explicitly that the types of protections the consumers need are included as part of the scheme.

Ms. BUDZINSKI. Yes.

Mr. GIANCARLO. And yet, Congresswoman, what many advocates for this technology are seeking is a less intermediated world than the one that they have been—that they have found themselves in. And so I think, as we go forward, we need to try to find the right balance. The goal can't be to re-erect an entire intermediated world on this new technology, a technology that is been developed to break through some of the gatekeeping, rent collecting, cost collection that goes on in the existing financial system and make it more accessible.

Ms. BUDZINSKI. Okay. I think I am about out of time, so I will just yield back, but thank you for your insights on that and my question. I appreciate it.

Mr. FEENSTRA. I now recognize the gentleman from Tennessee, Mr. Rose, for 5 minutes.

Mr. ROSE. Thank you to our panel of witnesses for your time today, and I will dive right into my questions. Mr. Gallagher, I noted that there are a small handful of digital assets in the very recent Binance and Coinbase complaints that the SEC alleges are securities that are also available on Robinhood Crypto's platform. To the extent this allegation were proven to be true, couldn't you simply offer those tokens through your SEC-registered broker/dealer?

Mr. GALLAGHER. Well, thank you very much for that question, Congressman. It is a very, very telling question. The answer is no. It—there are a few coins that have been noted in recent SEC complaints that we do trade on our platform. We are actively reviewing the SEC analysis to determine what, if any, actions to take in that regard. But you would think, with a major broker/dealer sitting on the other side of our house, our primary business, we could simply say, "Okay, SEC, you have just said these are securities, I am going to go trade them on my broker now." It is impossible without regulatory relief and infrastructure changes in the securities markets.

Mr. ROSE. In—and beyond what you have already identified, are there—what are the obstacles to doing that?

Mr. GALLAGHER. So, Congressman, in my written testimony I laid out a little bit about a process we called Crypto the Hard Way at Robinhood. When Chair Gensler at the SEC, in 2021, said "Come in and register," we did. We actually came in, and we did it proactively. We weren't being investigated by the SEC. We did it just because he wanted folks to do it, we thought it was good for our business and our customers. We went through a 16 month process with the SEC staff trying to register a special purpose broker/dealer, and then we were pretty summarily told in March that that process was over, and we would not see any fruits of that effort.

Now, one of the barriers that was raised in the discussions was the need to fix the—what I will call the 33 Act Disclosure. So the issuer disclosure deficiency that the SEC used as being present in crypto markets, for us, as an agency broker, to fix a perceived issuer disclosure issue is impossible. We can't control the actions of third parties. And so, by laying out that one issue it became a very high hurdle to pass, and that is why I admire the construct in the bill today that would get us quickly past that issue of the SEC registration status of the issuer.

Mr. ROSE. And just for the record, what is the status of your registration effort presently?

Mr. GALLAGHER. I believe it is—so the technical term would be DOA. We just got an e-mail saying no more talks, but they would be happy to talk to us about a pending—and any rulemaking. So if there will be a rulemaking on special purpose brokers, we will engage quickly. I am hoping we can still make process—progress with the SEC. I mean, the professional staff was nothing but professional throughout the whole process. I think they want—my sense was they wanted to find some way to be able to do this, but it just wasn't to be had.

Mr. ROSE. Thank you. I am going to shift gears a little bit. In 2021 SEC Chair Gensler said, regarding the regulation of digital assets, "There are some gaps in this space. We need additional Congressional authorities to prevent"—or "to prevent transactions, products, and platforms from falling between regulatory cracks." In 2022 he said that exemptive relief may be needed for crypto platforms to register with the SEC. It now seems that his tune has changed. He now says the securities laws are clear, but that he doesn't need—and that he doesn't need additional authority from Congress.

Mr. Berkovitz, do you agree with Chair Gensler version one, that he needs more authority from Congress to regulate crypto, or do you agree with Chair Gensler version two, that the Federal securities laws are 100 percent clear, and no relief is necessary to regulate digital asset securities and crypto platforms seeking to support them?

Mr. BERKOVITZ. Well, I think the statutory authorities are adequate, sufficient, and appropriate, the securities laws. I do believe that there is the regulatory gap, as I have outlined in my testimony, that registration is needed to close the current regulatory gap over non-security digital assets. That is what I say in my testimony.

Mr. ROSE. Thank you. I appreciate that. I—try to fit in one more. Mr. Grewal, you mentioned your petition for SEC rulemaking in your testimony. Why do you think it is necessary and appropriate for us to act with new legislation if you are also pressing for rulemaking with the SEC, as evidenced through your petition at the same time?

Mr. GREWAL. Thank you, Congressman. I am—I appreciate your raising the petition for rulemaking we filed last July, nearly 10—or now—I guess now 11 months ago. And we—the reason we filed that petition, even as we support legislative efforts to the one we are discussing today, is that under the current circumstances at the SEC, as Mr. Gallagher has alluded to, the invitation is extended repeatedly to come in and register, and yet, like, Robinhood, when Coinbase has attempted to do just that, to talk about how we could register as a broker/dealer, or an ATS, or even as an NSE, after months and months of discussion, we were simply dismissed, with no response, or any counterproposal, or ideas coming back from the SEC.

Mr. ROSE. Thank you. My time has expired. Thanks for your indulgence, and I yield back.

Mr. FEENSTRA. I now recognize the gentleman from California, Mr. Duarte, for 5 minutes.

Mr. DUARTE. Thank you. Dan Gallagher, you are the only one with the SEC on your placard in front of you, so let us talk about SEC stuff to start. Well——

Mr. GREWAL. Because he didn't put it on there. That is the only reason, Congressman.

Mr. DUARTE. Well, you are—you made a mistake. Anyway, I go on Charles Schwab, a brokerage, to buy a stock, and I can look at financial details, I can look at fundamental details, I can look at all kinds of company analytics, book value, earnings per share. And now we are going to put crypto objects on the stock market under the SEC guidance. How does a retail investor know what they are getting, or what the fundamentals are, or how do they evaluate? What are the metrics of—that help them understand what they are buying?

Mr. GALLAGHER. Yes. So it is a great question, Congressman, and the answer is disclosure, and that is what is missing right now. Compulsory disclosure in the digital asset space is missing.

Mr. DUARTE. Disclosure of what? I am sorry. I am—how many shares are out there, how many—are out there? What——

Mr. GALLAGHER. Anything.

Mr. DUARTE. What are the metrics that would foretell high likelihood of success, or at least let us evaluate one *versus* another? How do you measure an airdropped crypto asset? From a Securities Exchange point of view, what is the relevant information? I know earnings per share, or discounted cash flow is always a theory of stock valuation.

Mr. GALLAGHER. Right.

Mr. DUARTE. What is the theory of crypto valuation on the—from the SEC that we are defending to protect retail customers.

Mr. GALLAGHER. Right. Yes. And, look, I think the value of disclosure is in the eye of the investor, right? Some investors want to look at quantitative measures, like discounted cash flows, as you

said, some want to look at qualitative measures. Who is the management team, who formed this, what—in this instance, what does this coin do? Does it have a utility? What network is it on? Is it stakeable, right? All of these other features that might be important to it.

Mr. DUARTE. Well, what would be the comparable of full dilution, or earnings per share, in—when you talk about crypto?

Mr. GALLAGHER. Well, you have just—you have gone right past my level of accounting——

Mr. GIANCARLO. Might I jump in? Because it is a really interesting question. So, in the commodities world, overseen by the CFTC, there isn't the same kind of disclosure you get in the securities world. In other words, if you want to buy oil futures, if you want to buy wheat futures, there isn't disclosure put out as to how the wheat markets necessarily——

Mr. DUARTE. I will get to that next, but tell me something about the securities field.

Mr. GIANCARLO. Yes. Yes.

Mr. DUARTE. Can any of you answer me, what are the prime metrics of valuing a crypto asset in the Securities Exchange markets—regulated markets?

Mr. GALLAGHER. I think the reason we are having a hard time answering it is it hasn't happened, because there has been no registration for these assets under the securities laws.

Mr. DUARTE. Okay. So we don't have a—we don't know what we are disclosing, but we are going to be completely transparent and disclose something?

Mr. GALLAGHER. Yes. Something, right.

Mr. DUARTE. But we don't really know where the value is vested? It is not earnings.

Mr. GALLAGHER. Well, I think a lot of this is——

Mr. DUARTE. It is not business strategy. It is just something.

Mr. GALLAGHER. Well, the——

Mr. DUARTE. I mean, because right—we are just—right now we are closing down SPACs, right? We are just shutting it down, because it is too vague, too empty, too hollow, too much room for abuse. Special Purpose Acquisition Companies.

Mr. GALLAGHER. Sure.

Mr. DUARTE. We are shutting them down at the SEC, but now we are going to open up crypto, and we don't know how that is valued either.

Mr. GREWAL. Congressman, if I may?

Mr. DUARTE. Please.

Mr. GREWAL. The most important element of disclosure, whether you are talking about traditional equities or a crypto asset, is what does this thing do? And in the case of crypto assets, how does this network work? What is it aimed at providing in real ways for real people? That would happen under a regime of disclosure. It is important that people who purchase these crypto assets understand that——

Mr. DUARTE. Well, and——

Mr. GREWAL.—and they can then make independent assessments as to that value based upon their conclusions.

Mr. DUARTE. Yes, but we talk about what is your competitive advantage, what is your unique value proposition, what is your corporate strategy, what are you going to do better than other companies aren't already doing, what resources do you have, or what is your talent pool? I don't see how any of that fits into describing how we value a crypto asset. So I will let that sit here. Certainly be willing to have more answers further.

The other thing is, on the commodities side, there are lots of commodities in the world, but not all of them get listed on the Chicago Board of Trade. How do or don't—if I look at the ownership structure of even Ethereum and Bitcoin, the best case scenarios, it still looks like they are very consolidated in their ownership, and very—with a great deal of potential for manipulation by a few large holders to—where the whales can hurt the fish, if I look at certain charts. The tiny holders are going to get outplayed by the larger holders. Can—what are the standards there? How can we look to prevent that?

Mr. LUKKEN. The CFTC, since 1923, has had large trader reports filed daily by people trading in the markets, so they would have similar information for these products, so they would see if there was an outsized position that could be manipulated. And some of my former CFTC colleagues here know that there is surveillance staff that tries to talk those people out of positions, or force them to liquidate if they are too large.

Mr. DUARTE. And that is what happened on the LIBOR rate manipulation back in 2000——

Mr. LUKKEN. Well, that was off-exchange, so that was——

Mr. DUARTE. Was it?

Mr. LUKKEN.—that was part of the problem, it was off-exchange. But when it is on-exchange, and Chairman Giancarlo and my general——

Mr. DUARTE. So you can see patterns of manipulation by large holders? Okay. Yes, Mr. Chairman, thank you. I yield back.

Mr. FEENSTRA. At this time the Committee will break to accommodate votes. I humbly wish, and hope, that all of us stick around. We will resume after votes, so the Committee stands in recess, subject to the call of the chair. Two votes.

[Recess.]

Mr. JOHNSON [presiding.] All right, we will call back to order this full Committee hearing. With that, first up in the question queue is Mr. Alford from Missouri.

Mr. ALFORD. Thank you, Mr. Chairman. I want to start off with a confession. I, like lot of people in my Fourth Congressional District of Missouri, don't own any crypto, and know little about it, so I am learning, and that is kind of where I am approaching this today, okay? So bear with me. I am a big believer that less government involvement in business is the best policy, but when it comes to crypto, it seems like we are living in the Wild West, and Marshal Dillon is nowhere to be found. The town, the industries that you represent, is crying out for someone to come along and lay down the law, and to help save them.

So, Mr. Grewal, I want to start with you today. In layman's terms, so that I can understand it, and our district can absorb it, and America can understand, what happens if the marshal doesn't

show up? If Congress does not act, what happens in the Westworld of crypto currency?

Mr. GREWAL. Thank you very much, Congressman, and I think a couple of important things will happen if this Congress fails to act. First and foremost, the spot market for digital asset commodities will continue to lack Federal supervision in a way that will assure integrity and protections for consumers. As Chair Behnam articulated, I thought quite well, earlier today, as things currently sit right now, there is no Federal protection for the spot market when it comes to digital asset commodities. I think that is the most important thing that—opportunity that we lost if the Congress fails to act.

The other thing that will happen is that we will continue to see this innovation, this industry, invest more and more of its resources outside of the United States, in jurisdictions that have a much—a more balanced and appropriate framework and regulatory structure for this particular industry. So it is both about protecting consumers, on the one hand, in these important markets, and on the other, making sure the innovations that are being developed are being developed here in the United States.

Mr. ALFORD. Mr. Gallagher, what happens if we don't act, and the business goes to some other part of the world? What does that do to our economy and to the industry here in America?

Mr. GALLAGHER. Thanks, Congressman. I—look, I think it is already happening. We are seeing firms, crypto firms, declare very publicly that they are going to move to international jurisdictions. Sometimes it is because they want to go to low to no regulation jurisdictions. Sometimes—amazingly, we are at a point now where even Europe is ahead of us in providing a regulatory framework, and they want to go and chase clarity. They actually want to go to a jurisdiction where they don't have to worry every day about an enforcement action being dropped, a coin being deemed a security that yesterday wasn't, that sort of thing.

And so I think we are already there. And that is—again, relates back to the question we had earlier about deadlines, and things like that. I think it is incredibly important for this Congress to act quickly with legislation, and I think then it is going to be incumbent on the regulators to also move quickly.

Mr. ALFORD. Thank you. Mr. Lukken, in your testimony you talk about the CFTC has longstanding anti-fraud and anti-manipulation enforcement authority over the cash or spot markets, including for digital assets. Is the CFTC's limited enforcement authority sufficient to effectively police the digital asset ecosystem?

Mr. LUKKEN. You need a proper regulatory structure, not just only enforcement authority. So enforcement authority—and we have heard about CFTC and the SEC taking strong action, but you can't regulate by enforcement. You need a regulatory system. Most of these actors here testifying today want to be in compliance. They want to do the right thing, compete in a fair and responsible way. By providing a regulatory framework we can do that, and that is going to help make sure that the bad actors stay out of, in your case, the Wild, Wild West, and the good actors are actually being policed properly.

Mr. ALFORD. Thank you so much, gentlemen, for you being here today, and your candor, and your investment in our economy, and our society. Thank you. I yield back.

Mr. JOHNSON. Ms. De La Cruz, you have 5 minutes.

Ms. DE LA CRUZ. Thank you to all the witnesses joining us today. My first question—Mr. Gallagher, in your written testimony you reference the already eroding competitive position of the U.S. with regards to digital asset markets. Is it too late for us to change the course, and how quickly do you feel we need to act?

Mr. GALLAGHER. Thank you so much for the question, Congresswoman. Look, I don't think it is too late, but I do think, as I mentioned in my response to Congressman Alford, it is imperative that you move quickly. It has taken too long. The need for legislation I think has been pretty well recognized for years now, and in that period, other jurisdictions have seized the moment, right? Whether it be in Asia with Singapore, whether it be the EU—and, again, the EU is in—one of the lightest touch regimes in the world. They are very—they are deemed to be a very regulatory group of countries, and so it is kind of amazing to me that they have outpaced us in this regard.

So I think there is a chance to continue to have a thriving U.S. digital asset market, to keep our innovators here, keep our entrepreneurs here. One of the things that we are finding is there is less investment in this space, right? The messaging that has been given to those who fund this incredible new technology is you are not wanted here, or whatever you are going to fund is not wanted here, so let us go fund it elsewhere, let us not fund it at all, let us fund some different industry. And that is being felt in, very much in Silicon Valley and across the country. So please move with all due haste, if you can.

Ms. DE LA CRUZ. Thank you. My next question is for Mr. Grewal. In light of the SEC's lawsuit against Coinbase announced this morning, could you summarize for this Committee your interactions with Federal regulators that led to this point?

Mr. GREWAL. Thank you, Congresswoman. Well, I am still digesting the complaint that was served earlier today. What I can speak to in much greater detail are the many, many interactions we have had with the SEC, going back not just several months, but indeed several years. We have been a publicly listed company since 2021. As you might expect, as part of that process, we made very thorough disclosures of our business model, our review process, the way we consider assets, the way we assure that digital asset securities, because of the current law, are not listed on our platform.

After all of that disclosure, after all that examination, we were allowed to list, and so we have listed as a public company for now 2+ years. Since that time, we have had over 30 engagements with the SEC to try to work towards a sensible framework for regulation that would allow, for example, the registration of platforms as either broker/dealers, or NTASs, or a national security exchange. We received no response after our presentations as part of those discussions.

In July of last year we filed a formal petition for rulemaking in which we asked 50 questions that we believed needed to be answered in order for there to be a reasonable and comprehensive

regulatory framework and structure. Months and months have passed. We are now at 10 or 11 months. We still have not received a response to even whether rules would be issued, let alone what rules those might be. That is the history that we are dealing with.

Ms. DE LA CRUZ. So, in your view, could the SEC's concerns, as expressed in the lawsuit, be settled through continued dialogue? Because what I am hearing is that there hasn't been much dialogue, it has been one-sided dialogue. Or do you—would—what would clear this up be clear legislation from Congress? Is that the only way to really remedy, or to settle, the crypto industry specific gaps?

Mr. GREWAL. Well, as you suggest, Congresswoman, there hasn't been much of a dialogue. I would rather—more accurately characterize it as a monologue. Nevertheless, we remain open and willing to discussions around what a sensible framework could look like. I would happily walk over to the Commission today, as soon as this hearing were done, and have that conversation with the Chairman, or any other member of the SEC or staff that were interested in that conversation.

But in the absence of a true conversation or dialogue, legislation offers the best path forward, not just for Coinbase, but for the entire industry, so that consumers are protected in this emerging market. That is our goal.

Ms. DE LA CRUZ. Excellent. Thank you. With that, I yield back.

Mr. JOHNSON. Thank you, ma'am. I would yield myself 5 minutes for questions. Mr. Gallagher, coming at you, give us some sense of the disclosure regime in place at the SEC for those offering new securities, and are those disclosures well suited to the digital assets marketplace?

Mr. GALLAGHER. Thanks for the question, Congressman. The requirements from the SEC are tailored to actual investment contracts, to actual securities. I would say—and I have a fundamental disagreement with the notion that most, or the vast majority of existing digital assets are *securities* under the traditional definition, as defined 80 years ago in a Supreme Court case regarding orange groves.

So, I don't think the current SEC requirements are appropriately tailored to digital assets. I do think, from what I have seen in the bill, that the basic disclosure principles in the bill, in the DAMS Act, source code, transaction history, plan of development, the basic economics of the offering, the list of affiliates, material risks, all these things, those are core issues that would be certainly subsumed within the current SEC requirements, but more tailored to this industry, to the digital asset industry.

Mr. JOHNSON. So I don't want to put words in your mouth, Mr. Gallagher, so feel free to push back on me, but it seemed as though you are saying that the passage of this bill would put into place a disclosure system that is more effective, and is better tailored to the marketplace, than what we have today?

Mr. GALLAGHER. What we have today is nothing, Congressman. What we have today are no registered coins of any merit. And I think some might point out a few coins that registered under the 1934 Act because of an enforcement case. Those aren't real. We don't have 1933 Act registered coins that, today. So yes, I think

that what is laid out in the DAMS Act is a great—at a minimum, a great starting point. It could be the endpoint too.

Mr. JOHNSON. Yes. Thanks. And for our three former Commissioners of the CFTC, thanks for being here. We are obviously very grateful to have your insight. We have heard today about how the CFTC is a principles-based regulator, about how they can be nimble, about how they regulate in such a way to allow for innovation within product offerings. I think sometimes that can be recharacterized as light touch regulation without an appropriate focus on customer protection. So for the three former Commissioners, give me a sense. Are those mischaracterizations as off base as I assume they are?

Mr. GIANCARLO. Well, maybe I will lead off and just simply point out, just as a fact the CFTC markets did not fail during the great financial crisis. Whether that regulatory structure is characterized as light touch, heavy touch, it worked, as compared to perhaps some of those heavy touch jurisdiction—regulatory jurisdictions, where there was a great deal of failure.

Mr. BERKOVITZ. I think the CFTC regulatory system is fit for purpose for the markets it regulates. I think it does a good job. I think the combination of principles and prescriptiveness, and the core principles in CFTC regulation, works well for the markets that CFTC regulates, and protects adequately the market participants in the market it regulates. I do not believe that regime is adequate to protect participants in the securities markets, so I would be wary of moving securities from SEC jurisdiction into the CFTC markets.

I do not think the customers and investors receive the same degree of protection in the CFTC regulated markets as they receive in the SEC regulated markets across the board. It is not just markets. There are many more aspects to the regulatory regimes than just the trading of these assets on exchanges.

Mr. LUKKEN. Well, the principles-based system, I think there is a misunderstanding that somehow it is light touch. It is flexible, but don't get me wrong—and the registrants that have to comply with the Commodity Exchange Act have significant duties and responsibilities in doing so, and—protecting customers. And so I think you have seen over the years, as defaults happen in our markets, those customers have been largely protected, and—I mean, all the way through bankruptcy, and so this bill tries to replicate that.

I take a little bit of difference of opinion with my colleague here. I think the CFTC is more than capable of taking on certain customer protections for these new markets, and agree securities should be regulated by the SEC, but the CFTC certainly has the ability. They showed that during the retail foreign currency spot markets, when Congress gave them the authority to oversee that, and we are now at record low customer protection complaints, according to the NFA. So, to me, the CFTC certainly has the ability to take on this marketplace.

Mr. JOHNSON. Yes, I think that is very well said. I think there is all the evidence in the world that there are robust customer protections within that regime, that the CFTC is a strong market regulator. And as you mentioned, Mr. Giancarlo, that those registrants, that environment, that landscape, has been at least some-

what to—quite resilient to broader market disruptions. That is not for nothing, right?

With that, I would yield back. Mr. Soto, followed by Mr. Molinaro, that is the batting order. Sir, you have 5 minutes.

Mr. SOTO. Thank you so much, Mr. Chairman. When I get to talk to my constituents about things such as digital tokens, and cryptocurrency, stablecoins, Non-Fungible Tokens, people's eyes glaze over, right? And I think that is one of the challenges as we are working in legislation for this area. I am also one of the co-Chairs of the Blockchain Caucus, and I have worked with folks on both sides of the aisle to try to come up with a legislative regime to define jurisdiction between the CFTC, FTC, SEC. And so, first, if we were to define a *digital asset,* how do you think it should be defined? And I am going to leave that open for the whole panel, and then we will go to jurisdiction next. But, Mr. Chairman?

Mr. GIANCARLO. Thank you. And, Mr. Soto, I must say, it is nice to see you again. The last time I saw you, we were playing guitars in this very room.

Mr. SOTO. We were rocking it out.

Mr. GIANCARLO. Former Chairman——

Mr. SOTO. We were rocking it out, definitely.

Mr. GIANCARLO. Mr. Grewal said something interesting before. I want to actually build on it answering that question. When looking at any crypto, I think it is important to look at the underlying blockchain. The value is in what does the underlying blockchain do? What is its purpose, what does it serve? And it can serve in many different functions.

There are some that say all cryptos are securities, but I think that is only the case if the underlying blockchain serves a capital formation purpose. An underlying blockchain may serve something that looks like a commodity. It may serve something that looks like a banking function. It may look like something that does governance. It may look like something that creates different forms of—art forms. The—this technology doesn't easily fit into one simple box, and so the answer to the question lies in what is the purpose of the underlying blockchain? What purpose does it serve?

And that is why it is challenging, and, again we commend—I think all my colleagues commend this Committee for the very healthy first stab it has taken at this, and to try to come up with some definitions that will work as a lasting legal framework we can adopt.

Mr. SOTO. And, Mr. Chairman, therein lies the problem, right? It could be a commodity, it could be a security, it could be a currency. Mr. Grewal, where do you think we should line up in digital assets, and do you have any opinions on where jurisdiction should lie between CFTC, SEC, and potentially FTC as well?

Mr. GREWAL. Thank you very much, Congressman. I think the discussion draft actually goes a great distance towards the—striking the right balance, because, as you rightly pointed out, these assets are, and often do serve a myriad of purpose and reflect a myriad of qualities. I think that the most important thing that is—ought to be considered here, and—I believe is reflected in the current draft is to acknowledge that the characteristics of assets can and do change over time.

It may be the case, particularly for assets that were created solely for the purpose of capital formation, as Mr. Giancarlo identifies, that the asset is initially properly treated as a security and remains—and should continue to be treated as a security for all time. But there are many other assets which evolve as they decentralize, and as the information asymmetry between a small group of people with unique access with operation of the network changes, and you have broader distribution of the assets in ways that really require a different type of disclosure for a different type of participant in the network. That is why I think the discussion draft strikes the right balance.

Mr. SOTO. Thanks—thank you, Mr. Grewal, and our Securities Clarity Act (H.R. 3572) with Representative Emmer actually goes into the taxation part of this. Commissioner Gallagher, where do you see us defining *digital assets* and *jurisdiction?*

Mr. GALLAGHER. Congressman, I don't have much to add from what has already been said. I do think the discussion draft does a really fine job of getting at this very tough issue. These products do change. We recognize the basic definition, right, is basically a blockchain-based asset. We talk in terms of coins at Robinhood, and I do think setting the definition, and having legislation that anticipates the life cycle, and the potential for change in these assets is critically important.

Mr. SOTO. Thank you.

Mr. GALLAGHER. I will point out, too, our—Robinhood customers—you said your constituents, their eyes roll over. Our customers, their eyes get real big when they start talking about crypto assets.

Mr. SOTO. I said glaze over, not roll——

Mr. GALLAGHER. Glaze over, okay. All right.

Mr. SOTO. It is complicated, not that they are sarcastic about it, just for the record.

Mr. GALLAGHER. Well, let me keep the record clear.

Mr. SOTO. Commissioner Berkovitz, where do—where should we fall on digital assets on——

Mr. BERKOVITZ. Actually, I am happy to say that I found an issue where I agree with my colleagues, in terms of the definition of *digital asset,* and the terms—that assets can change over time. But I would emphasize again, and I think I am in agreement with my former Chairman, that the technological description of the asset, or the technology by which it is traded or distributed, is not determinative of whether it is a security, it is its functional nature as a capital-raising instrument. That—so I would have a digital asset apart from the definition of *security.* Thank you.

Mr. SOTO. Thank you. My time has expired.

Mr. JOHNSON. The honorable gentleman from New York, Mr. Molinaro.

Mr. MOLINARO. That was a very kind introduction, Mr. Chairman. I appreciate that very much. I don't play the guitar, but I am very happy the two of you could at least agree for a moment. Thanks, Mr. Chairman. So I want to return to the very question of defining *decentralization.* And I think, of course, we all recognize that the success of this particular proposed legislation is really found here, in establishing a process that accommodates tokens

that mature and become decentralized over time. So, Mr. Giancarlo, I am just going to return to this with you.

The discussion draft does both, but your testimony stated the CFTC and SEC should work together to certify a blockchain—that a blockchain is decentralized. Right now, of course, it is—only the SEC's is defined within the draft. Can you just elaborate, how might that function—and, by the way, I—perhaps address this question of anonymity, obviously. How do we—how could we prove decentralization as the draft is written?

Mr. GIANCARLO. Yes. So the point I made in my testimony, and—to answer the first part of your question, is—I think it is vitally important that the CFTC have a role in that determination as to whether protocol is sufficiently decentralized to be a commodity, because, at the end of the day, the CFTC will then have to regulate it, and will have to make sure that it trades on its regulated exchanges. So I think that leaving that decision only to one agency, as opposed to two agencies, they both have a vested interest. And hopefully we—the bill can put together a mechanism where the two agencies can come together on that determination.

In my testimony I also said that the determination that something having been decentralized might become centralized sufficient to become a security I think is also something there should be a mutuality of import into that determination. So it is one of the suggestions that I have made for improvement of the bill, to make sure that the CFTC's role in that decentralization/centralization determination is recognized in the legislation.

Mr. MOLINARO. And so, as written, though, do we have the tools—are the tools in place to adequately identify that decentralization? And I think the question of anonymity is a problem, right? Who owns how much of what?

Mr. GIANCARLO. Right. In the commodities world, unlike in the securities world, before we even get into digital assets, when it comes to commodities that come out of the ground, as opposed to—which the CFTC regulates, as opposed to securities that are issued by corporations, that distinction is quite clear, right? And there is no disclosure on coal, or wheat, or other commodities from a central party. What do market participants there do? And I was making this point earlier, they rely on third parties to provide a lot of that data set.

And today, even in the decentralized digital asset space, there are third parties, there are chain analysis, there are other firms that are actually providing very good data sets. So, as we think about a world of decentralized digital commodities, we shouldn't have to use old forms, and think there should be somebody in the center that is issuing disclosure. There will be third parties stepping up, providing very good analysis that people investing in digital commodities will look to.

Mr. MOLINARO. I am confident we are going to dive deeper into this topic. I want to just switch, if I could, to Mr. Berkovitz. The Dodd-Frank Act significantly expanded the jurisdiction of CFTC to include the $500 trillion swaps market, which required the agency to undertake significant new rulemaking. Was the Commission able to effectively implement those new rules, and do you believe

the swaps market is now better regulated than it was before Dodd-Frank?

Mr. BERKOVITZ. Absolutely, Congressman. The Dodd-Frank Act, I believe has significantly improved the resilience, and reduced systemic risks in the previously unregulated swap market, and it is very—I am very privileged and proud of having the opportunity to serve at the CFTC at that time. But I would say that the joint rulemakings that the CFTC did with the SEC during that time were really very resource intensive, and a very high priority of both Chairs. Chair Gensler and Chair Shapiro really put those joint rulemakings at a very high priority. But it was successful in the end, I believe.

Mr. MOLINARO. Sure. And this alludes to—or touches on something you alluded to earlier. If given the proper authority and resources from Congress, is there any reason to expect that the agency would not be able to issue oversight over digital commodities about markets?

Mr. BERKOVITZ. The non-security digital spot markets, without affecting current agency jurisdictions, yes, I believe so.

Mr. MOLINARO. Yes. All right. Let me just ask generally—this is more for the people at home who do understand this piece. Is the risk of scams, or another FTX-like scandal, more likely with or without Congressional action? To anyone.

Mr. GREWAL. Without.

Mr. GALLAGHER. Agree, without.

Mr. BERKOVITZ. Agree.

Mr. MOLINARO. Thank you, Mr. Chairman. I yield back.

Mr. JOHNSON. Before we close today's hearing, we would ask for some closing comments from the Ranking Member, Mr. David Scott.

Mr. DAVID SCOTT of Georgia. Well, thank you very much. And first I want to thank Chairman Behnam, our current CFTC Chairman, for his comments and insight earlier this morning. And now, for this panel, I want to thank the Honorable J. Christopher Giancarlo, former Chairman of the Commodity Futures Trading Commission, Mr. Paul Grewal, Chief Legal Officer of Coinbase. Thank you. The Honorable Don Gallagher, Chief Legal, Compliance, and Corporate Affairs Officer of Robinhood Markets, Inc. former Commissioner also of the United States Securities and Exchange Commission. Thank you. Then the Honorable Don Berkovitz, former Commissioner, Commodity Futures Trading Commission, and the Honorable Walter Lukken, President and Chief Executive Officer of Future Industry Association, and former Acting Chairman of the Commodity Futures Trading Commission. We have had just a spectacular and informative hearing from you all.

And we are burdened with two very serious challenges. First of all, to deal with this new and emerging aspect of our great financial system, and then we have two different agencies handling the regulation of it, the Securities and Exchange Commission, the CFTC. Commodities and securities, all there together. But the big issue that we have yet to deal with, and we have to deal with, is making sure that we appropriate the proper funding so that you

can do the job. And that is our job. And that is why this hearing was so important. We have to do it right.

And we can't skimp with this. This is the biggest challenge facing our financial system, certainly in most of our lifetime here. We have faced many challenges in the history of our great nation's financial system, but this one is revolutionary, and we have to make sure we fund it properly. And so we look to you to work with us here in Congress to make sure that we provide you with the resources, the financial strength, to do the job, and to do it right for the American people, and our nation, and the world. Because this could be very critical to do it right, to keep our economy and financial system number one in the world. Thank you for your valuable contribution.

Mr. JOHNSON. Washington, D.C. is a town that sometimes confuses activity with progress. We are all running a million miles a minute, and so after each hearing I try to take just a few seconds to ask myself what major themes appeared out of that hearing. And, to me, it was—it is crystal clear what—we have heard it from both panels today, as well as from the questions and statements of the Members, three major themes.

First off, there is uncertainty surrounding the transition of digital assets from security to commodity, and that that uncertainty injures innovation and market activity in this country. That is number one. Number two, that there—we are in need of a spot market regulator in the digital asset space. Number three, that the discussion draft makes important and serious advancements in closing both of those gaps. And so I want to thank our panelists for helping us to fill out those themes a bit, to give us some sense of how the discussion draft can be strengthened, and what the path forward might look like.

And, with that, I would note that, under the Rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplemental written responses from the witnesses to any questions that were posed to them by Members. And, unless there is anything else to come before this Committee, we will stand adjourned.

[Whereupon, at 2:50 p.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUPPLEMENTARY MATERIAL SUBMITTED BY HON. GLENN THOMPSON, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

Digital Asset Market Structure Discussion Draft

(a) SHORT TITLE.—This Act may be cited as the "[To be added Act of 2023]".
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—DEFINITIONS; RULEMAKING; PROVISIONAL REGISTRATION
SEC. 101. DEFINITIONS UNDER THE SECURITIES ACT OF 1933.

Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

"(20) AFFILIATED PERSONS.—The term 'affiliated person' means—

"(A) with respect to a digital asset issuer—

"(i) a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such digital asset issuer; and

"(ii) a person that was described under clause (i) at any point in the previous 3-month period; or

"(B) with respect to any digital asset—

"(i) a person that beneficially owns 5 percent or more of the units of such digital asset that are then outstanding; and

"(ii) a person that was described under clause (i) at any point in the previous 3-month period.

"(21) BLOCKCHAIN.—The term 'blockchain' means any technology—

"(A) where data is—

"(i) shared across a network to create a public ledger of verified transactions or information among network participants;

"(ii) linked using cryptography to maintain the integrity of the public ledger and to execute other functions; and

"(iii) distributed to network participants in an automated fashion to concurrently update network participants on the state of the public ledger and any other functions; and

"(B) composed of source code that is publicly available.

"(22) BLOCKCHAIN NETWORK.—The term 'blockchain network' means any blockchain or blockchain protocol.

"(23) BLOCKCHAIN PROTOCOL.—The term 'blockchain protocol' means any self-executing software deployed to a blockchain composed of source code that is publicly available and accessible, including a smart contract or any network of smart contracts.

"(24) DECENTRALIZED NETWORK.—With respect to a blockchain network to which a digital asset relates, the term 'decentralized network' means the following conditions are met:

"(A) During the previous 12-month period, no person, acting on the person's own, excluding any decentralized organization—

"(i) had the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality or operation of the blockchain network; or

"(ii) had the unilateral authority to restrict or prohibit any person who is not a related person or an affiliated person from—

"(I) using, earning, or transmitting the digital asset;

"(II) deploying software that uses or integrates with the blockchain network;

"(III) participating in on-chain governance decisions with respect to the blockchain network; or

"(IV) operating a node, validator, or other form of computational infrastructure with respect to the blockchain network.

"(B) During the previous 12-month period, neither any digital asset issuer nor any affiliated person, excluding any decentralized organization—

"(i) beneficially owned units of such digital asset that represented at any time 20 percent or more units of such digital asset that are then outstanding; and

"(ii) had the unilateral authority to direct the voting of units of such digital asset that represented at any time 20 percent or more of the outstanding voting power of such digital assets.

"(C) During the previous 3-month period, the digital asset issuer, any affiliated person, or any related person has not implemented or contributed any intellectual property to the software code of the blockchain network that materially alters the functionality or operation of the blockchain network.

"(D) During the previous 3-month period, neither any digital asset issuer nor any affiliated person—

"(i) has marketed to the public the digital assets or the blockchain network; or

"(ii) issued a unit of the digital asset.

"(E) During the previous 12-month period, all issuances of units of the digital asset through the programmatic functioning of the blockchain network were end-user distributions.

"(25) DECENTRALIZED ORGANIZATION.—

"(A) IN GENERAL.—The term 'decentralized organization' means, with respect to a blockchain network, any organization of persons using the digital assets related to such blockchain network to form consensus in the development, publication, management, or administration of such blockchain network, which is controlled by the entirety of persons holding such digital assets and not by any particular person.

"(B) EXCLUSION.—The term 'decentralized organization' does not include any organization directly engaged in an activity that requires registration with the Commission or the Commodity Futures Trading Commission other than—

"(i) developing, publishing, managing, or administering a blockchain network; or

"(ii) an activity with respect to which the organization is exempt from such registration.

"(26) DIGITAL ASSET.—

"(A) IN GENERAL.—The term 'digital asset' means any fungible digital representation of value that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger.

"(B) RELATIONSHIP TO A BLOCKCHAIN NETWORK.—A digital asset is considered to relate to a blockchain network if the digital asset is intrinsically linked to the blockchain network, including—

"(i) where the digital asset's value is reasonably expected to be generated by the programmatic functioning of the blockchain network;

"(ii) where the asset has voting rights with respect to the blockchain network; or

"(iii) where the digital asset is issued through the programmatic functioning of the blockchain network.

"(27) DIGITAL ASSET ISSUER.—With respect to a digital asset, the term 'digital asset issuer'—

"(A) means—

"(i) any person that deploys the source code providing for the creation of such digital asset;

"(ii) any person that makes an initial distribution of a unit of the digital asset; or

"(iii) any sponsor; and

"(B) does not include—

"(i) any person deploying source code on the instruction of a principal; or

"(ii) any software creating such digital asset.

"(28) DIGITAL ASSET MATURITY DATE.—The term 'digital asset maturity date' means, with respect to any units of a digital asset, the first date on which 20 percent or more of the total units of such digital asset that are then outstanding as of such date are—

"(A) digital commodities; or

"(B) digital assets that have been registered with the Commission and issued and sold by a digital asset issuer.

"(29) DIGITAL COMMODITY.—The term 'digital commodity' has the meaning given that term under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(30) END-USER DISTRIBUTION.—The term 'end-user distribution' means an issuance of a unit of a digital asset that—

"(A) does not involve an exchange of more than a nominal value of cash, property, or other assets;

"(B) is distributed in a broad, non-discretionary manner based on conditions capable of being satisfied by any participant in the blockchain network, including, as incentive-based rewards—

"(i) to users of the digital asset orany blockchain network to which the digital asset relates; or

"(ii) for activities directly related to the operation of the blockchain network, such as mining, validating, staking, or other activity directly tied to the operation of the blockchain network; and

"(C) relates to a blockchain network that is a functional network and for which the information described in section 203 of ⟦SHORT TITLE⟧ has been certified and made publicly available.

"(31) FUNCTIONAL NETWORK.—With respect to a blockchain network to which a digital asset relates, the term 'functional network' means—

"(A) the network allows network participants to use such digital asset for—

"(i) the transmission and storage of value on the blockchain network;
"(ii) the participation in an application running on the blockchain network; or
"(iii) the participation in governance of the blockchain network; and

"(B) the digital asset does not confer any express contractual rights between the holder and the digital asset issuer.

"(32) PAYMENT STABLECOIN.—The term 'payment stablecoin'—

"(A) means a digital asset—

"(i) that is or is designed to be used as a means of payment or settlement; and
"(ii) the issuer of which—

"(I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; and
"(II) represents will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value; and

"(B) that is not—

"(i) a national currency; or
"(ii) a security issued by an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)).

"(33) RELATED PERSON.—With respect to a digital asset issuer, the term 'related person'means—

"(A) a founder, promoter, employee, consultant, advisor, or person serving in a similar capacity;
"(B) any person that is or was in the previous 6-month period an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity; and
"(C) any equity holder or other security holder of a digital asset issuer.

"(34) RESTRICTED DIGITAL ASSET.—The term 'restricted digital asset' means a digital asset that is—

"(A) purchased directly from the digital asset issuer or an affiliated person in a private offering;
"(B) distributed to a digital asset issuer, a related person, or an affiliated person in an end-user distribution; or
"(C) distributed to any other person through a transaction that is not an end-user distribution.

"(35) SECURITIES LAWS.—The term 'securities laws' has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).
"(36) SOURCE CODE.—The term 'source code' means a text listing of commands to be compiled or assembled into an executable computer program used by network participants to access the network, amend the code, and confirm transactions.
"(37) SPONSOR.—The term 'sponsor' means, with respect to any issuance of digital assets, any person that—

"(A) participates in an arrangement for the primary purpose of effecting a sale, end-user distribution, or other issuance of such digital assets, including—

"(i) the granting of a license or assignment of intellectual property;
"(ii) the making available of free software or open source licenses; or
"(iii) the granting of other rights or transfer of assets material to execution of such sale, distribution, or other issuance; or

"(B) undertakes any other activity designed to avoid a classification as a 'digital asset issuer' for purposes of this Act.".

SEC. 102. DEFINITIONS UNDER THE COMMODITY EXCHANGE ACT.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (40), by striking subparagraph (F) and the following:

"(F) a digital commodity exchange registered under section 5i."; and

(2) by adding at the end the following:

"(52) DIGITAL COMMODITY.—

"(A) IN GENERAL.—The term 'digital commodity' means—

"(i) a digital asset that was issued to any person, other than a digital asset issuer, a related person, or an affiliated person, through an end-user distribution;

"(ii) a digital asset that is held by any person, other than a digital asset issuer, a related person, or an affiliated person, after each network to which the digital asset relates is—

"(I) a functional network; and

"(II) certified to be a decentralized network under section 204 of ⟦SHORT TITLE⟧; or

"(iii) a unit of the digital asset that is held by a related person or an affiliated person for so long as each blockchain network to which the digital asset relates is—

"(I) a functional network; and

"(II) certified to be a decentralized network under section 204 of the ⟦SHORT TITLE⟧.

"(B) EXCLUSION.—The term 'digital commodity' does not include a payment stablecoin.

"(53) DIGITAL COMMODITY BROKER.—

"(A) IN GENERAL.—The term 'digital commodity broker' means any person who, in a digital commodity cash or spot market, is—

"(i) engaged in soliciting or accepting orders for the purchase or sale of a unit of a digital commodity from a customer that is not an eligible contract participant;

"(ii) engaged in soliciting or accepting orders for the purchase or sale of a unit of a digital commodity from a customer on or subject to the rules of a registered entity; or

"(iii) registered with the Commission as a digital commodity broker.

"(B) EXCEPTION.—The term 'digital commodity broker' does not include a person solely because the person mines or validates a digital commodity transaction.

"(54) DIGITAL COMMODITY CUSTODIAN.—The term 'digital commodity custodian' means an entity in the business of holding, maintaining, or safeguarding digital commodities.

"(55) DIGITAL COMMODITY DEALER.—

"(A) IN GENERAL.—The term 'digital commodity dealer' means any person who—

"(i) in digital commodity cash or spot markets—

"(I) holds itself out as a dealer in a digital commodity;

"(II) makes a market in a digital commodity;

"(III) regularly enters into digital commodity transactions as an ordinary course of business for its own account; or

"(IV) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in a digital commodity; or

"(ii) is registered with the Commission as a digital commodity dealer.

"(B) EXCEPTION.—The term 'digital commodity dealer' does not include a person solely because the person—

"(i) enters into digital a commodity transaction with an eligible contract participant;

"(ii) enters into a digital commodity transaction on or through a registered digital commodity exchange;

"(iii) enters into a digital commodity transaction for the person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

"(iv) mines or validates a digital commodity transaction.

"(56) DIGITAL COMMODITY EXCHANGE.—The term 'digital commodity exchange' means a trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity.

"(57) DIGITAL ASSET-RELATED DEFINITIONS.—The terms 'affiliated person', 'blockchain network', 'decentralized network', 'digital asset', 'digital asset issuer', 'end-user distribution', 'functional network', 'payment stablecoin', 'related person', and 'restricted digital asset' have the meaning given the terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).".

SEC. 103. DEFINITIONS UNDER THIS ACT.

In this Act:

(1) ALTERNATIVE TRADING SYSTEM.—The term "alternative trading system" has the meaning given that term under section 242.300 of title 17, Code of Federal Regulations.

(2) DEFINITIONS UNDER THE COMMODITY EXCHANGE ACT.—The terms "digital commodity", "digital commodity broker", and "digital commodity exchange" have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(3) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—The terms "affiliated person", "blockchain", "blockchain network", "blockchain protocol", "decentralized network", "digital asset", "digital asset issuer", "digital asset maturity date", "end-user distribution", "functional network", "payment stablecoin", "restricted digital asset", "securities laws", and "source code" have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(4) DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.—The terms "broker", "dealer", and "self-regulatory organization" have the meaning given those terms, respectively, under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SEC. 104. JOINT RULEMAKINGS.

(a) DEFINITIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall, jointly, issue rules to further define the following terms:

(1) The terms "affiliated person", "blockchain", "blockchain network", "blockchain protocol", "decentralized network", "decentralized organization", "digital asset", "digital asset issuer", "digital asset maturity date", "end-user distribution", "functional network", "related person", "restricted digital asset", "source code", and "sponsor", as defined under section 2(a) of the Securities Act of 1933.

(2) The term "digital commodity", as defined under section 1a of the Commodity Exchange Act.

(b) JOINT RULEMAKING FOR EXCHANGES.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall, jointly, issue rules to exempt persons dually registered with the Commodity Futures Trading Commission as a digital commodity exchange and with the Securities and Exchange Commission as an alternative trading system from duplicative, conflicting, or unduly burdensome provisions of this Act, the securities laws, and the Commodity Exchange Act and the rules thereunder, to the extent such exemption would foster the development of fair and orderly markets in digital assets, be necessary or appropriate in the public interest, and be consistent with the protection of investors.

SEC. 105. PROVISIONAL REGISTRATION OF CFTC INTERMEDIARIES.

(a) TRANSITION TO FULL REGISTRATION FOR DIGITAL COMMODITY EXCHANGES, BROKERS, AND DEALERS.—

(1) IN GENERAL.—

(A) PROVISIONAL REGISTRATION STATEMENT.—Any person may file a provisional registration statement with the Commodity Futures Trading Commission (in this subsection referred to as the "Commission") as a—

(i) provisional digital commodity exchange, for a person intending to register as a digital commodity exchange under section 5i of the Commodity Exchange Act;

(ii) provisional digital commodity broker, for a person intending to register as a digital commodity broker under section 4u of the Commodity Exchange Act; or

(iii) [] provisional digital commodity dealer, for a person intending to register as a digital commodity dealer under section 4u of the Commodity Exchange Act.

(B) FILING.—A person desiring to file a provisional registration statement under subparagraph (A) shall submit to the Commission an application in such form and containing—

(i) the nature of the registrations the filer intends to pursue;

(ii) the information required by paragraph (2);

(iii) a certification of compliance with the requirements of paragraph (3); and

(iv) such other information as the Commission may require.

(2) DISCLOSURE OF GENERAL INFORMATION.—A person filing a provisional registration statement under paragraph (1) shall disclose to the Commission the following:

(A) Information concerning the management of the person, including information describing—

(i) the ownership and management of the person;

(ii) the financial condition of the person;

(iii) affiliated entities engaging in digital asset-related activities;

(iv) potential conflicts of interest; and

(v) other information relevant to the management of the person, as determined by the Commission.

(B) Information concerning the operations of the person, including—

(i) any rulebook or other customer order [fulfillment] rules;

(ii) risk management procedures; and

(iii) a description of the product listing process.

(3) REQUIREMENTS.—A person filing a provisional registration statement under paragraph (1) shall certify to the Commission that the person complies, in such manner as the Commission may by rule or order determine, with the following requirements:

(A) BOOKS AND RECORDS.—A person filing a provisional registration statement under paragraph (1) shall—

(i) make such reports as are required by the Commission by rule regarding the transactions, positions, and financial condition of the person;

(ii) keep books and records in such form and manner and for such period as may be prescribed by the Commission; and

(iii) keep the books and records referred to in clause (ii) open to inspection and examination by any representative of the Commission.

(B) CUSTOMER DISCLOSURES.—A person filing a provisional registration statement under paragraph (1) shall—

(i) make disclosures to customers of the person related to offering digital commodities, relevant to—

(I) the experience of the customer; and

(II) the risk tolerance of the customer;

(ii) provide information to customers of the person related to each digital commodity, including—

(I) the history of the digital commodity;

(II) the functionality of the digital commodity;

(III) the operation of the digital commodity; and

(IV) the economics of the digital commodity.

(C) CUSTOMER ASSETS.—

(i) IN GENERAL.—A person filing a provisional registration statement under paragraph (1) shall—

(I) hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in customer access to money, assets, and property of the customer;

(II) treat and deal with all money, assets, and property of any customer received as belonging to the customer;

(III) segregate all money, assets, and property received from any customer of the person from the funds of the person, except that—

(aa) the money, assets, and property of any customer may be commingled with that of any other customer, if separately accounted for; and

(bb) the share of the money, assets, and property, as in the normal course of business are necessary to margin, guarantee, secure, transfer, adjust, or settle a contract of sale of a digital commodity, may be withdrawn and applied to do so, including the payment of commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with the contract of sale of a digital commodity.

(ii) ADDITIONAL RESOURCES.—

(I) IN GENERAL.—This section shall not prevent or be construed to prevent a person filing a provisional registration statement under paragraph (1) from adding to the customer money, assets, and property required to be segregated under clause (i), additional amounts of money, as sets, or property from the account of the person as the person determines necessary to prevent the account of a customer from becoming under-segregated.

(II) TREATMENT AS CUSTOMER FUNDS.—Any money, assets, or property deposited pursuant to subclause (I) shall be considered customer property within the meaning of this paragraph.

(D) LISTINGS.—

(i) PERMITTED DIGITAL COMMODITIES.—

(I) LISTING ON DIGITAL COMMODITY EXCHANGES.—

(aa) IN GENERAL.—Except as provided in clause (ii), a person filing a provisional registration statement under paragraph (1) as a provisional digital commodity exchange may list for trading any digital asset that is listed for trading on the date such person filed the provisional registration statement with the Commission.

(bb) EXCHANGE CERTIFICATION FOR EXISTING ASSETS.—On filing a provisional registration statement described under item (aa), the exchange shall submit to the Commission and the Securities and Exchange Commission a certification that any digital asset listed on the exchange that was issued before the date of the enactment of this Act—

(AA) is related to a blockchain network that is a functional network and a decentralized network; and

(BB) satisfies the listing standards under section 5i(c)(3) of the Commodity Exchange Act.

(cc) NEW LISTINGS.—A provisional digital commodity exchange may submit to the Commission and the Securities and Exchange Commission for review under item (bb) a certification attesting that any digital asset the exchange seeks to list—

(AA) is related to a blockchain network that is a functional network and a decentralized network; and

(BB) satisfies the listing standards under section 5i(c)(3) of the Commodity Exchange Act.

(II) PERMITTED ACTIVITIES BY BROKERS AND DEALERS.—Except as provided in clause (ii), a provisional digital commodity broker or digital commodity dealer may offer for trading any digital commodity that is—

(aa) offered for trading on the date of the provisional digital commodity broker or digital commodity dealer filed a provisional registration statement with the Commission; or

(bb) offered for trading on a provisional digital commodity exchange.

(ii) DE-LISTING OF DIGITAL ASSETS.—

(I) NOTICE OF NONCOMPLIANCE.—

(aa) IN GENERAL.—After such time as the Commission and the Securities and Exchange Commission finalize the joint rulemaking described under section 104, the Commission and the Securities and Exchange Commission may issue notices to an entity under this section.

(bb) NOTICE FROM THE COMMISSION.—The Commission may provide notice to a provisionally registered digital commodity exchange that a digital asset certified under clause (i)(I)(bb) does not satisfy the listing standards under 5i(c)(3) of the Commodity Exchange Act.

(cc) NOTICE FROM THE SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission may provide notice to a provisionally registered digital commodity exchange that a digital asset certified under clause (i)(I)(bb) is not related to a blockchain network that is a functional network and a decentralized network

(II) DE-LISTING REQUIRED.—

(aa) PROVISIONAL DIGITAL COMMODITY EXCHANGE.—A provisional digital commodity exchange shall de-list a digital asset from trading if the provisional digital commodity exchange—

(AA) did not submit a certification under clause (i)(I)(bb) with respect to the digital asset; or

(BB) received a notice under subclause (I) with respect to the digital asset.

(bb) PROVISIONAL DIGITAL COMMODITY BROKERS AND DEALERS.—A provisional digital commodity broker or digital commodity dealer shall de-list a digital asset from trading if—

(AA) within 6 months after the date of the enactment of this Act, a provisional digital commodity exchange has not submitted a certification under clause (i)(I)(bb) with respect to the digital asset; or

(BB) a provisionally registered digital commodity exchange has received a notice under subclause (I) with respect to the digital asset.

(cc) REASONABLE TIME.—With respect to a required de-listing, the Commission shall provide a provisional digital commodity exchange, digital commodity broker, or digital commodity dealer sufficient time to ensure—

(AA) an orderly wind-down of trading activities; and

(BB) the prevention of disruptive trading.

(4) EXPIRATION OF PROVISIONAL REGISTRATION.—

(A) IN GENERAL.—No person may file a provisional registration statement with the Commission after the rules for the registration of digital commodity exchanges or digital commodity brokers or digital commodity dealers are finalized, as appropriate.

(B) TRANSITION TO FULL REGISTRATION.—The Commission shall provide for an orderly transition to full registration for any entity that has filed a provisional registration statement under this subsection.

(C) REVOCATION OF REGISTRATION.—The Commission shall revoke a provisional registration statement filed by any person that fails to comply with this section, after providing notice to the person of the failure of the person to comply and affording the person a reasonable opportunity to correct the noncompliance.

(5) DEFERMENT OF ENFORCEMENT.—

(A) IN GENERAL.—Any person who has filed a provisional registration statement under this section and is in compliance with this section shall not be subject to an enforcement action by the Commodity Futures Trading Commission or the Securities and Exchange Commission, or any other cause of action, for—

(i) listing for trading a digital asset that is not a digital commodity; or

(ii) failing to register as a digital commodity exchange, digital commodity broker, or digital commodity dealer.

(B) FULL REGISTRATION.—A registered digital commodity exchange, registered digital commodity broker, and registered digital commodity dealer shall not be subject to an enforcement action by the Commodity Futures Trading Commission or the Securities and Exchange Commission, or any other cause of action, while such person was in compliance with this section, for—

(i) listing for trading a digital asset that is not a digital commodity; or

(ii) failing to register as a digital commodity exchange.

SEC. 106. PROVISIONAL REGISTRATION OF SEC INTERMEDIARIES.

(a) PROVISIONAL REGISTRATION.—

(1) IN GENERAL.—Any person engaging in, or proposing to engage in, activities of a broker, dealer, or alternative trading system involving digital assets that would be subject to registration with the Securities and Exchange Commission (in this subsection referred to as the "Commission") may file a provisional registration statement with the Commission, and any relevant self-regulatory organization, as a broker, dealer, or alternative trading system, as appropriate, by providing the Commission and any relevant self-regulatory organization with a statement stating the intention of the person to provisionally register as such under this section.

(2) INSPECTION AND EXAMINATION.—Each broker, dealer, or alternative trading system that has filed a provisional registration statement pursuant to this section shall be subject to inspection and examination by the Commission.

(3) REGISTRATION PRIOR TO FINAL RULES.—

(A) IN GENERAL.—The Commission shall permit any person engaging in, or proposing to engage in, activities of a broker, dealer, or alternative trading system involving digital assets to file a provision registration statement pursuant to this section.

(B) ENFORCEMENT DEFERRED.—Beginning on the date of the enactment of this Act and ending on the date the Commission establishes a registration process for purposes of this section, a person engaging in, or proposing to engage in, activities of a broker, dealer, or alterative trading system involving digital assets shall not be subject to an enforcement action by the Commission for a violation of this Act or the securities laws related to a failure to register with the Commission before engaging in such activities.

(4) EXCEPTION.—A person may not file a provisional registration statement to be a broker, dealer, or alternative trading system is such person is disqualified under the securities laws or rules issued thereunder from acting as a broker, dealer, or alternative trading system, as applicable.

(5) TREATMENT UNDER CUSTOMER PROTECTION RULES.—The revisions required under section 304 shall apply to a broker, dealer, or alternative trading system that has provisionally registered pursuant to this section to the same extent as such revisions apply to a registered broker or dealer.

(b) TRANSITION TO FULL REGISTRATION.—

(1) IN GENERAL.—When finalizing the rules required under this section, the Commission shall provide for an orderly transition to full registration for each broker, dealer, or alternative trading system which has filed a provisional registration statement.

(2) REVOCATION OF REGISTRATION.—The Commission shall revoke a provisional registration statement under this section of any broker, dealer, or alternative trading system which fails to comply with this section after notice of such failure to comply and a reasonable opportunity to correct the deficiency.

(c) DEFERMENT OF ENFORCEMENT.—

(1) IN GENERAL.—A broker, dealer, or alternative trading system which has filed a provisional registration statement and is in compliance with the requirements of this section shall not be subject to an enforcement action by the Commission for engaging in activities involving digital assets, while the provisional registration statement for the broker, dealer, or alternative trading system is in effect, for—

(A) a violation of offering a digital asset deemed a security; or
(B) failure to register as a broker, dealer, or alternative trading system.

(2) FULL REGISTRATION.—A registered broker, dealer, or alternative trading system shall not be subject to an enforcement action by the Commission, while it was provisionally registered for—

(A) a violation of offering a digital asset deemed a security; or
(B) for failure to register as a broker, dealer, or alternative trading system.

TITLE II—DIGITAL ASSET EXEMPTIONS

SEC. 201. EXEMPTED TRANSACTIONS IN DIGITAL ASSETS.

(a) IN GENERAL.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 4(a), by adding at the end the following:

"(8) transactions involving the offer or sale of units of a digital asset by a digital asset issuer, if—

"(A) the aggregate amount of units of the digital asset sold by the digital asset issuer, including any amount sold in reliance on the exemption provided under this paragraph, during the 12-month period preceding the date of such transaction, including the amount sold in such transaction, is not more than $75,000,000;

"(B) with respect to a transaction involving the purchase of units of a digital asset by a person who is not an accredited investor, the aggregate amount of all units of digital assets purchased by such person during the 12-month period preceding the date of such transaction, including the unit of a digital asset purchased in such transaction, does not exceed the greater of—

"(i) 5 percent of the person's annual income or joint income with that person's spouse or spousal equivalent ; or

"(ii) 5 percent of the person's net worth or joint net worth with the person's spouse or spousal equivalent;

"(C) after the completion of the transaction, the purchaser does not own more than 10 percent of the total amount of the units of the digital asset sold in reliance on the exemption under this paragraph;

"(D) the transaction does not involve the offer or sale of equity securities, debt securities, or debt securities convertible or exchangeable to equity interests;

"(E) the transaction does not involve the offer or sale of a unit of a digital asset by a digital asset issuer that—

"(i) is not organized under the laws of a State, a territory of the United States or the District of Columbia;

"(ii) is a development stage company that either—

"(I) has no specific business plan or purpose; or

"(II) has indicated that the business plan of the company is to merge with or acquire an unidentified company;

"(iii) is an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act (15 U.S.C. 80a–3(b) or80a–3(c));

"(iv) is issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;

"(v) is, or has been, subject to any order of the Commission entered pursuant to section 12(j) of the Securities Exchange Act of 1934 during the 5-year period before the filing of the offering statement; and

"(vi) is disqualified pursuant to section 230.262 of title 17, Code of Federal Regulations; and

"(F) the issuer meets the requirements of section 4B(a)."; and

(2) by inserting after section 4A the following:

"SEC. 4B. REQUIREMENTS WITH RESPECT TO CERTAIN DIGITAL ASSET TRANSACTIONS.

"(a) REQUIREMENTS FOR DIGITAL ASSET ISSUERS.—

"(1) INFORMATION REQUIRED IN STATEMENT.—A digital asset issuer offering or selling a unit of digital asset in reliance on section 4(a)(8) shall file with the Commission a statement containing the following information:

"(A) The name, legal status (including the jurisdiction in which the issuer is organized and the date of organization), and website of the digital asset issuer.

"(B) A certification that the digital asset issuer meets the relevant requirements described under section 4(a)(8). "(C) An overview of the material aspectsof the offering.

"(D) A description of the purpose and intended use of the offering proceeds.

"(E) A description of the plan of distribution of any unit of a digital asset that is to be offered.

"(F) A description of the material risks surrounding ownership of a unit of a digital asset.

"(G) A description of exempt offerings conducted within the past three years by the digital asset issuer.

"(H) A description of the digital asset issuer and the current number of employees of the digital asset issuer.

"(I) A description of any material transactions or relationships between the digital asset issuer and affiliated persons.

"(2) INFORMATION REQUIRED FOR PURCHASERS.—A digital asset issuer shall disclose the information described under section 203 of [SHORT TITLE] on a freely accessible public website.

"(3) ONGOING DISCLOSURE REQUIREMENTS.—A digital asset issuer that has filed a statement under paragraph (1) to offer and sell a unit of a digital asset in reliance on section 4(a)(8) shall file the following with the Commission:

"(A) ANNUAL REPORTS.—An annual report that includes any material changes to the information described under paragraph (2) for the current fiscal year and for any fiscal year thereafter, unless the issuer is no longer obligated to file such annual report pursuant to paragraph (4).

"(B) SEMIANNUAL REPORTS.—Every six months, a report containing—

"(i) an updated description of the current state and timeline for the development of the blockchain network to which the digital asset relates, showing how and when the blockchain network intends or intended to be considered a functional network and a decentralized network; and

"(ii) any material changes to the information in the most recent annual report.

"(C) CURRENT REPORTS.—A current report shall be filed with the Commission reflecting any fundamental changes to the information previously reported to the Commission by the digital asset issuer.

"(4) TERMINATION OF REPORTING REQUIREMENTS.—

"(A) IN GENERAL.—The ongoing reporting requirements under paragraph (3) shall not apply to a digital asset issuer 180 days after the end of the covered fiscal year.

"(B) COVERED FISCAL YEAR DEFINED.—In this paragraph, the term 'covered fiscal year' means the first fiscal year of an issuer in which the blockchain network to which the digital asset relates is a functional network and certified to be a decentralized network under section 204 of [SHORT TITLE].

"(b) REQUIREMENTS FOR INTERMEDIARIES.—

"(1) IN GENERAL.—A person acting as an intermediary in a transaction involving the offer or sale of a unit of a digital asset in reliance on section 4(a)(8) shall—

"(A) register with the Commission as a broker under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

"(B) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

"(2) PURCHASER QUALIFICATION.—

"(A) IN GENERAL.—Each time, before accepting any commitment (including any additional commitment from the same person), an intermediary or digital asset issuer shall have a reasonable basis for believing that the purchaser satisfies the requirements of section 4(a)(8).

"(B) RELIANCE ON PURCHASER'S REPRESENTATIONS.—For purposes of subparagraph (A), an intermediary or digital asset issuer may rely on a purchaser's representations concerning the purchaser's annual income and net worth and the amount of the purchaser's other investments made, unless the intermediary or digital asset issuer has reason to question the reliability of the representation.

"(C) RELIANCE ON INTERMEDIARY.—For purposes of determining whether a transaction meets the requirements described under subparagraph (A) through (C) of section 4(a)(8), a digital asset issuer may rely on the efforts of an intermediary.

"(c) ADDITIONAL PROVISIONS.—

"(1) ACCEPTANCE OF WRITTEN OFFERS; SALES.—After an issuer files a statement under paragraph (1) to offer and sell a digital asset in reliance on section 4(a)(8)—

"(A) written offers of the digital asset may be made; and

"(B) the issuer may sell the digital assets in reliance on section 4(a)(8), if such sales meet all other requirements.

"(2) SOLICITATION OF INTEREST.—

"(A) IN GENERAL.—At any time before the filing of a statement under paragraph (1), a digital asset issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering. Such communications are deemed to be an offer of a unit of a digital asset for sale for purposes of the [anti-fraud] provisions of the Federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the statement is filed.

"(B) CONDITIONS.—In any communication described under subparagraph (A), the digital asset issuer shall—

"(i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;

"(ii) state that no offer to buy a unit of a digital asset can be accepted and no part of the purchase price can be received until the statement is filed and then only through an intermediary; and

"(iii) state that a person's indication of interest involves no obligation or commitment of any kind.

"(C) INDICATIONS OF INTEREST.—Any written communication described under subparagraph (A) may include a means by which a person may indicate to the digital asset issuer that such person is interested in a potential offering. A digital asset issuer may require a name, address, telephone number, or email address in any response form included with a communication described under subparagraph (A).

"(3) DISQUALIFICATION PROVISIONS.—The Commission shall issue rules to apply the disqualification provisions under section 230.262 of

title 17, Code of Federal Regulations, to the exemption provided under section 4(a)(8).

"(4) DIGITAL ASSETS DEEMED RESTRICTED SECURITIES.—A unit of a digital asset acquired directly or indirectly from the digital asset issuer in a transaction, or chain of transactions, made in reliance on the exemption provided under section 4(a)(8) is deemed a restricted digital asset.".

(b) ADDITIONAL EXEMPTIONS.—

(1) CERTAIN REGISTRATION REQUIREMENTS.—Section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(6)) is amended by striking "under section 4(6)" and inserting "under section 4(a)(6) or 4(a)(8)".

(2) EXEMPTION FROM STATE REGULATION.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(A) in section (B), by striking "section 4(4)" and inserting "section 4(a)(4)";
(B) in section (C), by striking "section 4(6)" and inserting "section 4(a)(6)";
(C) in subparagraph (F)—

(i) by striking "section 4(2)" each place such term appears and inserting "section 4(a)(2)";
(ii) by striking "or" at the end;

(D) in subparagraph (G), by striking the period and inserting "; or"; and
(E) by adding at the end the following:

"(H) section 4(a)(8).".

SEC. 202. REQUIREMENTS TO TRANSACT IN CERTAIN DIGITAL ASSETS.

(a) TRANSACTIONS IN CERTAIN RESTRICTED DIGITAL ASSETS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, subject to paragraph (2), a restricted digital asset may be offered and sold on an alternative trading system by any person other than a digital asset issuer if, at the time of such offer or sale, the information described in section 203 has been certified and made publicly available for any blockchain network to which the restricted digital asset relates.

(2) ADDITIONAL RULES FOR RELATED AND AFFILIATED PERSONS.—A restricted digital asset owned by a related person or an affiliated person may only be offered or sold after 12 months after the later of—

(A) the date on which such restricted digital asset was acquired; or
(B) the digital asset maturity date.

(b) DIGITAL COMMODITIES.—

(1) IN GENERAL.—Subject to paragraph (2), a digital commodity may be offered and sold by any person other than a digital asset issuer, a related person, or an affiliated person.

(2) PREVIOUSLY RESTRICTED DIGITAL ASSETS.—A digital commodity that was a restricted digital asset when it was first acquired, may only be offered or sold by a related person or an affiliated person if—

(A) the holder of the digital commodity owned the digital commodity while it was a restricted digital asset for 12 months after the later of—

(i) the date on which such restricted digital asset was acquired; or
(ii) the digital asset maturity date; and

(B) the digital commodity is offered or sold on or subject to the rules of a digital commodity exchange registered under section 5i of the Commodity Exchange Act.

(3) NOT AN INVESTMENT CONTRACT.—For purposes of the securities laws, a transaction in a digital commodity made in compliance with paragraph (1) or (2) shall not be a transaction in an investment contract.

(c) SALES RESTRICTIONS FOR AFFILIATED PERSONS.—A digital asset may be offered or sold by an affiliated person under subsection (a) or (b) if—

(1) the aggregate amount of such digital assets sold in any 3-month period by the affiliated person is not greater than one percent of the digital assets then outstanding; or

(2) the affiliated person promptly, following the placement of an order to sell one percent of the digital assets then outstanding during any 3-month period, reports the sale to—

(A) the Commodity Futures Trading Commission, in the case of an order to sell a digital commodity on or subject to the rules of a digital commodity exchange; or

(B) the Securities and Exchange Commission, in the case of a sell order for a restricted digital asset placed with an alternative trading system.

(d) TREATMENT UNDER THE SECURITIES LAWS.—

(1) NOT AN INVESTMENT CONTRACT.—For purposes of the securities laws, an end-user distribution shall not be a transaction in an investment contract.

(2) EXEMPTION.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) shall not apply to an end-user distribution or a unit of digital asset issued in such a distribution.

SEC. 203. ENHANCED DISCLOSURE REQUIREMENTS.

(a) DISCLOSURE INFORMATION.—With respect to a digital asset and any blockchain network to which the digital asset relates, the information described under this section is as follows:

(1) SOURCE CODE.—The source code for any blockchain network to which the digital asset relates.

(2) TRANSACTION HISTORY.—A description of the steps necessary to independently access, search, and verify the transaction history of any blockchain network to which the digital asset relates.

(3) DIGITAL ASSET ECONOMICS.—A description of the purpose of any blockchain network to which the digital asset relates and the operation of any such blockchain network, including—

(A) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

(B) information on any applicable consensus mechanism or process for validating transactions, method of generating or mining digital assets, and any process for burning or destroying digital assets on the blockchain network;

(C) an explanation of governance mechanisms for implementing changes to the blockchain network or forming consensus among holders of such digital assets; and

(D) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

(4) PLAN OF DEVELOPMENT.—The current state and timeline for the development of any blockchain network to which the digital asset relates, showing how and when the blockchain network intends or intended to be considered a functional network and decentralized network.

(5) DEVELOPMENT DISCLOSURES.—A list of all persons who are related persons or affiliated persons who have been issued a unit of a digital asset by a digital asset issuer or have a right to a unit of a digital asset from a digital asset issuer.

(6) RISK FACTOR DISCLOSURES.—Where appropriate, provide under the caption "Risk Factors" a description of the material risks surrounding ownership of a unit of a digital asset. This discussion shall be organized logically with relevant headings and each risk factor shall be set forth under a subcaption that adequately describes the risk.

(b) CERTIFICATION.—With respect to a digital asset and any blockchain network to which the digital asset relates, the information required to be made available under this section has been certified if the digital asset issuer, an affiliated person, or a decentralized organization (or, if no digital asset issuer, affiliated person, or decentralized organization are identifiable, an alternative trading system or digital commodity exchange) certifies on a quarterly basis to the Securities and Exchange Commission and Commodity Futures Trading Commission that the information is true and correct.

SEC. 204. CERTIFICATION OF CERTAIN DIGITAL ASSETS.

(a) CERTIFICATION.—Any person may certify to the Securities and Exchange Commission (in this subsection referred to as the "Commission") that the blockchain network to which a digital asset relates is a decentralized network.

(b) FILING REQUIREMENTS.—A certification described under subsection (a) shall be filed with the Commission, and include—

(1) information regarding the person making the certification; and

(2) an analysis of the factors on which such person based the certification that the blockchain network is a decentralized network.

(c) REBUTTABLE PRESUMPTION.—The Commission may rebut a certification described under subsection (a) with respect to a blockchain network if the Commission, within 30 days of receiving such certification, determines that the blockchain network is not a decentralized network.

(d) CERTIFICATION REVIEW.—

(1) IN GENERAL.—Any blockchain network that relates to a digital asset for which a certification has been made under subsection (a) shall be considered a decentralized network 30 days after the date on which the Commission receives a certification under subsection (a), unless the Commission notifies the person who made the certification within such time that the Commission is staying the certification due to—

(A) an inadequate explanation by the person making the certification; or

(B) any novel or complex issues which require additional time to consider.

(2) PUBLIC NOTICE.—The Commission shall make the following available to the public and provide a copy to the Commodity Futures Trading Commission:

(A) Each certification received under subsection (a).

(B) Each stay of the Commission under this section, and the reasons therefore.

(C) Any response from a person making a certification under subsection (a) to a stay of the certification by the Commission.

(e) STAY OF CERTIFICATION.—

(1) IN GENERAL.—A notification by the Commission pursuant to subsection (d)(1) shall stay the certification once for up to an additional 90 days from the date of the notification.

(2) PUBLIC COMMENT PERIOD.—Before the end of the 30-day period described under subsection (d)(1), the Commission may begin a public comment period of at least 30 days in conjunction with a stay under this section.

(f) DISPOSITION OF CERTIFICATION.—

(1) IN GENERAL.—A certification made under subsection (a) shall—

(A) become effective—

(i) upon the publication of a notification from the Commission to the person who made the certification that the Commission does not object to the certification; or

(ii) at the expiration of the certification review period; and

(B) not become effective upon the publication of a notification from the Commission to the person who made the certification that the Commission has rebutted the certification.

(2) DETAILED ANALYSIS INCLUDED WITH REBUTTAL.—The Commission shall include, with each publication of a notification of rebuttal described under paragraph (1)(B), a detailed analysis of the factors on which the decision was based.

(g) RECONSIDERATION.—

(1) IN GENERAL.—Any certification of a blockchain network that becomes effective pursuant to subsection (f) shall be eligible to be reconsidered by the Commission one year after the date on which the certification becomes effective and each year thereafter.

(2) RECONSIDERATION PROCESS.—To reconsider a certification under (f), the Commission shall—

(A) publish a notice announcing the reconsideration 120 days before the anniversary of the initial certification;

(B) provide a 30 day comment period, beginning 90 days before the anniversary of the initial certification; and

(C) after the end of the 30-day comment required under subparagraph (B) and no later than 30 days prior to the anniversary of the initial certification, publish either—

(i) a rebuttal of the certification; or

(ii) a notice that the Commission is not rebutting the certification.

(3) DETAILED ANALYSIS REQUIRED.—The Commission shall include, with each publication of a notification of rebuttal described under paragraph (2)(C)(i), a detailed analysis of the factors on which the decision was based.

(h) APPEAL OF REBUTTAL.—If the Commission rebuts a certification under this section, either initially or in a reconsideration under subsection (g), the person making such certification may appeal the decision of the Commission to a court of competent jurisdiction.

TITLE III—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE SECURITIES AND EXCHANGE COMMISSION

SEC. 301. TREATMENT OF DIGITAL COMMODITIES AND OTHER DIGITAL ASSETS.

(a) SECURITIES ACT OF 1933.—Section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) is amended by adding at the end the following: "The term does not include a digital commodity or payment stablecoin.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (6), by striking "receiving deposits or exercising fiduciary powers" and inserting "receiving deposits, exercising fiduciary powers, or offering custody and safekeeping services";

(2) in paragraph (10), by adding at the end the following: "Subject to subsection (i), the term does not include a digital commodity or payment stablecoin.";

(3) by redesignating the second paragraph (80) (relating to funding portals) as paragraph (81); and

(4) by adding at the end the following:

"(82) DIGITAL ASSET-RELATED TERMS.—The terms 'blockchain network', 'digital asset', 'digital commodity', 'payment stablecoin', and 'restricted digital asset' have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).".

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended—

(1) in paragraph (2), by striking "receiving deposits or exercising fiduciary powers" and inserting "receiving deposits, exercising fiduciary powers, or offering custody and safekeeping services,";

(2) in paragraph (18), by adding at the end the following: "The term does not include a digital commodity or payment stablecoin.";

(3) by redesignating the second paragraph (29) (relating to commodity pools) as paragraph (31);

(4) by adding at the end, the following:

"(32) DIGITAL ASSET-RELATED TERMS.—The terms 'digital commodity' and 'payment stablecoin' have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).".

(d) INVESTMENT COMPANY ACT OF 1940.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in paragraph (5), by striking "receiving deposits or exercising fiduciary powers" and inserting "receiving deposits, exercising fiduciary powers, or offering custody and safekeeping services,";

(2) in paragraph (36), by adding at the end the following: "The term does not include a digital commodity or payment stablecoin."; and

(3) by adding at the end, the following:

"(55) DIGITAL ASSET-RELATED TERMS.—The terms 'digital commodity' and 'payment stablecoin' have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).".

SEC. 302. [ANTI-FRAUD] AUTHORITY OVER PAYMENT STABLECOINS.

Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended—

(1) by designating the undesignated matter at the end of that section as paragraph (3) of subsection (c); and

(2) in subsection (c)(3), as so designated—

(A) by striking "Rules promulgated under subsection (b)" and inserting "Subsection (b) and rules promulgated thereunder";

(B) by inserting "and shall apply to payment stablecoins with respect to those circumstances in which the payment stablecoins are brokered, traded, or custodied by a broker or dealer or through an alternative trading system to the same extent as they apply to securities" after "to the same extent as they apply to securities" each place it occurs; and

(C) by inserting before the period at the end the following: "provided, that the Commission shall have no authority under subsection (b) or rules promulgated thereunder with respect to payment stablecoins (including the design, structure, or operation of such payment stablecoins) except with respect to circumstances in which the payment stablecoins are brokered, traded, or custodied by a broker or dealer or through an alternative trading system".

SEC. 303. ELIGIBILITY OF ALTERNATIVE TRADING SYSTEMS.

(a) IN GENERAL.—Section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e) is amended—

(1) by striking "It" and inserting the following:

"(a) IN GENERAL.—It"; and

(2) by adding at the end the following:

"(b) DIGITAL ASSET PROTECTIONS.—

"(1) IN GENERAL.—The Commission may not preclude a trading platform from operating pursuant to a covered exemption on the basis that the assets traded or to be traded on such platform are digital assets.

"(2) COVERED EXEMPTION.—In this subsection, the term 'covered exemption' means an exemption with respect to—

"(A) the requirements of subsection (a); and

"(B) any other rule of the Commission relating to the definition of 'exchange'.".

(b) RULEMAKING.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise the covered regulations to—

(A) exempt an alternative trading system permitting the trading of only securities, covered assets, or both from registration as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); and

(B) permit disintermediated trading between holders of covered assets and real-time settlement through custody of the covered assets, consistent with what is necessary or appropriate in the public interest or for the protection of investors.

(2) DEFINITIONS.—In this subsection—

(A) COVERED ASSETS.—The term "covered assets" means restricted digital assets, digital commodities, and payment stablecoins.

(B) COVERED REGULATIONS.—The term "covered regulations" means sections 242.301, 242.302, 242.303, and 242.304 of title 17, Code of Federal Regulations.

SEC. 304. CUSTOMER PROTECTION RULE MODERNIZATION.

Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise section 240.15c3–3 of title 17, Code of Federal Regulations, to provide that a registered broker or dealer shall be considered to have control of digital assets, in addition to such other methods as the Securities and Exchange Commission may permit, if—

(1) the broker or dealer holds such digital asset at a bank (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)))—

(A) that is recognized by the appropriate Federal banking agency or State bank supervisor (as such terms are defined, respectively, in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) as having custody over such assets;

(B) the delivery of which to the broker or dealer does not require the payment of money or value; and

(C) that has acknowledged in writing that the digital asset in its custody or control is free of charge, lien, or claim of any kind in favor of such bank or any person claiming through the bank; or

(2) the broker or dealer establishes, maintains, and enforces written policies, procedures, and controls reasonably designed to demonstrate that the broker has control over the digital asset it holds in custody to protect against the theft, loss, or unauthorized use of the private keys necessary to access and transfer such digital assets.

SEC. 305. MODERNIZATION OF RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—For purposes of determining custody of assets and maintenance of books and records by brokers, dealers, transfer agents, clearing agencies, and exchanges under the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.), a person may consider records of ownership of a digital asset determinable from a cryptographically secured distributed ledger as accurately indicating ownership.

(b) REVISION OF RULES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue and revise rules—

(1) in accordance with subsection (a); and

(2) to authorize registered transfer agents to use the technology described in such subsection to carry out the functions of such transfer agents under section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)).

SEC. 306. MODIFICATIONS TO EXISTING RULES FOR DIGITAL ASSETS.

(a) STUDY REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall complete a study with respect to the modernization of specified regulations under title 17, Code of Federal Regulations to apply to digital assets.

(b) RULE REVISION REQUIRED.—Not later than 180 days after the date the study required under subsection (a) is completed, the Securities and Exchange Commission shall propose rules to modernize the specified regulations. Such rules may not be unnecessary or unduly burdensome.

(c) SPECIFIED REGULATIONS.—In this section, the term "specified regulations" means—

(1) regulation NMS under part 242 of title 17, Code of Federal Regulations;

(2) regulation SCI under part 242 of such title;

(3) section 240.15c3–5 of such title; and

(4) section 240.15c2–11 of such title.

SEC. 307. TREATMENT OF CERTAIN DIGITAL ASSETS IN CONNECTION WITH FEDERALLY REGULATED INTERMEDIARIES.

Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) is amended by adding at the end the following:

"(5) EXEMPTION FOR CERTAIN DIGITAL ASSETS IN CONNECTION WITH FEDERALLY REGULATED INTERMEDIARIES.—A digital asset is a covered security with respect to a transaction that is exempt from registration under this Act when—

"(A) it is brokered, traded, custodied, or cleared by a broker or dealer registered under section 15 of the Securities Exchange Act of 1934; or

"(B) traded through an alternative trading system (as defined under section 242.301 of title 17, Code of Federal Regulations.".

SEC. 308. DUAL REGISTRATION.

Any person that is registered with the Securities and Exchange Commission as a broker, dealer, or alternative trading system may register with the Commodity Futures Trading Commission, as appropriate, as—

(1) a digital commodity exchange under section 5i of the Commodity Exchange Act (7 U.S.C. 1 et seq.), as added by this Act, if the person offers or seeks to offer a cash or spot market in at least one digital commodity;

(2) a digital commodity broker under section 4u of the Commodity Exchange Act, as added by this Act, if the person is engaged in soliciting or accepting orders in digital commodity cash or spot markets; or

(3) a digital commodity dealer under section 4u of the Commodity Exchange Act, as added by this Act, if the person holds themself out as a dealer in digital commodity cash or spot markets.

SEC. 309. EXCLUSION FOR ANCILLARY ACTIVITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G the following:

"SEC. 15H. EXCLUSION FOR ANCILLARY ACTIVITIES.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, a person shall not be subject to the regulatory requirements of this Act solely based on the person undertaking any ancillary activities.

"(b) EXCEPTIONS.—Subsection (a) shall not be construed to apply to the anti-manipulation and anti-fraud authorities of the Commission.

"(c) ANCILLARY ACTIVITIES DEFINED.—In this section, the term 'ancillary activities' means any of the following activities related to the operation of a blockchain network:

"(1) Network transactions compilation, pool operating, relating, searching, sequencing, validating, or acting in a similar capacity with respect to a restricted digital asset.

"(2) Providing computational work, or procuring, offering or utilizing network bandwidth, or other similar incidental services with respect to a restricted digital asset.

"(3) Providing a user-interface that enables a user to read and access data about a blockchain network, send messages, or otherwise interact with a blockchain network.

"(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain network.

"(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy a hardware or software wallet or other system facilitating an individual user's own personal ability to keep, safeguard, or custody the user's restricted digital assets or related private keys.".

TITLE IV—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE COMMODITY FUTURES TRADING COMMISSION

SEC. 401. COMMISSION JURISDICTION OVER DIGITAL COMMODITY TRANSACTIONS.

(a) IN GENERAL.—Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) is amended—

(1) in subparagraph (D)(ii)—

(A) in subclause (III), in the matter that precedes item (aa), by inserting "of a commodity, other than a digital commodity," before "that"; and

(B) by redesignating subclauses (IV) and (V) as subclauses (V) and (VI) and inserting after subclause (III) the following:

"(IV) a contract of sale of a digital commodity that—

"(aa) results in actual delivery, as the Commission shall by rule determine, within 2 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the digital commodity involved; or

"(bb) is executed with a registered digital commodity dealer—

"(AA) directly;

"(BB) through a registered digital commodity broker; or

"(CC) on or subject to the rules of a registered digital commodity exchange;"; and

(2) by adding at the end the following:

"(F) COMMISSION JURISDICTION WITH RESPECT TO DIGITAL COMMODITY TRANSACTIONS.—

"(i) IN GENERAL.—Subject to sections 6d and 12(e), the Commission shall have exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity in interstate commerce, including in a digital commodity cash or spot market, that is offered, solicited, traded, facilitated, executed, cleared, reported, or otherwise dealt in—

"(I) on or subject to the rules of a registered entity or an entity that is required to be registered as a registered entity; or

"(II) by any other entity registered, or required to be registered, with the Commission.

"(ii) LIMITATIONS.—Clause (i) shall not apply with respect to custodial or depository activities for a digital commodity, or custodial or depository activities for any promise or right to a future digital commodity, of an entity regulated by an appropriate Federal banking agency or a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act).

"(iii) SAVINGS CLAUSE.—Clause (i) shall not affect, or be interpreted to affect, the scope of the jurisdiction of the Commission with respect to—

"(I) any contract for the purchase or sale of any commodity for future delivery, security futures product, or swap;

"(II) any agreement, contract, or transaction described in subparagraph (C)(i) or (D)(i);

"(III) any commodity option authorized under section 4c; or

"(IV) any leverage transaction authorized under section 19.

"(G) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN STABLECOINS.—

"(i) IN GENERAL.—Except as provided in clause (ii)—

"(I) nothing in this Act governs or applies to an agreement, contract, or transaction in or with a payment stablecoin; and

"(II) a registered entity or other entity registered with the Commission shall not offer, offer to enter into, enter into, execute, confirm the execution of, or conduct any office or business for the purpose of soliciting, accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a payment stablecoin.

"(ii) PERMITTED PAYMENT STABLECOIN TRANSACTIONS.—

"(I) A registered entity and any other entity registered with the Commission may transact, offer, offer to enter into, enter into, execute, confirm the execution of, solicit, or accept any order for a payment stablecoin, as provided in subclauses (II) and (III).

"(II) The requirements of this Act shall apply to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction with or for a payment stablecoin that is offered, offered to enter into, entered into, executed, confirmed the execution of, solicited, or accepted—

"(aa) on or subject to the rules of a registered entity that is registered with the Commission; or

"(bb) by any other entity registered by the Commission.

"(III) The provisions of this Act and the jurisdiction of the Commission shall apply to any agreement, contract, or transaction described in subclause (II) as if the payment stablecoin were a digital commodity.

"(IV) A registered entity and any other entity registered with the Commission may use a payment stablecoin in general business transactions that are not otherwise subject to regulation by the Commission.".

(b) CONFORMING AMENDMENT.—Section 2(a)(1)(A) of such Act (7 U.S.C. 2(a)(1)(A)) is amended in the 1st sentence by inserting "subsection (c)(2)(F) of this section or" before "section 19".

SEC. 402. REQUIRING FUTURES COMMISSION MERCHANTS TO USE QUALIFIED DIGITAL COMMODITY CUSTODIANS.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) in subsection (a)(2)—

(A) in the 1st proviso, by striking "any bank or trust company" and inserting "any bank, trust company, or qualified digital commodity custodian"; and

(B) by inserting ": *Provided further,* That any such property that is a digital commodity shall be held in a qualified digital commodity custodian" before the period at the end; and

(2) in subsection (f)(3)(A)(i), by striking "any bank or trust company" and inserting "any bank, trust company, or qualified digital commodity custodian".

SEC. 403. TRADING CERTIFICATION AND APPROVAL FOR DIGITAL COMMODITIES.

Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended—

(1) in subsection (a), by striking "5(d) and 5b(c)(2)" and inserting "5(d), 5b(c)(2), and 5i(c)";

(2) in subsection (b)—

(A) in each of paragraphs (1) and (2), by inserting "digital commodity exchange," before "derivatives"; and

(B) in paragraph (3), by inserting "digital commodity exchange," before "derivatives" each place it appears;

(3) in subsection (c)—

(A) in paragraph (2), by inserting "or participants" before "(in";

(B) in paragraph (4)(B), by striking "1a(10)" and inserting "1a(9)"; and

(C) in paragraph (5), by adding at the end the following:

"(D) SPECIAL RULES FOR DIGITAL COMMODITY CONTRACTS.—In certifying any new rule or rule amendment, or listing any new contract or instrument, in connection with a contract of sale of a commodity for future delivery, option, swap, or other agreement, contract, or transaction, that is based on or references a digital commodity, a registered entity shall make or rely on a certification under subsection (d) for the digital commodity."; and

(4) by inserting after subsection (c) the following:

"(d) CERTIFICATIONS FOR DIGITAL COMMODITY TRADING.—

"(1) IN GENERAL.—Notwithstanding subsection (c), for the purposes of listing or offering a digital commodity for trading in a digital commodity cash or spot market, an eligible entity shall issue a written certification that the digital commodity meets the requirements of this Act (including regulations thereunder).

"(2) CONTENTS OF THE CERTIFICATION.—

"(A) IN GENERAL.—In making a written certification under this paragraph, the eligible entity shall furnish to the Commission—

"(i) an analysis of how the digital commodity meets the requirements of section 5i(c)(3);

"(ii) information about the digital commodity regarding—

"(I) its purpose and use;
"(II) its unit creation or release process;
"(III) its consensus mechanism;
"(IV) its governance structure;
"(V) its participation and distribution; and
"(VI) its current and proposed functionality; and

"(iii) any other information, analysis, or documentation the Commission may, by rule, require.

"(B) RELIANCE ON PRIOR DISCLOSURES.—In making a certification under this subsection, an eligible entity may rely on the records and disclosures of any relevant person registered with the Securities and Exchange Commission or other State or Federal agency.

"(3) MODIFICATIONS.—

"(A) IN GENERAL.—An eligible entity shall modify a certification made under paragraph (1) to—

"(i) account for significant changes in nature, operation, or functionality of the digital commodity; or

"(ii) permit trading in units of a digital commodity which were once restricted digital assets.

"(B) RECERTIFICATION.—Modifications required by this subsection shall be subject to the same disapproval and review process as a new certification under paragraphs (4) and (5), unless the Commission or such registered futures association (or committee thereof) to which the Commission has, by rule or order, delegated such authority finds that the digital asset no longer meets the requirements of this subsection (including regulations thereunder).

"(4) DISAPPROVAL.—

"(A) IN GENERAL.—The written certification described in paragraph (1) shall become effective unless the Commission or such registered futures association (or committee thereof) to which the Commission has, by rule or order, delegated such authority, finds that the digital asset does not meet the requirements of this Act (including regulations thereunder).

"(B) ANALYSIS REQUIRED.—The Commission shall include, with any findings referred to in subparagraph (A), a detailed analysis of the factors on which the decision was based.

"(5) REVIEW.—

"(A) IN GENERAL.—The written certification described in paragraph (1) shall become effective, pursuant to the certification by the eligible entity and notice of the certification to the public (in a manner determined by the Commission) on the date that is—

"(i) 20 business days after the date the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation), in the case of a digital commodity that has not been certified under this section or for which a certification is being modified under paragraph (3); or

"(ii) 2 business days after the date the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) for any digital commodity that has been certified under this section.

"(B) EXTENSIONS.—The time for consideration under subparagraph (A) may be extended through notice to the eligible entity that there are novel or complex issues that require additional time to analyze, that the explanation by the submitting eligible entity is inadequate, or of a potential inconsistency with this Act—

"(i) once, for 30 business days, through written notice to the eligible entity by the Chairman or such other executive office of a registered futures association to which the Commission has, by rule or order, delegated such authority; and

"(ii) once, for an additional 30 business days, through written notice to the digital commodity exchange from the Commission or such registered futures association (or committee thereof) to which the Commission has, by rule or order, delegated such authority, that includes a description of any deficiencies with the certification, including any—

"(I) novel or complex issues which require additional time to analyze;

"(II) missing information or inadequate explanations; or

"(III) potential inconsistencies with this Act.

"(6) CERTIFICATION REQUIRED.—Notwithstanding any other requirement of this Act, a registered entity or other entity registered with the Commission shall not list for trading, accept for clearing, offer to enter into, enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a digital asset, unless a certification has been made under this section for the digital asset.

"(7) ELIGIBLE ENTITY DEFINED.—In this subsection, the term 'eligible entity' means a registered entity or group of registered entities acting jointly.".

SEC. 404. REGISTRATION OF DIGITAL COMMODITY EXCHANGES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5h the following:

"SEC. 5i. REGISTRATION OF DIGITAL COMMODITY EXCHANGES.

"(a) IN GENERAL.—

"(1) REGISTRATION.—

"(A) IN GENERAL.—A trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity shall register with the Commission as a digital commodity exchange.

"(B) APPLICATION.—A person desiring to register as a digital commodity exchange shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

"(C) EXEMPTIONS.—A trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity shall not be required to register under this section if the trading facility—

"(i) permits no more than a *de minimis* amount of trading activity; or

"(ii) serves only customers in a single State or territory.

"(2) ADDITIONAL REGISTRATIONS.—

"(A) WITH THE COMMISSION.—

"(i) IN GENERAL.—A registered digital commodity exchange may also register as—

"(I) a designated contract market;

"(II) a swap execution facility; or

"(III) a digital commodity broker.

"(ii) RULES.—The Commission shall prescribe rules for an entity with multiple registrations under clause (i) to—

"(I) exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would foster the development of fair and orderly cash or spot markets in digital commodities, be necessary or appropriate in the public interest, and be consistent with the protection of customers; and

"(II) provide for portfolio margining.

"(B) WITH THE SECURITIES AND EXCHANGE COMMISSION.—A registered digital commodity exchange may register with the Securities and Exchange Commission as an alternative trading system to list or trade contracts of sale for digital assets deemed securities.

"(C) WITH A REGISTERED FUTURES ASSOCIATION.—

"(i) IN GENERAL.—A registered digital commodity exchange shall also be a member of a registered futures association and comply with rules related to such activity, if the registered digital commodity exchange—

"(I) accepts customer funds required to be segregated under subsection (d); or

"(II) maintains an account for the trading of digital commodities directly with any person who is not an eligible contract participant under subsection (e).

"(ii) RULEMAKING REQUIRED.—The Commission shall require any registered futures association with a digital commodity exchange as a member to provide such rules as may be necessary to further compliance with subsections (d) and (e), protect customers, and promote the public interest.

"(D) REGISTRATION REQUIRED.—A person required to be registered as a digital commodity exchange under this section shall register with the

Commission as such regardless of whether the person is registered as such with another State or Federal regulator.

"(b) TRADING.—

"(1) PROHIBITION ON CERTAIN TRADING PRACTICES.—

"(A) Section 4b shall apply to any agreement, contract, or transaction in a digital commodity as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

"(B) Section 4c shall apply to any agreement, contract, or transaction in a digital commodity as if the agreement, contract, or transaction were a transaction involving the purchase or sale of a commodity for future delivery.

"(2) PROHIBITION ON CERTAIN TRADING ACTIVITIES.—A registered digital commodity exchange shall not—

"(A) offer any contract of sale of a commodity for future delivery, option, or swap for trading without also being registered as a designated contract market or swap execution facility;

"(B) act as counterparty to any margined, leveraged, or financed transaction under section 2(c)(2)(D); or

"(C) act as any counterparty to any margined, leveraged, or financed transaction under section 2(c)(2)(C) without also being registered in a capacity determined by the Commission by rule or regulation.

"(3) TRADING SECURITIES.—A registered digital commodity exchange that is also registered with the Securities and Exchange Commission may offer a contract of sale of a digital asset deemed a security.

"(4) RULES FOR CERTAIN DIGITAL ASSET SALES.—The digital commodity exchange shall have in place such rules as may be necessary to reasonably ensure the orderly sale of any unit of a digital commodity sold by a related person or an affiliated person.

"(c) CORE PRINCIPLES FOR DIGITAL COMMODITY EXCHANGES.—

"(1) COMPLIANCE WITH CORE PRINCIPLES.—

"(A) IN GENERAL.—To be registered, and maintain registration, as a digital commodity exchange, a digital commodity exchange shall comply with—

"(i) the core principles described in this subsection; and

"(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(B) REASONABLE DISCRETION OF A DIGITAL COMMODITY EXCHANGE.—Unless otherwise determined by the Commission by rule or regulation, a digital commodity exchange described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the digital commodity exchange complies with the core principles described in this subsection.

"(2) COMPLIANCE WITH RULES.—A digital commodity exchange shall—

"(A) establish and enforce compliance with any rule of the digital commodity exchange, including—

"(i) the terms and conditions of the trades traded or processed on or through the digital commodity exchange; and

"(ii) any limitation on access to the digital commodity exchange;

"(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

"(i) to provide market participants with impartial access to the market; and

"(ii) to capture information that may be used in establishing whether rule violations have occurred; and

"(C) establish rules governing the operation of the exchange, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility.

"(3) LISTING STANDARDS FOR DIGITAL COMMODITIES.—

"(A) IN GENERAL.—A digital commodity exchange shall permit trading in only a digital commodity that is not readily susceptible to manipulation.

"(B) PUBLIC INFORMATION REQUIREMENTS.—

"(i) IN GENERAL.—A digital commodity exchange shall permit trading only in a digital commodity if the information required in clause (ii) is correct, current, and available to this public.

"(ii) REQUIRED INFORMATION.—With respect to a digital commodity and each blockchain network to which the digital commodity relates for which the digital commodity exchange will make the digital asset available to the customers of the digital commodity exchange, the information required in this clause is as follows:

"(I) SOURCE CODE.—The source code for any blockchain network to which the digital commodity relates.

"(II) TRANSACTION HISTORY.—A narrative description of the steps necessary to independently access, search, and verify the transaction history of any blockchain network to which the digital commodity relates.

"(III) DIGITAL ASSET ECONOMICS.—A narrative description of the purpose of any blockchain network to which the digital asset relates and the operation of any such blockchain network, including—

"(aa) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

"(bb) information detailing any applicable consensus mechanism or process for validating transactions, method of generating or mining digital assets, and any process for burning or destroying digital assets on the blockchain network;

"(cc) an explanation of governance mechanisms for implementing changes to the blockchain network or forming consensus among holders of the digital assets; and

"(dd) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

"(C) ADDITIONAL LISTING CONSIDERATIONS.—In addition to the requirements of subparagraphs (A) and (B), a digital commodity exchange shall consider—

"(i) whether a sufficient percentage of the units of the digital asset are units of a digital commodity to permit robust price discovery;

"(ii) whether it is reasonably unlikely that the transaction history can be fraudulently altered by any person or group of persons acting collectively;

"(iii) whether the operating structure and system of the digital commodity is secure from cybersecurity threats;

"(iv) whether the functionality of the digital commodity will protect holders from operational failures;

"(v) whether sufficient public information about the operation, functionality, and use of the digital commodity is available; and

"(vi) any other factor which the Commission has, by rule, determined to be in the public interest or in furtherance of the requirements of this Act.

"(D) RESTRICTED DIGITAL ASSETS.—A digital commodity exchange shall not permit the trading of a unit of a digital asset that is a restricted digital asset.

"(4) TREATMENT OF CUSTOMER ASSETS.—A digital commodity exchange shall establish standards and procedures that are designed to protect and ensure the safety of customer money, assets, and property.

"(5) MONITORING OF TRADING AND TRADE PROCESSING.—

"(A) IN GENERAL.—A digital commodity exchange shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading on the exchange.

"(B) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—A digital commodity exchange shall establish and enforce rules—

"(i) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

"(ii) to promote fair and equitable trading on the exchange.

"(C) TRADING PROCEDURES.—A digital commodity exchange shall—

"(i) establish and enforce rules or terms and conditions defining, or specifications detailing—

"(I) trading procedures to be used in entering and executing orders traded on or through the facilities of the digital commodity exchange; and

"(II) procedures for trade processing of digital commodities on or through the facilities of the digital commodity exchange; and

"(ii) monitor trading in digital commodities to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(6) ABILITY TO OBTAIN INFORMATION.—A digital commodity exchange shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

"(B) provide the information to the Commission on request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(7) EMERGENCY AUTHORITY.—A digital commodity exchange shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission or a registered entity, as is necessary and appropriate, including the authority to facilitate the liquidation or transfer of open positions in any digital commodity or to suspend or curtail trading in a digital commodity.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—

"(A) IN GENERAL.—A digital commodity exchange shall make public timely information on price, trading volume, and other trading data on digital commodities to the extent prescribed by the Commission.

"(B) CAPACITY OF DIGITAL COMMODITY EXCHANGE.—A digital commodity exchange shall have the capacity to electronically capture and transmit trade information with respect to transactions executed on the exchange.

"(9) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—A digital commodity exchange shall—

"(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

"(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act; and

"(iii) keep any such records of digital commodities which relate to a security open to inspection and examination by the Securities and Exchange Commission.

"(B) INFORMATION-SHARING.—Subject to section 8, and on request, the Commission shall share information collected under subparagraph (A) with—

"(i) the Board;
"(ii) the Securities and Exchange Commission;
"(iii) each appropriate Federal banking agency;
"(iv) each appropriate State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act);
"(v) the Financial Stability Oversight Council;
"(vi) the Department of Justice; and
"(vii) any other person that the Commission determines to be appropriate, including—

"(I) foreign financial supervisors (including foreign futures authorities);
"(II) foreign central banks; and
"(III) foreign ministries.

"(C) CONFIDENTIALITY AGREEMENT.—Before the Commission may share information with any entity described in subparagraph (B), the Commission shall receive a written agreement from the entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on digital commodities that is provided.

"(D) PROVIDING INFORMATION.—A digital commodity exchange shall provide to the Commission (including any designee of the Commission) information under subparagraph (A) in such form and at such frequency as is requiredby the Commission.

"(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a digital commodity exchange shall not—

"(A) adopt any rules or take any actions that result in any unreasonable restraint of trade; or
"(B) impose any material anticompetitive burden on trading.

"(11) CONFLICTS OF INTEREST.—A registered digital commodity exchange shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards—

"(i) to minimize conflicts of interest that might potentially bias the judgment or supervision of the digital commodity exchange and contravene the principles of fair and equitable trading and the business conduct standards described in this Act, including conflicts arising out of transactions or arrangements with affiliates (including affiliates engaging in digital commodity activities) which may include information partitions and the legal separation of different persons or entities involved in digital commodity activities; and
"(ii) to ensure that the activities of any person within the digital commodity exchange or any affiliated entity relating to research or analysis of the price or market for any digital commodity or acting in a role of providing dealing, brokering, or advising activities are separated by appropriate informational partitions within the digital commodity exchange or any affiliated entity from the review, pressure, or oversight of persons whose involvement in pricing, trading, exchange, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

"(B) address such other issues as the Commission determines to be appropriate.

"(12) FINANCIAL RESOURCES.—

"(A) IN GENERAL.—A digital commodity exchange shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the digital commodity exchange.

"(B) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—A digital commodity exchange shall possess financial resources that, at a minimum, exceed the total amount that would enable the digital commodity exchange to conduct an orderly wind-down of its activities.

"(13) GOVERNANCE FITNESS STANDARDS.—

"(A) GOVERNANCE ARRANGEMENTS.—A digital commodity exchange shall establish governance arrangements that are transparent to fulfill public interest requirements.

"(B) FITNESS STANDARDS.—A digital commodity exchange shall establish and enforce appropriate fitness standards for—

"(i) directors; and

"(ii) any individual or entity with direct access to, or control of, customer assets.

"(14) SYSTEM SAFEGUARDS.—A digital commodity exchange shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational and security risks, through the development of appropriate controls and procedures, and automated systems, that—

"(i) are reliable and secure; and

"(ii) have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

"(i) the timely recovery and resumption of operations; and

"(ii) the fulfillment of the responsibilities and obligations of the digital commodity exchange; and

"(C) periodically conduct tests to verify that the backup resources of the digital commodity exchange are sufficient to ensure continued—

"(i) order processing and trade matching;

"(ii) price reporting;

"(iii) market surveillance; and

"(iv) maintenance of a comprehensive and accurate audit trail.

"(d) HOLDING OF CUSTOMER ASSETS.—

"(1) IN GENERAL.—A digital commodity exchange shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

"(A) SEGREGATION OF FUNDS.—

"(i) IN GENERAL.—A digital commodity exchange shall treat and deal with all money, assets, and property that is received by the digital commodity exchange, or accrues to a customer as the result of trading in digital commodities, as belonging to the customer.

"(ii) COMMINGLING PROHIBITED.—Money, assets, and property of a customer described in clause (i) shall be separately accounted for and shall not be commingled with the funds of the digital commodity exchange or be used to margin, secure, or guarantee any trades or accounts of any customer or person other than the person for whom the same are held.

"(B) EXCEPTIONS.—

"(i) USE OF FUNDS.—

"(I) IN GENERAL.—Notwithstanding subparagraph (A), money, assets, and property of customers of a digital commodity exchange described in subparagraph (A) may, for convenience, be commingled and deposited in the same account or accounts with any bank, trust company, derivatives clearing organization, or qualified digital commodity custodian.

"(II) WITHDRAWAL.—Notwithstanding subparagraph (A), such share of the money, assets, and property described in item (aa) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle

a contract of sale of a digital commodity with a registered entity may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the contract of sale of a digital commodity.

"(ii) COMMISSION ACTION.—Notwithstanding subparagraph (A), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of the customers of a digital commodity exchange described in subparagraph (A) may be commingled and deposited in customer accounts with any other money, assets, or property received by the digital commodity exchange and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital commodity exchange.

"(2) PERMITTED INVESTMENTS.—Money described in subparagraph (A) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

"(3) CUSTOMER PROTECTION DURING BANKRUPTCY.—

"(A) CUSTOMER PROPERTY.—All assets held on behalf of a customer by a digital commodity exchange, and all money, assets, and property of any customer received by a digital commodity exchange registered under section 5i of this Act for trading or custody, or to facilitate, margin, guarantee, or secure contracts of sale of a digital commodity (including money, assets, or property accruing to the customer as the result of the transactions), shall be considered customer property for purposes of section 761 of title 11, United States Code.

"(B) TRANSACTIONS.—A transaction involving a unit of a digital commodity occurring on or subject to the rules of a digital commodity exchange shall be considered a 'contract for the purchase or sale of a commodity for future delivery, on or subject to the rules of, a contract market or board of trade' for the purposes of the definition of a 'commodity contract' in section 761 of title 11, United States Code.

"(C) EXCHANGES.—A digital commodity exchange shall be considered a futures commission merchant for purposes of section 761 of title 11, United States Code.

"(4) MISUSE OF CUSTOMER PROPERTY.—It shall be unlawful—

"(A) for any digital commodity exchange that has received any customer money, assets, or property for custody to dispose of, or use any such money, assets, or property as belonging to the digital commodity exchange; or

"(B) for any other person, including any depository, other digital commodity exchange, or digital commodity custodian that has received any customer money, assets, or property for deposit, to hold, dispose of, or use any such money, assets, or property as belonging to the depositing digital commodity exchange or any person other than the customers of the digital commodity exchange.

"(e) CUSTOMER PROTECTION.—For each registered digital commodity exchange that maintains an account for the trading of digital commodities directly with a person who is not an eligible contract participant, the Commission shall require the digital commodity exchange to register as a digital commodity broker, solely to solicit orders for the digital commodity exchange, directly from any person who is not an eligible contract participant.

"(f) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—A digital commodity exchange shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the exchange;

"(B) review compliance with the core principles in this subsection;

"(C) in consultation with the board of the exchange, a body performing a function similar to that of a board, or the senior officer of the exchange, resolve any conflicts of interest that may arise;

"(D) establish and administer the policies and procedures required to be established pursuant to this section;

"(E) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

"(F) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

"(3) REQUIREMENTS FOR PROCEDURES.—In establishing procedures under paragraph (2)(F), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(4) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the digital commodity exchange with this Act; and

"(ii) the policies and procedures, including the code of ethics and conflict of interest policies, of the digital commodity exchange.

"(B) REQUIREMENTS.—The chief compliance officer shall—

"(i) submit each report described in subparagraph (A) with the appropriate financial report of the digital commodity exchange that is required to be submitted to the Commission pursuant to this section; and

"(ii) include in the report a certification that, under penalty of law, the report is accurate and complete.

"(g) APPOINTMENT OF TRUSTEE.—

"(1) IN GENERAL.—If a proceeding under section 5e results in the suspension or revocation of the registration of a digital commodity exchange, or if a digital commodity exchange withdraws from registration, the Commission, on notice to the digital commodity exchange, may apply to the appropriate United States district court where the digital commodity exchange is located for the appointment of a trustee.

"(2) ASSUMPTION OF JURISDICTION.—If the Commission applies for appointment of a trustee under paragraph (1)—

"(A) the court may take exclusive jurisdiction over the digital commodity exchange and the records and assets of the digital commodity exchange, wherever located; and

"(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the digital commodity exchange in an orderly manner for the protection of customers subject to such terms and conditions as the court may prescribe.

"(h) QUALIFIED DIGITAL COMMODITY CUSTODIAN.—A digital commodity exchange shall hold in a qualified digital commodity custodian each unit of a digital commodity that is—

"(1) the property of a customer of the digital commodity exchange;

"(2) required to be held by the digital commodity exchange under subsection (c)(12) of this section; or

"(3) otherwise so required by the Commission to reasonably protect customers or promote the public interest.

"(i) EXEMPTIONS.—In order to promote responsible economic or financial innovation and fair competition, or protect customers, the Commission may (on its own initiative or on application of the registered digital commodity exchange) exempt, either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, a registered digital com-

modity exchange from the requirements of this section, if the Commission determines that—

"(1)(A) the exemption would be consistent with the public interest and the purposes of this Act; and

"(B) the exemption will not have a material adverse effect on the ability of the Commission or the digital commodity exchange to discharge regulatory or self-regulatory duties under this Act; or

"(2) the digital commodity exchange is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the exchange.

"(j) CUSTOMER DEFINED.—In this section, the term 'customer' means any person that maintains an account for the trading of digital commodities directly with a digital commodity exchange (other than a person that is owned or controlled, directly or indirectly, by the digital commodity exchange) for its own behalf or on behalf of other any person.

"(k) FEDERAL PREEMPTION.—Notwithstanding any other provision of law, the Commission shall have exclusive jurisdiction over any digital commodity exchange registered under this section.".

SEC. 405. QUALIFIED DIGITAL COMMODITY CUSTODIANS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended by the preceding provisions of this Act, is amended by inserting after section 5i the following:

"SEC. 5j. QUALIFIED DIGITAL COMMODITY CUSTODIANS.

"(a) IN GENERAL.—The Commission shall designate a digital commodity custodian as a qualified digital commodity custodian, if—

"(1) the digital commodity custodian is—

"(A) subject to the supervision of the Commission, an appropriate Federal banking agency, or the Securities and Exchange Commission, and permitted by the supervisor to engage in custodial activity;

"(B) subject to the supervision of a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act), unless the Commission finds the digital commodity custodian is not subject to adequate supervision and appropriate regulation; or

"(C) subject to the supervision of an appropriate foreign governmental authority in the home country of the digital commodity custodian, if the Commission finds that the digital commodity custodian is subject to adequate supervision and appropriate regulation; and

"(2) the digital commodity custodian agrees to such regular and periodic sharing of information regarding any accounts relating to an entity registered with the Commission, as the Commission determines by rule shall be reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.

"(b) RULEMAKING AUTHORITY.—For purposes of subsection (a), the Commission, by rule or order, shall define 'adequate supervision' and 'appropriate regulation' as any regulatory regime which meets such minimum standards for supervision and regulation as the Commission determines are reasonably necessary to protect the property of customers of a registered digital commodity exchange, including minimum standards relating to—

"(1) accessibility of customer assets;
"(2) financial resources;
"(3) risk management requirements;
"(4) governance arrangements;
"(5) fitness standards;
"(6) recordkeeping;
"(7) information-sharing; and
"(8) conflicts of interest.

"(c) AUTHORITY TO TEMPORARILY SUSPEND STANDARDS.—The Commission may, by rule or order, temporarily suspend, in whole or in part, any requirement imposed under, or any standard referred to in, this section if the Commission determines that the suspension would be consistent with the public interest and the purposes of this Act.".

SEC. 406. REGISTRATION AND REGULATION OF DIGITAL COMMODITY BROKERS AND DEALERS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended by the preceding provisions of this Act, is amended by inserting after section 4t the following:

"SEC. 4u. REGISTRATION AND REGULATION OF DIGITAL COMMODITY BROKERS AND DEALERS.

"(a) REGISTRATION.—It shall be unlawful for any person to act as a digital commodity broker or digital commodity dealer unless the person is registered as such with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a digital commodity broker or digital commodity dealer by filing a registration application with the Commission.

"(2) CONTENTS.—

"(A) IN GENERAL.—The application shall be made in such form and manner as is prescribed by the Commission, and shall contain such information as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

"(B) CONTINUAL REPORTING.—A person that is registered as a digital commodity broker or digital commodity dealer shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

"(3) TRANSITION.—Within 180 days after the date of the enactment of this section, the Commission shall prescribe rules providing for the registration of digital commodity brokers and digital commodity dealers under this section.

"(4) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a digital commodity broker or digital commodity dealer to permit any person who is associated with a digital commodity broker or a digital commodity dealer and who is subject to a statutory disqualification to effect or be involved in effecting a transaction on behalf of the digital commodity broker or the digital commodity dealer, respectively, if the digital commodity broker or digital commodity dealer, respectively, knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

"(5) LIMITATIONS ON CERTAIN ASSETS.—A registered digital commodity broker or registered digital commodity dealer shall not offer, offer to enter into, enter into, or facilitate any transaction with a digital commodity which has not been certified under section 5c(d).

"(c) ADDITIONAL REGISTRATIONS.—

"(1) WITH THE COMMISSION.—Any person required to be registered as a digital commodity broker or digital commodity dealer may also be registered as a futures commission merchant, introducing broker, or swap dealer.

"(2) WITH THE SECURITIES AND EXCHANGE COMMISSION.—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section may register with the Securities and Exchange Commission as a broker or dealer, pursuant to section 15(b) of the Securities Exchange Act of 1934, as applicable, if the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contract of sale to digital assets.

"(3) WITH A REGISTERED FUTURES ASSOCIATION REGISTRATION.—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section shall register as such with a registered futures association.

"(4) REGISTRATION REQUIRED.—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section shall register with the Commission as such regardless of whether the person is registered as such with another State or Federal regulator.

"(d) RULEMAKING.—

"(1) IN GENERAL.—The Commission shall prescribe such rules applicable to registered digital commodity brokers and registered digital commodity dealers as are appropriate to carry out this section, including rules in the

public interest that limit the activities of digital commodity brokers and digital commodity dealers.

"(2) MULTIPLE REGISTRANTS.—The Commission shall prescribe rules or regulations permitting, or may otherwise authorize, exemptions or additional requirements applicable to persons with multiple registrations under this Act, including as futures commission merchants, introducing brokers, digital commodity brokers, digital commodity dealers, or swap dealers, as may be in the public interest to reduce compliance costs and promote customer protection.

"(e) CAPITAL REQUIREMENTS.—

"(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall meet such minimum capital requirements as the Commission may prescribe to ensure that the digital commodity broker or digital commodity dealer, respectively, is able to—

"(A) conduct an orderly wind-down of the activities of the digital commodity broker or digital commodity dealer, respectively; and

"(B) fulfill the customer obligations of the digital commodity broker or digital commodity dealer, respectively, for any margined, leveraged, or financed transactions.

"(2) RULE OF CONSTRUCTION.—Nothing in this section shall limit, or be construed to limit, the authority of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of such Act (15 U.S.C. 78o(b)(11)) in accordance with section 15(c)(3) of such Act (15 U.S.C. 78o(c)(3)).

"(3) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—

"(A) IN GENERAL.—Each futures commission merchant, introducing broker, broker, and dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which the futures commission merchant, introducing broker, broker, or dealer, respectively, is subject under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(B) COORDINATION OF CAPITAL REQUIREMENTS.—

"(i) COMMISSION RULE.—The Commission shall, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations as a digital commodity dealer, digital commodity broker, futures commission merchant, or introducing broker.

"(ii) JOINT RULE.—The Commission and the Securities and Exchange Commission shall jointly, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations as a digital commodity dealer, digital commodity broker, futures commission merchant, introducing broker, broker, or dealer.

"(f) REPORTING AND RECORDKEEPING.—Each registered digital commodity broker and registered digital commodity dealer—

"(1) shall make such reports as are required by the Commission by rule or regulation regarding the transactions, positions, and financial condition of the digital commodity broker or digital commodity dealer, respectively;

"(2) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(3) shall keep the books and records open to inspection and examination by any representative of the Commission.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall maintain daily trading records of the transactions of the digital commodity broker or digital commodity dealer, respectively, and all related records (including related forward or derivatives transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as the Commission may require by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

"(3) COUNTERPARTY RECORDS.—Each registered digital commodity broker and registered digital commodity dealer shall maintain daily trading records for each customer or counterparty in a manner and form that is identifiable with each digital commodity transaction.

"(4) AUDIT TRAIL.—Each registered digital commodity broker and registered digital commodity dealer shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall conform with such business conduct standards as the Commission, by rule or regulation, prescribes related to—

"(A) fraud, manipulation, and other abusive practices involving spot or margined, leveraged, or financed digital commodity transactions (including transactions that are offered but not entered into);

"(B) diligent supervision of the business of the registered digital commodity broker or digital commodity dealer, respectively; and

"(C) such other matters as the Commission deems appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—The Commission shall, by rule, prescribe business conduct requirements which—

"(A) require disclosure by a registered digital commodity broker and registered digital commodity dealer to any counterparty to the transaction (other than an eligible contract participant) of—

"(i) information about the material risks and characteristics of the digital commodity;

"(ii) information about the material risks and characteristics of the transaction;

"(B) establish a duty for such a digital commodity broker and such a digital commodity dealer to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

"(C) establish standards governing digital commodity platform marketing and advertising, including testimonials and endorsements; and

"(D) establish such other standards and requirements as the Commission may determine are—

"(i) in the public interest;

"(ii) appropriate for the protection of customers; or

"(iii) otherwise in furtherance of the purposes of this Act.

"(3) SPECIAL REQUIREMENTS FOR DIGITAL COMMODITY BROKERS OR DEALERS ACTING AS ADVISORS.—It shall be unlawful for a registered digital commodity broker or registered digital commodity dealer to—

"(A) employ any device, scheme, or artifice to defraud any customer or counterparty;

"(B) engage in any transaction, practice, or course of business that operates as a fraud or deceit on any customer or counterparty; or

"(C) engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

"(i) DUTIES.—

"(1) RISK MANAGEMENT PROCEDURES.—Each registered digital commodity broker and registered digital commodity dealer shall establish robust and professional risk management systems adequate for managing the day-to-day business of the digital commodity broker or digital commodity dealer, respectively.

"(2) DISCLOSURE OF GENERAL INFORMATION.—Each registered digital commodity broker and registered digital commodity dealer shall disclose to the Commission information concerning—

"(A) the terms and conditions of the transactions of the digital commodity broker or digital commodity dealer, respectively;

"(B) the trading operations, mechanisms, and practices of the digital commodity broker or digital commodity dealer, respectively;

"(C) financial integrity protections relating to the activities of the digital commodity broker or digital commodity dealer, respectively; and

"(D) other information relevant to trading in digital commodities by the digital commodity broker or digital commodity dealer, respectively.

"(3) ABILITY TO OBTAIN INFORMATION.—Each registered digital commodity broker and registered digital commodity dealer shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission, on request.

"(4) CONFLICTS OF INTEREST.—Each registered digital commodity broker and digital commodity dealer shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards—

"(i) to minimize conflicts of interest that might potentially bias the judgment or supervision of the digital commodity broker or digital commodity dealer, respectively, and contravene the principles of fair and equitable trading and the business conduct standards described in this Act, including conflicts arising out of transactions or arrangements with affiliates (including affiliates acting as issuers, market-makers, or custodians), which may include information partitions and the legal separation of different digital commodity transaction intermediaries; and

"(ii) to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any digital commodity or acting in a role of providing exchange activities or making determinations as to accepting exchange customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, exchange, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

"(B) address such other issues as the Commission determines to be appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a digital commodity broker or digital commodity dealer shall not—

"(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

"(B) impose any material anticompetitive burden on trading or clearing.

"(j) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall designate an individual to serve as a chief compliance officer.

"(2) DUTIES.—The chief compliance officer shall—

"(A) report directly to the board or to the senior officer of the registered digital commodity broker and registered digital commodity dealer;

"(B) review the compliance of the registered digital commodity broker and registered digital commodity dealer with respect to the registered digital commodity broker and registered digital commodity dealer requirements described in this section;

"(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

"(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

"(E) ensure compliance with this Act (including regulations), including each rule prescribed by the Commission under this section;

"(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

"(i) compliance office review;
"(ii) look-back;
"(iii) internal or external audit finding;
"(iv) self-reported error; or
"(v) validated complaint; and

"(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS.—

"(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

"(i) the compliance of the registered digital commodity broker and registered digital commodity dealer with respect to this Act (including regulations); and
"(ii) each policy and procedure of the registered digital commodity broker and registered digital commodity dealer of the chief compliance officer (including the code of ethics and conflict of interest policies).

"(B) REQUIREMENTS.—The chief compliance officer shall ensure that a compliance report under subparagraph (A)—

"(i) accompanies each appropriate financial report of the registered digital commodity broker and registered digital commodity dealer that is required to be furnished to the Commission pursuant to this section; and
"(ii) includes a certification that, under penalty of law, the compliance report is accurate and complete.

"(k) SEGREGATION OF DIGITAL COMMODITIES.—

"(1) HOLDING OF CUSTOMER ASSETS.—

"(A) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in customer access to the money, assets, and property of the customer.
"(B) QUALIFIED DIGITAL COMMODITY CUSTODIAN.—Each registered digital commodity broker and registered digital commodity dealer shall hold in a qualified digital commodity custodian each unit of a digital commodity that is—

"(i) the property of a customer or counterparty of the digital commodity broker or digital commodity dealer, respectively; or
"(ii) otherwise so required by the Commission to reasonably protect customers or promote the public interest.

"(2) SEGREGATION OF FUNDS.—

"(A) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall treat and deal with all money, assets, and property that is received by the registered digital commodity broker or registered digital commodity dealer, or accrues to a customer as the result of trading in digital commodities, as belonging to the customer.
"(B) COMMINGLING PROHIBITED.—

"(i) IN GENERAL.—Except as provided in clause (ii), each registered digital commodity broker and registered digital commodity dealer shall separately account for money, assets, and property of a digital commodity customer, and shall not commingle any such money, assets, or property with the funds of the digital commodity broker or digital commodity dealer, respectively, or use any such money, assets, or property to margin, secure, or guarantee any trades or accounts of any customer or person other than the person for whom the money, assets, or property are held.

"(ii) EXCEPTIONS.—

"(I) USE OF FUNDS.—

"(aa) IN GENERAL.—A registered digital commodity broker or registered digital commodity dealer may, for convenience, commingle and deposit in the same account or accounts with any bank, trust company, derivatives clearing organization, or qualified digital commodity custodian money, assets, and property of customers.

"(bb) WITHDRAWAL.—The share of the money, assets, and property described in item (aa) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a digital commodity transaction with a registered entity may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the digital commodity transaction.

"(II) COMMISSION ACTION.—In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of the customers of a registered digital commodity broker or registered digital commodity dealer may be commingled and deposited in customer accounts with any other money, assets, or property received by the digital commodity broker or digital commodity dealer, respectively, and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital commodity broker or digital commodity dealer, respectively.

"(3) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation allow.

"(4) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization or depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any of the money, assets, or property as belonging to the depositing registered digital commodity broker, the depositing registered digital commodity dealer, or any person other than the digital commodity customer of the digital commodity broker or digital commodity dealer, respectively.

"(5) CUSTOMER PROTECTION DURING BANKRUPTCY.—

"(A) CUSTOMER PROPERTY.—All money, assets, or property described in paragraph (2) shall be considered customer property for purposes of section 761 of title 11, United States Code.

"(B) TRANSACTIONS.—A transaction involving a unit of a digital commodity occurring with a digital commodity dealer shall be considered a 'contract for the purchase or sale of a commodity for future delivery, on or subject to the rules of, a contract market or board of trade' for purposes of the definition of a 'commodity contract' in section 761 of title 11, United States Code.

"(C) BROKERS AND DEALERS.—A registered digital commodity dealer and a registered digital commodity broker shall be considered a futures commission merchant for purposes of section 761 of title 11, United States Code.

"(D) ASSETS REMOVED FROM SEGREGATION.—Assets removed from segregation due to a customer election under paragraph (5) shall not be considered customer property for purposes of section 761 of title 11, United States Code.

"(l) EXEMPTIONS.—In order to promote responsible economic or financial innovation and fair competition, or protect customers, the Commission may (on its own initiative or on application of the registered digital commodity broker or registered digital commodity exchange) exempt, unconditionally or on stated terms or conditions, or for stated periods, and retroactively or prospectively, or both, a registered digital commodity broker or registered digital commodity ex-

change from the requirements of this section, if the Commission determines that—

"(1)(A) the exemption would be consistent with the public interest and the purposes of this Act; and

"(B) the exemption will not have a material adverse effect on the ability of the Commission or the digital commodity exchange to discharge regulatory or self-regulatory duties under this Act; or

"(2) the registered digital commodity broker or registered digital commodity exchange is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the registered digital commodity broker or registered digital commodity exchange, respectively.".

SEC. 407. EXCLUSION FOR ANCILLARY ACTIVITIES.The Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended by the preceding provisions of this Act, is amended by inserting after section 4u the following:

"SEC. 4v. EXCLUSION FOR ANCILLARY ACTIVITIES.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, a person shall not be subject to the regulatory requirements of this Act solely based on the person undertaking any ancillary activities.

"(b) EXCEPTIONS.—Subsection (a) shall not be construed to apply to the anti-manipulation, anti-fraud, or false reporting enforcement authorities of the Commission.

"(c) ANCILLARY ACTIVITIES DEFINED.—In this section, the term 'ancillary activities' means any of the following activities related to the operation of a blockchain network:

"(1) Network transactions compilation, pool operating, relating, searching, sequencing, validating, or acting in a similar capacity with respect to a digital commodity transaction.

"(2) Providing computational work, or procuring, offering or utilizing network bandwidth, or other similar incidental services with respect to a digital commodity transaction.

"(3) Providing a user-interface that enables a user to read, and access data about a blockchain network, send messages, or otherwise interact with a blockchain network.

"(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain network.

"(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy a hardware or software wallet or other system facilitating an individual user's own personal ability to keep, safeguard, or custody the user's restricted digital assets or related private keys.".

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

SEC. 501. CODIFICATION OF THE SEC STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(l) STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.—

"(1) OFFICE ESTABLISHED.—There is established within the Commission the Strategic Hub for Innovation and Financial Technology (referred to in this section as the 'FinHub').

"(2) PURPOSES.—The purposes of FinHub are as follows:

"(A) To assist in shaping the approach of the Commission to technological advancements in the financial industry.

"(B) To examine FinTech innovations within capital markets, market participants, and investors.

"(C) To coordinate the response of the Commission to emerging technologies in financial, regulatory, and supervisory systems.

"(3) DIRECTOR OF FINHUB.—FinHub shall have a Director who shall be appointed by the Commission, from among individuals having experience in both emerging technologies and Federal securities law and serve at the pleasure of the Commission. The Director shall report directly to the Com-

mission and perform such functions and duties as the Commission may prescribe.

"(4) RESPONSIBILITIES.—FinHub shall—

"(A) foster responsible technological innovation and fair competition within the Commission, including around financial technology, regulatory technology, and supervisory technology;

"(B) provide internal education and training to the Commission regarding financial technology;

"(C) advise the Commission regarding financial technology that would serve the Commission's oversight functions;

"(D) analyze technological advancements and the impact of regulatory requirements on financial technology companies;

"(E) advise the Commission with respect to rulemakings or other agency or staff action regarding financial technology;

"(F) provide businesses working in emerging financial technology fields with information on the Commission, its rules and regulations; and

"(G) encourage firms working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

"(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that FinHub has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of FinHub.

"(6) REPORT TO CONGRESS.—

"(A) IN GENERAL.—Not later than October 31 of each year after 2024, FinHub shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of FinHub during the immediately preceding fiscal year.

"(B) CONTENTS.—Each report required under subparagraph (A) shall include—

"(i) the total number of persons that met with FinHub;

"(ii) the total number of market participants FinHub met with, including the classification of those participants;

"(iii) a summary of general issues discussed during meetings with persons;

"(iv) information on steps FinHub has taken to improve Commission services, including responsiveness to the concerns of persons;

"(v) recommendations—

"(I) with respect to the regulations of the Commission and the guidance and orders of the Commission; and

"(II) for such legislative actions as the FinHub determines appropriate; and

"(vi) any other information, as determined appropriate by the Director of FinHub.

"(C) CONFIDENTIALITY.—A report under subparagraph (A) may not contain confidential information.

"(7) SYSTEMS OF RECORDS.—

"(A) IN GENERAL.—The Commission shall establish a detailed system of records (as defined under section 552a of title 5, United States Code) to assist FinHub in communicating with interested parties.

"(B) ENTITIES COVERED BY THE SYSTEM.—Entities covered by the system required under subparagraph (A) include entities or persons submitting requests or inquiries and other information to Commission through FinHub.

"(C) SECURITY AND STORAGE OF RECORDS.—FinHub shall store—

"(i) electronic records—

"(I) in the system required under subparagraph (A); or

"(II) on the secure network or other electronic medium, such as encrypted hard drives or back-up media, of the Commission; and

"(ii) paper records in secure facilities.

"(8) EFFECTIVE DATE.—This subsection shall take effect on the date that is 180 days after the date of the enactment of this subsection.".

SEC. 502. CODIFICATION OF LABCFTC.

(a) IN GENERAL.—Section 18 of the Commodity Exchange Act (7 U.S.C. 22) is amended by adding at the end the following:

"(c) LABCFTC.—

"(1) ESTABLISHMENT.—There is established in the Commission LabCFTC.

"(2) PURPOSE.—The purposes of LabCFTC are to—

"(A) foster responsible financial technology innovation and fair competition for the benefit of the American public;

"(B) serve as an information platform to inform the Commission about new financial technology innovation; and

"(C) provide outreach to financial technology innovators to discuss their innovations and the regulatory framework established by this Act and the regulations promulgated thereunder.

"(3) DIRECTOR.—LabCFTC shall have a Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. Notwithstanding section 2(a)(6)(A), the Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

"(4) DUTIES.—LabCFTC shall—

"(A) advise the Commission with respect to rulemakings or other agency or staff action regarding financial technology;

"(B) provide internal education and training to the Commission regarding financial technology;

"(C) advise the Commission regarding financial technology that would bolster the Commission's oversight functions;

"(D) engage with academia, students, and professionals on financial technology issues, ideas, and technology relevant to activities under this Act;

"(E) provide persons working in emerging technology fields with information on the Commission, its rules and regulations, and the role of a registered futures association; and

"(F) encourage persons working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

"(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that LabCFTC has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of LabCFTC.

"(6) REPORT TO CONGRESS.—

"(A) IN GENERAL.—Not later than October 31 of each year after 2024, LabCFTC shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on its activities.

"(B) CONTENTS.—Each report required under paragraph (1) shall include—

"(i) the total number of persons that met with LabCFTC;

"(ii) a summary of general issues discussed during meetings with the person;

"(iii) information on steps LabCFTC has taken to improve Commission services, including responsiveness to the concerns of persons;

"(iv) recommendations made to the Commission with respect to the regulations, guidance, and orders of the Commission and such legislative actions as may be appropriate; and

"(v) any other information determined appropriate by the Director of LabCFTC.

"(C) CONFIDENTIALITY.—A report under paragraph (A) shall abide by the confidentiality requirements in section 8.

"(7) SYSTEMS OF RECORDS.—

"(A) IN GENERAL.—The Commission shall establish a detailed system of records (as defined in section 552a of title 5, United States Code) to assist the Office in communicating with interested parties.

"(B) ENTITIES COVERED BY THE SYSTEM.—The entities covered by the system of records shall include entities submitting requests or inquiries and other information to the Commission through the Office. Proprietary information provided to the Office by entities or persons shall be subject to the disclosure restrictions provided in section 8 of the Commodity Exchange Act.

"(C) SECURITY AND STORAGE OF RECORDS.—The system of records shall store records electronically or on paper in secure facilities, and shall store electronic records on the secure network of the Commission and on other electronic media, such as encrypted hard drives and back-up media, as needed.".

(b) CONFORMING AMENDMENTS.—Section 2(a)(6)(A) of such Act (7 U.S.C. 2(a)(6)(A)) is amended—

(1) by striking "paragraph and in" and inserting "paragraph,"; and
(2) by inserting "and section 18(c)(3)," before "the executive".

(c) EFFECTIVE DATE.—The Commodity Futures Trading Commission shall implement the amendments made by this section (including complying with section 18(c)(7) of the Commodity Exchange Act) within 180 days after the date of the enactment of this Act.

SEC. 503. CFTC–SEC JOINT ADVISORY COMMITTEE ON DIGITAL ASSETS.

(a) ESTABLISHMENT.—The Commodity Futures Trading Commission and the Securities and Exchange Commission (in this section referred to as the "Commissions") shall jointly establish the Joint Advisory Committee on Digital Assets (in this section referred to as the "Committee").

(b) PURPOSE.—

(1) IN GENERAL.—The Committee shall—

(A) provide the Commissions with advice on the rules, regulations, and policies of the Commissions related to digital assets;

(B) further the regulatory harmonization of digital asset policy between the Commissions;

(C) examine and disseminate methods for describing, measuring, and quantifying digital asset—

(i) decentralization;
(ii) functionality;
(iii) information asymmetries; and
(iv) transaction and network security; and

(D) discuss the implementation by the Commissions of this Act and the amendments made by this Act.

(2) REVIEW BY AGENCIES.—Each Commission shall—

(A) review the findings and recommendations of the Committee;

(B) each time the Committee submits a finding or recommendation to a Commission, promptly issue a public statement—

(i) assessing the finding or recommendation of the Committee;
(ii) disclosing the action or decision not to take action made by the Commission in response to a finding or recommendation; and
(iii) the reasons for the action or decision not to take action; and

(C) each time the Committee submits a finding or recommendation to a Commission, provide the Committee with a formal response to the finding or recommendation not later than 3 months after the date of the submission of the finding or recommendation.

(c) MEMBERSHIP AND LEADERSHIP.—

(1) NON-FEDERAL MEMBERS.—

(A) IN GENERAL.—The Commissions shall appoint at least 20 nongovernmental stakeholders with a wide diversity of opinion and who represent a broad spectrum of interests representing the digital asset ecosystem, equal-

ly divided between the Commissions, to serve as members of the Committee. The appointees shall include—

(i) digital asset issuers;
(ii) persons registered with the Commissions and engaged in digital asset related activities;
(iii) individuals engaged in academic research relating to digital assets; and
(iv) digital asset users.

(B) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under subparagraph (A) shall not be deemed to be employees or agents of a Commission solely by reason of membership on the Committee.

(2) CO-DESIGNATED FEDERAL OFFICERS.—

(A) NUMBER; APPOINTMENT.—There shall be 2 co-designated Federal officers of the Committee, as follows:

(i) The Director of LabCFTC of the Commodity Futures Trading Commission.
(ii) The Director of the Strategic Hub for Innovation and Financial Technology.

(B) DUTIES.—The duties required by chapter 10 of title 5, United States Code, to be carried out by a designated Federal officer with respect to the Committee shall be shared by the co-designated Federal officers of the Committee.

(3) COMMITTEE LEADERSHIP.—

(A) COMPOSITION; ELECTION.—The Committee members shall elect, from among the Committee members—

(i) a chair;
(ii) a vice chair;
(iii) a secretary; and
(iv) an assistant secretary.

(B) TERM OF OFFICE.—Each member elected under subparagraph (A) in a 2-year period referred to in section 1013(b)(2) of title 5, United States Code, shall serve in the capacity for which the member was so elected, until the end of the 2-year period.

(d) NO COMPENSATION FOR COMMITTEE MEMBERS.—

(1) NON-FEDERAL MEMBERS.—All Committee members appointed under subsection (d)(1) shall—

(A) serve without compensation; and
(B) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(2) NO COMPENSATION FOR CO-DESIGNATED FEDERAL OFFICERS.—The co-designated Federal officers shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(e) FREQUENCY OF MEETINGS.—The Committee shall meet—

(1) not less frequently than twice annually; and
(2) at such other times as either Agency may request.

(f) DURATION.—Section 1013(a)(2) of title 5, United States Code, shall not apply to the Committee.

(g) TIME LIMITS.—The Commissions shall—

(1) adopt a joint charter for the Committee within 90 days after the date of the enactment of this section;
(2) appoint members to the Committee within 120 days after such date of enactment; and
(3) hold the initial meeting of the Committee within 180 days after such date of enactment.

(h) FUNDING.—The Commissions may jointly fund the Committee.

SEC. 504. MODERNIZATION OF THE SECURITIES AND EXCHANGE COMMISSION MISSION.

(a) SECURITIES ACT OF 1933.—Section 2(b) of the Securities Act of 1933 (15 U.S.C. 77(b)) is amended—

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and
(2) by inserting "innovation," after "efficiency,".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78(c)) is amended—

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and
(2) by inserting "innovation," after "efficiency,".

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 2(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and
(2) by inserting "innovation," after "efficiency,".

SEC. 505. STUDY ON DECENTRALIZED FINANCE.

(a) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly carry out a study on decentralized finance that analyzes—

(1) the nature, size, role, and use of decentralized finance protocols;
(2) the operation of smart contracts that comprise decentralized finance protocols;
(3) the interoperability of smart contracts and blockchain technology;
(4) the interoperability of smart contracts and software-based systems, such as websites and software wallets;
(5) the software-based governance systems through which decentralized finance may be administered or operated, including—

(A) whether the systems enhance or detract from—

(i) the decentralization of the decentralized finance; and
(ii) the inherent risks of the systems; and

(B) any procedures or requirements that would mitigate the risks identified in subparagraph (A)(ii);

(6) the benefits of decentralized finance, including—

(A) operational resilience and interoperability of blockchain-based systems;
(B) market competition and innovation;
(C) transaction efficiency; and
(D) transparency and traceability of transactions; and

(7) the risks of decentralized finance, including—

(A) pseudonymity of users and transactions;
(B) lack of intermediaries; and
(C) cybersecurity vulnerabilities;

(8) the extent to which decentralized finance has integrated with the traditional financial markets and any potential risks to stability of such markets from the integration;
(9) how the levels of illicit activity in decentralized finance compare with the levels of illicit activity in traditional financial markets; and
(10) how decentralized finance may increase the accessibility of cross-border transactions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the relevant congressional committees a report that includes the results of the study required by subsection (a).
(c) GAO STUDY.—The Comptroller General of the United States shall—

(1) carry out a study on decentralized finance that analyzes the information described under paragraphs (1) through (10) of subsection (a); and
(2) not later than 1 year after the date of enactment of this Act, submit to the relevant congressional committees a report that includes the results of the study required by paragraph (1).

(d) DEFINITIONS.—In this section:

(1) DECENTRALIZED FINANCE.—The term "decentralized finance" means a system of software applications that—

(A) are created through smart contracts deployed to permissionless blockchain technology; and

(B) allow users to engage in financial transactions in a self-directed manner so that a third-party intermediary does not effectuate the transactions or take custody of digital assets of a user during any part of the transactions.

(2) RELEVANT CONGRESSIONAL COMMITTEES.—The term "relevant congressional committees" means—

(A) the Committees on Financial Services and Agriculture of the House of Representatives; and

(B) the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate.

SEC. 506. STUDY ON NON-FUNGIBLE DIGITAL ASSETS.

(a) The Secretary of Commerce shall, in consultation with the Office of Science and Technology Policy, the Securities and Exchange Commission, and the Commodity Futures Trading Commission carry out a study of non-fungible digital assets that analyzes—

(1) the nature, size, role, purpose, and use of non-fungible digital assets;

(2) the similarities and differences between non-fungible digital assets and other digital assets, including digital commodities and payments stablecoins, and how the markets for those digital assets intersect with each other;

(3) how non-fungible digital assets are minted by issuers and subsequently administered to purchasers;

(4) how non-fungible digital assets are stored after being purchased by a consumer;

(5) the interoperability of non-fungible digital assets between different blockchain networks;

(6) the scalability of different non-fungible digital asset marketplaces;

(7) the benefits of non-fungible digital assets, including verifiable digital ownership;

(8) the risks of non-fungible tokens, including—

(A) intellectual property rights;

(B) cybersecurity risks; and

(C) market risks;

(9) whether and how non-fungible digital assets have integrated with traditional marketplaces, including those for music, real estate, gaming, events, and travel;

(10) any potential risks to such traditional markets from such integration; and

(11) the levels and types of illicit activity in non-fungible digital asset markets.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce, shall make publicly available a report that includes the results of the study required by subsection (a).

Digital Asset Market Structure Discussion Draft Summary

The current regulatory framework for digital assets hinders innovation and fails to provide adequate consumer protection. The House Committee on Financial Services and the House Committee on Agriculture are addressing these shortcomings by establishing a functional framework that works for both market participants and consumers. This functional framework would provide digital asset firms with regulatory certainty and fill the gap that exists between the authorities of the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC).

The Digital Asset Market Structure Discussion Draft (Discussion Draft) provides the CFTC with jurisdiction over digital commodities and clarifies the SEC's jurisdiction over digital assets offered as part of an investment contract. Additionally, the Act establishes a process to permit the secondary market trading of digital commodities, if they were initially offered as part of an investment contract. Finally, the

Act imposes robust customer protections on all entities required to be registered with the SEC and CFTC.

Classification as a Security vs. a Commodity

The Act also builds on the current exemption regime for the offer and sale of digital assets pursuant to an investment contract including a disclosure regime to address the potential risks associated with digital assets. Under this exemption, digital asset issuers will need to demonstrate that their digital assets operate on a decentralized network and fulfil certain fit-for-purpose disclosure requirements. The Act specifies that a digital asset can be considered a digital commodity if certain conditions are met. This would be determined by the network being functional and considered decentralized.

The Act includes definitions for a decentralized network and a functional network and provides a certification process under which a digital asset issuer may certify to the SEC that the network on which the digital asset relates is decentralized. The SEC may object to the certification if the SEC determines the certification is inconsistent with the Act, but must provide a detailed analysis of its reasons for doing so.

Regulation of SEC Intermediaries

The Act would enable registration of digital asset trading platforms as an Alternative Trading System (ATS). The Act would prohibit the SEC from denying a trading platform from an exemption to operate as an ATS on the basis that the platform trades digital assets. It would also allow an ATS to offer digital commodities and payment stablecoins on their platforms. The Act also requires the SEC to modify its rules to allow broker-dealers to custody digital assets, if they meet certain requirements. Additionally, the Act would require the SEC to write rules to modernize certain regulations for digital assets.

Regulation of CFTC Intermediaries

The Act creates a Digital Commodity Exchange (DCE) framework that is similar to existing exchange frameworks in the Commodity Exchange Act (CEA) for Designated Contract Markets and Swap Execution Facilities. A registered DCE would be required to comply with requirements within the Act, certain longstanding CEA core principles, as well as CFTC regulations including the monitoring of trading activity, prohibition of abusive trading practices, minimum capital requirements, public reporting of trading information, conflicts of interest, governance standards, and cybersecurity. DCEs must also register with a registered futures association and comply with its customer protection rules if it directly serves customers.

Additionally, before listing digital commodities, DCEs would need to certify with the CFTC that the digital commodity is not readily susceptible to manipulation before being listed to trade, including considering its availability, structure, functionality, and public information.

Further, the Act creates a Digital Commodity Broker (DCB) and a Digital Commodity Dealer (DCD) framework. Because they directly serve customers, all DCBs and DCDs are required to register with a registered futures association and meet prescriptive business conduct requirements related to minimum capital, fair dealing, risk disclosures, advertising limitations, conflicts of interest, recordkeeping and reporting, daily trading records, and employee fitness standards.

The proposed legislation also builds on the existing commodity market requirements imposed on Futures Commission Merchants (FCMs) to protect customer assets. DCEs would be required to segregate customer assets and hold them in digital commodity custodians, which will be subject to minimum standards for supervision and comprehensive regulation set by the CFTC. Further, the Act provides bankruptcy protections for customers when the FCM is acting as a counterparty.

Regulatory Coordination

The Act would permit a single CFTC entity to obtain multiple licenses with the CFTC, depending on the nature of the services the entity engaged in, except that no exchange would be permitted to be registered as a dealer directly. The Act would also permit certain entities to dually register with the CFTC and SEC to be permitted to facilitate transactions in multiple types of digital assets.

Innovation and Coordination

The Act codifies the establishment of both the Strategic Hub for Innovation and Financial Technology (FinHub) at the SEC and LabCFTC at the CFTC. The offices will serve as information resources for the Commissions on financial technology (FinTech) innovation. The offices will also make the Commissions more accessible

to FinTech innovators and serve as a forum for innovators seeking a better understanding of the Commissions' regulatory frameworks.

The Act also establishes a Joint CFTC–SEC Advisory Committee on Digital Assets, which will consist of 20 market participants, who will provide advice to the CFTC and SEC related to digital assets. The Act requires the CFTC and the SEC to conduct a joint study on decentralized finance. The Act also requires the Department of Commerce, in consultation with the White House Office of Science and Technology, the SEC, and the CFTC to conduct a study on non-fungible digital assets.

Regulatory Transition

The Act provides for a transition period for entities to come into temporary compliance with both the SEC and CFTC immediately, while the Commissions are writing final rules to bring comprehensive oversight to these markets. Existing digital assets are eligible for a safe harbor under which they are permitted to trade during this period, until the SEC or CFTC issues a notice to the trading venue that they are not digital commodities.

Digital Asset Market Structure Discussion Draft Section-by-Section

Title I—Definitions; Rulemaking; Provisional Registration

Sec. 101. Definitions under the Securities Act of 1933.

Section 101 provides for definitions under the Securities Act of 1933.

Sec. 102. Definitions under the Commodity Exchange Act.

Section 102 provides for definitions under the Commodity Exchange Act.

Sec. 103. Definitions under this Act.

Section 103 provides for definitions under this Act.

Sec. 104. Joint rulemakings.

Section 104 provides for joint rulemakings between the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), including joint rulemakings related to defining key terms in the Act and the oversight of dually registered exchanges.

Sec. 105. Provisional Registration of CFTC intermediaries.

Section 105 permits a digital commodity exchange, digital commodity broker, or a digital commodity dealer to file a provisional registration statement with the CFTC. Filing a provisional registration requires a filer to submit information regarding the company to the Commission, submit to inspection by the Commission, and provide disclosures and segregate customer assets. Filing a provisional registration provides limited relief from the requirements of this Act, until such time as the rules are written and permanent registration commences.

Sec. 106. Provisional registration of SEC intermediaries.

Section 106 permits a broker-dealer and alternative trading system (ATS) to file a provisional registration statement with the SEC. Filing a provisional registration requires a filer to submit information regarding the company to the Commission and submit to inspection by the Commission. Filing a provisional registration provides limited relief from the requirements of this Act, until such time as the rules are written and permanent registration commences.

Title II—Digital Asset Exemptions

Sec. 201. Exempted transactions in digital assets.

Section 201 establishes an exemption from the securities laws for a digital asset issuer's sale of digital assets that meet the following conditions: (1) the issuer's total sales of the digital asset over the prior 12 months does not exceed $75 million; (2) a non-accredited investor's purchases of the digital asset from the issuer over the prior 12 months are less than the greater of 5% of the purchaser's annual income or 5% of their net worth; (3) the purchaser does not own more than 10% of the units of the digital asset after the completion of the transaction; and (4) the transaction does not involve equity or debt securities.

The digital asset issuer must file information with the Commission as prescribed by the Act. The digital asset issuer must file annual and semiannual reports until a defined period after the blockchain network is certified decentralized. Any intermediaries involved in the offer or sale of a unit of a digital asset under this exemption must be registered with the SEC. A unit of a digital asset acquired from the digital asset issuer in reliance on this exemption is deemed a restricted digital asset.

Sec. 202. Requirements to transact in certain digital assets.

Section 202 sets out the conditions under which certain persons are permitted to engage in restricted digital asset transactions and digital commodity transactions. Generally, restricted digital assets are permitted to trade on an ATS under the supervision of the SEC and digital commodities are permitted to trade on a Digital Commodity Exchange (DCE) under the supervision of the CFTC.

Sec. 203. Enhanced disclosure requirements.

Section 203 provides for a new disclosure regime to be completed by a digital asset issuer, affiliated person, related person, or other appropriate entity. The information required to be disclosed is focused on the nature of the risks surrounding digital assets, including source code, project economics, development plan, related and affiliated persons, and other risk factors.

Sec. 204. Certification of certain digital assets.

Section 204 provides for a process for a blockchain relating to a digital asset to be certified as decentralized. The certification process permits any person to certify to the SEC that the blockchain network meets the requirements of the Act. The SEC is then provided an opportunity to rebut the assertion that the network meets the decentralization test.

Title III—Registration for Digital Asset Intermediaries at the Securities and Exchange Commission

Sec. 301. Treatment of digital commodities and other digital assets.

Section 301 excludes digital commodities and payment stablecoins from the definition of a security under the securities laws. This section aligns the definition of bank in the Exchange Act with the Advisers Act and Investment Company Act and clarifies the activities of trust companies engaging in custody and safekeeping services.

Sec. 302. [Anti-fraud] authority over payment stablecoins.

Section 302 provides the SEC with authority over transactions with or involving payment stablecoins that occur on or with a SEC registered entity, as though those payment stablecoins are a security solely for purposes of the Commission's anti-fraud or anti-manipulation enforcement authorities. The SEC shall have no authority over the design, structure, or operation of payment stablecoins.

Sec. 303. Eligibility of alternative trading systems.

Section 303 specifies that the SEC may not exclude a trading platform from operating pursuant to an exemption as an ATS solely on the basis that the assets traded are digital assets. It also requires the SEC to revise regulations to exempt ATSs that offer digital assets, digital commodities, and payment stablecoins from registration as a national securities exchange and revise the ATS framework to permit disintermediated trading and real-time settlement consistent with what is necessary or appropriate in the public interest or for the protection of investors.

Sec. 304. Customer protection rule modernization.

Section 304 requires the SEC within 270 days to revise the Customer Protection Rule to provide that a registered broker-dealer is considered to have control of digital assets if the broker-dealer holds digital assets with a bank, if certain conditions are met, or establishes written policies and procedures demonstrating that the broker has exclusive control over the digital asset.

Sec. 305. Modernization of recordkeeping requirements.

Section 305 requires the SEC to promulgate rules that enable cryptographically secured distributed ledgers to satisfy the books and records requirements and to specify that registered transfer agents are able to use cryptographically secured distributed ledgers to meet obligations.

Sec. 306. Modifications to existing rules for digital assets.

Section 306 requires the SEC to complete a study and revise rules under Regulation National Market System, Regulation Systems Compliance and Integrity, and the Market Access Rule, among others, to modernize such rules for digital assets.

Sec. 307. Treatment of certain digital assets in connection with federally regulated intermediaries.

Section 307 adds digital assets to "covered securities" which are exempt from state blue sky law registration requirements.

Sec. 308. Dual registration.

Section 308 requires SEC-registered intermediaries offering or seeking to offer a cash or spot market in at least one digital commodity to register with the CFTC.

Sec. 309. Exclusion for ancillary activities.

Section 309 defines certain ancillary activities related to the operations and maintenance of blockchain networks and exempts such activities from direct SEC regulation, although not from the Commission's anti-fraud or anti-manipulation enforcement authorities.

Ancillary activities are defined as validating or providing incidental services with respect to a restricted digital asset, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks.

Title IV—Registration for Digital Asset Intermediaries at the Commodity Futures Trading Commission

Sec. 401. Commission jurisdiction over digital commodity transactions.

Section 401 sets out the new authority of the CFTC over certain transactions in digital assets. Specifically, the section provides the Commission with new exclusive regulatory jurisdiction over digital commodity cash or spot markets which occur on or with CFTC the new registered entities created in this Act: digital commodity exchanges, digital commodity dealers, and digital commodity brokers. This new authority complements the Commission's existing anti-fraud and anti-manipulation authority over all cash or spot market commodity transactions, including cash or spot market transactions in digital assets.

Section 401 provides the Commission with authority over transactions with or involving payment stablecoins that occur on or with a CFTC registered entity, as a payment stablecoin is a digital commodity. The CFTC shall have no authority over the design, structure, or operation of such payment stablecoins.

Sec. 402. Requiring futures commission merchants to use qualified digital commodity custodians.

Section 402 requires Future Commission Merchants (FCM) to hold customers' digital commodities in a qualified digital commodity custodian (QDCC).

Sec. 403. Trading certification and approval for digital commodities.

Section 403 establishes the process by which a registered entity may determine that digital commodities are eligible to be traded on CFTC registered entities and through other CFTC registered intermediaries.

The process requires a registered entity to submit a certification to the Commission that the digital commodity meets the requirements of the Commodity Exchange Act, including the listing requirements under section 404, and to provide disclosures about the functionality and operations of the digital commodity. The Commission then has up to 80 days to review the certification for its accuracy, completeness, and veracity.

Sec. 404. Registration of digital commodity exchanges.

Section 404 provides for the registration and regulation of digital commodity exchanges (DCE).Registration requires DCEs to comply with core principles, including listing standards, treatment of customer assets, trade surveillance, capital, conflicts of interest, reporting and system safeguards. Subject to the core principles, DCEs are allowed to list only those digital commodities that are not susceptible to manipulation and for which they have made public disclosures regarding source code, transaction history, and digital asset economics.

DCEs are also subject to comprehensive requirements to segregate customer funds, provide risk-appropriate disclosures to retail customers, and be members of a registered futures association and comply with any additional rules they impose.

Sec. 405. Qualified digital commodity custodians.

Section 405 sets out the requirements for custodians to be qualified digital asset custodians, and thus eligible to hold the digital assets of customers of entities registered with the CFTC. While the Commission is not given authority to directly regulate custodians, it is provided authority to set minimum standards for those custodians holding customer digital assets within the CFTC regulated perimeter.

Sec. 406. Registration and regulation of digital commodity brokers and dealers.

Section 406 provides for the registration and regulation of digital commodity brokers (DCB) and digital commodity dealers (DCD).

Registration requires DCBs and DCDs to comply with requirements pertaining to business conduct standards, fair dealing, customer disclosures, segregation of customer funds, conflicts of interest, minimum capital requirements, reporting and record keeping, and other requirements.

In addition, DCBs and DCDs are required to be members of a registered futures association and comply with any additional rules they impose.

Sec. 407. Exclusion for ancillary activities.

Section 407 defines certain ancillary activities related to the operations and maintenance of blockchain networks and exempts such activities from direct CFTC regulation, although not from the Commission's anti-fraud, anti-manipulation, or false reporting enforcement authorities.

Ancillary activities are defined as validating or providing incidental services with respect to a digital commodity, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks.

Title V—Innovation and Technology Improvements

Sec. 501. Codification of the SEC Strategic Hub for Innovation and Financial Technology (FinHub).

Section 501 establishes the SEC Strategic Hub for Innovation and Financial Technology (FinHub), which will assist the SEC with its approach to technological advancements, examine the impact that FinTech innovations have on capital markets, market participants, and investors, and coordinate the SEC's response to emerging technologies in financial, regulatory, and supervisory systems. FinHub will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office. The Office shall submit an annual report to Congress on its activity.

Sec. 502. Codification of LabCFTC.

Section 502 establishes LabCFTC in the CFTC, which will serve as an information source for the CFTC on financial technology (FinTech) innovation. The Office will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office.

The Office will ensure the CFTC is more accessible to FinTech innovators and bolster the CFTC's understanding of new technologies. The Office will also serve as a forum for innovators seeking a better understanding of the CFTC's regulatory framework. The Office shall submit an annual report to Congress on its activity.

Sec. 503. CFTC–SEC Joint Advisory Committee on Digital Assets.

Section 503 establishes a Joint CFTC–SEC Advisory Committee on Digital Assets composed of digital asset marketplace stakeholders. Among its many duties, the Joint Advisory Committee will provide recommendations to the CFTC and SEC regarding their respective promulgation of rules under the Act. The section also requires the CFTC and SEC to publicly respond to any recommendations made by the Joint Advisory Committee.

Sec. 504. Modernization of the Securities and Exchange Commission Mission.

Section 504 amends the Securities Act of 1933, the Securities Act of 1934, and the Investment Advisers Act of 1940 by adding "innovation" to the factors the SEC must consider when issuing a rulemaking.

Sec. 505. Study on decentralized finance.

Section 505 requires the SEC and the CFTC to conduct a study on decentralized finance (DeFi), which will include an analysis of the size, scope, role, nature, and use of DeFi protocols, the benefits and risks of DeFi, how DeFi has integrated into the traditional financial markets, including the risks of DeFi integration, and the levels and types of illicit activities in DeFi compared to traditional financial markets. The report will be submitted to Congress one year after enactment. GAO shall also conduct a report on DeFi and submit it to Congress one year after enactment.

DeFi is defined as a system of software applications that (1) are created through smart contracts deployed to permissionless blockchain technology; and (2) allow users to engage in financial transactions in a self-directed manner such that no third-party intermediary effectuates such transactions or takes custody of a user's digital assets during any part of such transaction.

Sec. 506. Study on non-fungible digital assets.

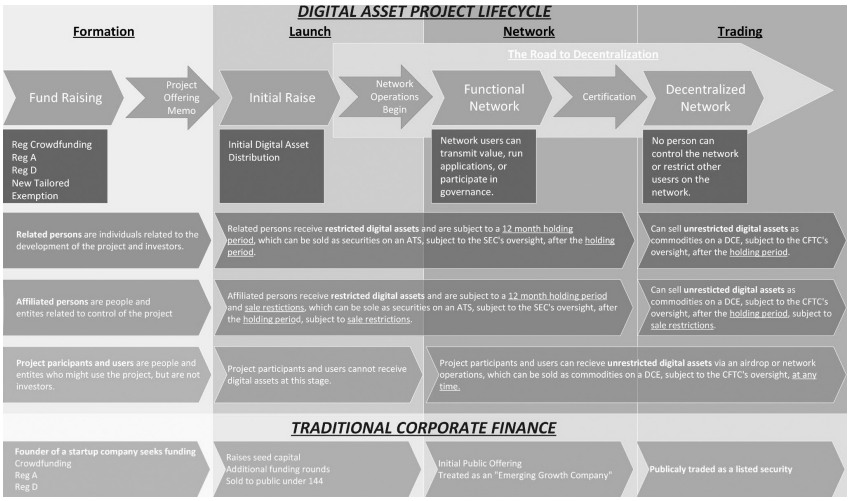
Section 506 requires the Department of Commerce, in consultation with the White House Office of Science and Technology, the CFTC, and the SEC, to conduct a study on non-fungible digital assets (NFT), which will include an analysis of the size,

scope, role, nature, and use of non-fungible digital assets, the similarities and differences between non-fungible digital assets and other digital assets, the benefits and risks of non-fungible digital assets, how non-fungible digital assets have integrated into traditional marketplaces, including the risks of such integration, and the levels and types of illicit activities in non-fungible digital asset markets. The report will be made publicly available one year after enactment.

Exhibit 1: Summary of Title [II]

Digital Asset Holder	Primary Transactions	Digital Asset Received	Secondary Transactions Can Occur If
Ordinary Persons	End-User Distributions	Digital Commodities	Digital Commodity Exchange—Trades as Digital Commodities, subject to requirements: • Functional Network • Current Information
	Sales pursuant to Title II digital asset exemption	Restricted Digital Assets	Alternative Trading System—Trades as Restricted Digital Assets, subject to requirements: • Current Information Digital Commodity Exchange—Trades as Digital Commodities, subject to requirements: • Functional Network • Decentralized Network • Current Information
Related Persons	Sales pursuant to Title II or applicable securities laws. Distributions pursuant to applicable securities laws. End-User Distributions	Restricted Digital Assets	Alternative Trading System—Trades as Restricted Digital Assets, subject to requirements: • Holding Period • Current Information Digital Commodity Exchange—Trades as Digital Commodities, subject to requirements: • Holding Period • Functional Network • Decentralized Network • Current Information
Affiliated Persons	Sales pursuant to Title II or applicable securities laws. Distributions pursuant to applicable securities laws. End-User Distributions	Restricted Digital Assets	Alternative Trading System—Trades as Restricted Digital Assets, subject to requirements: • Holding Period • Current Information • Volume Limitation • Notice Requirement Digital Commodity Exchange—Trades as Digital Commodities, subject to requirements: • Holding Period • Functional Network • Decentralized Network • Current Information • Volume Limitation • Notice Requirement

Exhibit 2: Digital Asset Project Lifecycle



SUPPLEMENTARY MATERIAL SUBMITTED BY HON. ROSTIN BEHNAM, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION

Insert

Mrs. HAYES. Well, thank you. My time has expired, but I would love to hear more from you on what you could do with funding to actually support this legislation.

If we received funding to support this legislation, we would establish a regulatory regime for digital assets that are not securities. This would include drafting rules that establish regulatory requirements, and guardrails. We would register exchanges, brokers and dealers if they meet appropriate standards, bringing greater transparency to the market.

In addition, we would we deploy surveillance tools to prosecute fraud when it does occur.

SUBMITTED QUESTIONS

Response from Hon. Rostin Behnam, Chairman, Commodity Futures Trading Commission

Questions Submitted by Hon. Trent Kelly, a Representative in Congress from Mississippi

Question 1. Chairman Behnam, the Dodd-Frank Act embraced a split regulatory regime between the CFTC and SEC when it established regulatory clarity for swaps after decades of ambiguity and litigation. While the SEC is the primary regulator for securities-based swaps, CFTC has primary regulatory authority over all other swap instruments, which can take all manner of shapes and configurations. Do you see parallels between the way Dodd-Frank created an effective regime for swaps instruments and the need for appropriate regulation of digital assets today?

Answer. There are parallels between how Dodd-Frank established a split regime for swap instruments and the need for regulation of digital assets today. Congress gave the agencies directives, which helped the CFTC and the SEC work through regulatory and jurisdictional issues related to different types of swaps. We did that over a number of years and today we have a well-functioning regulatory regime. I am, therefore, confident we can meet the complex and novel issues raised by digital asset markets in an expedited and orderly manner.

Question 2. Chairman Behnam, given the SEC Chair's recently expressed view that "everything other than bitcoin" might be a security, there seems to be a risk that the SEC and CFTC have already taken—and may take additional—conflicting

positions on whether certain assets, such as Ether and Litecoin, are commodities or securities. In your view, what are the public policy implications of such inconsistencies and how should they be addressed? Is this posture sustainable?

Answer. I recognize that there can be difficult legal issues presented in digital asset-related cases that may implicate the jurisdiction of multiple regulators. The critical issue is closing the regulatory gap for non-security digital assets. Given the absence of Congressional legislation, the CFTC will continue being proactive in this space when our jurisdiction is implicated. We will also continue to work with the SEC and other agencies to ensure that wrongdoers are held accountable.

Questions Submitted by Hon. Salud O. Carbajal, a Representative in Congress from California

Question 1. Chairman Behnam, you state in your testimony that digital asset markets are often promoted as a form of financial inclusion to populations that may be most vulnerable to the inherent risks in these assets as well as to predatory financial schemes. And that any legislation in this area should recognize this dynamic and require additional work and study to better understand how these populations interact with this market and ensure they are adequately protected. Can you elaborate in more detail on who these populations are and how any legislation in this space should address this dynamic to ensure these populations are protected?

Answer. One possible legislative approach is set out in The Digital Commodities Consumer Protection Act, introduced by Senators Stabenow and Boozman, which requires the CFTC to conduct a study on digital assets and historically under-served populations. We would use our experience and the conclusions of that study to develop tools for safe, inclusive access to digital markets.

Currently, the CFTC's Office of Consumer Education and Outreach is statutorily authorized to educate and inform customers in our markets about risks related to fraud and manipulation. OCEO has issued numerous customer advisories and related materials specifically about the digital asset market (see *https://www.cftc.gov/digitalassets/index.htm*).*

If the CFTC is given greater authority, the OCEO, in conjunction with the CFTC's operating divisions, will review the digital commodity market and the relevant investor population, and proactively engage with customers to assess investor risks in those markets, provide information about the CFTC's customer protection regime and continue to publish customer advisories regarding market risks.

Question 2. Chairman Behnam, in your testimony, you talked about the need for sufficient funding as the CFTC is the only financial market regulator relying solely on Congressional appropriations. To take on the additional responsibility of oversight of non-security digital assets, do you think the CFTC currently has sufficient funding? Can you elaborate on what would happen if additional authority were provided but resources are reduced?

Answer. If Congress were to give the CFTC regulatory responsibility over digital asset commodity spot markets, the agency would need to start implementation work immediately. We would therefore need additional appropriations from Congress above our current year funding request to meet these costs.

As mentioned in my testimony before the Committee on June [6], 2023, the CFTC is the only financial market regulator that relies on appropriated dollars from Congress for its funding and that does not have a self-funding mechanism. For the CFTC, as for any regulator taking on new authority, it is imperative that the Congress provide the resources necessary to implement that new authority. Regulation of the digital commodity market will bring new responsibilities to the CFTC that cannot be managed by simply folding this market into our existing regulatory regime with existing resources.

I am grateful for the Committees support for including language that provides $120 million over 5 years to be spent on needs directly related to implementation of any new authority granted by Congress over the digital asset commodity markets.

If additional authority were provided, but resources were reduced, the agency's ability to fulfill its current statutorily mandated oversight responsibilities would be significantly compromised.

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[1] **Editor's note:** a website snapshot is retained in Committee file.

Response from Hon. Dan M. Berkovitz, Former Commissioner, Commodity Futures Trading Commission; Former General Counsel, U.S. Securities and Exchange Commission

Question Submitted by Hon. Trent Kelly, a Representative in Congress from Mississippi

Question. Mr. Berkovitz, some have called for the CFTC and SEC to jointly regulate all digital assets? Do you believe that is a practical approach to resolving the regulatory gaps that exist with respect to this market?

Answer. Generally, single agency regulation is more effective and efficient than joint regulation, particularly when two five-member commissions with different overall statutory mandates and regulatory structures are involved. A regulatory process that involves ten decision-makers in two different Federal agencies with different statutory mandates and regulatory priorities is inherently more time-consuming and complex than if only one agency is involved. When agencies are required to act jointly, accountability is more diffuse, which lessens the ability of the public to participate in decision-making and the responsiveness of each agency and its officials to the public.

In certain circumstances, joint rulemaking can be an effective way to address issues common to both agencies or more clearly define respective agency jurisdictions. The joint CFTC–SEC rulemaking mandated by the Dodd-Frank Act to jointly define key terms for the implementation of that Act, such as the definition of swap, security-based swap, swap dealer and security-based swap dealer, was effective in delineating agency jurisdiction over these instruments and entities. Once the definitional rulemaking was completed, however, each agency was singly responsible for regulating the instruments and entities within its jurisdiction.

The most effective and efficient way to close the exists regulatory gaps with respect to digital assets would be for Congress to assign a single agency the responsibility and authority for regulating in those areas, and to ensure that the assigned agency has the appropriate tools for such regulation. The current regulatory gap involves the spot market for digital assets that are neither securities within the SEC's jurisdiction nor derivatives within the CFTC's jurisdiction. It would be most efficient and effective to assign responsibility for the regulation of this market to either the CFTC or the SEC. Joint regulation over assets in this market is not necessary and would be inefficient and less effective than single agency regulation.

Response from Hon. Walter L. Lukken, President and Chief Executive Officer, Futures Industry Association; Former Acting Chairman, Commodity Futures Trading Commission

Question Submitted by Hon. Trent Kelly, a Representative in Congress from Mississippi

Question. Mr. Lukken in your testimony, you talk about how the CFTC has longstanding anti-fraud and anti-manipulation enforcement authority over the cash or spot markets, including for digital assets. Is the CFTC's limited enforcement authority sufficient to effectively police the digital asset ecosystem?

Answer. You cannot regulate a market through enforcement authority alone. A proper regulatory structure must have both regulatory tools aimed at protecting end-users and the integrity of the markets as well as enforcement powers aimed at punishing wrongful activity and deterring bad behavior.

The CFTC has existing strong enforcement powers over all spot markets in commodities, and it has used those powers to bring more than 80 enforcement actions involving wrongdoing in digital asset commodities. CFTC enforcement actions related to digital assets have primarily targeted exchanges that illegally offer derivatives and leveraged, margined, or financed virtual currency transactions. The agency has also targeted businesses that engage in fraud and manipulative behavior, as well as foreign platforms that do not establish adequate safeguards and controls to prevent U.S. persons from accessing their platforms.

While the CFTC's existing enforcement authority offers effective tools to punish wrongdoing and to serve as a powerful deterrent for other bad actors, it is also true that there is an existing gap in the *regulation* of the spot market of digital that are not securities. This was identified in an October 2022 *report*[1]* of the Financial Stability Oversight Council (FSOC). While ultimately the decision to expand the CFTC's regulatory jurisdiction is a decision for Congress to make, I would agree that regulation of the spot digital asset markets would provide greater up-front pro-

[1] *https://home.treasury.gov/news/press-releases/jy0986.*

* **Editor's note:** the press release and report are retained in Committee file.

tections for customers by possibly preventing many bad actors from wrongdoing through CFTC rules and oversight.

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