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before the

Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence
U.S. House of Representatives Committee on Financial Services

and the

Subcommittee on Commodity Markets, Digital Assets and Rural Development
U.S. House of Representatives Committee on Agriculture

“American Innovation & the Future of Digital Assets: A Blueprint for the 21st Century”

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Chairman Hill and Ranking Member Waters, Chairman Thompson and Ranking Member Craig, Chairman Steil and Ranking Member Lynch, Chairman Johnson and Ranking Member Davis, members of the committees, I am honored and grateful to testify before you today on this important and timely topic.

The Gap In Regulation

Between 2017 and 2025, I had the privilege of serving first as a Commissioner, then as 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 repeated 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-

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)

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 will provide the needed customer protections that American investors have become accustomed to in traditional 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 policy inaction will deflate public interest for digital assets; inaction will only result in greater risk to our financial markets and investors. As the digital asset market continues to integrate 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. Though well intentioned, 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, or inaction, there is only one choice: comprehensive regulation, full stop.

A Legislative Solution to Empower Regulators

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 Today’s joint hearing demonstrates the healthy engagement and collaboration that these two committees, and also the two respective agencies overseen by these committees have enjoyed over many decades. Similar to debates around security and commodity futures during the advent of financial derivatives fifty years ago, or security based and commodity based swaps throughout the deliberation of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, I believe the digital asset market is another milestone in the evolutionary arc of financial markets that pose unique, but solvable policy questions.

As both committees consider a legislative solution, I believe it is critical to rely on durable legal precedent as the framework to define digital tokens as securities or commodities, and recognize that the nature of 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

⁵ <https://coinmarketcap.com/>

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> (Mar. 6. 2023)

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.

Any credible digital asset regulatory framework of commodity digital assets must include disclosures, but more limited in scope by virtue of the characteristics of the underlying asset. Put more simply, and using Bitcoin as an example, there simply is no regularly reportable information on this commodity token that fits neatly into the securities regime. In addition to disclosures for digital asset investors about risk of loss and the static characteristics of a token, the primary focus of a comprehensive market regulatory framework for commodity tokens like Bitcoin should rest on the principles of fair, orderly and efficient markets. The argument that the CFTC is not a disclosure based agency is only true insofar as commodities cannot fulfill the securities regime.

Dual Registration

Given the critical role the SEC plays in the oversight of security-based digital tokens, the Committees should consider legislating a disciplined, flexible, and balanced framework for the determination of tokens as commodities or securities. As mentioned, the SEC and CFTC have a longstanding partnership that facilitates strong, robust regulation of securities and commodity derivatives markets.

Where intermediaries handle both security and non-security tokens in the cash market, separate jurisdiction is critical to a healthy, comprehensively regulated ecosystem. Currently, there are numerous examples of individuals and entities dually registered with the CFTC and SEC, most typically as a broker-dealer and futures commission merchant, or investment advisor and commodity pool operator. In these instances, each agency retains its licensing authority over the registrant. Any regulatory system that contemplates a different model, where one agency defers to the other, or is simply notified of activity within its jurisdiction, will be nothing more than a paper clip and band-aid on the existing gap in regulation, leaving bad actors and arbitrageurs opportunities to exploit weakness and leave 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, like agricultural and energy, to name a few.

While preserving each agency's authority is critical, supporting cross-agency collaboration, consistent with what is practiced today, and which may include tools like portfolio margining and other netting mechanisms is also beneficial where appropriate.

Targeted with Flexibility

As both Committees continue to consider legislation to fill the regulatory gap, I would like to focus attention on the components of a regulatory framework that would ensure the CFTC has the tools to provide customer and market protections. The CFTC has been involved in the digital asset market for over a decade, sharpening its expertise and skillset in a balanced, deliberative fashion. The CFTC has also been at the forefront of many of the most complex and historic enforcement cases, working closely with other state and federal civil and criminal authorities.

First, the principles-based oversight model has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements, and measured flexibility to meet those outcomes. Core principles such as 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, the CFTC would then, consistent with a legislative mandate, tailor rules to meet the risk and characteristic profile. The CFTC would also have flexibility to adapt with a changing market landscape, should the digital market evolve in a manner not first contemplated.

Second, appropriate funding is necessary to meet the mandate of any legislatively enacted regulatory program. The CFTC is currently funded for its mandate; it is funded to regulate digital commodity cash markets. I would strongly encourage the Committees and the Congress, as it would in any instance where it increases an agency's mandate, to consider a permanent fee-for-service model, exclusively assessed on digital asset registrants, that is commensurate with the responsibilities outlined in any legislative effort. As with other fee-for-service models, congressional appropriators and the agency should work together to set budget levels and subsequently set fees to meet those budget levels.

Third, and following my earlier point about the need for a sensible disclosure regime, any legislative package should require registrants to provide information regarding a commodity token's structure, purpose, market-based characteristics, and general risks to ensure investors have access to material information.

Fourth, 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 boots on the ground 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.

Fifth, 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 under U.S. law for market participants. With the right tools, including AML, KYC, and CIP authority, the digital asset ecosystem will not only become exponentially safer but also 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, built off of both the SEC and CFTC's customer education programs, will enable the investing public to understand both the risks and opportunities of this technology.

International Competition

⁷ Id. at 2

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

Conclusion

The principles and regulatory foundations that have made U.S. capital markets and derivatives markets the deepest, most liquid, and most resilient in the world provide an effective model for the digital asset commodity market. 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 both Committees for your focus in this area, and look forward to answering your questions.

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