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## PRACTICE

Chelsea Pizzola is a partner in Willkie's Asset Management Department and a member of the Digital Works practice. She is based in the Firm's Washington, DC office.

Chelsea's practice focuses on derivatives, commodities, securities, and banking regulatory and enforcement matters, as well as cryptocurrency and related digital assets regulation. She has wide-ranging in-house, government, and law firm experience. Prior to joining Willkie, Chelsea was Associate General Counsel at principal trading firm DRW, working with its digital asset trading business, Cumberland. At DRW, she led a team providing counsel on the application of the Commodity Exchange Act and federal securities laws, CFTC and SEC regulations thereunder, and applicable foreign law. She also provided legal and policy guidance on engagement with congressional, agency, and industry stakeholders on digital asset regulation and related securities, derivatives, banking, and administrative law matters.

Earlier in her career, she served as Deputy Chief of Staff and Counsel to Chairman Heath Tarbert at the U.S. Commodity Futures Trading Commission, where she provided legal and policy advice on Commission rulemakings, enforcement actions, and registration orders and other Commission and staff actions.

## SELECTED PUBLICATIONS AND LECTURES

- Panelist, "What's Keeping Your Customers Up at Night," Futures Industry Association Law & Compliance Conference, April 24, 2025
- Panelist, "SEC Crypto Task Force Roundtable—Between a Block and a Hard Place: Tailoring Regulation for Crypto Trading," April 11, 2025
- Panelist, "Market Structure Developments," American Bar Association Derivatives & Futures Law Committee Winter Meeting, January 31, 2025

- Panelist, “The Role of Legal and Compliance in Cybersecurity and Crisis Management,” Futures Industry Association Law & Compliance Conference, April 26, 2024
- Panelist, “Fintech Trading Developments,” Practising Law Institute FinTech 2022 Conference, December 2022
- Panelist, “Derivatives Update—Uncleared Margin Rules,” MFA Legal & Compliance Conference, July 2020
- Speaker, “The Future of Derivatives Regulation,” ISDA Regulatory & Compliance Update, December 2019
- Co-author, “Insider Trading Enforcement Intensifies Across Markets and Regulators,” *New York Law Journal*, Jan. 28, 2019

**RECOGNITION, HONORS, & AWARDS**

- CFTC Chairman’s Award for Staff Excellence, 2020

**BAR ADMISSIONS**

- District of Columbia

**EDUCATION**

- The George Washington University Law School (J.D. *summa cum laude*, 2016)
- University of North Carolina at Chapel Hill (B.A. with distinction, 2012)

# Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

**Committee:** Agriculture

**Subcommittee:**

**Hearing Date:** 06/04/2025

**Hearing Title :**

"American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework"

**Witness Name:** Chelsea Pizzola

**Position/Title:** Partner, Willkie Farr & Gallagher LLP

**Witness Type:** ○ Governmental ◎ Non-governmental

**Are you representing yourself or an organization?** ○ Self ◎ Organization

**If you are representing an organization, please list what entity or entities you are representing:**

**FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY**

**Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.**

**Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.**

No.

**Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.**

None

**Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that you or the organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.**

None

**Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.**

☑ I have attached a written statement of proposed testimony.

☑ I have attached my curriculum vitae or biography.

***** Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a non-governmental capacity, a written statement of proposed testimony shall include— (i) a curriculum vitae; (ii) a disclosure of any Federal grants or contracts, or contracts, grants, or payments originating with a foreign government, received during the past 36 months by the witness or by an entity represented by the witness and related to the subject matter of the hearing; and (iii) a disclosure of whether the witness is a fiduciary (including, but not limited to, a director, officer, advisor, or resident agent) of any organization or entity that has an interest in the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B)(ii) shall include— (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form 24 hours before the witness appears to the extent practicable, but not later than one day after the witness appears.

**Written Testimony of Chelsea Pizzola**
**Partner, Willkie Farr & Gallagher LLP**

**Before the**

**U.S. House of Representatives Committee on Agriculture**

**American Innovation and the Future of Digital Assets:**
**From Blueprint to a Functional Framework**

**Wednesday, June 4, 2025, at 10:00 am**

Chairman Thompson, Ranking Member Craig, Members of the Committee:

It is an honor to testify before you today. Thank you for the opportunity to discuss the current draft of the CLARITY Act of 2025 and the U.S. Commodity Futures Trading Commission's ("CFTC") role in digital asset regulation.

I have previously had the privilege of serving as the CFTC's Deputy Chief of Staff and Counsel to former CFTC Chairman Heath Tarbert, as well as head regulatory counsel to Cumberland DRW, a large participant in digital asset spot and derivatives markets. Currently, as a partner at the law firm Willkie Farr & Gallagher, I advise clients on CFTC and U.S. Securities and Exchange Commission ("SEC") regulatory matters, including matters involving digital assets.[1]

In these roles, I have seen firsthand the confusion, misallocation of resources, and barriers to innovation and competition caused by the lack of jurisdictional clarity with respect to digital assets. Markets work best when there are clear rules of the road. In the United States today, digital asset market participants cannot even be certain which road they are on at any given time. In the race for global competitiveness in the digital asset space, we have regrettably lost years to regulatory uncertainty and at times outright hostility toward digital assets. This environment has largely driven digital asset projects and markets offshore and impeded participation by regulated institutions.

A clear demarcation of the boundaries of the SEC's jurisdiction over digital asset transactions, and workable rules for transactions within those boundaries, are critical to getting the United States back on track as a leader in the digital assets arena. Under new agency leadership, the SEC's recently formed Crypto Task Force is making admirable strides in this direction,[2] and I understand that Commission-level action is in progress.[3]

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[1] I appear before you today in my personal capacity; the views I express here are my own. Thanks are due to Hon. J. Christopher Giancarlo and Matthew Goldberg of Willkie Farr & Gallagher for their contributions to this statement.
[2] *See, e.g.*, Hon. Hester M. Peirce, Commissioner, SEC, *New Paradigm: Remarks at SEC Speaks* (May 19, 2025), available at https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks.
[3] *See* Hon. Paul S. Atkins, Chairman, SEC, *Keynote Address at the Crypto Task Force Roundtable on Tokenization* (May 12, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225.

But more is needed. Any SEC action acknowledging the limitations of its jurisdiction can be reversed under a future Administration. The previous SEC Chair claimed jurisdiction over all transactions in "[e]verything other than Bitcoin"[4] and pursued an aggressive enforcement and regulatory campaign to make good on that claim. A future Chair could do the same. Legislation must remove any jurisdictional ambiguity to ensure this cannot happen again.

In this statement, I will (1) summarize relevant aspects of the draft legislation at a high level; (2) explain why I support the bill's allocation of regulatory responsibility between the CFTC and the SEC; and (3) highlight the importance of such a clear legislative division of authority between the agencies and robust coordination in any inevitable areas of overlapping authority.

## 1. Primary- and secondary-market jurisdiction

The bill divides jurisdiction between the SEC and the CFTC along the line between primary and secondary markets. It implies that the offer or sale of a "digital commodity" by the issuer may constitute the offer or sale of an investment contract subject to the securities registration requirements under Section 5 of the Securities Act of 1933, and it creates a conditional registration exemption under new Section 4(a)(8) for such offers and sales. It cuts off the "investment contract" chain there, however, by providing that (1) a digital commodity transferred pursuant to an investment contract is not itself an investment contract, and (2) offers and sales of a digital commodity by a person *other than* the issuer (or an agent or underwriter thereof) likewise are not offers or sales of investment contracts.

Thus, generally, primary-market sales of a digital commodity could fall under the securities laws, while secondary-market sales would not. A trading facility for spot digital commodity transactions would be required to register with the CFTC as a digital commodity exchange ("DCE") and subject to enumerated core principles and listing standards. Under Section 202 of the bill, an intermediary in an issuer offer or sale conducted in reliance on Section 4(a)(8) must register with the SEC as a broker-dealer, whereas a broker or dealer engaged in secondary-market digital commodity transactions and certain related activities must register with the CFTC as a digital commodity broker ("DCB") or digital commodity dealer ("DCD" and, together with DCEs and DCBs, "Digital Commodity Entities"), respectively.

This jurisdictional division of digital asset transactions provides much-needed regulatory stability and certainty. Provision (1) above codifies existing case law distinguishing digital assets themselves from the manner in which they are offered and sold,[5] while provision (2) resolves vexing conflicts in case law related to secondary-market transactions[6] in a manner consistent

[4] Ankush Khardori, *Can Gary Gensler Survive Crypto Winter?: D.C.'s top financial cop on Bankman-Fried blowback*, N.Y. Mag. (Feb. 23, 2023), https://nymag.com/intelligencer/2023/02/gary-gensler-on-meeting-with-sbf-and-his-crypto-crackdown.html.

[5] Every court to consider the issue has ruled that natively digital assets are not in and of themselves "investment contracts" and that the relevant inquiry is whether the facts and circumstances of a particular digital asset *transaction* satisfy the "investment contract" definition. *See, e.g.*, *SEC v. Binance Holdings*, 1:23-cv-01599, Doc. 248, at *19-21 (June 28, 2024) (collecting cases).

[6] *See, e.g.*, *SEC v. Coinbase Inc.*, Case 1:23-cv-04738 (KPF), Doc. 175 (S.D.N.Y. Jan. 7, 2025) (order granting motion to certify ruling for interlocutory appeal). This order acknowledges a split in authority between judicial

with the best reading[7] of the term "investment contract" as interpreted under *SEC v. W.J. Howey Co.*[8] and its progeny.

Of equal importance, the role the bill allocates to each agency generally is appropriately tailored to that agency's specialized expertise, experience, and statutory remit.

Initial sales of digital assets by an identifiable issuer are often viewed as similar to "capital raises" involving issuance of traditional debt and equity securities, in that the proceeds of the sale are expected to go to the issuer or a related promoter to finance its development of an enterprise. The SEC has been administering a fulsome disclosure regime for capital-raising issuances, to the benefit of American investors, since its creation in 1934. Though there are inherent differences between traditional securities offerings and most initial sales of natively digital assets, the SEC nevertheless is well-suited for the role the bill assigns to it in regulating what are essentially capital-forming issuer sales.

Equally, the CFTC is the natural regulator for exchanges, brokers, and dealers executing digital asset transactions not involving the issuer. Interpreting current law, multiple—albeit not all—federal court rulings on the issue have held that such transactions are not offers or sales of investment contracts.[9] Rather, these are transactions in commodities. The CFTC is best-suited, by dint of expertise, experience, and historical statutory framework, to regulate digital commodity markets.[10]

Though the CFTC currently does not have plenary regulatory authority over spot commodity markets, it has anti-fraud and anti-manipulation authority over such markets. And the Commission, particularly through its Divisions of Market Oversight and Enforcement, intently monitors and surveils these markets given the close relationship between derivatives contracts and the underlying commodities they reference. The CFTC also has regulatory authority over retail foreign exchange dealers[11] and vigorously polices statutory restrictions on certain leveraged retail off-exchange commodity transactions.[12] Moreover, the agency has exclusive

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districts, and even between judges of the same district, on the question of whether secondary-market transactions in digital assets can constitute the offer or sale of "investment contracts."

[7] *See, e.g.*, *SEC v. Ripple Labs*, 682 F. Supp. 3d. 308, 328 (S.D.N.Y. 2023); *Binance*, 1:23-cv-01599, Doc. 248, at *37-43; *see also* Letter from Cumberland DRW LLC to SEC Crypto Task Force (Mar. 16, 2025) (explaining why secondary-market transactions generally do not satisfy the "common enterprise" and "reasonable expectation of profits from the efforts of others" prongs of the *Howey* test). While *SEC v. Terraform Labs* declined to distinguish primary from secondary markets and held that the SEC had plausibly alleged horizontal commonality, there the court was required to credit the SEC's allegations that the defendant, who was the token's issuer, pooled the proceeds from token sales and represented that such proceeds would be used to benefit all purchasers. *See* 684 F. Supp. 3d 170, 195–96 (S.D.N.Y. 2023). The court in *SEC v. Coinbase* followed *Terraform* in ruling on a motion for judgment on the pleadings. *SEC v. Coinbase*, Case 1:23-cv-04738 (KPF), Doc. 105 (S.D.N.Y. Mar. 27, 2024).

[8] 328 U.S. 293 (1946).

[9] *See generally* note 7, *supra*. In *Ripple,* the transactions held not to involve investment contracts did involve the issuer; however, this was not known to the purchasers because the transactions occurred on a blind bid-ask basis.

[10] As a technical matter, a security likely would fall within the broad definition of a "commodity" under Section 1a(9) of the Commodity Exchange Act ("CEA"), 7 USC 1a(9). However, securities generally are not treated like other commodities under the CEA; Section 2 of the CEA, 7 USC 2, preserves the SEC's jurisdiction over securities.

[11] *See* 7 USC 2(c)(2)(C)(ii)(III); 17 CFR Part 5.

[12] *See* 7 USC 2(c)(2)(C), 2(c)(2)(D) (requiring transactions in foreign exchange and other commodities with counterparties that are not eligible contract participants to be executed on a designated contract market, among other

regulatory authority over futures, options on futures, and swaps referencing commodities. In summary, the CFTC has spent the past 50 years dedicated to understanding and improving commodities markets and markets for commercial risk transfer.

The CFTC has an extensive history of engagement with digital asset markets via the above-described authorities. After thorough analysis, it determined Bitcoin to be a non-security commodity in 2015[13] and did the same with respect to Ether in 2019.[14] It has enhanced integrity in these markets by aggressively and successfully pursuing fraud and manipulation in spot and derivatives instruments—and multiple failure-to-register cases involving digital asset derivatives—since that time.[15] It worked closely with designated contract markets ("DCM") and their clearinghouses (derivatives clearing organizations, or "DCO") ahead of the first Bitcoin futures listings in 2017 to ensure appropriate risk management, contract resistance to manipulation, and adherence to other DCM core principles,[16] and did the same with Ether futures listings in 2019. Today, these markets are deep, liquid, and transparent, and are well-policed by the CFTC for fraud, manipulation, and trade practice violations. As former CFTC General Counsel Dan Davis recently noted in a statement before this Committee, Bitcoin, Ether, and other digital assets underlying products trading on CFTC-regulated markets currently represent 83% of total digital asset market capitalization.[17]

The cumulative effect of this extensive engagement with digital asset products and markets recently led the CFTC's Divisions of Market Oversight and Clearing and Risk to withdraw a 2018 staff advisory providing "enhanced" guidance on listing of digital asset derivatives, explaining that the advisory is no longer necessary given CFTC staff experience gained in this area since that time.[18]

The CFTC's oversight of digital asset markets is not only long-running, but also battle-tested: in the 2022 failure of digital asset exchange operator FTX, while other FTX trading platforms revealed a total $8.9 billion shortfall in customer funds and went into bankruptcy, FTX's CFTC-

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things, unless there is "actual delivery" of the commodity within 2 days (for foreign exchange) or 28 days (for other commodities)); *see also, e.g.*, CFTC, *Addendum to FY 2024 Enforcement Results* (Dec. 2024), https://www.cftc.gov/media/11596/DOE_ResultsFY24_AddendumA120424/download (noting CFTC enforcement actions pursuing leveraged retail off-exchange commodity transactions).

[13] *See In re Coinflip, Inc.*, 29 Comm. Fut. L. Rep. (CCH) ¶ 33,538 (Sept. 17, 2015).

[14] *See, e.g.*, Hon. Heath P. Tarbert, Chairman, CFTC, Yahoo! Finance All Markets Summit (Oct. 10, 2019), https://www.cftc.gov/PressRoom/PressReleases/8051-19#:~:text=Chairman%20Tarbert%20on%20Ether's%20Status,be%20regulated%20under%20the%20CEA.

[15] *See, e.g.*, *CFTC v. Samuel Bankman-Fried*, Case No. 1:22-cv-10503-PKC (S.D.N.Y. Aug. 7, 2024); *CFTC v. Changpeng Zhao (Binance Holdings)*, Case No. 1:23-cv-01887 (N.D. Ill. Dec. 14, 2023); *see also In re Coinbase*, Comm. Fut. L. Rep. (CCH) ¶ 34,925 (Mar. 19, 2021).

[16] *See, e.g.*, Remarks of Hon. J. Christopher Giancarlo, Chairman, CFTC, to the ABA Derivatives and Futures Section Conference, Naples, Florida (Jan. 19, 2018).

[17] *See American Innovation and the Future of Digital Assets: A Blueprint for the 21st Century: Hearing Before the Subcomm. on Commodity Mkts., Dig. Assets, and Rural Dev. of the H. Comm. on Agric. and the Subcomm. on Dig. Assets, Fin. Tech., and Artificial Intelligence of the H. Comm. on Fin. Servs.*, 119th Cong. 4 (2025) (statement of Dan Davis, Partner, Katten Muchin Rosenman LLP), available at https://agriculture.house.gov/uploadedfiles/hhrg-119-ba21-wstate-davisd-20250506.pdf.

[18] CFTC Staff Letter No. 25-07 (Mar. 27, 2025), *available at* https://www.cftc.gov/PressRoom/PressReleases/9059-25. This letter also cites digital asset market growth and maturation over the years in support of withdrawal of the prior advisory.

regulated DCM, swap execution facility ("SEF"), and DCO survived without any loss of customer assets and remain in operation today under new ownership.

This record on digital assets is consistent with the CFTC's 50-year tenure as a preeminent markets regulator. Due to its sound regulatory framework, not a single CFTC-regulated exchange failed during the 2008 financial crisis. On average during Q1 2025, a total of approximately 40 million futures contracts were traded each day on CME Group and Intercontinental Exchange ("ICE") derivatives exchanges alone.[19] The CFTC-supervised DCOs for these exchanges are designated by the Financial Stability Oversight Council as systemically important financial market utilities under Title VIII of the Dodd-Frank Act.[20] Neither these DCOs nor any other under CFTC supervision has ever defaulted or even resorted to use of its mutualized guaranty fund resources.[21] And in the OTC derivatives market, total U.S. reported notional traded in interest-rate swaps alone was approximately $112.7 trillion during Q3 2024.[22] These CFTC-regulated markets and market utilities have functioned well and steadily performed their risk-transfer and shock-absorption roles through periods of extreme volatility, such as during instances of negative oil pricing and other shocks at the onset of the COVID-19 pandemic.[23]

Finally, in addition to the above-described experience and expertise, the CFTC's statutory framework and mission further bolster the case for the CFTC as the appropriate regulator for Digital Commodity Entities. Among the key purposes of the CEA are to promote "responsible innovation and fair competition." Since they were added to the statute by the Commodity Futures Modernization Act of 2000 ("CFMA"),[24] the CFTC has regulated with these purposes as guiding lights—including in its approach to digital assets.

The CFMA furthered these twin purposes by, *inter alia*, (1) replacing prescriptive requirements with flexible core principles for registered entities (e.g., DCMs, DCOs, and now SEFs following enactment of the Dodd-Frank Act of 2010) and (2) allowing registered entities to list new

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[19] CME Group International Average Daily Volume Hits Record 8.8 Million Contracts in Q1 2025, Up 19% Year over Year, CME Group (Apr. 9, 2025), https://www.cmegroup.com/media-room/press-releases/2025/4/09/cme_group_internationalaveragedailyvolumehitsrecord88millioncont.html; Historical Daily Volume, ICE, https://ir.theice.com/investor-resources/supplemental-information/default.aspx (last accessed May 27, 2025). Note that ICE figures include foreign boards of trade registered with the CFTC in addition to DCM ICE Futures US.

[20] *See* Designated Financial Market Utilities (Jan. 29, 2015), Board of Governors of the Fed. Reserve, https://www.federalreserve.gov/paymentsystems/designated_fmu_about.htm.

[21] *See* Giancarlo, note 29, *infra*, at 5-6.

[22] International Swaps and Derivatives Association, Interest Rate Derivatives Trading Activity Reported in EU, UK, and US Markets: Third Quarter of 2024 and Year-to-September 30, 2024 (2024), available at https://www.isda.org/a/lqbgE/Interest-Rate-Derivatives-Trading-Activity-Reported-in-EU-UK-and-US-Markets-Third-Quarter-of-2024-Year-to-September-30-2024.pdf. Note that these figures include only interest-rate swaps reported to the Depository Trust & Clearing Corporation swap data repository. Not all swap transactions are subject to reporting; for example, CFTC staff has granted no-action relief from swap data repository reporting requirements for inter-affiliate swaps.

[23] *See* Hon. Heath P. Tarbert, *Volatility Ain't What it Used to Be*, Wall St. J. (Mar. 23, 2020), https://www.wsj.com/articles/volatility-aint-what-it-used-to-be-11585004897?mod=searchresults&page=1&pos=1.

[24] Public Law 106–554, 114 Stat. 2763 (2000). Since before the CFMA was enacted, Section 4(c) of the CEA has authorized the CFTC to issue exemptions from statutory requirements "in order to promote responsible economic or financial innovation and fair competition." 7 USC 6c(a).

products for trading without affirmative CFTC approval by certifying to the CFTC that the listing complies with the CEA and CFTC regulations. These reforms were intended, *inter alia*, to "remov[e] barriers to financial innovation that [we]re threatening America's global competitive position in financial markets."[25]

The statutory core principles established for registered entities are outcomes-based requirements, and a registered entity has reasonable discretion in determining how to comply.[26] Importantly, "flexible" regulation does not mean "lax" or "light-touch" regulation. The CFTC is authorized to issue (and has issued) interpretations describing acceptable practices for compliance with the core principles, which it may designate as the exclusive means of compliance.[27] And the CFTC has brought enforcement actions against registered entities for failure to comply with applicable core principles and implementing regulations.[28] But the CFTC's post-CFMA history of outcomes-based regulation has allowed registered entities to establish compliance methods appropriate for their respective businesses, preventing a recurrence of the kind of rigid, one-size-fits-all regulatory environment that stifled innovation and competition in CFTC-regulated markets prior to the CFMA.[29]

The self-certification listing process as implemented by the CFTC has likewise supported innovation and competition, allowing inventive new platform-traded products to flourish by reducing the time to market "from years to days."[30]

These changes to the CEA have supported the proliferation of a variety of new entrants operating trading platforms, including multiple CFTC-regulated platforms specializing in digital asset products today.

As in the period before enactment of the CFMA, an oppressive regulatory environment has again threatened America's global competitive position—this time in digital asset markets. The bill applies many of the same remedies that cured the problem in 2000, including a core principles

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[25] Press Release, House Comm. on Agric., Congress Concludes Commodity Futures Modernization Act: House-Senate committee leaders craft consensus measure, (Dec. 15, 2000) (quoting House Agriculture Committee Chairman Larry Combest), https://agriculture.house.gov/news/documentsingle.aspx?DocumentID=2047; *see also* CFMA § 2 (providing that "[t]h]e purposes of [the CFMA] . . . [include] to promote innovation for futures and derivatives…").

[26] *See, e.g.*, 7 USC 7, 7a-2, 7b-3. The applicable core principles differ across the different types of registered entities.

[27] 7 USC 7a-2(a).

[28] *See, e.g.*, *In re Options Clearing Corporation*, Comm. Fut. L. Rep. (CCH) ¶ 35,225 (Feb. 16, 2023).

[29] *See The CFTC at 50: Examining the Past and Future of Commodity Markets: Hearing Before the H. Comm. on Agric.*, 119th Cong. (2025) (testimony of De'Ana H. Dow, Partner and General Counsel, Capitol Counsel LLC), available at https://agriculture.house.gov/uploadedfiles/testimony-package_dow_03.25.2025.pdf; *see also The CFTC at 50: Examining the Past and Future of Commodity Markets: Hearing Before the H. Comm. on Agric.*, 119th Cong. (2025) (testimony of Hon. J. Christopher Giancarlo, Senior Counsel, Willkie Farr & Gallagher), available at https://docs.house.gov/meetings/AG/AG00/20250325/118038/HHRG-119-AG00-Wstate-GiancarloJ-20250325-U1.pdf.

[30] *Hearing on the Commodity Futures Modernization Act of 2000: Hearing Before the S. Committee on Banking, Housing and Urban Affairs*, 109th Cong. (2005) (testimony of Terrence A. Duffy, Chairman, Chicago Mercantile Exchange Holdings, Inc.), available at https://www.banking.senate.gov/imo/media/doc/duffy.pdf. The Commission may stay listing of a product during the pendency of Commission proceedings for filing a false certification of compliance with the CEA or during the pendency of a petition to alter or amend the contract terms and conditions under Section 8a(7) of the CEA, 7 USC 12a(7). 17 CFR 40.2(c).

framework for digital commodity exchanges and a self-certification listing process. This flexible, adaptable framework is particularly well-suited for the relatively novel and constantly evolving nature of digital asset markets. There is no better agency to implement such a regulatory framework in furtherance of responsible innovation than the one that has done so for the last twenty-five years, allowing the markets under its jurisdiction to become by far the largest, and the most vibrant and robust, of their kind in the world.

**2. Digital commodity activity by SEC-registered entities**

The bill seeks to strike an appropriate balance allowing for efficient, non-duplicative SEC supervision of its registrants engaged in digital commodity activity while preserving CFTC authority over digital commodity markets that are appropriately under its jurisdiction. Regulatory efficiency is a laudable objective. But a framework that retains holistic CFTC oversight over the secondary digital commodity markets is necessary to avoid fragmentation in market regulation, monitoring, and surveillance and to bring to bear the CFTC's unique expertise and perspective regarding these markets.

CFTC registration exemptions for SEC registrants engaged in *de minimis* levels of digital commodity activity may be appropriate measures for minimizing regulatory cost and burden and maximizing efficient use of regulatory resources. This construct has precedents in other areas of overlapping CFTC and SEC jurisdiction.[31] But beyond such limited exemptions, the CFTC should have oversight over digital commodity markets as a whole. Carving up the market between two regulators could result in a situation in which neither regulator can see the forest for the trees and major market disruption, manipulation, fraud, or other issues arise without warning.

Holding multiple registrations with different regulators for different activities is commonplace in U.S. financial markets today. For example, many entities are simultaneously registered with the CFTC as futures commission merchants ("FCM") or swap dealers and with the SEC as broker-dealers or security-based swap dealers. Regulators do and should coordinate with and defer to one another where appropriate to minimize the cost and burden of such multiple registrations. Forms of "alternative compliance" or similar deference are provided for in certain specific areas, such as in CFTC capital rules incorporating for dual registrants elements of SEC net capital rules.[32] Similarly, portfolio margining is available in certain cases for related products under different agencies' jurisdiction—e.g., Treasuries under SEC jurisdiction and Treasury futures under CFTC jurisdiction—with expansion of such margining programs keenly awaited as the SEC's Treasury clearing mandate deadline approaches. A comparison of the vibrancy of broad-based security index futures markets (under sole CFTC jurisdiction) with the past malaise of single-stock and narrow-based security futures markets (under an onerous and complex joint

[31] *See, e.g.*, 17 CFR 4.13(a)(3) (providing an exemption from commodity pool operator registration where, *inter alia*, a pool's positions in products under CFTC jurisdiction do not exceed established thresholds); 17 CFR 240.18a-10 (allowing a dually registered swap dealer and security-based swap dealer to comply with CFTC requirements in lieu of certain SEC requirements where, *inter alia*, the entity's security-based swap positions do not exceed established thresholds).

[32] *See, e.g.*, 17 CFR 23.101(a)(1)(ii); *see generally* 17 CFR 1.17.

regulatory regime) should serve as a reminder of the importance of these types of measures to minimize regulatory burden in areas of jurisdictional overlap.[33]

But with these tools for regulatory efficiency in our toolkit, we should not hesitate to unify all U.S. digital commodity markets and market participants of material size under a single ruleset, administered by a single agency with the expertise and experience to ensure these markets are vibrant, innovative, and well-regulated.

## 3. Conclusion

Ultimately, exactly *how* the line is drawn between CFTC and SEC jurisdiction is less important than ensuring that a clear, durable line *is* drawn through lasting legislation. If we lose this historic opportunity to provide enduring regulatory clarity for digital asset markets and end users, we cannot be sure that another will come. And the United States may slip further behind in the push for global digital asset markets competitiveness. We should not allow inaction to perpetuate an environment of regulatory uncertainty. Digital asset entrepreneurs and the American people deserve better.

Thank you, and I look forward to your questions.

[33] Indeed, the SEC seemingly recognized the latter structure's negative implications for innovation and competition when it attempted to issue an exemption allowing futures contracts on the SPIKES™ index to be regulated as futures rather than security futures, with the stated goal of facilitating new entrants into the market for volatility products. SEC, Order Granting Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 With Respect to Futures Contracts on the SPIKES™ Index, 85 Fed. Reg. 77297 (Dec. 1, 2020), *vacated*, *CBOE Futures Exchanges, LLC v. SEC*, No. 21-1038 (D.C. Cir. July 28, 2023) (vacating exemptive order under the Administrative Procedure Act due to order's inadequate explanation and consideration of the issues).