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before the

Subcommittee on Digital Assets
United States Senate Committee on Banking, Housing, and Urban Affairs

“Exploring Bipartisan Legislative Frameworks for Digital Asset Market Structure”

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Chairman Lummis and Ranking Member Gallego, members of the Digital Asset Subcommittee (the “Committee”), I am honored to testify before you today on this important topic.

The Gap In Regulation

Between 2017 and 2025, I served first as a Commissioner, then the Chairman of the U.S. Commodity Futures Trading Commission (“CFTC”). During that more than seven year period, I observed the significant growth of the digital asset market and wider adoption of digital assets by both institutional and retail investors in the United States. Over this time, digital assets evolved from a little known financial product to one that has become ubiquitous globally, owned by nearly 1 in 5 Americans according to a 2024 Pew study², and easily accessible to the public.³

While I served at the CFTC, the digital asset market endured multiple periods of dramatic volatility, often significant in size and scale. Throughout this time, I publicly stated one consistent message to Congress: under current U.S. law, there is a gap in regulation for the non-security digital asset market. In 2022, a Financial Stability Oversight Council report highlighted this gap in regulation of the spot market for digital assets that are not securities.⁴ This gap for non-security tokens continues to constitute a majority of the digital asset market measured by market capitalization.⁵

The regulatory gap remains today, and must be filled with targeted legislation; it has facilitated countless scandals and fraudulent activity, some very small and typical in criminal form, others massive in profile. First and foremost, filling the regulatory gap, coupled with a comprehensive

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

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

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

⁴ Financial Stability Oversight Council, *Report on Digital Assets and Financial Stability Risks and Regulation* (Oct. 2022), [Report on Digital Asset Financial Stability Risks and Regulation 2022 \(treasury.gov\)](https://www.treasury.gov/press-releases/2022/10/20221027)

⁵ <https://coinmarketcap.com/>

security token regulatory framework under existing law, will provide the needed customer protections that American investors have become accustomed to in traditional financial markets regulated by the CFTC and the U.S. Securities and Exchange Commission (“SEC”).

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

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

A Legislative Solution to Empower Regulators

As this Committee explores a legislative framework for digital assets, I recommend focusing on the gap in regulation for non-security tokens. I have consistently and publicly called for new legislative authority for the CFTC in order to provide core customer protections in the non-security digital asset market.⁶ Additionally, I believe it is critical to anchor digital asset market structure legislation in the following principles: (i) durable legal precedent to define digital tokens as either securities or commodities; and (ii) current securities and commodity derivatives market structure as the model for digital asset market structure.

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

Disclosures

All investors deserve appropriate and material information about a financial asset to ensure an informed decision. Like traditional markets, the disclosure regime for security and non-security tokens will differ by virtue of the underlying asset. Any legislative solution must recognize that

⁶ See, Rostin Behnam, Chairman, CFTC, Testimony Before U.S. House Committee on Agriculture, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42> (Mar. 6. 2024); see also, Rostin Behnam, Chairman, CFTC, Testimony [on The Future of Digital Assets: Providing Clarity for Digital Asset Spot Markets Before the U.S. House Committee on Agriculture](https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42> (Mar. 6. 2023)

commodity assets do not necessitate an identical regulatory framework fit for securities. Most notably, a key pillar of the securities law is bridging information gaps between an issuer of securities and prospective investors through mandated disclosures. While information about a public company's audited financial statements, executive leadership team, and business risk factors, to name a few, are identifiable and quantifiable for security issuers, and critically important to investors, the same is not the case for commodity assets.

In addition to disclosures for digital asset investors about risk of loss and the static characteristics of a commodity token, the primary focus of a comprehensive market regulatory framework for commodity tokens should rest on the principles of fair, orderly and efficient markets.

Market Structure

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

Entity Registration

The CFTC and SEC have a longstanding partnership that facilitates strong, robust regulation of securities and commodity derivatives markets. In a situation where a regulated entity handles both security and non-security tokens in the underlying market, separate and exclusive jurisdiction for the CFTC and SEC is critical to a healthy, comprehensively regulated ecosystem. Any regulatory system that contemplates a different model will be an incomplete effort, leaving bad actors and arbitrageurs opportunities to exploit weakness, leaving American investors at risk. Further, any framework where each agency does not retain its exclusive licensing authority portends a future of blurred jurisdiction across other financial products. Over several decades, cross-agency collaboration has been a hallmark of the CFTC and SEC, using a variety of regulatory tools to achieve cost efficiencies and support resiliency for market participants. I am confident the same can be achieved in the digital asset market.

Targeted with Flexibility

As the Committee explores legislative solutions, I would like to focus attention on the components of a regulatory framework that would ensure U.S. market regulators have the tools to provide customer and market protections. The CFTC and SEC have been involved in the digital asset market for over a decade, sharpening their expertise and skillset in a balanced, deliberative fashion. Both agencies have been at the forefront of many of the most complex and historic enforcement cases, working closely with other state and federal authorities.

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

Second, law and regulations are only as strong as the agency and personnel that enforce it. Appropriate funding, which includes technology and human capital, is necessary to meet the mandate of any regulatory program. I would strongly encourage this Committee, as it would in any instance where an agency’s mandate is expanded, to couple new authority for the CFTC and SEC with increased funding, commensurate with the new responsibility.

Third, a reliable self-regulatory organization (“SRO”) has been critical to the success of the CFTC and SEC for decades. Both the National Futures Association, in the case of the CFTC, and FINRA, in the case of the SEC, have served as effective partners for both agencies, complementing and supporting the missions of each. Any effective legislative effort mandating a regulatory framework for digital assets must include a role for SROs.

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

Finally, given the broad adoption of digital assets by a significant portion of the American population⁷, a comprehensive education and outreach program, mirroring the SEC and CFTC’s customer education programs, will enable the investing public to understand both the risks and opportunities of this technology.

International & Domestic Cooperation

While CFTC Chairman, I had the privilege of serving as the Vice-Chairman of the International Organization of Securities Commissions (“IOSCO”). IOSCO’s member agencies regulate more than 95% of the world’s securities markets in over 130 jurisdictions⁸. As Vice-Chair, I saw major and developing economies establish regulatory frameworks for this new asset class.

The current divide between the U.S. and our international counterparts creates regulatory arbitrage opportunities that are exploited by bad actors, and prohibits the U.S. from contributing to much

⁷ Id. at 2

⁸ International Organization of Securities Commissions, About IOSCO, https://www.iosco.org/v2/about/?subsection=about_iosco (last visited July 8, 2024)

needed multilateral coordination efforts. Further, the potential economic benefits and innovation arising from this technology ultimately will be stymied without regulatory certainty. Investors, entrepreneurs, and various other stakeholders simply cannot participate with sufficient confidence without regulatory protections and certainty.

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

Conclusion

The principles and regulatory foundations that make U.S. capital markets and derivatives markets the deepest, most liquid, and most resilient in the world provide an effective model for digital asset market structure. We need to act thoughtfully, but with urgency, to fill this harmful regulatory gap in order to give American investors the protection they deserve.

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