

**LEGISLATIVE HEARING TO REVIEW S. 4760,
THE DIGITAL COMMODITIES
CONSUMER PROTECTION ACT**

HEARING

BEFORE THE

**COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY**

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

September 15, 2022

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry



Available on <http://www.govinfo.gov/>

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2024

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

DEBBIE STABENOW, Michigan, *Chairwoman*

PATRICK J. LEAHY, Vermont

SHERROD BROWN, Ohio

AMY KLOBUCHAR, Minnesota

MICHAEL F. BENNET, Colorado

KIRSTEN E. GILLIBRAND, New York

TINA SMITH, Minnesota

RICHARD J. DURBIN, Illinois

CORY BOOKER, New Jersey

BEN RAY LUJAN, New Mexico

RAPHAEL WARNOCK, Georgia

JOHN BOOZMAN, Arkansas

MITCH McCONNELL, Kentucky

JOHN HOEVEN, North Dakota

JONI ERNST, Iowa

CINDY HYDE-SMITH, Mississippi

ROGER MARSHALL, Kansas

TOMMY TUBERVILLE, Alabama

CHARLES GRASSLEY, Iowa

JOHN THUNE, South Dakota

DEB FISCHER, Nebraska

MIKE BRAUN, Indiana

ERICA CHABOT, Majority Staff Director

JESSICA L. WILLIAMS, Chief Clerk

FITZHUGH ELDER IV, Minority Staff Director

C O N T E N T S

Thursday, September 15, 2022

	Page
HEARING:	
Legislative Hearing to Review S. 4760, the Digital Commodities Consumer Protection Act	1
<hr/>	
STATEMENTS PRESENTED BY SENATORS	
Stabenow, Hon. Debbie, U.S. Senator from the State of Michigan	1
Boozman, Hon. John, U.S. Senator from the State of Arkansas	3
WITNESSES	
Panel I	
Behnam, Hon. Rostin, Chairman, Commodity Futures Trading Commission, Washington, D.C.	4
Panel II	
Phillips, Todd, Director, Financial Regulation and Corporate Governance, Center for American Progress, Washington, D.C.	30
Warren, Sheila, Chief Executive Officer, Crypto Council for Innovation, San Francisco, CA	32
Parker, Christine, Vice President and Deputy General Counsel, Coinbase, San Francisco, CA	34
Tarbert, Heath, Ph.D., Chief Legal Officer, Citadel Securities, Chicago, IL	35
Dixon, Denelle, Chief Executive Officer, Stellar Development Foundation, San Francisco, CA	37
<hr/>	
APPENDIX	
PREPARED STATEMENTS:	
Behnam, Hon. Rostin	50
Phillips, Todd	53
Warren, Sheila	72
Parker, Christine	93
Tarbert, Heath, Ph.D.	108
Dixon, Denelle	124
DOCUMENT(S) SUBMITTED FOR THE RECORD:	
Stabenow, Hon. Debbie: Arkansas Advocates for Children and Families, letter of support	136
QUESTION AND ANSWER:	
Behnam, Hon. Rostin:	
Written response to questions from Hon. John Boozman	140
Written response to questions from Hon. Raphael Warnock	140
Written response to questions from Hon. John Hoeven	141
Written response to questions from Hon. Charles Grassley	143
Written response to questions from Hon. John Thune	145
Phillips, Todd:	
Written response to questions from Hon. Cory Booker	146

IV

	Page
Warren, Sheila:	
Written response to questions from Hon. Cory Booker	149
Written response to questions from Hon. John Hoeven	152
Parker, Christine:	
Written response to questions from Hon. Cory Booker	155
Tarbert, Heath, Ph.D.:	
Written response to questions from Hon. John Boozman	157
Written response to questions from Hon. John Hoeven	157
Dixon, Denelle:	
Written response to questions from Hon. Cory Booker	160

**LEGISLATIVE HEARING TO REVIEW S. 4760,
THE DIGITAL COMMODITIES CONSUMER
PROTECTION ACT**

THURSDAY, SEPTEMBER 15, 2022

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room 215, Dirksen Senate Office Building, Hon. Debbie Stabenow, Chairwoman of the Committee, presiding.

Present: Senators Stabenow, Brown, Klobuchar, Gillibrand, Smith, Durbin, Booker, Warnock, Boozman, Hoeven, Ernst, Marshall, Tuberville, Grassley, Thune, Fischer, and Braun.

**STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR
FROM THE STATE OF MICHIGAN, CHAIRWOMAN, U.S. COM-
MITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

Chairwoman STABENOW. Good morning. I call this hearing to order of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry to order. So pleased to see all of our colleagues here for this really important hearing and discussion.

We are here today because a rapidly increasing number of Americans are investing in cryptocurrencies; yet, there is no Federal oversight over the tokens that make up the majority of this market.

Just as quickly as these assets have risen in popularity, we have seen their value drop. As a result, hardworking Americans have lost billions of dollars, dollars they use to support their families, keep roofs over their heads, and nestle away for hard-earned retirement. In the past few months alone, numerous companies have gone bankrupt, and the value of some widely traded coins has dwindled to cents on a dollar. Meanwhile, \$1.9 billion worth of cryptocurrency was stolen in hacks in the first seven months of this year alone, up 60 percent from this time last year.

At the same time, it is important to recognize that cryptocurrencies and blockchain technology offer an alternative to using large financial institutions. One-third of Americans who have bought or traded crypto earn less than \$60,000 a year, some of them—some of whom lack trust in these institutions or find them too costly. They simply cannot afford, though, to lose their savings because of a lack of guardrails in these markets, and that is where we come in our responsibility as overseeing Federal regulators.

We need to have clear, consistent rules of the road that allow good actors to innovate and grow while, first and foremost, keeping customers safe. As the committee with oversight over one of our Nation's two market regulators, it is our job to ensure that we bring the necessary protections to this marketplace.

Together with my partner, Senator Boozman, and with colleagues, Senators Booker, Thune, Ernst, and Gillibrand, we have introduced the Digital Commodities Customer Protection Act. This bill gives the Commodity Futures Trading Commission (CFTC) oversight over digital assets that act like commodities, such as Bitcoin and Ether, that currently have no Federal oversight. This is a glaring hole in our financial system, and I believe we must close it.

Our bipartisan bill will require that all digital commodity platforms register with the CFTC. This will set a uniform national standard and allow the CFTC to catch fraud before it happens. As its name suggests, our bill is focused on consumer protection. It will require that platforms segregate and safeguard customer assets, hold sufficient capital, and abide by rigorous cybersecurity standards. It will eliminate many of the conflicts of interest in this market, and it will mandate that platforms speak truthfully about the risks of trading digital commodities and do not engage in misleading advertising.

The CFTC is the right regulator for the job. Congress gave the Agency oversight over the swaps market in Dodd-Frank, and it responded by setting the global standard. Our nation's derivatives markets have been a mainstay for our producers during recent supply chain disruptions and elevated commodity prices. We will hear today from Chairman Behnam shortly about how the CFTC has been a leader in policing the crypto markets for fraud and abuse.

This week, we received a letter from former Republican CFTC Chairman, Christopher Giancarlo, expressing his support for the bipartisan bill, and without objection, I would enter this into the record. So, ordered.

[The following document can be found on page 136 in the appendix.]

Chairwoman STABENOW. This bill also gives the Agency additional resources to get this job done right, which is so important.

Finally, it recognizes that other financial agencies have critical roles to play in regulating digital assets, also important. I am pleased to see Chairman Gensler's recent comments about how the CFTC and SEC can work together to make this market work just as we did in putting together Dodd-Frank, and we have had productive discussions with SEC staff about the bill, which we appreciate and will continue.

As President Biden has recognized, this is a big responsibility with a lot at stake, and it is going to take all of us at the table working together. At our table today will be some of the brightest leaders in this space, and I look forward to hearing from each of you on how we can continue to bring transparency and accountability to this marketplace while still enabling the innovation that makes this technology so promising.

I would like to turn now to my colleague and partner, Senator Boozman, for his opening remarks.

**STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM
THE STATE OF ARKANSAS, U.S. COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY**

Senator BOOZMAN. Well, thank you so much, Madam Chair, and it is great to be with you today as we examine S. 4760, the Digital Commodities Consumer Protection Act (DCCPA). This bill, which I am proud to co-sponsor with the Chairwoman as well as Senators Thune and Booker, will bring much-needed regulatory certainty to the growing digital commodity ecosystem. As this industry continues to grow, questions remain about the proper role Federal regulators will play. I believe regulation must ensure market integrity and consumer protection while also fostering an environment that encourages innovation. I believe our bill gives the CFTC the authority to do just those things.

Currently, the digital assets spot or cash markets are subject to a patchwork of regulations at the State and the Federal level. This is simply inadequate for market structure and consumer protection perspectives. It is without question that digital commodities and related technologies will continue to play an important role in the global economy for decades to come. As a result, now is the time to provide regulatory certainty to the market and create a framework that makes sense from both a domestic and an international perspective.

It is imperative that both Congress and regulators work with industry and consumer advocates to ensure the laws and regulations for market participants are created through a transparent process that results in a clearly understood set of rules. Anything less hurts everyone. Regulation by enforcement without any meaningful engagement with market participants is no way to police the industry. It is unfair to stakeholders who operate in good faith but are then punished because they have not been given clear rules of the road.

Ultimately, this Committee's goal is to establish a framework that allows industry to innovate and grow while providing the CFTC the resources necessary to write and enforce rules that protect consumers and provide retail participants the ability to fully understand the functions of the commodities they are buying and selling.

I hope today's hearing provides an opportunity for both Chairman Behnam and our esteemed panel of stakeholders to weigh in on the most important features of our bill, including constructive recommendations to improve the bill, as we look forward to a committee markup in the near future.

In closing, I am confident the CFTC can rise to the challenge to be the right fit for an expanded regulatory role in the digital commodities spot market, and I am confident that we can work together to protect consumers and allow this ever growing technology to flourish.

I want to thank Chairwoman Stabenow for her leadership and look forward to today's discussion and hearing from our witnesses.

Before I conclude, I would like to welcome one staffer to the Committee and then thank another staffer who will be leaving shortly. First, I would like to welcome Erica Chabot. Erica is the new Majority Staff Director for Chairwoman Stabenow but is cer-

tainly no stranger to the Senate. For the last 20 years, she has served Senator Leahy, a member and former Chairman of this Committee, who we all know and are going to miss as he retires. We really look forward to Erica and look forward to her service to the Committee.

Second, I would like to thank Darin Guries of my staff for his exceptional service to the Senate and Committee. Darin is a native Kansan and has spent the last 15 years working for the Senate. For the last seven, he has worked for the Agriculture Committee, first for Senator Roberts and now for me.

The legislation that we are discussing today is largely the product of bipartisan negotiations led by Darin and Lucy, working hand in hand to, I think, produce a very, very good product.

The Committee and the Senate have greatly benefited from Darin's expertise, judgment, and charm. We will miss Darin as he leaves the Senate. I wish him great success and many thanks for his service. We are trying not to be bitter over the people that have hired him, but it is okay.

Thank you, Madam Chair.

Chairwoman STABENOW. Well, thank you, Senator Boozman, and thank you so much for recognizing Erica. We are so pleased to have her here. Welcome, welcome.

Darin, he may think he is leaving, but actually I think we are not going to let him. Right in the middle of all this? Really. Oh, my goodness.

I do so appreciate our wonderful staffs. We have been so fortunate on the Committee, past, present, with some of the smartest, hardworking people that there are. We very much work in partnership and certainly on this bill. That has been hand-in-glove, and we really appreciate all of that.

Well, let me turn now to our first witness. Rostin Behnam is Chairman of the Commodity Future Trading Commission and certainly no stranger to this Committee either. Prior to his time leading the Commission, Chairman Behnam has served as a commissioner. He has served since 2017 on the Commission and prior to that was a valuable member of our staff on the Agriculture Committee.

Welcome, Chairman Behnam, and we recognize you for five minutes of testimony.

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

Mr. BEHNAM. Thank you. Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, appreciate the opportunity to be here before you today to discuss the Digital Commodities Consumer Protection Act.

Last February, when I testified before this Committee, I noted that the unique characteristics of the growing digital asset industry necessitated a comprehensive Federal regulatory regime. I believe that to be more true today and thank the Committee for taking steps to address these needs through the DCCPA. I have directed staff at the CFTC to analyze what additional needs we would have to support its implementation.

Digital asset commodity cash markets have significant speculative retail participation, often use high levels of leverage, and largely rely on platform-based custody arrangements outside of the traditional regulated banking sector. Market participants may perceive themselves to be interacting with exchanges and intermediaries regulated like those in other traditional financial markets, but the reality is quite different. Since I last testified, over \$1 trillion in market value has been lost in conjunction with the failure of several large, high profile firms operating in the shadows. One lesson is that leverage, interconnected markets, and contagion can wreak the same havoc in the digital asset ecosystem that they do in our traditional financial markets.

As I have publically stated several times, including to this Committee, many digital assets constitute commodities. As recognized by the DCCPA, the CFTC's expertise and experience make it the right regulator for the digital asset commodity market. The CFTC facilitates customer protections through its principles-based market oversight and disclosure regime aimed at ensuring transparency, integrity, and security of transactions. These structures inform customers about who they are dealing with and provide clarity on the risks of participating in our markets.

In requiring digital commodity brokers, dealers, and custodians to join a registered futures association, the DCCPA acknowledges the key role that self-regulatory organizations, like the National Futures Association, play in safeguarding the integrity of markets.

The CFTC has often adapted its oversight capabilities to meet the demands of evolving markets. Most notably, in the wake of the 2008 financial crisis, Congress provided the CFTC authority over approximately 95 percent of the swaps market, serving as the cornerstone of a robust regulatory regime for the \$350 trillion swaps market.

Returning to the digital asset market, since 2014, the CFTC has brought almost 60 enforcement cases, including a recent matter involving a \$1.7 billion fraudulent Bitcoin scheme. With a lack of full visibility into the digital commodity asset market, the Agency's enforcement program has had to lean primarily on tips and complaints from the public to identify fraud and manipulation. The Agency has developed a deep understanding of this novel market and the underlying innovations that fuel it, hiring specialists, forming internal task forces and work groups, leveraging public-private partnerships, and most recently, restructuring the CFTC's Financial Technology Hub into the Office of Technology Innovation.

The DCCPA leverages the historical strength of the CFTC as a market regulator by requiring registration and supervision of digital commodity platforms and digital commodity intermediaries as is required in CFTC-regulated derivatives markets. Digital commodity facilities will be subject to compliance with core principles prescribing, among other things, that the platforms establish and enforce rules minimizing conflicts of interest, prohibiting abusive trade practices, establishing system safeguards to minimize cybersecurity and other operational risks, ensuring the financial integrity of transactions and intermediaries, and protecting customer funds.

Critically, all digital commodity platforms must maintain adequate financial, operational, and managerial resources, segregate customer funds, and comply with Commission requirements for the treatment of customer assets. These tools have proven effective in preserving customer funds and market operations in times of instability, uncertainty, or market misconduct.

The DCCPA directly addresses the increased role of retail participants in the digital commodity asset markets by directing the Commission to adopt customer protection rules, requiring digital commodity platforms to disclose to customers material conflicts of interest and material risks of trading digital commodities, establishing duties to communicate in a fair and balanced manner, and establishing standards for the platforms' marketing and advertising. With the additional resources contemplated by the funding mechanism in the bill, and a clear mandate for customer education and outreach to ensure that our efforts reach all demographics, the CFTC can swiftly effectuate this new regime.

On September 21st, 1922, nearly 100 years ago to the day, the Grain Futures Act of 1922 was signed into law, which led to the near immediate establishment of the then CFTC. With that legislative accomplishment, this Committee and the Congress swiftly responded to a policy need that arose on the heels of emerging risks to American consumers because of then new financial markets and products, technological innovation, and the promise of economic development.

With the CFTC's rich history overseeing commodity markets, coupled with its expertise and track record, which rests on a firm foundation as a forceful and disciplined cop on the beat, the Agency stands ready to tackle these new risks and opportunities one century later.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Behnam can be found on page 50 in the appendix.]

Chairwoman STABENOW. Thank you very much, Mr. Chairman. As you have indicated and I have spoken about as well, cryptocurrencies are traded largely by everyday Americans right now. Some people have voiced concern that the CFTC does not have a customer protection mandate and, therefore, may not have the tools that you need to protect these retail customers. Could you respond to that?

Mr. BEHNAM. Thank you, Senator. Before I get into any details, I would say, unequivocally, the Commodity Exchange Act and the rules that the Commission promulgates from the law directly support customer protections, full stop and without question.

In thinking about the layers, because I think there are several layers to the customer protection regime at the CFTC, I think it is important to identify each. At the sort of foundational level is the law itself and the rules that we implement, which are more prescriptive and more specific requirements for the registered entities, which you do in your bill. The core principles can be anything from system safeguards which directly address cybersecurity and operational risks, and this is directly about protecting customer funds and customer assets.

Conflicts of interest, something you noted, which is a big concern in this issue area, a core principle, we would have to ensure registered entities which your bill contemplates, whether it is the trading platforms, the brokers, the dealers, the custodians, are serving the best interest of the client or the customer only and no one else.

We have core principles about reporting and recordkeeping. This is information flow that comes to the Agency so that we can monitor, for example, disruptive trading practices and making sure that the market is free from fraud and manipulation, also prohibiting contracts being listed on trading platforms that are readily susceptible to manipulation.

These are just a few of the nearly two dozen core principles which make up the regime and ultimately are manifested through the rules we prescribe.

I would say the second layer is how do we make sure that our regulated entities are complying with these rules and regulations. We do this through a series of inspections, examinations, and investigations. We work in tandem with our partner, the National Futures Association, which again is another provision you include in the Act, to create a self regulatory regime to ensure that the individuals and institutions that are regulated by our market are complying with the law, and we make sure that they have the adequate proficiency and information they need to comply with the law.

The third thing I will mention is enforcement. We have to ensure that individuals are held accountable for breaking the law. This is, obviously, one of the key components of our requirements as a civil litigator.

Within our Agency—and, Chairwoman, you know this—we have struggled with funding over the past decade or so, and I have looked at some data points. In the past 10 fiscal years, our average budget has just been over \$240 million per year. In that same period, this 10-year period, the Division of Enforcement has assessed penalties, on average, of over \$1.5 billion per, so a six times-plus return on investment for the American taxpayer in enforcement penalties.

A few months ago, I had the privilege of standing next to the Attorney General as he announced settlement with one of the largest commodity trading advisors that had manipulated oil markets. This was a civil and criminal case brought by Justice and the CFTC, over \$1 billion. In this time, we need to ensure our energy markets are free of fraud and manipulation. That case was brought by the CFTC.

LIBOR, a benchmark, a financial benchmark which underpins trillions of dollars of financial contracts, student loans, mortgages, over 10 years ago was found to be fraudulent. The setting standard for setting the benchmark itself, which is in these trillions of dollars of financial contracts, was manipulated. Billions of dollars of fines assessed against financial institutions across the globe. That case was uncovered just downtown at the CFTC.

These are some examples of the work we do, from the rules set and the implementation, the law, how we enforce it, and the accountability. I think layered on top of that, which are all things you

include in the bill, which is extremely important, is the bankruptcy protection which is another amendment to your bill to the bankruptcy code and is extremely important. We prioritize customer funds and customer assets above all else, above creditors and above security holders.

This in total, I think, as a very robust, very comprehensive customer protection regime, has worked in our derivatives market very well for decades and, I think, as you contemplate in your bill, will work as well in the digital commodity market.

Chairwoman STABENOW. Let me just ask one other question. Thank you so much. The President has talked about a whole of government response to the regulation of digital assets and this new innovation. Take just a moment about how you would move forward in working. Obviously, two very important agencies, CFTC, SEC. Again, we did it in Dodd-Frank. We have got two great regulators. Just speak about, as you move forward in this space, how you will craft your regulations and how you see working together.

Mr. BEHNAM. Chairwoman, you know, it is not going to be any different than what we have done before, and you alluded to it, whether it was 2010 with Dodd-Frank or even going back 40 years with security futures and commodity futures. We are constantly talking at the highest level, the Chair, Enforcement, the different divisions. We naturally have intersections between our markets. We have dually registered entities, whether it is the intermediaries, the broker-dealers, and the FCMs or the investment managers. We have to work together to make this work because, otherwise, the markets would not work like they should and like they are intended. We have a long history of this.

I do not think we need to try to fix something that is working right now, and I think it is all about communication, transparency, and understanding at a high level what the goal is. Right? This is not about us at the CFTC. It is not about the SEC. It is about the regulatory framework. It is about financial markets. It is about protecting customers. If we keep that goal in mind, I think we will be able to accomplish what we are tasked with.

Chairwoman STABENOW. Thank you very much.

Senator BOOZMAN.

Senator BOOZMAN. Thank you, Madam Chair, and I appreciate your questioning concerning enforcement. That is one of the things that, you know, comes up in regard to the bill. Does the CFTC have the ability? Are they a strong enough enforcer?

I think you answered that question very, very well, explaining your role and the great job that you are doing with the resources that you have and punching so far above your weight and, yet, while still enabling protecting the customer while still enabling innovation. Again, thank you for, again, a great response in that regard.

Another thing that comes up is user fees on derivatives market activities, and I had the opportunity of being on the Subcommittee on Appropriations that has to do with that and really champion efforts to make clear that the CFTC does not have the authority to impose user fees on derivatives market activities. That said, our current bill authorizes the CFTC to impose a user fee only on digital commodity platforms. Do you agree that our bill, as written,

prevents any application of a user fee onto derivatives market activity?

Mr. BEHNAM. Senator, in short, the answer is yes, that the law—that the bill is drafted prescriptively to ensure that the fee would only be assessed on the digital commodity platforms and not on traditional derivatives market entities.

Senator BOOZMAN. Right. It would take congressional authorization to do that.

Mr. BEHNAM. Correct.

Senator BOOZMAN. In fact, further, do you believe that it is clear that the only user fee precedent, you know, as a result of this bill is to say that it would take additional legislation to authorize a user fee in the traditional derivatives market the CFTC oversees?

Mr. BEHNAM. Yes.

Senator BOOZMAN. Very good. I also want to thank you and your staff. They have done a very, very good job in providing technical assistance not only with this bill but, again, you know, just through the many years that we have worked with them.

One of the suggestions we have heard from numerous industry stakeholders is about the definition of dealer. Because our bill is intended to protect retail consumers, it is not our intent to cover proprietary trading firms who invest only for their own accounts to be covered under the definition of dealer. As currently written, do you believe our legislation covers this kind of nonretail consumer facing market activity?

Mr. BEHNAM. Senator, good question, and I think I agree with you in principle that we are trying to focus on retail customers. In this case, yes, the principal trading firms, or the “prop traders” as they are more commonly known, would be exempt from the dealer definition, and that is consistent with what the Act and this Committee and the Commission have done with respect to traditional swap dealers. That is my interpretation, and I think it is drafted appropriately to create that carve-out for proprietary traders.

Senator BOOZMAN. Very good. Well, I think I am going to yield back my time in the interest of getting all of the questions. We appreciate your answers. As an old staffer, you understand the importance of actually answering questions. Again, thank you very much.

Mr. BEHNAM. Thank you, Senator.

Chairwoman STABENOW. Well, thank you very much, Senator Boozman. Since I went over a few moments, I think we are now back to even. Thank you very much for that.

I will now turn to Senator Klobuchar, and then I believe Senator Ernst will be here shortly, and she would be next. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Chairwoman, and thank you as well, Senator Boozman.

Chairman, I think we have talked about this before. I appreciated you visiting my office as well. As you mentioned in your testimony, these are volatile markets. I think we all saw that big time when we saw that when digital currencies were approaching their highest values and the companies were spending all the millions, maybe even more, on the celebrity endorsements. I think we all saw the Super Bowl ads. Many first-time buyers were convinced to invest just in time for the market to crash, and there are people

who are trading on these unregulated platforms that they may not even realize it. Many of the investors have not even traded on platforms like this before.

Could you talk a little bit more about how these underlying markets work and why you think the CFTC is in a position to oversee such a volatile market? I know you have done such things before. Without regulation, what recourse do consumers have who have been scammed or defrauded by crypto brokers? Kind of two different questions.

Mr. BEHNAM. Thanks, Senator. I think in response to your first question, in many respects, you know, the markets and the way that the unregulated digital asset platforms are set up and operate are very similar to the way our traditional markets operate, but, as you point out, they are unregulated. The regulation is limited to FinCEN at Treasury and some State money transmitter licenses, but we do not have that market regulatory structure which provides that transparency and that lens into how the markets are operating.

Notwithstanding some obvious custody issues because this technology is so unique in how you custody the actual underlying token, the market structure is largely the same. I think as we contemplate this bill it is about bringing and shedding light on this marketplace that is otherwise in the dark, and we would apply the same principles that we have for decades that have worked quite well.

You talk about volatility, and I think that is in part—you know, we are seeing correlations between the digital asset market and traditional equities markets and bond markets, but I also think that with regulation we will probably see reduced volatility because you will have more participants and sort of tighter spreads between individuals willing to buy and sell these digital assets.

I think it is implementing our core principles, implementing the rules that we found to be very successful and effective, focusing on customer protections, focusing on protecting customer money, but implementing these core principles that are around trading practices, disruptive trading practices—

Senator KLOBUCHAR. Okay.

Mr. BEHNAM [continuing]. ensuring financial resources so that the platform can do what they are intended to do.

Senator KLOBUCHAR. All right. A June FTC report indicated that, since 2021, \$575 million of the crypto fraud losses reported to the FTC were about bogus investment opportunities. I referred to some of this in my last questions. Many of these originated on social media platforms like Instagram and Facebook. Could you talk about the interaction with the platforms, what their role is, and what more could be done on that front?

I really do not know what your answer is going to be on this. I just noticed these numbers in my briefings.

Mr. BEHNAM. Yes, Senator, it is a very difficult area because we do not have a lens into the trading platforms so we are relying on customers. As I stated in my statement, every case that we brought, 60 enforcement cases, has been brought to us through complaints. We do not have that vision and that lens into the trading platforms.

Senator KLOBUCHAR. You are saying the bill would help to give you the transparency into it.

Mr. BEHNAM. It would provide the authority to the CFTC to regulate markets, and this volatility, the fraud, the manipulation, much of it would probably go away because we now have a regulator, a cop on the beat, and this would deter activity by bad actors.

Senator KLOBUCHAR. Okay. There is a lot of bad actor activity going on, on social media platforms, as you know. This is not the only thing. A cop on the beat would be unique compared to a lot of the things going on.

When considering the environmental impacts of the significant energy that is required to mine cryptocurrencies, like Bitcoin, there is a lot of questions regarding the sustainability of cryptocurrencies. Can you speak to the way that this bill approaches the environmental impacts of cryptocurrencies?

Mr. BEHNAM. Thank you, Senator. The bill provides and requires the CFTC to draft a report within 6 months and report back to this Committee and the House Ag Committee in consultation with other U.S. regulators, most notably, those that have expertise in the energy space, and I think this is the appropriate approach to this issue.

We have heard the statistics about the amazing amount of energy used to mine coins. I would say that an event occurred last night with Ethereum, which is going to reduce energy consumption, a step in the right direction but certainly not resolving the problem.

I think at its core the report will stand as a basic starting point so that we can examine what the issues are, where the energy usage is occurring, and what is the correlation between the energy usage and the outcome, the mining of the tokens. From there, I think that would lead to future policy discussions, potentially disclosures, and hopefully, incentives to move away from carbon-intensive energy sources.

Senator KLOBUCHAR. Well, thank you very much. I have a lot of faith in you, Mr. Chairman, and look forward to working with Senators Stabenow and Boozman and others on this.

I did want to point out before we turn it back that we have with us the winning pitcher of the congressional softball game, Senator Gillibrand, who got four strikeouts—Joni knows. She used to play on this team—and, against all odds, beat the press that we will just say was significantly younger as we had two grandmothers on our team. The congressional team beat the press, and we should be very pleased with Senator Gillibrand's performance as a pitcher. She was incredible.

Chairwoman STABENOW. All right. Way to go. That is terrific. Thank you.

All right, Senator Ernst.

Senator ERNST. Oh, wonderful. Thank you very much, Chairwoman Stabenow and Ranking Member Boozman. Today's hearing, it is extremely interesting. I think we have probably got a lot of viewers out there that are interested as well.

Chairman, thank you for being here. We have heard all of these concerns. The cryptocurrency companies are being pushed out of the U.S. to other jurisdictions due to the lack of regulatory clarity.

I would like you to walk through a little bit more how the bill would address those concerns and encourage American competitiveness but then why also should we want to promote the U.S. as a leader and an attractive jurisdiction for cryptocurrency companies. What benefit does this bring to every American, even those that are not engaged in cryptocurrency?

Mr. BEHNAM. Thanks, Senator. Yes, for sure, I have heard probably many of the anecdotes you have heard about companies needing to move overseas because of the regulatory uncertainty. I think this bill in many respects is one element of the larger digital asset-crypto ecosystem, but it is certainly a huge step forward given the size of the market that you contemplate regulating.

I think with that regulatory certainty the innovators, the entrepreneurs are going to have more incentives to consider staying within the U.S., raising capital here, and starting their businesses here. It is the regulatory certainty. It is the understanding that the law will be clear and they know how it will impact and intersect with their business and not fear something unknown in the future.

To your second point, you know, I view this in many respects like any technological disruption or innovation that has occurred for decades. I mentioned the Grain Futures Act from 100 years ago in my opening statement. It was a different time when our farmers and ranchers were creating futures markets, and that was technological innovation at the time.

Here we are 100 years later with a very different technological innovation, but I think it is important, at a minimum, despite where the technology may go. I cannot predict the success or failure of it, but there certainly is demand. There is certainly optimism. I think there is a vision for it to be implemented into our economy. When you have those core fundamentals being discussed and being outlined, then I think it is important, collectively, as elected officials and as regulators, we do what we can to balance customer protections against innovation and supporting the technology.

Senator ERNST. If you could describe for us, what would happen if we do not move on this in the next six months, if we do not move in the next year? What is the potential there?

Mr. BEHNAM. It is always difficult to give an exact timeline to when things may shift within the marketplace. I think, quite frankly, the U.S. does a very good job—and I will speak only from a financial regulatory position—of balancing the need to move cautiously to ensure that we are embedding the principles that have worked well for our capital markets and our derivatives markets for over a hundred years, and that means moving slowly, thoughtfully, but moving and making sure we are advancing the conversation and giving entrepreneurs and innovators a sense of what the direction the country is going to take from a policy perspective.

We have to balance the “Oh, if you do not do something now, we are going to move overseas.” You know? I take that with a grain of salt.

We have to have the conversation. We have to engage. We have to come up with a framework and set a timeline and a pathway so that these innovators, these entrepreneurs can do what they do best, and I think we are on that path. This is certainly a step in

the right direction. It is a very positive step, and I think if we continue to do that we will be able to preserve these entities, these companies, these entrepreneurs within the U.S.

Senator ERNST. Fantastic. I really appreciate it.

I want to echo what Senator Klobuchar said. Thank you, Senator Gillibrand, for leading such a great team and a great victory. I have played women's softball, congressional softball for many years. I was not able to make the game last night. We lost all the years that I played, and they won last night. What is the common denominator there? Anyway, thank you, Kirsten. Great victory.

Thank you, Chairman.

Mr. BEHNAM. Thank you.

Chairwoman STABENOW. Well, thank you so much.

I do—I am going to turn to the winning pitcher of last night's game and a leader of it, Senator Gillibrand.

Senator GILLIBRAND. Thank you, Madam Chairwoman.

Thank you to Amy and thank you to Joni. Amy is our commentator, so she keeps the crowd very lively, which is very important. Joni has the best arm of the whole team. You better come back next year so we can keep our winning.

Chairman Behnam, thank you so much for your leadership on this issue. Thank you for being willing to work with this Committee, for you being willing to work with me on my legislation as well. This bill that we are looking at, I think, can be transformational. I think it is timely. I think it is urgent. I think it is necessary to create stability in a market that is growing.

I talk to a lot of colleagues about cryptocurrency, blockchain, Web3, and they say, well, is this going to go away? It is here for good. It is part of the world economic community.

The question that we have as a Committee right now is: Are we going to be part of the solution, or are we not?

What is needed so much right now are rules of the road. We just need rules of the road so market participants, so innovators, so businesses can have basic clarity on how to create their businesses, what level of oversight and accountability will be effective, how to create basic safety and soundness, how to create consumer protection. You being part of this process has been absolutely essential to getting this bill written and to getting where it is today for the Committee. I am very, very optimistic.

I would like you to continue along with the line that Senator Ernst started about why is this relevant now. This bill takes jurisdiction over the commodities part of cryptocurrencies. Some cryptocurrencies are securities. Digital assets can take many forms. SEC has a regulatory responsibility. CFTC will have a regulatory responsibility. IRS will have a regulatory responsibility and so will thoughts and ideas on cybersecurity, which I will address after this question.

What I would like you to talk about is: How does this bill fit into the broader framework? Why is getting this bill done now so essential? Why and how does getting this bill done now allow us to build on it to do the rest of the regulatory frameworks, to then go and look at the Banking Committee and try to do stablecoins, go and look at the Banking Committee to try to get SEC regulation for

those digital assets that are securities? Talk about why this piece matters now.

Mr. BEHNAM. Senator, thanks for the question. You know, you rightfully point out that this is one piece of the puzzle. We all have a role to play. We all have our pieces to contribute to the larger puzzle. I have been lucky to participate in the Principles Working Group, the Financial Stability Oversight Council, other international fora, and this is a big issue.

You mentioned stablecoins. This is a predominantly, prudentially, banking-regulated issue. The security tokens. There are thousands of security tokens that innovators are creating and that we need to address. There are issues around payments, custody, settlement, so many different elements of this larger digital asset ecosystem that in many respects is interconnected. As much as their own little silo, they are all interconnected.

I think this is an important bill because, you know, you expressly outlined Bitcoin and Ether and commodity tokens. That will be a significant majority of the digital asset marketplace, and I think it will push the conversation forward so that we can continue to have policy around the different areas of the digital asset space clarified and complete because as much as this will bring clarity, transparency, and most importantly, as you point out, customer protections to this particular market, which is significant, the other elements need to be completed, too.

We need to complete the larger puzzle because if we are going to see advancements in the technology and the innovation coupled with the customer protections, the market resilience, and ultimately, financial stability depending on the size of the market, we need to have this patchwork all plugged together so that we have the full lens into that space from a regulatory perspective and from a prudential perspective.

Senator GILLIBRAND. Thank you, Mr. Chairman. Along the lines that I mentioned on cyber, when I first became involved in this issue, it was through my role on the Intelligence Committee, and so obviously, addressing things like cyber threats, fraud, theft, privacy breaches, and other technology-based crimes facilitated through Web3 applications by foreign adversaries is top of mind for me.

Can you talk a little bit about the work that you and your Agency are undertaking to be ready to address these types of threats and what needs to be done in the future to ensure security of the commodities market?

Mr. BEHNAM. Thanks, Senator. You know, cybersecurity is top of mind at the Agency right now. We are a financial market regulator that has systemically important registrants. As I mentioned in my earlier responses and in my statement, we have core principles which drive our rules and regulation. The core principle around system safeguards directly relates to cybersecurity. We have to build operational resilience within the institutions, the regulated institutions. Thankfully, the DCCPA addresses this specifically, prescriptively mentions cybersecurity.

We are leveraging the tools, the expertise we have. We understand that we are going to have to up our game because from a markets perspective the cyber resilience and cyber issues are large-

ly the same but this technology, specifically the custody element, how do we hold these tokens, and the unique nature of the technology is going to require some deep thinking. It is going to require new hires and new expertise in the space. Those are the areas that I am concentrated on.

Using the resources that the bill provides will be critical to ensure that we can recruit, retain, and build out that infrastructure so that we have a cyber-resilient system. As we have seen in the past with the Colonial Pipeline or others, digital assets will be a vulnerable point, will be a touchpoint for bad actors to try to attack the U.S. through different systemically important infrastructure.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Thank you, Madam Chairwoman.

Chairwoman STABENOW. Thank you very much.

Senator TUBERVILLE.

Senator TUBERVILLE. Thank you very much, Madam Chair, Senator Boozman. Thank you all for doing this. We need this; we need this bill. We need to regulate. We got people out there investing in this and do not have a clue what they are doing, including me. There is not a handful of people in this room right now that really understand what we are talking about, and I have been to hours of seminars and read books. It is complicated, and we need to help the American people. Thank you. Thank you all for doing this.

Mr. Chairman, thank you for being here. Thank you for being accessible and the hard work that you are doing. Some of your counterparts in some of these other agencies could learn from you and your accessibility.

Just a few questions. You know, I recently learned that over 90 percent of all crypto trades are executed outside the United States. Our country dominates equity and bond and derivatives trading. Why are we so far behind in this?

Mr. BEHNAM. Senator, as I was talking to Senator Ernst, it is a great question. I think we are moving at a good clip, but we are certainly not moving as fast as others. I think we have to balance the need to preserve the financial integrity, the financial resilience that has made our capital and derivatives markets the best in the world but also making sure that we are giving a clear sense to the marketplace that we are moving forward.

There are several jurisdictions around the world which will naturally use this as an opportunity. They think that this is a way to increase economic development so that they are going to either lower standards or lower their sort of regulatory bar so that they have more individuals or institutions coming into their jurisdiction, and that is fair.

I think from a U.S. perspective, given our size, given our legal structure, and given the accountability through enforcement, we can move at a clip that is safe, that is cautious, that is thoughtful, but has to be deliberate.

I agree with you, and I get your sense that we need to move forward. This is a step in the right direction. We need to continue this conversation and see this through the finish line so that we have that certainty for market participants so that they can start the business there and that statistic which you named, having that vol-

ume greater outside of the U.S. as opposed to inside of the U.S., can be flipped.

Senator TUBERVILLE. You know, other countries are starting their digital currencies, including our biggest adversary, China. What do you think about that, and what is their regulatory system going to look like? Have you read anything on that?

Mr. BEHNAM. Senator, you know, I want to—I certainly recognize that, and I am very aware of what is going on. There are a number of issues that—or approaches, I would say, that China is taking that I do not think we should or are taking here in the U.S., specifically around privacy issues.

With that, I know that the Federal Reserve and the Chairman, Chair Powell, is working very carefully and thoughtfully, not unlike what I said earlier, to contemplate the idea of what a digital dollar would look like. It is a balance. It is a lot of technical issues, monetary policy issues, and infrastructure issues that have to be really worked through, thoughtfully and comprehensively, before we can push that out in either a beta mode or in full.

I think we are moving at the right clip. It has got to be cautious, but we are keeping an eye on the ball, engaging, and moving the conversation forward.

Senator TUBERVILLE. If we were to pass this bill tomorrow, do you have the assets to implement this?

Mr. BEHNAM. Senator, one of the great elements and provisions of the bill is the user fee, which Senator Boozman pointed to, the Chairwoman did as well. This is a critical component of this bill. With the user fee that is exclusively focused on the digital platforms, we would be able to implement the bill.

Senator TUBERVILLE. How is your relationship with SEC?

Mr. BEHNAM. Historically and presently, it has always been very positive. I speak regularly with Chair Gensler, and I know my staff does as well. We have to work together. We are building off a relationship that is decades old. In order for us to serve customers, taxpayers, and market participants, we have to work together well, and I think we are doing a good job at that.

Senator TUBERVILLE. I think one of our biggest protections in this area is going to be education, people really understand what is going on, because as I said earlier a lot of us are behind. You know? It is pretty complicated, obviously.

I am starting to see digital ATM machines in my State. What are your thoughts on that?

Mr. BEHNAM. Senator—and I do want to commend the Alabama Security Commission. You know, they have been very forward thinking and very thoughtful about, obviously, at the State level, protecting customers. We have worked very closely with them, so I appreciate that relationship.

There are a lot of things emerging. I have seen the same sort of ATM machines that you are pointing out, and yes, this concerns me. I think on the one hand we have to let individuals make choices, but I think collectively, as policymakers, we have to make sure that the individuals are informed, they are informed with facts, and that they can make the most informed decisions about what they are doing with their capital and how they are allocating it.

That is—what concerns me today is that we are not doing that right now because this market is operating in the shadows. We do our best at the CFTC to put advisories and customer alerts on our website, but it is simply not enough. We have to leverage States and work with their individuals who are really boots on the ground, to get individuals at, you know, VFWs, town halls, churches, schools, to get information, to have access to information, so that when they go to that ATM they know what they are doing and they can make the most informed decision. We are not there right now, but this bill takes a step to accomplish that.

Senator TUBERVILLE. Thank you. I am like Senator Gillibrand. People think this is a phase. This is not a phase. This is not going away. You are at the head of this, and we hope we can help you in any way. We are behind you 100 percent, and we just want to continue to be educated and market it the right way and regulate it. I think that is going to be a big key.

Thank you, Madam Chair.

Mr. BEHNAM. Thank you.

Chairwoman STABENOW. Well, thank you, Senator, and I agree. That is why we have the legislation. It is our job to make sure that those things are in place.

Senator Smith and then Senator Fischer.

Senator SMITH. Great. Thank you, Madam Chair and Ranking Member, and I want to just let you know I appreciate the work that you are doing with this bill to address the regulatory gaps that we have, particularly when we are thinking about digital commodities.

You know, it is interesting. Along with my colleagues, Senator Brown and Senator Warnock, I have the privilege of sitting on both this Committee and the Banking, Housing Committee. In fact, Chair Gensler is testifying in front of the Banking Committee as we speak, which is where I am going to be going next, not on this topic specifically.

I do think that this gives us a unique view, an important view, not only of the spot and derivatives markets for digital asset commodities but also the market overall. I would like to dive in a little bit on how this can work together.

I appreciate what you are saying, Chair Behnam, about the importance of having a comprehensive approach and also the fact that your Agency has worked with SEC together for many, many years. Could you just talk in a little bit more detail about how you see—with this bill and the needs for regulation and other capacities around digital assets, how you see that working together, coming together?

Mr. BEHNAM. Well, Senator, it is a good question. I think as I was pointing out to Senator Gillibrand, this bill is a huge step in the right direction, but there are going to be—there are missing components. There are other parts that we need to address around stablecoins, around the securities law, around payments and settlement and what not.

I think it creates clarity around the commodity markets and around the definition of what a digital commodity is, and just by virtue of that—and I think the definition is drafted quite well because it, you know, very clearly talks about a digital form of per-

sonal property, it excludes physical commodities, it excludes securities, and it excludes dollars or, essentially, a digital dollar, something that is backed by the U.S. Government. With that framework, we then have at the CFTC a sense of what constitutes a digital commodity.

In the inverse, you know, my colleagues across town or at prudential regulators could then use this bill as a marker for how the rest of the patchwork or the puzzle may look, and I think that is extremely helpful in the process of identifying what is a commodity, what is a security, what is a stablecoin, and how everything should fit within each different regulator that oversees financial markets.

Senator SMITH. What would be—just as an example, what would be the implications of having—you know, you have one platform. You have digital assets being offered on that platform, side by side, that are regulated under different regimes. Are there implications to that? Is that something we should be thinking about?

Mr. BEHNAM. Well, you know, in many respects—so you would probably have dually registered platforms. In a case where you had a security token and a commodity token, the trading platform would be regulated by both the CFTC and the SEC.

Depending on how the platform wanted to list the contracts, they would either be siloed within a commodities space, a securities space; you could potentially segregate the customer accounts and the custodian sort of services that you are providing to the client. Alternatively, you could have a single account, an omnibus account, for a client that services both the securities side and commodities side.

It may sound complicated, but with the efficiencies of technology and, quite frankly, the experience we have had in the swaps market—we have security swaps. We have commodity swaps. We have security futures. We have commodity futures. We have done this before. We have dual registrants, from investment advisors to broker-dealers and futures commission merchants.

We are not reinventing the wheel. There is a level of complexity we can certainly figure out with—in partnership with the private sector but, of course, with our sister agency to ensure that we are doing it in the most efficient way but, ultimately, the most productive way from a customer protection and market resilience perspective.

Senator SMITH. Your view is that while there might be some complexity to that that is complexity that can be addressed through good coordination and—good coordination between the agencies.

Mr. BEHNAM. Absolutely.

Senator SMITH. Yes. As I understand it, the bill takes the regulatory structure for commodities that exists and applies it to digital assets that are being marketed to retail investors. Could you talk about—yet, your Agency does not have—does not work directly with retail investors. Could you talk about how that framework will apply to retail investors and how you can address how that works for retail investors?

Mr. BEHNAM. Yes, you are absolutely right, Senator, that the majority of our investors, our customers, our market participants are

institutional. We do have a fair amount of retail participation in our market. We work closely with the National Futures Association, which is an SRO, which is contemplated in this bill, to make sure that we have boots on the ground, that we have appropriate disclosures. We have the core principles, which I have mentioned a couple times, about you know, preventing contracts that are readily susceptible to manipulation, protecting customers, making sure that information is getting to customers through disclosures.

I would say that, as you sit on both the Banking and this Committee, this distinction needs to be drawn, and I have said this before. Commodities have a very different disclosure regime and requirement than a security does. Security requirements require, in good faith, bridging of information gaps between an issuer of a security and an investor. That is because there is management. There is a centralized management. There is a financial statement. Any of these things that we see in reports from the SEC, quarterly, annual, or period. That does not exist on the commodities side.

What we have to do is protect markets, make sure markets remain transparent, fair, orderly, and that customers understand market-based risk as they decide how to allocate capital.

Senator SMITH. Thank you very much.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you.

Senator FISCHER.

Senator FISCHER. Thank you, Madam Chair.

We have seen reports that the SEC Chairman Gensler has said he is working with the CFTC on a formal memorandum of understanding which would create one rulebook between regulators for the regulation of digital assets and digital asset exchanges. My question to you, Mr. Chairman: How important is it that we have that one notebook between all the regulators?

Mr. BEHNAM. Senator, thank you. It is a great question. I think it is important that we have a mutual understanding between regulators, especially the two market regulators, us and the SEC, about how we are going to collectively regulate markets. Regardless of the type of market or the financial asset, there always is an intersection between the two regulators because you are going to have dually registered entities or individuals. It is very important that we have this mutual understanding in the form of an MOU or just a handshake agreement in certain times because we need to know what and how we are going to contemplate these different financial assets within the context of the law.

That said—

Senator FISCHER. Are you working on an MOU right now?

Mr. BEHNAM. Currently, we are not working on an MOU. I know, you know, Chairman Gensler and I talk frequently. We understand what may occur within the context of the securities laws if entities were to be registered as securities platforms or securities ICOs, and if there is a situation where we need to work on an MOU-type document I certainly would be open to it and willing to make sure that it works for market participants.

Senator FISCHER. Have you reached out at this point to try and do that?

Mr. BEHNAM. I—

Senator FISCHER. Does Congress have to provide guidance on that? Are you able to do that on your own?

Mr. BEHNAM. No. Yes, we are able to do that. We have several MOUs between the two agencies on enforcement matters or other matters of mutual interest.

Senator FISCHER. Okay. Nebraska passed a law that was introduced by our newest Congressman, Congressman Mike Flood, when he was in the Nebraska legislature, and it allows digital asset depositories to be created, which have allowed State chartered banks in Nebraska to offer services to customers who have those digital assets. Nebraska is just the second State to pass that legislation.

As we see these digital assets grow, questions will continue to be raised about how they should be regulated and the role that State regulators play alongside the Federal regulators, particularly as it relates to protecting and educating investors, as Senator Tuberville was referring to. Can you discuss your views on that relationship between the State regulators and the CFTC, please?

Mr. BEHNAM. Thanks, Senator. I would say, as a former State regulator myself, having State regulators is so important as a matter, and I used this phrase with Senator Tuberville, "boots on the ground." Right? We in Washington do not have the capacity or the resources to have that comprehensive reach across the country, whether it is in Nebraska, California, or any other State. The State regulators play a key role, and that partnership is so critical to make sure that those individuals at the State regulator are touching individuals at the local level, at the county level or the district level.

We have a very close relationship through MOUs, actually, with NASAA, which is essentially a national association of securities regulators. Crypto is top of mind right now, and it has been for several years. I think the bill does a very good job from a markets perspective in preempting States from registering the entities that the bill contemplates, but what it does do is it preserves States' authority over anti fraud, which is a critical authority for States attorney generals to have for bad actors at a local level.

We will continue to use the relationships, the existing relationships we have with State regulators and understand that they play a critical role in making sure that information and disclosure and education is received by local investors but also those protections around fraud are preserved.

Senator FISCHER. Have you had any contact with States at this point in time? Has Nebraska reached out to you or the other States who may be looking at passing similar laws? Have they contacted you at all on this for any kind of guidance?

Mr. BEHNAM. I have spoken with the Alabama State Security Commissioner, in part, because we have known each other for a number of years in my professional capacity and his as well. He is also the president of this association I said, the national association of State securities regulators. He may act as the sort of voice for the larger association and each individual State member. I did speak at the annual fly in they had a few months ago.

I have not heard from Nebraska. I would certainly welcome the opportunity to build a relationship, to talk with them, to learn

what they are doing, and to support them with the resources and the expertise we have.

Senator FISCHER. Okay. Thank you, sir.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator DURBIN.

Senator DURBIN. Thank you, Madam Chairman.

Chairman Behnam, thanks for coming here. Representing the city of Chicago, I am more familiar with the CFTC than some members, and I think you do a great job.

Mr. BEHNAM. Thank you.

Senator DURBIN. In fact, because of your good work, we have been able to establish global leadership in many areas, particularly when it comes to the Mercantile Exchange and the futures market. People trust it. It has a level of integrity that makes a difference. There is global competition, but we seem to do pretty well in that competition. The question is whether or not we can establish the same standard of integrity when it comes to this whole crypto world.

I was surprised in preparing for this to learn that one in five Americans has invested in or traded cryptocurrency. Your testimony notes the fact that a significant number of these investors are lower-income individuals who took quite a hit recently. It is no wonder that the average American is interested in this. After all, respected investment advisors like Matt Damon and Larry David have told them this is a good investment, everybody is doing it, and everybody is winning.

We know the reality, and you pointed out the reality. That is not the case when we look at the record. Over the last year, the value of the crypto market has fallen below \$1 trillion, losing about 70 percent of its value. Bitcoin alone has seen its value plummet below \$20,000 from a peak of \$67,000. In June, Celsius, a crypto platform, suspended customer withdrawals and transfers, filed for bankruptcy. In May, the “stablecoin” Terra collapsed, resulting in a \$300 billion loss across crypto markets; yet, it was marketed as a “stablecoin.”

Do not get me wrong. There is risk in speculation, and it applies to a lot of different circumstances. Lucky for us that cryptocurrencies have not been inextricably tied to our banking system or a \$2 trillion loss would have been felt in a different way.

Now we have companies like Fidelity saying they are going to include Bitcoins and cryptocurrency in retirement accounts. If we went through another meltdown as we did this last year with retirement accounts and life savings at stake, it would have much greater impact.

I would say my concern is this. I am glad we are talking about regulation. We have to have it. I worry that we are doing enough to salve our conscience, that we are doing something, but not doing enough to put up guardrails and stop signs on the “Crypto Express.”

This term “regulatory certainty,” I have run into that before as a term, that if we do not provide regulatory certainty to this industry they will leave. They will go to Malta or El Salvador or Portugal or somewhere. Really? Do you think that is a possibility?

Mr. BEHNAM. It is, but it is not a concern of mine. Senator, I appreciate the point. It is what I said to Senator Ernst. We in the U.S. have to balance our approach to regulation, and we have done this very well for decades. We have to be deliberate. We have to be cautious. We have to be patient and instill the principles of regulatory foundations that have made our capital markets, our derivatives markets, including the Board of Trade, the best in the world.

I do think coupled with that caution and deliberation we do need to move forward. We need to engage. We need to understand that this is a new technology that is disrupting financial markets.

Senator DURBIN. How much money does CFTC need to regulate cryptocurrency?

Mr. BEHNAM. Senator, I think about a year ago—I think it was my November hearing before this Committee. It could have been February, and I apologize for not knowing specifically—I said \$100 million. I used that number because that was approximately the number that we received over the past few years since the financial crisis and what our funding level went prior to the financial crisis to after the financial crisis.

In an effort to get a more specific number, I had my staff work on this exercise specifically for a number of months. We have come up with \$112 million over the first three years, divided not equally. We would be weighted on the front end of the three-years. This would be for rulemaking. This would be for hiring. This would be for training, expertise. This would be with outreach.

Senator DURBIN. What is your current annual budget?

Mr. BEHNAM. Current annual budget is \$320 million.

Senator DURBIN. You are talking about a substantial infusion through the user fee of \$112 million.

Mr. BEHNAM. \$112 million over three years. The first year would be about \$40 million.

Senator DURBIN. Really?

Mr. BEHNAM. Yes. We did calculations based on the rulemakings and some of the reports that are due and then the engagement with the industry.

Senator DURBIN. Well, I would like to talk to you about that because I honestly believe that you are lowballing it, that if you are serious about regulation of an industry where one in five Americans now has invested and had some risk, and we are now getting into retirement accounts—

Mr. BEHNAM. Yes.

Senator DURBIN [continuing]. and 401(k)'s and the like, and the major brokers like Fidelity and others are starting to include this in their plan, there is a lot more exposure and a lot more risk than just a year or two ago.

Mr. BEHNAM. Senator, I welcome the conversation. We did sort of off-the-cuff analysis based on examinations of who is registered with FinCEN and just doing a survey of markets. This is certainly not a hard number, and you may be right. I certainly would welcome an upward movement of that funding level, but I did want to come back with some evidence to support a number as opposed to just saying \$100 million, which is what I did last time.

Time will tell, and I do not know how the market will either consolidate or grow after this bill would be passed. It is hard for me to give an exact number, but I just wanted to do my best to defend a number that I am sharing with the Committee.

Senator DURBIN. This number, whatever it may be, is going to be generated from the crypto world in a user fee.

Mr. BEHNAM. Exactly.

Senator DURBIN. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator Thune and then Senator Booker.

Senator THUNE. Thank you, Chairwoman Stabenow and Ranking Member Boozman, for holding today's legislative hearing to consider the Digital Commodities Consumer Protection Act. I also want to thank both of you for your leadership on this legislation and on the responsible regulation of digital commodities.

Technology continues to transform digital commodities, and it is critical the Federal Government has the proper tools to regulate this growing market and to provide certainty when it comes to digital commodity platforms, which is why I am an original co-sponsor of the bill that we are considering today. It would clarify the regulatory uncertainty surrounding cryptocurrencies and give the CFTC explicit authority to establish rules and regulations to oversee digital commodities and establish guardrails for the market, which I think we all agree needs to happen.

I want to thank all the witnesses who are here today, for your input. I look forward to working with my colleagues on this Committee to advance what I think is very important legislation.

Mr. Chairman, in your testimony, you highlighted the regulatory role CFTC has played over the digital asset commodity market in recent years. Could you sort of walk us through—and I do not have a lot of time—fairly quickly through CFTC's experience and successes in regulating digital commodities?

Mr. BEHNAM. Thank you, Senator. Yes, we have been overseeing this market through mostly an enforcement mechanism since 2014, utilizing our fraud and manipulation authority. We have brought over 60 enforcement cases, some as large as \$1.7 billion, \$100 million, \$40 million, again, some of the largest incumbent crypto firms. We, since 2017, have delisted futures contracts relating to digital assets, Bitcoin, Ether, and others. We are continuing to see even in the past few years native or incumbent crypto firms purchasing CFTC-regulated entities or licensed entities.

The move is swift. It is quick. It is forcing us to learn, to up our game, and to leverage our expertise, and I think that puts us in a good position to implement this bill and oversee the market.

Senator THUNE. Given that, just what you shared, the CFTC's recent enforcement actions and efforts, what is your response to concerns that the CFTC is not equipped to play the lead regulatory role for digital commodities?

Mr. BEHNAM. Well, I do not think that statement is really backed by facts, I think, if anyone took some time to look at what we have done over the past few years going back to 2014. I shared with Chairwoman Stabenow some of our enforcement statistics at large. We are one of the toughest cops on the beat across the globe. We have expertise because of our experience with this technology. I

think with the user fee that is included within the bill we would be able to leverage that authority, hire the right individuals, train existing individuals, and really hit the ground running, and do what we need it to do.

Senator THUNE. Let me ask again quickly, and I know that you have probably addressed this issue already. Where would you say the United States ranks globally in terms of digital asset and blockchain technology, and if enacted, what effect would this legislation have on U.S. competitiveness in this space?

Mr. BEHNAM. Senator, you know, naturally, because of the size of our markets, the capital available through venture capital and fundraising and private equity, you know, we are always at the top, but I think there are other jurisdictions that have taken a very aggressive approach to this technology, hoping to sort of capture the innovators within their jurisdiction.

As Senator Durbin pointed out, I think that comes with risks, and that is not something I support moving or arbitraging our regulatory system. I think we do it very well here in the U.S., of moving cautiously and deliberately, but as I said, we have to move forward.

I do think this bill, if passed, would create the authority, give regulatory certainty, and I think give incentives to innovators and entrepreneurs to stay here in the U.S. and leverage the venture capital, the private equity, and the legal infrastructure, the enforceability of the law, which really is one of the most important things of all within global jurisdictions, and elevate our status within other countries regarding this technology.

Senator THUNE. One of the objectives of the bill—and we all talk about this—is how essential it is that there be strong, robust consumer protections to protect customers in the digital asset marketplace from fraud and manipulation. Can you kind of just speak to how this legislation would help build upon the CFTC's already robust customer protection and enforcement actions?

Mr. BEHNAM. Yes, Senator. It is a great question, but it really is built on multiple layers. It is the core principles which is reporting and recordkeeping. It is conflicts of interest. It is cybersecurity through system safeguards. It is prohibition of listing contracts that are susceptible to manipulation. It is this baseline, foundational level that pushes us toward writing more prescriptive rules and then enforcing those rules through inspections, examinations, investigations, and then ultimately, if someone breaks the law, keeping them accountable and making sure that we are deterring future actions.

It is a series. It is a layered customer protection regime. It is largely replicating what we do now and what has been very successful for decades, and I have no doubt that this regime that we do in traditional derivatives could be applied as equally and as successfully in digital assets.

Senator THUNE. All right. Thank you, Madam Chair. My time is expired.

Thank you, Mr. Chairman.

Chairwoman STABENOW. Thank you very much.

Senator BOOKER.

Senator BOOKER. Madam Chairwoman, Ranking Member, I am really grateful for your leadership in this space, and I am honored to be a partner on what I think is an important bill.

I just want to say, first and foremost, it is good to see you, another bald Jersey boy doing okay.

Just really quickly, I am really optimistic, not necessarily about the coins and the commodities, but the technology underlying all of this opens up a whole new realm of possibility for Web3 when it comes to blockchain.

We have some real issues and concerns right now that I think this bill addresses. We have seen scams being perpetrated by outright fraudsters, taking advantage of eager investors. We have seen risky projects with inadequate disclosures, not giving consumers chances to accurately evaluate the assets they are purchasing with their hard-earned money. We have seen these advertisements, which some of my colleagues have already talked about, promising guaranteed profits and almost seeming like hucksters as they put forward.

We do not have significant guardrails right now. We do not have transparency that we need right now. We need better regulations, and so there is only three things to do as Congress.

We can do nothing, which would allow a lot of this to continue. There are some people that want to create rules that basically make it illegal or impossible for everyday people to access tokens, strangling a market.

We could undermine the strong securities laws and customer protections that already exist in the financial sector, opening floodgates that would enrich a select few, creating chaos and uncertainty for businesses and regular people alike.

Or, we can do what this bill does, which is dig in with the goal of allowing this space to thrive for innovation to occur but also give solid protections that would curb scams, frauds, increase transparency, accountability, and increase the safety and the strength of our financial system. That is why this bill, to me, is so utterly important, and doing nothing is unacceptable.

I just want you to address some of the criticisms I hear out there specifically about the CFTC. Some people say that this is just going to be some kind of “light touch” regulation in the crypto market without the real capacity to hold bad actors accountable and bring stability. You know, Chairman, what do you have to say to those who think the CFTC, with this legislation, would bring a regulatory touch that would be too light and how you as Chair will work with Chairman Gensler and other commissioners of the SEC to make sure that there are strong regulatory provisions in place?

Mr. BEHNAM. Thanks, Senator. You know, I said this to the Chairwoman; I could unequivocally say, you know, our rules are based on customer protections.

The data, if someone took time, who is drawing this narrative that we are weak or “light touch,” if they took time to see what the CFTC does, if they took time to examine how our rules are structured and what they are based on, and the success of the markets, which Senator Durbin was pointing out, they would know that we are one of the toughest cops on the beat in the world, and we are known for that. Our enforcement statistics speak for themselves,

returning six times what our budget is every year for the past 10 years.

These are the individuals within the Agency that—these are sophisticated contracts, too, whether it is swaps, futures, or options. I mentioned a case against a commodity trader: very, very sophisticated trading strategies, manipulative trading strategies to create some arbitrage or some net benefit between cash and futures markets.

Senator BOOKER. Just for the sake of time, with the extra resources as well, you would be able to do even more significant enforcement as well.

I just want to shift to another big criticism—

Mr. BEHNAM. Sure. Yes.

Senator BOOKER [continuing]. that I hear a lot about the energy consumption—

Mr. BEHNAM. Yes.

Senator BOOKER [continuing]. involved in crypto even though some people are moving away from proof of work. I just want you to touch on that real quick about—obviously, President Biden has tried to address this. What would you be able to do as a result of this legislation even more so to deal with this?

Mr. BEHNAM. Thanks, Senator. You know, as a first starting point, the bill is very effective in requiring us to write a report. It requires us to consult and work with other regulators within the U.S. Government, specifically those who have expertise in physical energy markets, do tooth-and-nail examination of what the energy consumption is, how it relates to the output and the utility of the technology, and then come back to this Committee in 6 months with a report of what our recommendations are to either create a disclosure regime or incentives for folks, as you mentioned, indirectly to move away from proof of work, to move to proof of stake or other methods to reduce carbon emission consumption.

Senator BOOKER. The last thing I just want to really cover really quickly with you is some part of the bill, and I have been so grateful to the Chairwoman for allowing me to help to shape this. I am concerned about equity issues that are out there, the disparities in wealth that we have in this country that are persisting. Women, African Americans are overrepresented right now and participating in the world of digital assets, which is concerning given the lack of regulation that we are looking. It also is something that I think could actually help to create more opportunity for democratization of wealth in our Nation.

This bill directs the CFTC to examine racial, ethnic, and gender demographics of customers participating in the digital markets and to use that information to inform your rulemaking. Do you want to comment on that provision of the bill real quick for me?

Mr. BEHNAM. Senator, I am extremely excited about it, and I am excited—you know, I am very proud that I created the first Chief Diversity Officer at the CFTC a few months ago. We have moved the Office of Customer Education within our Public Affairs Office. We now have an infrastructure to leverage what the bill requires us to do to have a wider outreach to communities, lower-income communities, historically marginalized communities, and get boots on the ground to educate, to inform, to do the outreach so that we

understand where these pockets of speculative investors are, where these individuals are, who are risking capital without being informed about the risks associated with this technology.

That is going to be a priority of mine. I certainly look forward to working with you, but I think we are in a good place right now with some actions that have been taken in the past year. This bill's authority, coupled with the user fee, should really springboard us to get information out to consumers.

Senator BOOKER. Thank you. Damn it, you make Jersey proud. You are not quite Bon Jovi-Bruce level, man, but you are climbing the hill.

I am not going to be able to stay for the next panel because I have got sickle cell work to do. I just want to say, thank you, Chairwoman. The next panel does not have quite the Jersey authenticity, but there are some really good folks—

Chairwoman STABENOW. Really good.

Senator BOOKER [continuing]. and I hope great conversations with you all here. Thanks.

Chairwoman STABENOW. Thank you so much for your input in general on the bill but specifically on those provisions that are very important as we go forward to evaluate impact. Thank you very much for all of your leadership.

Senator BOOKER. Thank you.

Chairwoman STABENOW. Senator Hoeven.

Senator HOEVEN. Thank you, Madam Chairman. I appreciate it very much.

Chairman Behnam, thanks for being here. Appreciate it. Now you are going to be regulating in the spot market versus futures. Can you tell me what your thoughts are in regard to that? Is that going to make a difference for you in a significant way, and does it portend other future regulation in the spot market?

Mr. BEHNAM. Senator, thanks for the question. I do not think it portends future regulation in the cash market or the spot market. I think, as I have said a few times, this particular commodity market is unique as it relates to traditional agricultural, energy, or metal commodity markets because it is highly speculative and it is retail-oriented, and that is why I think we have a very important role to play in this specific commodity market as compared to some more traditional commodity markets?

Senator HOEVEN. Thank you. How should this work? I mean, there is going to be multiple agencies now that have a role. What should that look like? Not just your role, but how do you interface with others so we do not end up with one of these bureaucratic mazes that nobody can figure out what is going on or who is responsible for what? Which is not only difficult for the providers but for the consumers.

Mr. BEHNAM. Sure.

Senator HOEVEN. What should it look like in your opinion?

Mr. BEHNAM. Senator, I think it needs to look like what we do now in traditional financial markets because—and I will just use our sister market regulator agency, the SEC, as an example, but we have relationships with the banking regulators because we have dually registered entities as well. We have been forced to work together for the better part of 50 years with them because the reg-

istrants, the market participants have access and intersections with both our markets. They are dually registered as advisors for, you know, commodity pools or investment pools. They are dually registered as broker-dealers or futures commission merchants.

We have the framework and the foundation to do exactly what we have been doing for decades in this space, and I have no doubt that we will be able to do it successfully. There is good will, good faith. We can get to it. I think ultimately the reason why I think it is going to work well and the reason why I think it has worked well is most clearly demonstrated in the fact that the U.S. has the strongest, deepest, largest capital markets and derivatives markets. If we did not do our job well from a regulatory perspective in matching these differences, we would not have those statistics and that data to support it.

Senator HOEVEN. Are you interfacing now with those other agencies that will be involved in the oversight regulatory function, and is there a blueprint as to how that interface will work? Are there other bills with other committees of jurisdiction that you are coordinating with this legislation?

Mr. BEHNAM. Senator, I am mostly working—I have the most contact with the SEC and Chairman Gensler because of the relationship we have through our markets.

I work closely with all other Federal regulators. Both from a professional level, it is important to do it, but through the President's Working Group and the Financial Stability Oversight Council. We are working on several projects focused on the digital asset area. President Biden's EO has forced us, thankfully, to work on these issues specifically. We will continue to do it.

We do not have any set structure necessarily now because there is a little bit of a vacuum in terms of what regulation might look like. We have seen several bills, most notably on stablecoin, some on cash markets.

But this, as I said to Senator Gillibrand, is a step in the right direction. It needs to be moved as quickly as possible, one piece of the puzzle, but I think as that puzzle becomes more clear and we see what the landscape is going to be then we will be able to credibly move forward as regulators and lay out the plan of how we are going to work together and how we are going to put this out in an effective way.

Senator HOEVEN. Who, legislatively, makes sure that that package of legislation pulling in, you know, all these agencies actually works?

Mr. BEHNAM. Senator—

Senator HOEVEN. Who does that versus, you know, various committees of jurisdiction, various agencies each kind of doing their thing?

Mr. BEHNAM. I would say the best blueprint to look at now, the most recent one, is Dodd-Frank and after the financial crisis. This Committee played the most important and the sole role in Title VII, which was the derivatives title, but there were multiple titles to the Dodd-Frank bill which affected several financial regulators which we work currently with.

Senator HOEVEN. Yes, well, not everybody is a fan of Dodd-Frank or the CFPB, so I am not sure.

Mr. BEHNAM. I appreciate that, but it has been still a blueprint of how Congress passes the law, multiple jurisdictions, multiple agencies, and then we need to work together to implement the law in an effective way with appropriate oversight on a continual basis.

Senator HOEVEN. Right. I do think that coordination is important to get a—particularly with the complexity of cryptocurrency. You know? I mean, we are all still trying to understand it. Right?

Mr. BEHNAM. Agree.

Senator HOEVEN. One other question. I know the MERC is concerned about it, but you know, you have not used the user fee concept before. Obviously, that is something we are very familiar with because of FDA. You know, I serve on Ag Appropriations, so we deal with that all the time. It has good aspects, and it has some that are not as good.

What is your thought on now for the first time actually using that user fee concept?

Mr. BEHNAM. I think, structurally, it should not be very difficult to implement. I think it is critically important that the user fee is structured in a way where we have to work with appropriators to set the level of what we can assess in terms of fees. We will not be able to just assess fees individual or independently. We have to work in coordination, which I think is consistent with most user fees assessed right now.

Overall, Senator, I would say it is critically important. We will not be able to do the job the bill requires us to do unless we have the resources to do it.

Senator HOEVEN. Thank you. Appreciate it.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much. Seeing no further questions from colleagues for Chairman Behnam, we want to thank you very much for joining us today. Look forward to continuing to work with you.

We will take a moment to bring up our witnesses, our second panel. We are so pleased that all of you are with us.

I will indicate that we will see a vote starting shortly, which will just mean you will see us coming and going. It does not mean that Senator Boozman does not like what you are saying or that I do not like what you are saying. We will be going back and forth, and probably have other colleagues as well, so I do not believe that has started yet.

Welcome. Appreciate all of you taking the time to be with us, and I will begin our introductions.

First, I want to welcome Todd Phillips, the Director of Financial Regulation and Corporate Governance at the Center for American Progress, is experienced in both Congress and the executive branch, having served as an attorney for the Federal Deposit Insurance Corporation and the Administrative Conference of the United States and on the staff of the Oversight and Reform Committee of the U.S. House of Representatives, so we welcome you.

Sheila Warren is the CEO of the Crypto Council for Innovation, a digital asset trade association. Prior to joining CCI, Ms. Warren served as the World Economic Forum's Deputy Global Head of Data, Blockchain, and Digital Assets, with a focus on making the

crypto industry more inclusive, equitable, and sustainable, so thank you so much for being with us.

Christine Parker is Vice President and Deputy General Counsel for Coinbase, the largest U.S.-based cryptocurrency exchange. Ms. Parker recently joined Coinbase from Reed Smith, where she was a partner in the Fintech Practice Group and before that practiced at Sullivan & Cromwell, and she is no stranger to Congress, having worked as counsel to Senator Schumer. We will not hold that against you. Welcome.

Denelle Dixon is the CEO of the Stellar Development Foundation, a nonprofit that seeks to create equitable access to global financial systems. Before joining Stellar, Ms. Dixon was the COO of Mozilla and General Counsel and Legal Advisor in private equity and technology.

I am now going to turn to Senator Boozman for our last introduction.

Senator BOOZMAN. Thank you, Madam Chair. Our next bipartisan witness is Dr. Heath Tarbert. Dr. Tarbert is the Chief Legal Officer of Citadel Securities, where he is responsible for the global legal compliance, surveillance, regulatory affairs, and corporate governance functions for one of the world's leading market makers.

Dr. Tarbert served as the 14th Chair and Chief Executive of the Commodity Futures Trading Commission and Vice Chairman of the International Organization of Securities Commissions. During his tenure, the CFTC advanced 41 final rules and 21 proposals, 90 percent of them on a bipartisan basis. The CFTC also set numerous records in enforcement and more than 20 actions supporting liquidity and orderly trading.

Before joining the CFTC, Dr. Tarbert was Assistant Secretary of Treasury for International Markets and served as a Supreme Court clerk, Associate White House Counsel, and Special Counsel to the Senate Banking Committee.

Thank you for joining us, and thank you for all of the witnesses. This is just an outstanding panel, so thank you, Madam Chair.

Chairwoman STABENOW. Yes, thank you. Yes. Absolutely, we are so pleased you are all here, and we will recognize each of our witnesses for 5 minutes. We welcome any other information you would like to give to the Committee as well, in writing.

We will begin with Mr. Phillips. Welcome.

STATEMENT OF TODD PHILLIPS, DIRECTOR, FINANCIAL REGULATION AND CORPORATE GOVERNANCE, CENTER FOR AMERICAN PROGRESS, WASHINGTON, D.C.

Mr. PHILLIPS. Thank you. Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the opportunity to discuss the Digital Commodities Consumer Protection Act. I applaud your collaboration and the work of your staff in its development and am pleased to support this bipartisan bill which would provide much-needed regulatory oversight of the digital commodities markets.

In recent years, crypto assets have grown significantly in usage and prominence in the economy and culture. The expansion can likely be explained not only by the innovativeness of the underlying technology but also a general hype and narrative that crypto is rev-

olutionizing the financial system. However, practices such as market manipulation, “rug pulls,” fraud, and outright theft plague crypto markets. According to one estimate \$2.9 billion worth of crypto was stolen in the first 4 months of 2022 alone. These types of problems pose significant risks to retail investors who, in some cases, invest their life savings into crypto and might reasonably assume that they are protected from these threats by the routine Federal regulations that apply to other financial assets.

One reason these harms occur is because there is a lack of Federal regulation for crypto commodities. Crypto assets are largely either securities or commodities. If a token is a security a plethora of essential investor protections apply. If it is a commodity, the CFTC only has limited anti-fraud and manipulation authority over it. Because the crypto industry maintains that most crypto assets are commodities, issuers, exchanges, and depositories are largely not enforcing the securities laws’ guardrails to protect retail investors.

The question of whether a crypto asset is a security or a commodity is a facts-and-circumstances determination that is appropriately left to the courts. I expect many crypto assets to be deemed securities and the platforms that list them to be subject to SEC rules. However, at least one crypto asset, Bitcoin, is a commodity, meaning that the securities laws will not apply. Today, Bitcoin accounts for nearly 40 percent of the crypto market by volume, and we lack a regulatory regime for it.

Further, although some courts have applied legal tests to declare specific crypto assets as securities, the case law is in its infancy. If courts deem some or most crypto assets commodities, Federal regulators would be hamstrung in their ability to regulate them.

Under these circumstances, the Digital Commodities Consumer Protection Act provides a much-needed and right-sized regulatory framework for decentralized digital commodities and grants the CFTC the desperately needed authority to oversee these markets. Here are some of the bill’s most important provisions:

First, while the DCCPA grants the CFTC regulatory authority over digital commodities, the bill excludes from the definition anything that is a security. Existing securities laws would appropriately continue applying to crypto assets deemed securities with oversight from the SEC.

Second, the DCCPA would implement consumer protections for digital commodities, including prohibitions from trading platforms listing assets that are readily susceptible to manipulation, from engaging in fraudulent, deceptive, or manipulative practices, from trading against their clients or insider trading, and more. These are protections that currently apply to the securities markets.

Further, whereas investors in securities have ready access to a variety of written disclosures, investors in crypto commodities are largely limited to scouring projects’ discord servers for inconsistent and unverifiable information. To address the lack of consolidated disclosures, the DCCPA would require crypto commodity platforms to disclose conspicuous and plain language information about listed assets to customers.

The DCCPA would also protect investors by requiring platforms to hold customer assets in segregated funds, not comingled with

the platforms' property, and would update the bankruptcy code to better protect platforms' clients.

Third, the DCCPA would require the CFTC to help address the effects of crypto on both climate change and financial inclusion. The bill would require the CFTC to examine the energy consumption used in connection with the most widely traded crypto commodities and publish those estimates. This information could help incentivize token issuers to migrate to more energy efficient blockchains and miners to utilize cleaner electricity as investors migrate their capital following the environmental impacts of their investments.

The bill also would require the CFTC to study the participation of historically underserved communities in crypto markets and use this information to inform its customer protection regulations.

Although my written testimony contains several suggestions for amendments, the DCCPA is a critical step in the right direction, and I applaud the Chair, Ranking Member, and Senators Booker and Thune for developing this bill. I highly support the Digital Commodities Consumer Protection Act, and I encourage this Committee and Congress to approve this bipartisan bill.

Thank you. I am happy to answer any questions.

[The prepared statement of Mr. Phillips can be found on page 53 in the appendix.]

Chairwoman STABENOW. Thank you so much.

We will now hear from Ms. Warren. Welcome.

STATEMENT OF SHEILA WARREN, CHIEF EXECUTIVE OFFICER, CRYPTO COUNCIL FOR INNOVATION, SAN FRANCISCO, CA

Ms. WARREN. Thank you. Chairwoman Stabenow, Ranking Member Boozman, members of the Committee, thank you for the opportunity to testify today on both the tremendous benefits and opportunities associated with the adoption of digital assets in the United States. I am grateful for the engagement leadership shown by so many on this Committee.

There is a pressing need for regulatory clarity that promotes innovation while protecting consumers. The legislation being considered today can provide some of the certainty needed to help spur international economic growth, create jobs, improve financial inclusion, and enhance privacy and security.

I am pleased to represent the Crypto Council, a global alliance of industry leaders across digital assets and the Web3 space. We use an evidence-based approach to support institutions and leaders worldwide who are shaping and encouraging the responsible regulation of this innovation.

Over the past two decades, my time as an attorney, entrepreneur, product builder, and NGO executive has focused on the intersection of technology, law, diversity and inclusion, civil rights, and Web3. Over the 6 years, I have worked across 16 countries of leaders to advance the responsible and inclusive adoption of this new technology.

Now I see crypto as this generation's best chance of addressing inequity in current financial and technical systems. Crypto can provide a more equal playing field for people in communities that do

not have meaningful access to these systems. As we shift to a more ownership-based global digital economy, the building of an open and transparent regulatory framework is crucial. The DCCPA is a pivotal step in achieving the clarity and oversight that are greatly needed, and I applaud this Committee for its bipartisan work on this legislation.

Crypto improves efficiency and accessibility, reduces costs, and removes frictions from financial transactions. Cross-border payments underpinned by blockchains could save about four billion U.S. dollars a year. For example, remittances comprise a \$630 billion market globally, with high fees of 6 percent according to the World Bank. By contrast, crypto service providers can process remittance payments with fees of one to three percent, a significant cost savings to consumers.

Crypto also represents an unprecedented opportunity to increase financial equity. A Federal Reserve study found that nearly 20 percent of Americans have neither access to a bank account nor adequate access to financial services through other means, and this problem is significantly higher among those who are low-income, less educated, or racial minorities. This is, in part, because these groups often do not trust traditional banks, as a recent FDIC survey found. By contrast, a 2021 Morning Consult poll found that in the United States 37 percent of the underbanked population and 12 percent of people without access to financial services reported owning crypto currency. An ownership-based model is key to providing meaningful opportunities to these historically excluded populations.

In the case of foreign aid, within days of the invasion of Ukraine, crypto was a catalyst and bridge to crucial financial support. Roughly \$100 million in crypto donations enabled purchases of medical supplies and essentials before the bulk of foreign aid could arrive.

The reality is that crypto is global by nature. Simply put, other countries are not waiting for the United States to act. The European Union recently came to a landmark political agreement on their Markets in Crypto Assets package. The United Kingdom has set out its plan “to make the UK a global crypto asset technology hub.” South Korea’s Digital Asset Basic Act is set to be in shape by the first half of 2023. It is clear that China is already poised to leverage its Digital Yuan as a tool to achieve its foreign policy goals in emerging markets and beyond.

Relatedly, forward-looking regulation is paramount to national security. Financial services have always represented an important lever for the U.S. Government, and risks will be heightened if U.S. companies become less predominant in this space. Proactive policymaking now is critical to maintain a competitive position.

Of course, in an industry this complex, details are important. It will be critical to thoroughly study things like decentralized finance, or DeFi, prior to including them in formal policymaking. It will also be equally important that the SEC, as we have heard, act as a regulatory partner to the CFTC and that the question, what is a security, is definitively answered through the appropriate legislative process.

I was particularly excited to see the report on historically underserved communities and the energy reports included in this pro-

posal. I believe the actual facts that these reports surface will show that crypto can be a tool to support and impact critical policy goals in these spaces.

Thank you again for the opportunity to discuss these important questions. I look forward to answering your questions.

[The prepared statement of Ms. Warren can be found on page 72 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Ms. Parker, welcome.

STATEMENT OF CHRISTINE PARKER, VICE PRESIDENT AND DEPUTY GENERAL COUNSEL, COINBASE, SAN FRANCISCO, CA

Ms. PARKER. Thank you. Good morning, Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee. Thank you for inviting me to testify about the Digital Commodities Consumer Protection Act and the need for a comprehensive regulatory regime for crypto.

My name is Christine Parker, and I am the Vice President and Deputy General Counsel for Regulatory Legal at Coinbase. Prior to joining Coinbase, I was a lawyer in private practice where I focused on commodities, derivatives, and digital assets. I spent years advising clients on the regulatory and compliance obligations associated with Title VII of Dodd-Frank as well as the Commodity Exchange Act, more generally. I also had the pleasure of working for Senate Majority Leader Chuck Schumer for five years prior to joining a private practice.

I believe that we are at a crossroads when it comes to crypto. The U.S. Government can either create a regulatory framework that embraces the transformative nature of crypto and protect consumers or it can impose an unworkable regulatory framework that will push technological innovation and the jobs of the future overseas, a trend that we are already seeing.

I would caution members who are skeptical about crypto that the second path will lead to the unfortunate reality in which retail U.S. investors will continue to access Web3 but will be forced to do so through unregulated foreign companies that are not obligated to comply with the anti-money laundering consumer protection and safety standards that define U.S. financial markets.

As the largest crypto trading platform in the United States and the only one that is a U.S. public company, we are committed to the first path. That is why we applaud Chairwoman Stabenow, Ranking Member Boozman, and the other co-sponsors for introducing a bill we believe will create a robust framework for the effective regulation of digital assets. I also want to thank the staff of the Committee for their hard work and focus in solving the technological challenges presented in drafting this legislation.

The current regulatory environment for crypto is complex and disjointed. At the Federal level, the government has relied on laws that have not kept up with the technology. At the State level, laws and regulations for digital assets have emerged in recent years with little consistency across jurisdictions.

The bill amends the Commodity Exchange Act to create a much-needed framework for spot markets for digital asset commodities.

The framework would fill an existing gap in Federal oversight and lead to a more consistent consumer protection across the country.

The bill, importantly, draws on the CFTC's existing framework for regulating futures and derivatives, which is comprehensive and well understood. To that point, I note that Coinbase operates a CFTC-regulated DCM, CFTC-regulated exchange, and we are hopefully a few months away from operating our own CFTC-regulated futures commission merchant.

The bill defines digital commodities to include, but critically, not limited to, Bitcoin and Eth. The bill does not, however, cut the Gordian knot as to what is or is not a digital asset security. That is one of the fundamental issues that remains unsolved today. What is a digital asset? Is it a currency, a commodity, a security, all of those, or something entirely different?

At Coinbase, we employ a rigorous listing process to determine if an asset is legal, compliant, and secure before we list it on our platform. Key to that analysis is whether or not the asset has characteristics that would make it a security under U.S. securities laws. We have approved and currently list 219 assets for trading, and we are confident that they are not securities. However, this process is not scalable across the industry, and it forces Coinbase to reject many assets that we might otherwise lawfully be permitted to list.

We believe the bill could be strengthened by further defining digital asset commodities to ensure assets that do not meet the definition of securities are regulated by the CFTC and not by enforcement through the SEC. We urge Congress to draw these distinct lines between the different types of digital assets to ensure they are overseen by the appropriate Federal regulator. Statutory clarity would help existing and new market participants confidently offer new innovations to consumer in a safe and reliable way.

In sum, Coinbase believes the Digital Commodities Consumer Protection Act creates a strong foundation for the regulation of digital assets. We understand the bill will continue to evolve, particularly as the full Senate considers the other issues and agencies that intersect with the regulation of digital assets, and we will continue working with all interested parties to pass a law as soon as possible in this important area.

I look forward to answering your questions.

[The prepared statement of Ms. Parker can be found on page 93 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Dr. Tarbert, welcome.

STATEMENT OF HEATH TARBERT, PH.D., CHIEF LEGAL OFFICER, CITADEL SECURITIES, CHICAGO, IL

Mr. TARBERT. Chairwoman Stabenow, Ranking Member Boozman, and distinguished members of the Committee, thank you for inviting me. I dealt with digital assets as CFTC Chair, and I am here today as Chief Legal Officer of Citadel Securities, one of the world's leading market makers. It is great to be back to support the Committee's historic work on digital commodities.

As I see it, the Digital Commodities Consumer Protection Act achieves three essential goals.

No. 1, it addresses a critical gap in the CFTC's jurisdiction. While I was CFTC Chair, we brought nearly 20 crypto-related enforcement cases to protect market integrity, but we could not write any rules to stop bad behavior before it happened. The CFTC just does not have that authority.

A number of States have attempted to fill the gap, but the patchwork of differing regulatory regimes is simply ill suited for a national market. That has, unfortunately, been demonstrated by the so called "crypto winter." Many of the most vulnerable Americans have suffered massive losses as a result of hacks, bankruptcies, and outright fraud.

This bill addresses that glaring regulatory gap. It would grant the CFTC authority to directly regulate digital commodity trading. That would help these markets grow responsibly. They would have the same kinds of regulatory guardrails that have made our other financial markets the envy of the world.

We at Citadel Securities are proud of our 20-year track record of reducing cost, increasing transparency, improving resilience, and broadening access in markets here and around the world. With rules of the road in place for digital commodities, Citadel Securities and other traditional players are more likely to get off the sidelines and get on the field. They would bring real stability to these markets and replace the bucket shops and boiler rooms.

No. 2, the bill promotes U.S. leadership in digital asset markets. It would help Americans by enhancing customer protection, focusing specifically on abusive trading practices, a lack of transparency, and conflicts of interest. In addition, all platforms would be subject to financial and system safeguard requirements to improve their resilience, and optional self certification of new exchange products would encourage responsible American innovation.

No. 3, this bill is designed to stand the test of time. Let us start with the obvious. This is a bipartisan bill, and history teaches that laws with broad bipartisan support are more likely to weather political change.

Another enduring feature is the bill's appropriate use of principles based regulation. The bill would allow reasonable, yet flexible compliance with core principles.

It would also avoid the loopholes that inevitably come when regulations are too detailed to keep up with markets undergoing rapid change. Relatedly, the bill would supplement the CFTC's new authority with a self-regulatory first line of defense.

Finally, the bill recognizes the important contributions of regulators other than the CFTC. It also will not tie Congress's hands on the many other issues digital assets raise for the U.S. financial system.

All in all, this bill is a huge step forward. At the same time, I think there are at least three ways the bill could be fine-tuned.

First, the Committee should refine the definitions of digital commodity brokers and dealers. This is to avoid sweeping in firms that are not considered broker-dealers in other well-regulated markets.

Second, the bill should have safeguards to protect those who trade digital commodities that have been self-certified or otherwise approved but then are later reclassified as securities.

Third, I recognize that when principles needed fleshing out in the past, the CFTC proactively wrote rules or provided guidance, but I think Congress should make its intent crystal clear that the bill does not grant a license for reactive rulemaking by enforcement.

As the legislation moves ahead, my colleagues and I at Citadel Securities look forward to discussing these and other aspects of the bill. We also look forward to sharing our expertise in improving investor protection, transparency, and market resilience.

Let me end by saying, paradoxically, that 2022 looks a lot like 1922. A hundred years ago, this very Committee helped to create the Grain Futures Act. Passed in September 1922, it established the Grain Futures Commission, an early forerunner of the CFTC. The problem then was strikingly similar to the one now; futures in wheat, corn, and other grains emerged as a truly national financial market, but they were subject to a patchwork of conflicting State laws that failed to protect Americans.

The answer then is the answer now: a robust, yet flexible, regulatory framework that provides clarity and coherence for everyone. I, therefore, applaud the Committee and your staff for advancing this critically important initiative and thank you so much for having me.

[The prepared statement of Mr. Tarbert can be found on page 108 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Ms. Dixon, welcome.

**STATEMENT OF DENELLE DIXON, CHIEF EXECUTIVE OFFICER,
STELLAR DEVELOPMENT FOUNDATION, SAN FRANCISCO, CA**

Ms. DIXON. Good morning, Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee. Thank you for inviting me to testify today. I am so honored to be here, and I look forward to discussing the Digital Commodities Consumer Protection Act.

My name is Denelle Dixon, and I am the CEO and Executive Director of the Stellar Development Foundation. Before I speak about the opportunities that are presented by the DCCPA, I would like to share a bit more about the Stellar Development Foundation and the Stellar Network and, most importantly, the real-world solutions built with this technology.

The Stellar Development Foundation, or SDF, was established alongside the Stellar Network in 2014 with the mission of creating equitable access to the global financial system by using the underlying technology presented by Stellar. The Stellar Network is an open, permissionless, decentralized ledger, or a blockchain network, optimized for payments and asset issuance, particularly useful with stablecoins in payments.

Today, rather than talking about the things that we read about in the press with respect to trading or speculation, I would like to highlight a payment service that was built on Stellar, launched in the dead of the “crypto winter” this summer. In June, MoneyGram, Circle, and a growing number of digital wallets launched a first-of-its-kind global service that enables anyone to convert cash to digital assets without a bank, without a bank account, and without a credit card.

This service utilizes the Stellar blockchain and Circle's USDC coin—it is a stablecoin—to allow cash funding and payout in different currencies all around the world. The Stellar Network provides the digital rails to make payments fast and secure. USDC provides a truly stable digital asset and while MoneyGram provides a global network of cash-in and cash-out locations. This is true interoperability with the existing financial system.

In practical terms, what this means is that an immigrant farm worker in Michigan or Kansas or California or anywhere in the world can send her hard-earned cash to her family and to her home country without experiencing outsized fees or uncertain wait times. She can walk into a local MoneyGram location, typically a supermarket or a pharmacy, with \$100 in cash, and in minutes, from start to finish, she can convert that \$100 into virtual dollars in USDC, and that is deposited directly into her digital wallet. On the other side of the transaction, her parents could visit their local MoneyGram location and cash out of their own USDC from their digital wallet that she sent to them into their local fiat currency when they need that.

This is available right now and is being used right now. This novel service gives neglected, unbanked, underbanked, and cash-reliant populations a pathway to enter the digital economy.

Let me turn now to the legislation. The DCCPA goes a long way toward allowing the kind of regulatory framework that will offer the opportunity for these types of payment services to be—to flourish and, also, by identifying the CFTC as the spot market regulator. The Agency's history of vetting and approving new products demonstrates it is well suited for this type of responsibility.

We also applaud the focus on consumer protection and education and its inclusion of the study on energy consumption related to digital commodities.

It is also encouraging to see that this bill sets out a process for listing stablecoins and that it is consistent with the PWG report with payment stablecoins not being included as securities. We agree with that, and they are necessary for payments. Rightfully, the DCCPA has defined a digital commodity while recognizing the SEC's jurisdiction.

Unfortunately, it fails to address the fundamental question that plagues this industry and has for far too long. When is a digital asset considered a commodity versus a security? The Howey Test does not include a clear definition, and it was not an agency-created rule. The industry desperately needs a definition, and the DCCPA is the perfect vehicle for it. Not all digital assets are created equal.

As an example of the challenges we face defining digital assets, I reference the Minnesota and Iowa State Fairs in my written testimony, which require tickets in order to experience the full fair experiences much like you need digital assets to engage with particular networks and services.

We need a practice, principles-based framework that focuses on asset functionality. With an appropriate and clear policy and regulatory framework, digital assets and blockchain have great potential to improve access to financial services for millions of people. I

believe that the DCCPA is a consequential step toward creating this vision.

Thank you again for the opportunity to testify today.

[The prepared statement of Ms. Dixon can be found on page 124 in the appendix.]

Chairwoman STABENOW. Thank you very much and very much appreciate all of these suggestions about further ways that we can improve this legislation, so thank you very much.

Let me start with Mr. Phillips. One of the important goals, of course, of the legislation is to make sure that we are bringing the trading of digital assets under Federal oversight, that we are bringing all of it. We know the Securities and Exchange Commission regulates securities, and we want them to do that and want them to do their work. Not all, as we know, of the digital assets are securities. What are the risks for Congress, or what are the risks for consumers, actually, if Congress does not pass legislation giving the CFTC oversight over digital commodities?

Mr. PHILLIPS. Yes, thank you, Senator. There are so many risks to consumers that, we have seen over the past couple of years. Consumers have lost millions, hundreds of millions, billions of dollars through scams, through “rug pulls,” through hacks, and this bill would enable the CFTC to write appropriate rules to protect consumers against all of those things.

For example, the access to exchange data feeds would allow the CFTC to use technology to find market manipulation and enforce its anti-fraud and anti-manipulation authorities. It would require platforms to provide appropriate disclosures. It would allow the CFTC to write enforceable rules around cybersecurity protections for the various platforms. This bill would do so much to protect customers, and I appreciate the fact that all these provisions are in the bill.

Chairwoman STABENOW. Thank you very much.

Ms. Warren, we know that a large number of individuals, as you have indicated, including those in historically underserved communities, are using and trading crypto right now. Our bill, of course, directs the CFTC to study the racial, ethnic, and gender demographics of traders—Senator Booker already spoke to this—and use data to educate, to really inform around outreach and education during—in rulemaking efforts, actually.

Drawing on your experience in the industry and the nonprofit sector, do you have recommendations for the CFTC about how to do outreach so that we can really reach all of these customers?

Ms. WARREN. I certainly do, Senator, and thank you for the question. I think it is critically important to begin with community need. I am the co-founder of something, a project called the Crypto Research and Design Lab, which uses tech ethnography to center these communities that have been historically underserved or even fully excluded by formal financial and technical systems, to articulate what exactly their needs are and how crypto can be a tool of support and provide the kind of financial access that they so desperately need both for themselves and their families.

I think it is critical that this kind of analysis inform everything from disclosure regimes, which need to be in plain language, very clear, so that consumers can make the risk assessments that they

themselves are best qualified to make in determining how crypto can best serve them and their families. I think that engaging in factual analysis is critically important, but beginning with the communities themselves is of paramount importance.

In addition, I think we need to have education that begins focusing on not just crypto itself but on fundamental and baseline digital literacy, and that is something I think needs to be seen and spread throughout our community college system, our post-secondary in general but even in secondary schools, to ensure that Americans are prepared for the global digital economy regardless of their background and regardless of the opportunities they have through being, you know, from wealthier families or from higher-income populations.

Chairwoman STABENOW. Thank you very much.

Ms. Dixon, colleagues on the House Financial Services Committee are working on a bill to regulate stablecoins, as we know. How would that legislation interact with our bill giving the CFTC the authority to regulate digital commodities?

Ms. DIXON. Thank you, Senator. It is such a great opportunity to be able to have these bills work together.

Having a clear definition of what truly is a stablecoin is so important. We already see in this bill there is a process for listing stablecoins, but it is really important because a lot of what we read about in the early days of the summer focused on things that were labeled stablecoins but not were not one-to-one backed with fiat, did not have audit requirements, did not have the transparency that we think is important not just for American consumers but also for businesses who want to leverage these stablecoins, as I mentioned in the MoneyGram example.

Creating that very clear definition of what is a stablecoin, holding those assets in a secured financial depository account, making sure that you cannot have—that if you do have a run on the bank that there is not going to be a problem for the constituents that choose to get their money out, these are all really, really important pieces that we think need to be addressed.

We see not just the bill in the House but also the proposal that Senators Gillibrand and Lummis put together with respect to stablecoins and defining stablecoins.

We would love to see the idea that we continue to have innovation in this space, but it is regulated innovation around stablecoins.

Chairwoman STABENOW. Thank you very much. I have numerous other questions, but I am going to stop at this point. I am going to go and vote and leave the Committee in the capable hands of Senator Boozman.

So, don't mess it up.

Senator BOOZMAN.

[Presiding.] I am getting a little responsibility. That is great.

Senator Gillibrand, would you like to go now, or do you want to—this is our star pitcher, so we will defer to her.

Chairwoman STABENOW. That is right.

Senator GILLIBRAND. Thank you, Senator.

Senator BOOZMAN. Would you like to go now and then vote?

Senator GILLIBRAND. Yes. Then I will go vote, yes. I wanted—Ms. Warren, I wanted to talk a little bit about DeFi because this is an

area where I think we could improve this bill. Right now, for those who are focused on this issue, decentralized finance has enormous opportunity to improve innovation, to work collectively toward creating more financial inclusivity, as many of you have testified about, fewer intermediaries, more opportunities of all income levels to engage in the financial system.

While this bill does include decentralized finance in its regulatory framework, I do not know that it is being treated in the way it would need to be treated to actually continue to participate. I want to talk a little bit more, specifically for the benefit of the staff who are working on the next iteration of this bill, what you would suggest laying out in terms of protocols that would apply and map for decentralized finance better than the definitions right now that seem to be overly broad and encompassing too many things that do not really apply.

Ms. WARREN. Thank you, Senator. I agree; I think that the definition proposed as now is, frankly, a bit unworkable in terms of how DeFi actually operates. I think it is important to note that crypto is not a monolith and so DeFi—I have been in this space full-time now for almost six years, and DeFi did not exist when I entered this space, as a concept. It was brand, brand new.

We are really at a point where the cutting edge of innovation is reflected in what we are seeing in this space, and the market has not even had time to decide which models make sense, let alone settle into parameters and models that are consistent across different kinds of offerings and services here.

I echo your sentiment that this is a critically important edge for financial inclusion in our system. It is going to provide, I believe over time, increasing advantages to those who simply cannot access other forms of financial services because they have been, again, historically underserved as the report that is named in the DCCPA so aptly—it is so aptly named.

I think what is also really important is to ensure that DeFi remains in the United States as a locus of innovation. The concern that I have, which I have shared with you previously, is that we are going to see offshoring of this innovation space in a way that, as our colleagues on the panel have noted, is going to not embed the principles-based frameworks that are so critical to ensure that Americans receive the adequate protections that they need and deserve, let alone the global citizenry that is going to benefit from this innovation.

As a general matter, you know, we do recommend that this is a space that requires a lot of study and requires a lot of focus on what is happening, what is coming, the trajectory here, but also a bit more time for the space to settle a bit before we try to box it into something that may wind up cutting off avenues that could benefit tremendous groups of people.

Senator GILLIBRAND. Can you just explain it a little more in detail because a lot of people do not understand the difference? If you have a DeFi protocol that never takes custody of assets, does it need to make sure they are not comingled, like a bank or something more in a traditional finance basis?

Can you explain the difference and why these definitions, unfortunately, may include and, therefore, exclude DeFi entirely? Can

you just explain the difference for the Committee, particularly for Chairman Boozman and the staff, so they understand why it needs a separate study for this part and to make sure it is not being excluded?

Ms. WARREN. Swept up, really, in these unworkable definitions.

Senator GILLIBRAND. Yes.

Ms. WARREN. The way that DeFi works is it is basically an immediate pass-through. It enables a precise peer-to-peer connection between two parties that are engaging in a transaction without a centralized intermediary that is in the middle of that. Then it is software, and it is not an entity.

Senator GILLIBRAND. Then it is software, and it is not an entity.

Ms. WARREN. Exactly right.

Senator GILLIBRAND. It is not like a group of people managing an organization. It is a software program.

Ms. WARREN. That is exactly right. It is code. It is code that is actually governing this exchange. That leads to a lot of exciting innovation, but it is also challenging to figure out how do you create a framework around that because everything that has come before—we have talked a lot about 1922. This is about as opposite from that kind of model as you could get because there is not an entity in the middle of this that is directing the flow of funds and pointing, you know, things to where they ought to go. It is code that is essentially conducting that same service and providing that same opportunity.

We do—it does behoove us, I think, to think very carefully about the precedent that is being set when we think about a code base that is serving a primary financial service function. How ought we to think about regulation there in a way that protects consumers but again retains that innovation edge and, most importantly, ensures that a principles-based framework that is grounded in historical—the U.S. historical approach of financial services is underlying all of that?

Senator GILLIBRAND. Thank you, Ms. Warren.

Mr. Phillips, I want to thank you as well for your leadership and the work you have done with this Committee and with my staff on writing portions of this legislation in terms of ideas and thoughtfulness.

I want to talk a little bit about the issue that people have concerns about, about energy use and the way this bill will create a study and a protocol to create better disclosures perhaps or other recommendations so that the participants can make informed choices.

Can you talk a little bit about how you do that, which other regulatory agencies, such as FERC, we may ask for information from, and explain how we are doing that and how you think ultimately it will help long-term?

Mr. PHILLIPS. Absolutely, Senator. Thank you. This bill would require the CFTC to conduct a study, along with other regulators, examining the energy impacts of a variety of digital asset commodities. In addition to studying and creating recommendations for Congress and the Agency on how to reduce those energy impacts, it would also require the CFTC to list the energy impacts of a vari-

ety of different digital asset commodities so that investors can see those disclosures and accordingly make investing decisions.

If there is a token that has an extremely high energy impact compared to a similar token, it is reasonable to believe that investors would move to the lower energy-intensive asset, incentivizing the higher energy ones to reduce their energy impacts by moving to a different blockchain or doing something else, reducing the overall impact of energy usage in the crypto market overall.

As for other regulators that the CFTC should speak with in doing this, I would recommend consulting with FERC, which has oversight of the nation's energy markets, the Securities and Exchange Commission, which I would want to also examine the energy impacts of digital asset securities, and potentially the bank regulators and FSOC, who oversee other parts of the digital asset markets.

Senator GILLIBRAND. Thank you.

Thank you, Mr. Chairman. I have more questions if you want me to filibuster, but if you have questions, your turn.

Senator BOOZMAN. If you want to ask another question, you are welcome.

Senator GILLIBRAND. I have one more, yes.

Senator BOOZMAN. As long as they do not get mad at you over on the floor.

Senator GILLIBRAND. Hopefully not. One more. Ms. Warren, I have one more. I want to talk a little bit about what happened after the days of Russia's invasion of Ukraine. People were concerned that cryptocurrency would be used by Russian oligarchs to evade sanctions, but that actually was not the story that we heard. It winded up being a very important example of how this industry and blockchain technology can be a solution for families, countries, unstable governments that need resources, to get them quickly.

I thought Ms. Dixon made some excellent points about remittances and how important that is for world financial markets. I care very deeply about access to capital for communities that are disadvantaged and are unbanked or underbanked and then the banking community does not serve it.

I would like you to augment Ms. Dixon's testimony and talk about some of the really positive stories about how this industry and this technology can transform who has access to capital at urgent times of need, and I think you can use the Ukraine example as one but whatever ones you want to add to the record.

Ms. WARREN. Well, I think that is the most acute because I think there is really no question—and I do not mean to sound dramatic about this. There is really no question we would be in a very different situation in that conflict if the crypto community had not mobilized in response to a request, a specific request, from the Ukrainian government all the way up to the President's office, asking for crypto donations to bridge and serve as a catalyst while the international community could provide the badly needed aid, the billion dollars of aid that actually has resulted in where we are and the ability of the Ukrainian people to stand up to this brutal invasion.

There is no question crypto was a bridge. It was a catalyst. It was essential and critical in order to give the international commu-

nity time to use traditional financial means to provide this kind of capital. We know because we can see on what is called a block explorer where that money went, who it was given to, and also what it was used for. We know based on all the accounts that come from the Ukrainian government this was medical supplies. It was, in some cases, arms. It was just things that were critically, vitally important at that crucial time.

In addition, we have seen crypto be a critical tool for activists, those who are working in some cases with the U.S. Government against rogue States, to actually provide money, whether it is money to get them securely out of a country at times when their lives are in political—they are in crisis because of political happenings around them. We have seen this all over the place.

We have also seen women in times of trouble, and Afghanistan is probably a really great example of this, maybe the best, where in a patriarchal society, where when the Taliban came in, they were looking to basically seize and appropriate funds and the community was using crypto, particularly women were using crypto in a way to shield assets from that seizure, which is critical and again provided the ability for people in that country to resist the authoritarian regime that was being pushed upon them.

Those are examples that I think are located in other countries but they are so critical, and they underlie, in my opinion, the nature of crypto and why it is so important, to your point, in times of crisis.

The reality is that here in the United States we certainly have communities in crisis as well. These may not be the examples that are, you know, as popular or as noted because they are quieter examples, and they maybe are not as dramatic in terms of the opposition that is being faced. Nevertheless, there are communities here that also have been unable to get access to basic financial services that are turning to crypto. The numbers speak for themselves, and we quoted them already.

Whether or not you are in an acute situation or a crisis, I do find that preserving the opportunities that this particular innovation represents is of critical importance, and again, grounding that in the principles-based frameworks that underlie the American financial system are also of critical importance.

Senator GILLIBRAND. I just want to thank the entire panel. I appreciate your testimony and the information you are giving to this panel about the urgency and the importance and the benefits of really creating these regulatory frameworks now. Thank you so much.

Senator BOOZMAN. Thank you.

Mr. Phillips, we appreciate the good work that you and your organization are doing in trying to educate the public as to what we are trying to accomplish here. This topic is something that is anything but easy to understand.

One of the things that we are hearing is, you know, from some of the other consumer advocacy groups is that somehow this would erode the SEC's authority to police the crypto market and the CFTC is ill prepared to ensure retail consumers are protected. Would you agree our bill specifically defers to the SEC when it

comes to those digital assets deemed securities and only looks to provide the CFTC regulatory authority over digital commodities?

The other thing that we are hearing along with that is that somehow, you know, they would be underfunded, they would not be able to do this. You might, you know, reiterate the importance of user fees and that that would be fine.

Again, like I say, those are two of the major things that we are hearing. If you would address that, it would be helpful.

Mr. PHILLIPS. Sure. Thank you, Senator. This bill, as I read it, specifically defers authority over crypto securities to the Securities and Exchange Commission and reserves for the CFTC authority over those assets that are crypto commodities. My understanding is that since introduction there have been one or two places where it has been identified that the SEC's authority may be impinged, and in my written testimony I make recommendations to address that.

I want the SEC to retain authority over securities——

Senator BOOZMAN. Right.

Mr. PHILLIPS [continuing]. and CFTC authority over commodities.

I also think that the CFTC, with this bill, would have the regulatory capacity and expertise to be able to address these markets. The CFTC is an excellent regulator. The commissioners and the Chairman are excellent regulators, and I think they have the best interest of customers, crypto customers, in mind.

As for the underfunding, I think all of our regulators need additional resources. I encourage Congress to, if it enacts this bill, to also increase the CFTC's budget. I do think that the user fees that the CFTC would be able to collect would perhaps make it easier for Congress to increase the budget to a point where the CFTC can appropriately regulate this industry.

On the first panel, we heard Chairman Behnam mention that he expects that the CFTC would need an increase of \$112 million over three years. That sounds like an excellent bang for the buck to get these assets appropriately regulated.

Senator BOOZMAN. Very good. Thank you.

Ms. Warren, I was going to ask you a question about the DeFi, but I think, you know, I appreciate the discussion that you and Senator Gillibrand, you know, had. Certainly that is something that we are very concerned with getting that right, so we appreciate that.

Ms. Parker, your testimony discusses the current regulatory framework under which a cryptocurrency exchange operates. Please speak about the various State and Federal regulators of Coinbase, where there might be gaps particularly relating to consumer protection measures, and why it makes sense to provide the CFTC with exclusive, mandatory Federal regulation of digital commodities as set forth in the bill.

Ms. PARKER. Thanks, Senator. That is a great question. I will say there are many State and Federal regulators that regulate Coinbase. One of our big challenges is particularly with respect to consumer protection, is that it generally falls to the State banking regulators under the money transmitter licenses to carry that mandate.

It is not so much that we are unregulated in this space or there are gaps in the regulation. It is that it is not consistent across States, and in particular, I would point to our disclosure requirements. Each State has its own set of disclosure requirements for consumers. Not all are tailored to digital assets.

This bill solves a critical gap in the sense that it would bring in a unitary Federal regulator with a consistent—that would provide a consistent set of consumer protection requirements that would apply equally to all consumers and would do so in a way that is tailored to the nature of the market and the assets. And you know, the CFTC has been active in this space for a number of years, but this regulation fills the gap with respect to commodities transactions in the spot market. We would certainly welcome, you know, that role for the CFTC in this space.

Senator BOOZMAN. Good. Thank you.

Dr. Tarbert, your testimony raises an important point, how this Committee may provide further certainty to market participants who comply with the bill's registration requirements for listing a digital commodity but somehow, subsequently, run into an SEC threat to reclassify what appears to be a digital commodity as a security. How can we address that problem?

Mr. TARBERT. Thank you so much, Senator, and for your leadership on this important issue. I think that is really the key here. You know, many established market participants in other markets, like Citadel Securities, are looking for that clarity and coherence. And as you say, one of the issues could be if something is reclassified after the fact. We would want the kind of certainty that comes through a safe harbor or something during the time in which we are trading those instruments to be able later on to not face, you know, civil litigation, other kinds of enforcement actions for a change by the regulator itself.

Senator BOOZMAN. Very good.

Ms. Dixon, again, another thing—and this has been discussed already, but I think it is important because it does come up. It is my understanding the energy consumption required for proof of work, consensus mechanism, transaction validations can be significant, which is why I am glad our legislation looks to study the issue. What is your view on measuring energy usage related to various consensus mechanisms in the crypto space?

Ms. DIXON. Thank you so much for the question, Senator Boozman, and thank you for your leadership and that of your staff on this. The environmental—and what the bill presupposes about the study that needs to be done with respect to the environmental impact of all the different consensus mechanisms is so important. It is something that we do in lots of other industries to be able to figure out the benefits and the harm that each of the industries or each of the different challenges bring to the United States.

All consensus mechanisms are not alike, but importantly, what we can do and what we are hopeful that this study does is create a framework for how to measure the carbon output and figure out what we need to do as an industry to even further improve it. We just saw last night, I think it was at 2:34 a.m. in Eastern time, where Ethereum moved from proof of work to proof of stake. That was already a momentous shift from that in terms of dem-

onstrating the increased sustainability for that network by moving to proof of stake.

I think, again, not all consensus mechanisms are created equally, but if we think about a framework, which we have done—by the way, we have engaged PWC to create that kind of framework to consider how you should—and we have done it with respect to the Stellar Network, what pieces of the Stellar Network and what pieces of the transaction should be viewed when you are looking at the sustainability impact as a whole.

We welcome that kind of framework. We think that the industry needs that to be able to create consistency and to understand really, truly, the value and also the potential harm and what we can do to improve on it.

Senator BOOZMAN. Good. Thank you very much.

Madam Chair?

Chairwoman STABENOWS.

[Presiding.] Well, thank you very much, Senator Boozman.

Thanks so much to all of you, and we appreciate your testimony and look forward to continuing to work with you, and also appreciate so much Chairman Behnam and his leadership at the CFTC, which is going to be so critical moving forward.

We saw last year a lot of volatility in the marketplace, and we have a bill that is going to address that, to make digital commodities safer for Americans to use and to trade and, again, investing in and supporting the innovation and the opportunities as well. I think this is a really important opportunity for us to move forward, and I am hoping our colleagues will join us on this bipartisan bill so we can get the CFTC to work.

Again, thank you.

The record will remain open for five business days for members to submit additional questions or statements.

Without further comment, the meeting is adjourned. Thank you.

[Whereupon, at 12:28 p.m., the Committee was adjourned.]

A P P E N D I X

SEPTEMBER 15, 2022

Testimony of Rostin Behnam
Chairman, Commodity Futures Trading Commission
“Legislative Hearing to Review S.4760,
the Digital Commodities Consumer Protection Act”
U.S. Senate Committee on Agriculture, Nutrition, and Forestry
September 15, 2022

Introduction

Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, I appreciate the opportunity to appear before you today as Chairman of the Commodity Futures Trading Commission (“CFTC” or “Agency”) to discuss S.4760, the Digital Commodities Consumer Protection Act (“DCCPA”). Before I begin, I would like to recognize and thank my fellow CFTC Commissioners and colleagues; their dedication, expertise, and commitment to the American public ensures our greatest success.¹

Last February, when I testified before this Committee,² I noted that the unique characteristics of the growing digital asset industry necessitated a comprehensive federal regulatory regime. I believe that to be more true today than ever, and thank the Committee for taking steps to directly address these needs through the DCCPA. I have directed staff to analyze specifically how current CFTC initiatives are already leveraging resources, personnel, and technology infrastructure towards the tenets of the DCCPA, and what additional needs we would have to support its implementation.

Digital asset commodity cash markets have significant speculative retail participation, often use high levels of leverage, and largely rely on platform-based custody arrangements outside of the traditional regulated banking sector. Many participants in these markets may perceive themselves to be interacting with exchanges and intermediaries structured and regulated like those in other financial markets. The reality is quite different. The lack of a comprehensive regulatory regime means that traditional market-based disclosures and bankruptcy protections are frequently absent, and disruptions involving trade settlement, conflicts of interest, data reporting, and cybersecurity resulting in unprotected customer losses are more likely.

Since I last testified, over \$1 trillion in market value has been lost in conjunction with the failure of several large high-profile firms operating in the shadows. One lesson from the recent fallout is that leverage, interconnected markets, and contagion can wreak the same havoc in the digital-asset ecosystem that they do in our traditional financial markets, particularly in the absence of appropriate regulation. Unfortunately, the most significant losses are disproportionately impacting lower-income investors and historically underserved

¹ I am grateful to David Felsenthal, Jason Somensatto, and Laura Gardy for their assistance in preparing for this hearing and my testimony.

² 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), [Testimony of Chairman Rostin Behnam Regarding “Examining Digital Assets: Risks, Regulation, and Innovation” | CFTC](#).

communities. The volatility in the market, and its impact on retail customers – which may only worsen under current macroeconomic conditions – emphasizes the immediate need for regulatory clarity and market protections.

The CFTC: The Right Regulator

As I have publicly stated several times, including to this committee, and as has been recognized by federal courts, many digital assets constitute commodities. As recognized by the DCCPA, the CFTC’s expertise and experience make it the right regulator for the digital asset commodity market. The CFTC facilitates customer protections through its principles-based market oversight and disclosure regime aimed at ensuring transparency, integrity, and security of transactions. These structures inform customers about who they are dealing with and provide clarity on the risks of participating in our markets.

In requiring digital commodity brokers, dealers, and custodians to join a registered futures association³, the DCCPA acknowledges the key role that self-regulatory organizations, like the National Futures Association (“NFA”), our designated registered futures association, play in safeguarding the integrity of markets through strict requirements and oversight. Going a step further, the CFTC’s Reparations Program provides a prompt, accessible, and effective forum for retail participants to resolve disputes with registered trading professionals. Decisions rendered by an Administrative Judge are enforceable and may be reviewed by the Commission and ultimately a federal appeals court.⁴

The CFTC has often adapted its oversight capabilities to meet the demands of evolving markets within its jurisdiction, and to protect customers through scaling and building specialized knowledge. Most notably, in the wake of the 2008 financial crisis, Congress provided the CFTC authority over approximately 95 percent of the swaps markets under Title 7 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁵ The rulemakings set in motion by the Dodd- Frank Act now serve as the cornerstone of a robust regulatory regime for the \$350 trillion swaps markets.⁶

Expertise and Scale

Returning to the digital asset market, since 2014, the CFTC has brought almost 60 enforcement digital asset related cases, including a recent matter involving a \$1.7 billion fraudulent bitcoin scheme. With a lack of full visibility into the digital commodity asset market, the Agency’s enforcement program has had to lean primarily on tips and complaints from the public to identify fraud and manipulation, including submissions to the CFTC’s Whistleblower Program, which has been a critical driver to our actions.

While we are engaged in a comprehensive effort across the Agency to police these markets and their participants with the tools currently available to us, the DCCPA will allow us to apply our full oversight capabilities without restriction. For example, a few digital asset-focused companies currently operate CFTC-registered exchanges, and our Division of Market Oversight is actively reviewing new products tied to digital commodity assets both from these

³ See 7 U.S.C. § 21.

⁴ See 17 C.F.R. § 12; Reparations Program, CFTC, [Reparations Program | CFTC](#).

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”).

⁶ CFTC Weekly Swaps Report, <https://www.cftc.gov/MarketReports/SwapsReports/L1GrossExpCS.html>.

new entrants and from traditional registrants. The Agency has developed a deep understanding of this novel market and the underlying innovations that fuel it, hiring specialists, forming internal task forces and working groups, leveraging public-private partnership through the work of CFTC Advisory Committees, and most recently restructuring the CFTC's financial technology innovation hub into the Office of Technology Innovation.

Facing the Challenge Head-on

The DCCPA leverages the historical strength of the CFTC as a market regulator by requiring registration and supervision of digital commodity platforms and digital commodity intermediaries as is required in CFTC-regulated derivatives markets. Digital commodity facilities will be subject to compliance with core principles prescribing, among other things, that the platforms establish and enforce rules minimizing conflicts of interest, prohibiting abusive trade practices, establishing system safeguards to minimize cybersecurity and other operational risks and maintain emergency procedures and disaster recovery protocols, ensuring the financial integrity of transactions and intermediaries, and protecting customer funds. Critically, all digital commodity platforms must maintain adequate financial, operational, and managerial resources, segregate customer funds, and comply with Commission requirements for the treatment of customer assets. These tools have proven effective in preserving customer funds and market operations in times of instability, uncertainty, or market misconduct.

The DCCPA directly addresses the increased role of retail participants in the digital commodity asset markets by directing the Commission to adopt customer protection rules requiring digital commodity platforms to disclose to customers material conflicts of interest and material risks of trading digital commodities, establishing duties to communicate in a fair and balanced manner, and establishing standards for the platform's marketing and advertising.

With the additional resources contemplated by the funding mechanism in the DCCPA and the clear mandates for customer education, outreach, and information gathering to ensure that our efforts reach all demographics of the investing community, especially those that remain most vulnerable to fraud and abuse, the CFTC can move swiftly in effectuating this new regime.

Conclusion

On September 21, 1922, nearly 100 years ago to the day, the Grain Futures Act of 1922 was signed into law, which led to the near immediate establishment of the then CFTC. With that legislative accomplishment, this Committee and the Congress swiftly responded to a policy need that arose on the heels of emerging risks to American consumers because of new financial markets and products, technological innovation, and the promise of economic development. With the CFTC's rich history overseeing commodity markets, coupled with its expertise and track record, which rests on a firm foundation as a forceful and disciplined cop on the beat, the Agency stands ready to tackle these new risks and opportunities one century later.

Thank you and I look forward to answering your questions.

Statement by
Todd Phillips, Director of Financial Regulation and Corporate Governance
Center for American Progress
Before the United States Senate Committee on Agriculture, Nutrition, and Forestry
“Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act”
September 15, 2022

Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the opportunity to discuss the Digital Commodities Consumer Protection Act of 2022 (S. 4760). I am Todd Phillips, Director of Financial Regulation and Corporate Governance at the Center for American Progress. I am pleased to support this bipartisan bill, which would provide much needed regulatory oversight of the crypto commodity markets while ensuring other regulators may continue to police other parts of the crypto markets.

Risks, Harms, and the Existing Regulatory Regime

Retail Investors Face Elevated Risks from Crypto

In recent years, crypto assets have grown significantly in usage and prominence in the economy and culture.¹ An NBC News poll in March found that 21 percent of Americans have used or invested in crypto.² The significant expansion in crypto usage in the last few years can likely be explained not only by the innovativeness of the underlying technology, but also a general “hype” and narrative promoted by advocates that crypto is revolutionizing the financial system. Many advocates have made significant claims about how crypto and the blockchain—often labeled as “Web3”—could have a transformative impact on the financial system and the economy.³ These claims rely on the fact that the blockchain allows for decentralized, peer-to-peer transactions that obviate the need for traditional intermediaries—and thus can provide, in theory, an open, egalitarian outlet for individuals to earn money and trade assets outside of the traditional financial system.⁴ Further, many buyers of crypto no doubt purchased tokens with the expectation that their value will only continue to increase—an expectation reinforced by a frequent claim made by advocates that the price of Bitcoin will inevitably grow to \$100,000 or more.⁵

¹ “Total Cryptocurrency Market Cap,” CoinMarketCap, available at <https://coinmarketcap.com/charts/> (last accessed July 2022); Will Gottsegen, “Ads of the ‘Crypto-Bowl,’” CoinDesk, February 8, 2022, available at <https://www.coindesk.com/layer2/2022/02/08/ads-of-the-crypto-bowl/>.

² Thomas Franck, “One in five adults has invested in, traded or used cryptocurrency, NBC News poll shows,” CNBC, March 31, 2022, available at <https://www.cnbc.com/2022/03/31/cryptocurrency-news-21percent-of-adults-have-traded-or-used-crypto-nbc-poll-shows.html>.

³ Rebecca King, “Web3: The hype and how it can transform the internet,” World Economic Forum, February 1, 2022, available at <https://www.weforum.org/agenda/2022/02/web3-transform-the-internet/>.

⁴ David Yaffe-Bellamy, “Crypto Crash Widens a Divide: ‘Those With Money Will End Up Being Fine,’” *The New York Times*, June 29, 2022, available at <https://www.nytimes.com/2022/06/29/technology/crypto-crash-divide.html>.

⁵ Shivdeep Dhaliwal, “Bitcoin At \$100,000 Before The Year Is Out, Says Novogratz,” Yahoo! Finance, February 9, 2021, available at <https://finance.yahoo.com/news/bitcoin-100-000-says-novogratz-053354426.html>.

However, because the longstanding federal financial regulatory laws designed to protect investors are not being enforced, practices such as market manipulation, so-called “rug pulls,” fraud, and outright theft plague crypto markets.⁶ According to one estimate, \$2.9 billion of crypto was stolen in the first four months of 2022 alone,⁷ and a major crypto exchange was recently sued by a retirement savings firm alleging that the exchange failed to protect customers from an attack that led to the theft of \$36 million in crypto assets (the case is ongoing).⁸ These types of problems pose a significant risk to retail investors, who in some cases invest their life savings into crypto assets. So long as existing laws are not effectively applied to crypto markets and gaps exist in existing financial regulatory laws, customers and investors will not benefit from the many protections that these laws guarantee for traditional financial services products ranging from stocks and bonds to bank deposits.

Investors have also been drawn into a variety of crypto projects by implausible and sometimes fantastical promises. Recently failed crypto projects accumulated investors with promises of stability plus high returns (in the case of Celsius, promising returns as high as 19 percent).⁹ These businesses were essentially engaging in fractional-reserve banking when they lent depositors’ crypto to speculators on margin. When crypto prices sharply declined in recent months, these firms suddenly found that their counterparties were unable to meet margin calls. The situation was made worse as the depositors lost confidence and began demanding withdrawals *en masse* which, given the nature of fractional-reserve banking, the lenders could not meet in full. Consequently, these firms have been forced to file for bankruptcy.¹⁰

Similarly, the recent collapse of the stablecoin TerraUSD and demonstrates the significant risks to investors in algorithmic stablecoins. Stablecoin issuers have economic features that resemble banks even though they are not regulated as such. Issuers, in theory, hold reserve assets that allow investors to redeem tokens on demand for \$1 each in cash (very similar to how a traditional bank deposit account works). However, issuers may (and the issuer of TerraUSD did) rehypothecate the assets for their own benefit. Terra, accordingly, did not have sufficient assets

⁶ Deloitte, “Market Manipulation in Digital Assets,” March 2021, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Financial-Services/gx-design-market-manipulation-in-digital-assets-whitepaper-v2-1.pdf>; CoinMarketCap, “Rug Pull,” available at <https://coinmarketcap.com/alexandria/glossary/rug-pull> (last accessed July 2022); Adam Morgan McCarthy, “Founder of now-defunct BitConnect has been indicted for a \$2.4 billion crypto Ponzi scheme,” Markets Insider, February 28, 2022, available at <https://markets.businessinsider.com/news/currencies/bitcoin-bitconnect-fraud-ponzi-scheme-indictment-jury-sec-crypto-blockchain-2022-2>.

⁷ Sead FadiPašić, “The crypto theft problem is getting worse and worse,” TechRadar, April 25, 2022, available at <https://www.techradar.com/news/the-crypto-theft-problem-is-getting-worse-and-worse>.

⁸ Jon Fingas, “Winklevoss twins’ crypto exchange faces lawsuit over \$36 million theft,” Yahoo! News, June 7, 2022, available at <https://www.yahoo.com/news/winklevoss-twins-gemini-crypto-theft-lawsuit-200542527.html>.

⁹ Manya Saini and Noel Randewich, “Crypto lender Celsius says it is exploring options,” Reuters, June 30, 2022, available at <https://www.reuters.com/markets/us/crypto-lender-celsius-says-it-is-exploring-options-2022-06-30/>.

¹⁰ Rob Davies, “Celsius Network: crypto firm reveals \$1.2bn deficit in bankruptcy filing,” *The Guardian*, July 15, 2022, available at <https://www.theguardian.com/technology/2022/jul/15/celsius-network-crypto-firm-deficit-bankruptcy-funds>; Ryan Browne, “Crypto brokerage Voyager Digital files for Chapter 11 bankruptcy protection,” CNBC, July 6, 2022, available at <https://www.cnbc.com/2022/07/06/crypto-firm-voyager-digital-files-for-chapter-11-bankruptcy-protection.html>.

on reserve, which prompted a run by investors demanding redemptions that caused the token to “lose its peg” and collapse in value.¹¹

Crypto’s Consequences for Climate Change

In addition to imposing significant risks on retail investors, there is evidence that activities involving crypto assets—particularly, the process of solving a repetitive mathematical function to record new transactions known as mining, hashing, or validating—are extremely energy intensive, and therefore have a large carbon footprint. By some estimates, Bitcoin alone is responsible for 0.40% of the world’s electricity consumption, has a carbon footprint equal to that of Denmark or New Zealand, and in a single transaction uses more energy than 100,000 Visa transactions.¹² By another estimate, the carbon footprint of a single mined Bitcoin is 221 metric tons of carbon dioxide, while the carbon footprint of mining gold valued at the equivalent of one Bitcoin is only 8 tons of carbon dioxide.¹³ As the Office of Science and Technology Policy noted, “[t]he explosive growth of the digital asset ecosystem may contribute to greater energy use and negatively impact the climate.”¹⁴

Crypto’s Heretofore Negligible Effects on Financial Inclusion

One particularly noteworthy element of the crypto industry’s advocacy has been claims by industry leaders that the growth of crypto assets will bolster financial inclusion by providing low-income individuals easier and cheaper access to financial services than those offered by the traditional financial services industry.¹⁵ Financial inclusion is defined as access to financial products and services, such as payments, savings, and credit, that are “delivered in a responsible and sustainable way,” and is typically measured by the percentage of a community’s population that has access to a bank account.¹⁶ Individuals who lack access to any financial services are considered “unbanked,” accounting for about 6 percent of the U.S. population and disproportionately consisting of people of color.¹⁷

The fundamental purpose of financial inclusion is to improve the overall economic well-being of low-income individuals. Expanding access to financial services should help reduce poverty and

¹¹ Alexander Osipovich and Caitlin Ostroff, “Crash of TerraUSD Shakes Crypto. ‘There Was a Run on the Bank.’” *The Wall Street Journal*, May 12, 2022, available at <https://www.wsj.com/articles/crash-of-terrausd-shakes-crypto-there-was-a-run-on-the-bank-11652371839>.

¹² Alice Feng, “Is Cryptomining Harming the Environment?” Princeton Student Climate Initiative, February 27, 2021, available at <https://psci.princeton.edu/tips/2021/2/27/is-cryptomining-harming-the-environment>.

¹³ Digiconomist, “Bitcoin Energy Consumption Index,” available at <https://digiconomist.net/bitcoin-energy-consumption> (last accessed September 2022).

¹⁴ Federal Register, “Request for Information on the Energy and Climate Implications of Digital Assets” (Washington, DC: 2022), available at <https://www.federalregister.gov/documents/2022/03/25/2022-06284/request-for-information-on-the-energy-and-climate-implications-of-digital-assets>.

¹⁵ “Cryptocurrencies can enable financial inclusion. Will you participate?,” World Economic Forum, June 9, 2021, available at <https://www.weforum.org/agenda/2021/06/cryptocurrencies-financial-inclusion-help-shape-it/>; Chamber of Digital Commerce, “Blockchain and Financial Inclusion” (Washington, DC: 2017) available at <https://digitalchamber.org/assets/blockchain-and-financial-inclusion.pdf>.

¹⁶ The World Bank, “Financial Inclusion”, available at <https://www.worldbank.org/en/topic/financialinclusion/overview> (last accessed August 30 2022).

¹⁷ See Board of Governors of the Federal Reserve System, “Report on the Economic Well-Being of U.S. Households in 2019 - May 2020” (Washington, DC: 2020), Available at <https://www.federalreserve.gov/publications/2020-economic-well-being-of-us-households-in-2019-banking-and-credit.htm>.

improve the overall economic well-being of the unbanked by enabling individuals to build savings, make financial transactions at lower costs, and better prepare for future financial risks.¹⁸ The primary obstacle for financial inclusion is cost: Bank account fees, particularly overdraft fees, can be prohibitive for low-income individuals.¹⁹ Moreover, the cumbersome nature of the U.S. payments system, in which transactions usually take a couple of days to clear and checks can take as many as six days to clear, is a significant obstacle for individuals who live paycheck to paycheck and need access to cash quickly to cover basic living expenses.²⁰

Advocates' claims that crypto assets can bolster financial inclusion typically include several points, including that crypto is easier to access than traditional financial services because it only requires having internet and a device; that crypto assets can help the unbanked accumulate savings without needing a bank account; that crypto assets can help the unbanked make payments more easily than using existing financial services; and that crypto assets can help the unbanked invest their money without the need for traditional intermediaries such as banks. While this claim that crypto supports financial inclusion may be true in certain instances—indeed, some crypto transactions may be cheap, much as how some traditional money transfers may be outrageously expensive—it does not necessarily hold for the entire industry.

This rhetoric is faulty on several counts. First, even though fees for money transfers and bank accounts can be high, crypto asset fees are often even higher.²¹ Crypto networks charge transaction fees, often at a steep rate, even for small transactions.²² Second, the inherently speculative nature of crypto assets is at odds with the purpose of financial inclusion. Crypto assets are still an especially risky form of investment, and as explained above, consumer protections are lax. Further, crypto assets are scarcely used for normal payments at present.²³ Third, individuals still typically require a bank account to use crypto assets. In order to purchase

¹⁸ Asli Demirgüç-Kunt, Leora Klapper, and Dorothe Singer, “Financial Inclusion and Inclusive Growth: A Review of Recent Empirical Evidence” (World Bank Group: 2017), available at <https://documents1.worldbank.org/curated/en/403611493134249446/pdf/WPS8040.pdf>.

¹⁹ Stein Berre, Kristian Blickle, and Rajashri Chakrabarti, “Banking the Unbanked: The Past and Future of the Free Checking Account” (Federal Reserve Bank of New York: 2021) <https://libertystreeteconomics.newyorkfed.org/2021/06/banking-the-unbanked-the-past-and-future-of-the-free-checking-account/>.

²⁰ Catalini, Christian and Lilley, “Andrew, Why is the United States Lagging Behind in Payments?” (2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3893937.

²¹ Alexis Leondis, “Beware PayPal’s New Fees for \$100 Crypto Trades,” February 18, 2022, available at https://www.washingtonpost.com/business/beware-paypals-new-fees-for-100-crypto-trades/2022/02/18/0593f9f2-90dd-11ec-8ddd-52136988d263_story.html.

²² Kenneth Rapoza, “Cryptocurrency Exchange Fees Are A Mess. Will They Ever Improve?,” Oct 17, 2021, available at <https://www.forbes.com/sites/kenrapoza/2021/10/17/cryptocurrency-exchange-fees-are-a-mess-when-will-they-ever-improve/?sh=71e403d52f4c>. Recent investment enterprises such as ConstitutionDAO—in which organizers crowdfunded millions of dollars in an unsuccessful effort to purchase a copy of the Constitution but then struggled to return funds to investors and accumulated high fees while doing so—have demonstrated both how quickly fees can pile up and that such fees are most likely to hurt the smallest investors. See Jacob Kastrenakes, “Almost buying a copy of the Constitution is easy, but giving the money back is hard,” The Verge, November 24, 2021, available at <https://www.theverge.com/2021/11/24/22800995/constitutiondao-refund-progress-steep-gas-fees-cryptocurrency>.

²³ Rod Garratt, Michael Lee, Antoine Martin, and Joseph Torregrossa, “The Future of Payments Is Not Stablecoins,” February 7, 2022, available at <https://libertystreeteconomics.newyorkfed.org/2022/02/the-future-of-payments-is-not-stablecoins/>.

crypto on a reputable exchange, customers must deposit funds in an online account from a debit card or bank account and when holders need to sell their crypto for cash, they usually require a bank account to deposit the cash they received.²⁴ While it is true that trading crypto assets technically only requires internet access and a device, the same can be said about having a bank account—and research has shown that lack of internet access itself increases one’s probability of being unbanked and outside the financial system.²⁵

Finally, and perhaps most importantly, crypto assets do not appear to fundamentally fix the problem that financial inclusion seeks to solve. The goal of financial inclusion is more than just easier and more accessible financial transactions; it is making sure individuals and households have better financial stability and economic well-being. Crypto assets use a new technology that can sometimes make old processes more efficient, but there’s no proof they reduce income inequality or put more money into people’s pockets.²⁶ Crypto simply offers a new way for individuals to transact and speculate with the money they already have. In fact, a recent survey by the Pew Research Center indicates that, of the U.S. adults who have invested in crypto assets, 78% say they did so as “a different way to invest” and 75% say they thought crypto investing was “a good way to make money.”²⁷ And because that survey found that 46% of Americans who have invested in cryptocurrency say it’s “done worse than expected,” compared to only 15% who say their investments have done better, encouraging people to use their hard-earned paychecks or savings to buy highly risky assets could actually harm the goals of financial inclusion.

The Existing Crypto Regulatory Regime

Crypto assets exist and trade on blockchains, a relatively new form of technology that can be used for many public and private purposes. Blockchain technology is unique in that data are shared among the nodes of computer networks and organized as irreversible chains of blocks.²⁸ But at their core, blockchains are functionally similar to traditional databases or ledgers in that their basic purpose is to store information. The novelty and innovative nature of the technology does not change the fact that assets that are stored on blockchains are the same types of assets that have always existed. Just as the evolution of stocks from physical pieces of paper to digitized certificates stored in computer depositories did not change the fundamental economic characteristics of the assets, for example, the fact that a token representing the sale of a security exists on a blockchain does not mean it should be treated any differently than traditional securities from an economic or regulatory standpoint. When traded publicly, crypto assets that

²⁴ Coinbase, “How to Buy BTC,” available at <https://www.coinbase.com/buy-bitcoin> (last accessed August 2022); “How to sell Bitcoin: 5 ways to ‘cash out’ your BTC holdings,” Coin telegraph, available at <https://cointelegraph.com/bitcoin-for-beginners/how-to-sell-bitcoin-5-ways-to-cash-out-your-btc-holdings> (last accessed August 2022).

²⁵ Nathaniel Karp and Boyd W. Nash-Stacey, “Technology, Opportunity & Access: Understanding Financial Inclusion in the U.S.” (BBVA Research: 2015), available at https://www.bbva.com/wp-content/uploads/2015/07/WP15-25_FinancialInclusion_MSA.pdf.

²⁶ Annie Nova, “Cryptocurrencies could lead to financial instability, author warns,” October 13, 2021, available at <https://www.cnn.com/2021/10/13/cryptocurrencies-could-lead-to-financial-instability-author-warns.html>.

²⁷ Michelle Faverio and Navid Massarat, “46% of Americans who have invested in cryptocurrency say it’s done worse than expected,” August 23, 2022, available at <https://www.pewresearch.org/fact-tank/2022/08/23/46-of-americans-who-have-invested-in-cryptocurrency-say-its-done-worse-than-expected/>.

²⁸ Adam Hayes, “Blockchain Explained,” Investopedia, March 5, 2022, available at <https://www.investopedia.com/terms/b/blockchain.asp>.

exist on blockchains can be securities, commodities, banking products, or non-fungible tokens, subject to existing statutory provisions.²⁹

- Securities are fungible (i.e., interchangeable) and tradeable financial instruments—including stocks, bonds, notes, and other evidences of indebtedness—that are used by corporations, governments, and other entities to raise capital. Crypto assets are “crypto securities” when they meet the same legal requirements as other securities.
- Commodities are “goods sold in the market with a quality and value uniform throughout the world.”³⁰ Commodities are fungible, do not represent legal claims, and have prices that float based on supply and demand, and crypto assets that meet this categorization are “crypto commodities.”³¹
- Banking products can be functionally equivalent to securities or commodities, but when issued by a bank they may be subject to different regulatory provisions.
- Non-fungible tokens (NFTs) are unique crypto assets that can be used to represent something else, such as physical or virtual assets. Much like works of art, NFTs can be bought and sold by collectors with prices that fluctuate due to demand for NFTs with certain characteristics (e.g., location of the represented real property, identity of the issuer).³²

Statutes that Congress has enacted over many decades to protect investors and the financial system give regulators broad authority to address many of the risks posed by crypto assets, even though those risks are fairly new.³³ Like traditional financial products, some crypto assets or crypto market infrastructure may be under the jurisdiction of multiple regulators. Importantly, despite the age of these laws, they are sufficiently flexible to allow regulators to amend existing regulations or simply apply them to new situations in ways that protect investors and consumers while still permitting legitimate financial services companies to operate and grow. Below are

²⁹ Todd Phillips and Alex Thornton, “Congress Must Not Provide Statutory Carveouts for Crypto Assets,” Center for American Progress, March 1, 2022, available at <https://www.americanprogress.org/article/congress-must-not-provide-statutory-carveouts-for-crypto-assets/>.

³⁰ Mitchell Prentis, “Digital Metal: Regulating Bitcoin As A Commodity,” *Case Western Reserve Law Review* 66 (2) (2015): 609-38, available at <https://core.ac.uk/download/pdf/214103464.pdf>.

³¹ *In the Matter of Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan*, CFTC Docket No. 15-29 (September 17, 2015), available at

<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf>; Commodity Futures Trading Commission, “Retail Commodity Transactions Involving Certain Digital Assets,” 85 Fed. Reg. 37734 (2020); *Commodity Futures Trading Commission v. McDonnell*, 287 F. Supp. 3d 213, (E.D.N.Y. 2018); *Commodity Futures Trading Commission v. My Big Coin Pay, et al.*, 334 F. Supp. 3d 492, (D. Ma. 2018).

³² Elizabeth Howcroft, “NFT sales hit \$25 billion in 2021, but growth shows signs of slowing,” Reuters, January 11, 2022, available at <https://www.reuters.com/markets/europe/nft-sales-hit-25-billion-2021-growth-shows-signs-slowing-2022-01-10/>. Importantly, ownership of an NFT may, but does not necessarily, grant the holder legal rights over the unique asset represented by the NFT; there have been instances of issuers creating and selling NFTs of assets to which the issuer has no legal rights, or creators maintaining intellectual property ownership of images backing NFTs. Sarah Kearns, “A Group of Anonymous Creators Is Selling NFTs of Olive Garden Locations,” HypeBeast, December 24, 2021, available at <https://hypebeast.com/2021/12/olive-garden-franchise-restaurants-nft>.

³³ See generally Todd Phillips and Alex Thornton, “Congress Must Not Provide Statutory Carveouts for Crypto Assets.”

descriptions of some authorities that financial regulators maintain over crypto assets. Other laws, such as criminal statutes, may also apply. Appendix A provides the below information as a chart.

Securities and Exchange Commission

The Securities Act of 1933, the Securities Exchange Act of 1934, and regulations thereunder require the issuer of a security—including a crypto security—to register the security with the Securities and Exchange Commission (SEC) and issue a prospectus before marketing and selling the security to the general public³⁴ and file quarterly, annual, and other disclosure reports.³⁵ These filings provide important information to investors, including the terms governing the security,³⁶ finances and governance of the issuer,³⁷ and how the issuer intends to use the proceeds.³⁸ These laws also ensure that all market participants have the same information about crypto securities, and prohibit insider trading.

Consistently applying the federal securities laws to crypto securities would address many of the largest abuses. At minimum, registration requirements would provide two significant benefits to the crypto markets. First, if a crypto security is unregistered, and no exemption is claimed, investors or investment advisers can know that it is likely a scam. Second, unregistered crypto securities cannot be traded on registered exchanges, limiting the reach of that scam.

The SEC also has broad authority over those who assist in the buying and selling, as well as custody, of securities. Some companies provide custody services for crypto assets, either holding clients' wallets or holding clients' crypto assets directly in the companies' own wallets. Depending on the roles they play, wallet providers could be regulated as securities brokers, which are required to register with the SEC and become a member of a national securities association (e.g., FINRA).³⁹ Brokers are also limited in how they may use clients' securities in short sales or other hypothecation activities, and have capital requirements to protect investors' assets.⁴⁰ Further, brokers are also prohibited from engaging in manipulative, deceptive, or otherwise fraudulent activities, again protecting investors against abuses.⁴¹ Brokers are also regulated by Securities Investor Protection Corporation (SIPC), which protects client assets.⁴² Lastly, the SEC requires brokers to maintain protections against cybersecurity incidents.

The SEC could also regulate wallet providers as clearing agencies, which act as intermediaries in the buying and selling of securities, helping ensure settlement or reduce the number of settlement transactions by holding securities in custody for clients.⁴³ Traditionally, securities clearing agencies take the form of the DTCC, a private company that holds securities in trust and permits transactions to occur on its proprietary ledger, easing market transactions (it cleared \$1.6

³⁴ 15 U.S.C. § 77e.

³⁵ 15 U.S.C. § 78m.

³⁶ 17 C.F.R. § 229.202.

³⁷ 17 C.F.R. Subpart 229.300.

³⁸ 17 C.F.R. § 229.504.

³⁹ 15 U.S.C. § 78o.

⁴⁰ 17 C.F.R. § 240.15c2-1.

⁴¹ FINRA, "2020. Use of Manipulative, Deceptive or Other Fraudulent Devices," available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2020> (last accessed January 2022).

⁴² 15 U.S.C. § 78ccc.

⁴³ 15 U.S.C. § 78c.

quadrillion in transactions in 2014).⁴⁴ Requiring wallet providers to register as clearing agencies would help safeguard clients' securities by allowing the SEC to impose regulations on providers and prohibit providers from providing services to prior bad actors, among other restrictions.⁴⁵

Crypto securities often trade on exchanges and venues that are similar to securities exchanges, alternative trading systems (ATS), and broker-dealer internalizers. Any entity that “constitutes, maintains, or provides a marketplace or facilities for bringing together purchasers and sellers of securities” is required to register with the SEC or qualify for an exemption.⁴⁶ SEC oversight of crypto securities trading venues would enable the SEC to ensure that those venues have rules and procedures to “prevent fraudulent and manipulative acts and practices,” “promote just and equitable principles of trade,” and prohibit “unfair discrimination” in trading.⁴⁷ Further, applying oversight to crypto securities trading venues also entails the imposition of listing standards, which may include prohibiting venues from listing crypto securities that fail to meet certain income, liquidity, or other thresholds so that investors know that they are investing in reputable securities.⁴⁸ The SEC could also impose business continuity standards so that crypto exchanges remain accessible to traders in times of market volatility or natural disasters, and against cybersecurity incidents.

Commodity Futures Trading Commission

The Commodity Exchange Act provides that it is illegal to manipulate or provide false or misleading information regarding the markets for commodity and commodity derivative contracts, and that the Commodity Futures Trading Commission (CFTC) has authority to write rules clarifying what types of activities are manipulative.⁴⁹ Applying these prohibitions to the market for crypto commodities would protect traders, as the CFTC could sue for market manipulation like churning, wash trading, spoofing, and other manipulative acts and practices. The prohibitions on fraud and manipulation apply not only to traders transacting in commodities, but the market infrastructure surrounding those transactions, including crypto commodity issuers, wallet providers, and exchanges. The CFTC can enforce the fraud prohibition on wallet providers that fail to provide custody protections offered, and on crypto commodity exchanges that promise traders specific protections against manipulation on their platforms but fail to deliver.

The CFTC also regulates the market for commodity derivatives, which are financial instruments with a value based on the value of something else; for example, a future is a contract between two parties to sell a commodity at a certain date in the future for a price determined today. The CFTC has full regulatory authority over exchanges that facilitate the trading of commodity derivatives, including derivatives of crypto commodities. Under the Commodity Exchange Act, there are two types of exchanges—designated contract markets (DCMs) and swap execution

⁴⁴ Jonathan Shapiro, “Quadrillion dollar corporation at the heart of the financial system,” *Financial Review*, July 7, 2015, available at <https://www.afr.com/companies/financial-services/quadrillion-dollar-corporation-at-the-heart-of-the-financial-system-20150707-gi6w7b>.

⁴⁵ 15 U.S.C. § 78q-1.

⁴⁶ 15 U.S.C. §§ 78c, 78f.

⁴⁷ 15 U.S.C. § 78f.

⁴⁸ *Ibid.*

⁴⁹ 7 U.S.C. § 9.

facilities (SEFs)—that execute or trade commodity derivatives contracts, and they must register with the CFTC.⁵⁰ Requiring registration of exchanges that facilitate transactions in derivatives of crypto commodities would require the exchanges to “establish and enforce ... rules that will deter abuses,” to limit trading of only those swaps “not readily susceptible to manipulation,” and address conflicts of interest, among other requirements.⁵¹ It would also require exchanges to have a chief compliance officer and allow the CFTC to write extensive regulations ensuring that investors are protected.⁵²

The Gap in Existing Regulation

The most prominent gap in the regulation of crypto assets is in the crypto commodity spot markets (that is the sale of an item for immediate delivery, or “on the spot”). Although the CFTC may enforce prohibitions against fraud and market manipulation, Congress has not previously granted agencies regulatory authority in these areas; previously, corporations such as grain elevators served as commodity exchanges and federal regulation was largely unnecessary. Today, however, regulations governing crypto commodity spot markets would be beneficial. For example, with spot exchange registration requirements, regulators could easily shut down unregistered spot brokers and exchanges that may be harming their clients; failure to register or false statements on registration documents are easier to prove than fraud, market manipulation, or unfair practices. Spot exchange regulations would also enable regulators to require exchanges to actively prevent fraud and market manipulation, as the SEC requires of securities exchanges, and regulatory authority would give the CFTC easy access to the quote and trade data that allows them to identify market manipulation more easily.

Security or a Commodity?

One of the biggest questions in crypto today is whether any particular fungible token is a security or a commodity, and significant legal implications turn on the determination. Traditionally, securities are issued by companies, municipalities, non-profits, or individuals to raise capital to develop products and provide holders with legal rights vis-à-vis the issuers (e.g., voting rights, dividends). Unlike securities, commodities like gold or corn have no central issuer and generally do not provide owners with legal rights.

One classic problem in financial markets is information asymmetry: the sellers of financial products may have access to material information affecting the value of an investment of which the buyer is not aware. Congress attempted to mitigate this problem with the passage of the Securities Act and Securities Exchange Act in 1933 and 1934, the core of which involve requiring entities issuing and trading securities to provide detailed disclosures of information about their business practices.⁵³ Such disclosures are critical to well-functioning markets because they allow investors to make informed judgments about how to best allocate their capital based on expected risks and rewards.

⁵⁰ 7 U.S.C. §§ 1a, 7, 7b–3.

⁵¹ 7 U.S.C. § 7b–3.

⁵² *Ibid.*

⁵³ Congressional Research Service, “Federal Securities Laws: An Overview,” (Washington: 2020), available at <https://crsreports.congress.gov/product/pdf/IF/IF11422>.

To determine whether the sale of an asset constitutes a security, courts use two different tests. The test most applicable to the sale of crypto assets is the Howey Test, under which a contract is an “investment contract,” and therefore a security, if there is (1) an investment; (2) in a common enterprise; (3) with a reasonable expectation of profits; (4) to be derived from the entrepreneurial or managerial efforts of others.⁵⁴ This four-part test was crafted to appropriately include within the scope of the securities laws those financial instruments for which investors would benefit from the laws’ applications and exclude those for which investors would not. Investors in instruments largely reliant on product developers or centralized promoters to create profit need information about how those profits will be or are being created. However, investors in contracts that do not meet the Howey Test are unlikely to need protection from the securities laws; investors do not need securities-specific disclosures if there is no investment, no expectation of profit, no central promoter, or if they themselves are central to an enterprise’s profitmaking activities.

Although whether or not a particular crypto token is a security under the Howey Test is a facts-and-circumstances determination, prior case law indicates that many crypto assets are likely to be deemed securities by courts; the application of the securities laws to sales of crypto assets would benefit investors, as investors would be served by knowing who is developing the product, how investments are being used, what the product will look like, and what the investment risks are.⁵⁵

For example, even when an issuer sells crypto assets that do not grant the token holder voting rights or claims to coupon or dividend payments like holders of stocks and bonds, Securities Act disclosures provide investors in the initial sale with information that will help them understand whether their tokens can be resold for a profit.⁵⁶ When an issuer airdrops/gifts crypto tokens to provide secondary market liquidity that allows the issuer to raise capital in secondary market offerings, the Securities Exchange Act’s disclosures may help new investors understand issuers’

⁵⁴ See *Securities and Exchange Commission v. Life Partners, Inc.*, 87 F. 3d 536, (D.C. Cir. 1996). See also *Securities and Exchange Commission v. Howey Co.*, 328 U.S. 293 (1946). Under the second test, the *Reves* Test, a “note” is presumed to be a security, but that presumption may be rebutted if the note bears a “family resemblance” to other assets that are not securities. Courts look at 1) whether the issuer is raising capital for business purposes and the purchaser “is interested primarily in the profit;” 2) whether the instrument is distributed in a manner similar to other securities; 3) whether the public reasonably expects the securities laws to apply; and 4) whether another regulatory scheme applies, such as the banking laws. See *Reves v. Ernst & Young*, 494 U.S. 56 (1990).

⁵⁵ Legal decisions have rebuffed attempts to evade the securities laws with creative structuring, and this flexibility is important given the myriad ways crypto assets have been issued. For example, the “investment” prong of the Howey Test applies to cash, “goods and services,” and any other “exchange of value,” including, for example, gift recipients selling their securities and making a market. *Teamsters v. Daniel*, 439 US 551 (1979); *Hocking v. Dubois*, 885 F.2d 1449 (9th Cir. 1989); *SEC v. Sierra Brokerage Services Inc.*, 608 F. Supp. 2d 923 (S.D. Oh. 2009). The “expectation of profit” prong merely requires some expectation of financial return from either the issuer or by selling in the secondary market, rather than of “a commodity for personal consumption.” *Gary Plastic v. Merrill Lynch*, 756 F.2d 230 (2d Cir. 1985); *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837 (1975). And the “derived from the efforts of others” prong refers to instances in which a promoter makes managerial decisions even though investors may be “required to perform some duties, as long as they are nominal or limited.” *Lino v. City Investing Co.*, 487 F.2d 689 (3d Cir. 1973).

⁵⁶ Securities and Exchange Commission, “Spotlight on Initial Coin Offerings (ICOs),” available at <https://www.sec.gov/ICO> (last accessed January 2022).

ongoing activities.⁵⁷ And although many crypto projects are open source (e.g., anyone may suggest edits to an application's code and holders of "governance tokens" may vote on whether those edits are adopted) there may be instances in which a primary developer or central promoter remains sufficiently in control of the application's development. In such cases, investors deserve to know that primary developer or central promoter's future plans.

For these reasons, it is reasonable to expect the courts to deem many tokens issued by so-called decentralized finance ("DeFi") apps (Dapps) or decentralized autonomous organizations (DAOs) to be securities. Although many Dapp and DAO token promoters claim that they are decentralized, in reality, Dapps and DAOs have characteristics akin to traditional corporations: Single developers or managers are often actively involved in the administration of a given project and many tokens have characteristics akin to traditional stocks such as giving holders the ability to vote on governance proposals and permitting profit-sharing arrangements akin to dividends.⁵⁸ This type of structure can be susceptible to manipulation and attacks, such as a recent instance involving the DeFi project Beanstalk Farms, in which an attacker used a DeFi product called a flash loan to borrow crypto for a short period of time in order to quickly gain possession of a majority of Beanstalk governance tokens and vote through a governance proposal giving itself over \$180 million worth of crypto.⁵⁹ However, if Beanstalk Farms had been registered with the SEC and the securities laws were applied, it is possible the manipulation and attacks could have been mitigated in part because investors would have access to greater information about the project and investment risks, as well as investor protections and SEC oversight of flash loan platforms.

Benefits of the Digital Commodities Consumer Protection Act

Although I expect many crypto assets would be deemed securities under the Howey Test, courts may decide that some or all Dapp and DAO tokens are not securities following facts-and-circumstances examinations of their issuance and governance. For example, courts could determine that a Dapp's governance is sufficiently distributed such that investors would not be served by the application of the securities laws. If courts were to make such determinations, federal regulators would be quite limited under current law in their ability to regulate these assets. Further, there are some crypto assets, such as bitcoin, where there is broad consensus that they are not securities, including by SEC Chair Gensler.⁶⁰ Today, bitcoin accounts for nearly 40% of the crypto market by volume, and the United States lacks a regulatory regime for it.

⁵⁷ See, e.g., Securities and Exchange Commission, "SEC Bars Perpetrator of Initial Coin Offering Fraud," Press release, August 14, 2018, available at <https://www.sec.gov/news/press-release/2018-152>; William Hinman, "Digital Asset Transactions: When Howey Met Gary (Plastic)," June 14, 2018, available at <https://www.sec.gov/news/speech/speech-hinman-061418>.

⁵⁸ See, e.g., Yennie Geller, "The Basics of The Uniswap Token and Its Platform," Change Now, November 18, 2020, available at <https://changenow.io/blog/the-basics-of-the-uniswap-token-and-its-platform>.

⁵⁹ Corin Faife, "Beanstalk cryptocurrency project robbed after hacker votes to send himself \$182 million," The Verge, April 18, 2022, available at <https://www.theverge.com/2022/4/18/23030754/beanstalk-cryptocurrency-hack-182-million-dao-voting>.

⁶⁰ See, e.g., Kevin Helms, "SEC Chair Gensler Affirms Bitcoin Is a Commodity — 'That's the Only One I'm Going to Say'," Bitcoin.com, June 27, 2022, available at <https://news.bitcoin.com/sec-chair-gensler-bitcoin-is-a-commodity/>.

Oversight of the market for bitcoin and any other crypto commodities is limited to the CFTC’s anti-fraud and -manipulation authorities.

This gap in federal law wherein no regulator has full legal authority to oversee the commodity spot markets harms investors and the credibility of the markets themselves. Crypto commodity investors deserve better.

I support the Digital Commodities Consumer Protection Act (DCCPA) because it would appropriately fill in that gap by providing the CFTC with the desperately needed authority to oversee these markets without affecting other regulators’ jurisdiction and legal authorities. Below are explanations of some of the most important provisions of the bill.

Retains SEC Authority Over Crypto Securities

While the DCCPA would grant the CFTC regulatory authority over digital commodities,⁶¹ the bill would exclude from the definition of “digital commodity” anything that is a “security.”⁶² Accordingly, the securities laws would appropriately continue applying to crypto assets identified by the courts as securities.

Implements Appropriate Customer Protections

The DCCPA would implement appropriate consumer protections for assets subject to the bill’s provisions.

Because it is easier for retail traders to buy and sell assets that are listed on platforms than to trade bilaterally, the securities laws have long provided the SEC with the authority to limit which assets exchanges list to those appropriate for retail investors.⁶³ One of the biggest improvements made by the DCCPA would be that the CFTC could prohibit trading platforms (i.e., trading facilities, brokers, dealers, custodians) from listing any crypto assets that are “readily subject to manipulation,” protecting the customers that may decide to invest in those assets.⁶⁴ Specifically, the DCCPA would permit the CFTC to limit the listing of crypto assets to those in which “the operating structure and system of the digital commodity is secure from cybersecurity threats, including the possibility of material alterations by persons acting collectively” and “the functionality of the digital commodity will protect holders from operational failures,” among other restrictions. This would help address, for example, problem that Beanstalk Farms assets were siphoned off following a change in governance by a single bad actor.

The DCCPA would also ensure crypto commodity investors receive consolidated disclosures. Whereas investors in securities have ready access to a variety of written disclosures (e.g., S-1s, 10-Ks, 10-Qs), investors in crypto commodities currently lack any such disclosures; instead, they are largely limited to scouring projects’ discord servers for project updates. To address the lack of consolidated disclosures, the DCCPA would require crypto commodity platforms to disclose

⁶¹ Digital Commodity Consumer Protection Act, S. 4760, 117th Cong. § 4 (2022) (henceforth “DCCPA”), proposed Commodity Exchange Act (CEA) section 2(c)(2)(F).

⁶² DCCPA § 4, proposed CEA section 1a(18).

⁶³ See U.S. Securities and Exchange Commission, “Listing Standards,” available at <https://www.sec.gov/education/smallbusiness/goingpublic/listingstandards> (last accessed August 2022).

⁶⁴ DCCPA § 4, proposed CEA section 5i(d)(5)(B).

to customers “conspicuous” and “plain language” information about “the operating structure and system of” listed crypto commodities,⁶⁵ as well as about “the material risks and characteristics of any applicable digital commodity contracts.”⁶⁶ This information will better enable crypto commodity investors to understand the risks and opportunities of their investments. Having this information in one central location is even more helpful.

Further protecting investors is the DCCPA’s broad prohibitions on fraud, deceit, and manipulation. The bill would prohibit all platforms from “engag[ing] in any act, practice, or course of business ... that is fraudulent, deceptive, or manipulative.”⁶⁷ In addition, trading facilities would be required to ensure “a competitive, open, and efficient market ... that protects the price discovery process,” to “protect markets and market participants from abusive practices” on their platforms, and to “monitor trading in digital commodities to prevent manipulation, price distortion, and disruptions of the delivery or settlement process,”⁶⁸ and brokers and dealers would only be permitted to “trade, or arrange a trade, in a in a contract for a digital commodity that is not readily susceptible to manipulation,”⁶⁹ and would be required to conform with “business conduct standards... relating to fraud, manipulation, and other abusive practices.”⁷⁰ All of these provisions would ensure that crypto commodity markets are fair and equitable and that retail investors may make decisions based on truthful information.

Currently, some crypto platforms trade against their clients⁷¹ or engage in what is effectively insider trading,⁷² and there is little regulators can do to stop it so long as these practices are disclosed in the platforms’ fine print. These types of activities are explicitly prohibited by the securities laws, as they are contrary to the concept of fair dealing.⁷³ The DCCPA would address crypto commodity platforms’ conflicts of interest by requiring the CFTC to “establish structural and institutional safeguards ... to minimize conflicts of interest that might potentially bias the judgment or supervision of a digital commodity platform and contravene the core principles of fair and equitable trading ... including conflicts arising out of transactions or arrangements with affiliates.”⁷⁴ Among other things, the DCCPA would also permit the CFTC to require “information partitions and the legal separation of different categories of digital commodity platforms” so that these activities cannot occur.⁷⁵ Brokers and dealers would also be required to “establish prices fairly and objectively,” “disclose the basis for those prices,” and “shall not

⁶⁵ DCCPA § 4, proposed CEA section 5i(d)(8).

⁶⁶ DCCPA § 4, proposed CEA section 5i(f)(1)(A).

⁶⁷ DCCPA § 4, proposed CEA section 5i(h).

⁶⁸ DCCPA § 4, proposed CEA section 5i(b)(2)(C).

⁶⁹ DCCPA § 4, proposed CEA section 5i(e).

⁷⁰ DCCPA § 4, proposed CEA section 5i(b)(3)(C).

⁷¹ See Brian Evans, “SEC chief Gary Gensler says crypto exchanges are ‘market making against their customers,’” May 11, 2022, available at <https://markets.businessinsider.com/news/currencies/crypto-exchanges-market-making-against-customers-sec-gary-gensler-2022-5?op=1>

⁷² See, e.g., Kate Irwin, “Coinbase Has a Serious Insider Trading Problem, Study Claims,” August 17, 2022, available at <https://decrypt.co/107671/coinbase-insider-trading-problem-study>

⁷³ See, e.g., “Obligations to Your Customers,” Financial Industry Regulatory Authority, available at <https://www.finra.org/registration-exams-ce/manage-your-career/obligations-your-customers> (last accessed August 2022)

⁷⁴ DCCPA § 4, proposed CEA section 5i(b)(4)(C).

⁷⁵ Ibid.

disrupt market functioning or hinder the price discovery process.”⁷⁶ Further, the bill would also require the CFTC to adopt “standards governing digital commodity platform marketing and advertising, including testimonials and endorsements” to avoid misleading advertisements like those that occurred during the “Crypto Bowl.”⁷⁷

Finally, the DCCPA would protect investors by requiring platforms to hold customer assets “in a manner that minimizes the risk of loss of, or unreasonable delay in access to, the customer property,” including segregating funds and prohibiting the comingling with the property of the platform.⁷⁸ Further, just as the securities laws permit of the SEC,⁷⁹ the DCCPA would permit the CFTC to regulate or even prohibit platforms to rehypothecate (i.e., lend out) client crypto commodities.⁸⁰ And to address issues being faced today with the bankruptcy of crypto lending platforms like Celsius, the DCCPA would update the bankruptcy code to provide that crypto commodities held by platforms are assets of the platforms’ clients.⁸¹

Provides for Effective Federal Oversight of Crypto Commodity Platforms

Unlike some other bills that have been introduced this Congress,⁸² the DCCPA would require the mandatory registration, oversight, and inspection of crypto commodity platforms.⁸³ The importance of this oversight cannot be overstated. Most importantly, permitting platforms to avoid registration would simply lead to a race to the bottom; if one platform gains a competitive advantage by not registering, it is likely that others will decide not to register either, causing a deterioration of customer protections.

Further, in order to effectively enforce prohibitions on fraud and market manipulation, regulators must have ready access to pre- and post-trade data from platforms, allowing regulators to more easily identify spoofers, inside traders, and other market manipulators.⁸⁴ Yet today, the CFTC’s lack of detailed information about transactions on crypto platforms inhibits its ability to enforce its existing anti-fraud and -manipulation authority over crypto commodities. Importantly, while many crypto asset transactions occur on blockchains, transactions facilitated by crypto exchanges occur on the exchanges’ own ledgers. A recent investigation “of 157 crypto exchanges” using data reported to research firms “finds that 51% of the daily bitcoin trading volume being reported is likely bogus,” resulting from wash trades and other market manipulation.⁸⁵ However, because

⁷⁶ DCCPA § 4, proposed CEA section 5i(b)(3)(A).

⁷⁷ DCCPA § 4, proposed CEA section 5i(f)(3); *see generally* Tiffany Hsu, “Prepare Yourself for This Weekend’s ‘Crypto Bowl,’” *New York Times*, February 11, 2022, available at <https://www.nytimes.com/2022/02/11/business/media/super-bowl-commercials.html>.

⁷⁸ DCCPA § 4, proposed CEA section 5i(b)(4)(H).

⁷⁹ 15 U.S.C. § 78h.

⁸⁰ DCCPA § 4, proposed CEA section 5i(b)(4)(H)(iii)(III)(aa).

⁸¹ DCCPA § 5(i).

⁸² *See, e.g.*, Digital Commodity Exchange Act, H.R. 7614, 117th Cong. (2021).

⁸³ DCCPA § 4, proposed CEA section 5i(a)(1).

⁸⁴ CFTC, Division of Enforcement Annual Report FY 2020 at page 10, available at <https://www.cftc.gov/PressRoom/PressReleases/8323-20>.

⁸⁵ Javier Paz, “More Than Half Of All Bitcoin Trades Are Fake,” *Forbes*, August 26, 2022, available at <https://www.forbes.com/sites/javierpaz/2022/08/26/more-than-half-of-all-bitcoin-trades-are-fake/>.

the CFTC does not have access to the trade data, it is difficult if not impossible to effectively enforce the market manipulation prohibitions currently applicable to bitcoin.

The DCCPA would address this lack of information by requiring all crypto commodity platforms to engage in extensive recordkeeping and provide that information to the CFTC upon request.⁸⁶ Specifically, trading facilities would be explicitly required to “capture information that may be used in establishing whether rule violations have occurred,”⁸⁷ and brokers and dealers would be required to “keep full, complete, and systematic records (including all pertinent data and memoranda) of all transactions relating to its business of dealing or brokerage in digital commodity transactions,” as well as “all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices.”⁸⁸ Brokers and dealers would also be required to become members of a self-regulatory organization, which would impose additional oversight of these entities.⁸⁹

Importantly, the definitions of digital commodity broker, dealer, and trading facility in the DCCPA are sufficiently broad as to cover defi trading platforms, not just centralized platforms.

In addition, the DCCPA would permit trading platforms to list both crypto securities and crypto commodities, allowing traders to buy and sell all crypto assets on a single platform, so long as the platform is dual-registered with the SEC as a securities exchange, broker, or dealer.⁹⁰ In this sense, the DCCPA would allow the crypto commodity and security markets to continue developing as a singular entity but would not permit issuers to choose their regulator.

Prevents Systemic Risks

As crypto markets continue developing, they have the potential to become highly integrated into traditional financial markets. The DCCPA contains several provisions that would help ensure that crypto markets do not become a systemic risk. Specifically, the DCCPA would provide the CFTC with the explicit authority to “make, promulgate, and enforce such rules governing margined, leveraged, or financed digital commodity trades.”⁹¹ Congress granted regulators similar authority over the trading of securities on margin following the Great Depression to ensure that overly-leveraged trading does not again cause the securities markets to fail, which also applies to crypto securities,⁹² and it is important that crypto commodities be covered by similar provisions. Further, the DCCPA requires crypto commodity trading facilities to “provide for the exercise of emergency authority” by the facility or CFTC when markets go haywire, “including the authority to liquidate or transfer open positions in any digital commodity or to suspend or curtail trading in a digital commodity.”⁹³ This provision is extremely important; in a market event where crypto prices drop precipitously, platforms’ automated systems could close

⁸⁶ DCCPA § 4, proposed CEA section 5i(b)(4)(A).

⁸⁷ DCCPA § 4, proposed CEA section 5i(b)(2)(A).

⁸⁸ DCCPA § 4, proposed CEA section 5i(b)(3)(B).

⁸⁹ DCCPA § 4, proposed CEA section 5i(i).

⁹⁰ DCCPA § 4, proposed CEA section 5i(j).

⁹¹ DCCPA § 4, proposed CEA section 5i(c).

⁹² 15 U.S.C. § 78g.

⁹³ DCCPA § 4, proposed CEA section 5i(b)(2)(F).

traders' positions and cause a cascading effect, whereas halting trading could bring stability to the markets.

Addresses Climate Change and Financial Inclusion

As noted above, two significant concerns about crypto assets are their implications for climate change and financial inclusion. Importantly, the DCCPA works towards addressing these worries. Regarding climate change, the bill requires the CFTC and other federal agencies to “examine ... the energy consumption and sources of energy used in connection with the creation and transfer of the most widely traded digital commodities” and publish “an estimate of the energy consumption and sources of energy used in connection with the creation and transfer of” those assets.⁹⁴ With the disclosure of this information, traders would be able to understand how energy efficient a crypto asset is and whether added costs due to using energy-intensive blockchains could reduce potential investment returns, thereby yielding better capital allocation in the market.⁹⁵ As a result of such disclosures, token issuers may be incentivized to migrate to more energy efficient blockchains and miners and stakers may be incentivized to utilize cleaner electricity as investors migrate their capital following the environmental impacts of their investments.

Regarding financial inclusion, the DCCPA would require the CFTC to study the participation of historically underserved communities in crypto markets. Specifically, the CFTC would be required to “examine the racial, ethnic, and gender demographics of customers participating in digital commodity markets” and issue a report “describing how those demographics will inform the rules and regulations of the Commission relating to customer protection” and how the CFTC “can provide outreach to historically underserved customers” and “provide [for] appropriate protection, outreach, or other similar activities relating to historically underserved customers participating in digital commodity markets.”⁹⁶ This study is important. There are deep concerns about whether crypto assets and blockchain technology will truly lead to financial inclusion; as Black, Hispanic, and Asian Americans are more likely to have invested in crypto assets than White Americans, they are likely to have been harmed by the recent crypto downturn.⁹⁷ While other regulators examine the potential for crypto to be used in payments or banking, it is important that the CFTC evaluates racial, ethnic, and gender differences in crypto investing and applies those lessons to its rulemakings.

Additional Important Provisions

The DCCPA contains three additional, positive provisions that warrant mentioning.

First, the bill would permit the CFTC to collect fees from crypto commodity platforms registrants “used to recover the annual costs of” regulating the crypto commodity markets.⁹⁸

⁹⁴ DCCPA § 4, proposed CEA section 5i(g).

⁹⁵ Todd Phillips, “The SEC’s Regulatory Role in the Digital Asset Markets” (Washington: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/sccs-regulatory-role-digital-asset-markets/>.

⁹⁶ DCCPA § 7.

⁹⁷ Michelle Faverio and Navid Massarat, “46% of Americans who have invested in cryptocurrency say it’s done worse than expected,” August 23, 2022, available at <https://www.pevresearch.org/fact-tank/2022/08/23/46-of-americans-who-have-invested-in-cryptocurrency-say-its-done-worse-than-expected/>.

⁹⁸ DCCPA § 4, proposed CEA section 5i(k).

Although these user fees would be used to offset congressional appropriations, rather than supplementing or replacing those appropriations as is preferable, these offsetting user fees may encourage Congress to raise the CFTC's total appropriations to a more effective level.

Second, the bill would preempt State money transmission, virtual currency, and commodity broker registration requirements. This provision is appropriately limited, and explicitly does "not affect the applicability of State antifraud laws."⁹⁹

Lastly, the DCCPA would require all digital commodity platforms to comply with federal anti-money laundering (AML) laws.¹⁰⁰ These entities are already largely required to comply with AML laws, but the bill would make this requirement explicit.¹⁰¹

Recommended Amendments

Following public release of the DCCPA, several provisions have been identified for which the Committee may wish to consider amendment.

First, the DCCPA's definition of "digital commodity" explicitly provides that the crypto asset Ether is a commodity. Sometime this year, the Ethereum blockchain will be undergoing changes to make it more energy efficient, and there is debate within academia and the crypto industry about whether this change will make Ether a security under the Howey Test.¹⁰² The Committee may wish to consider removing reference to specific crypto assets from its definition.

Second, there is some concern that the listing of a digital asset on a digital commodity platform may result in a legal presumption that the asset meets the definition of digital commodity under the DCCPA. This is especially a concern given that the DCCPA appropriately does not limit digital commodity platforms from listing only digital commodities; in fact, it expects dual registration as a securities platform and the listing of securities.¹⁰³ The Committee may wish to clarify that the listing of a digital asset on a digital commodity platform does not provide a presumption that the asset is a commodity. A similar change could be made to provide that the fact that the CFTC has not stayed a listing does not imply that the CFTC considers that asset to be a digital commodity under the DCCPA.

Third, the DCCPA's definition of "digital commodity" is limited to those assets that can be "transferred person-to-person without necessary reliance on an intermediary."¹⁰⁴ The implication of this prong is that crypto miners and stakers—upon which crypto transactions rely—are not intermediaries. However, these entities may be considered intermediaries as they may have the

⁹⁹ DCCPA § 4, proposed CEA section 5i(n).

¹⁰⁰ DCCPA § 5(g).

¹⁰¹ Financial Crime Enforcement Network, "Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies," May 9, 2019, available at <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

¹⁰² Frederick Munawa, "What's at Stake: Will the Merge Turn Ether Into a Security?," CoinDesk, August 10, 2022, available at <https://www.coindesk.com/tech/2022/08/10/whats-at-stake-will-the-merge-turn-ether-into-a-security/>.

¹⁰³ DCCPA § 4, proposed CEA section 5i(j).

¹⁰⁴ DCCPA § 2(a)(7), proposed CEA section 1a(18).

capacity to rearrange the order in which crypto transactions are validated.¹⁰⁵ The Committee may wish to consider adding a prong to the definition of “digital commodity” that explicitly includes that assets that are “transferred on a blockchain or similar technology.”

Fourth, the DCCPA as written would potentially remove the SEC’s jurisdiction over some transactions that include securities as the bill would provide the CFTC with exclusive jurisdiction over agreements, contracts, or transactions involving digital commodities.¹⁰⁶ This exclusive jurisdiction language could, for example, strip the SEC of concurrent jurisdiction over transactions for which crypto commodities are exchanged for securities, including crypto securities. Accordingly, the Committee may wish to consider amending the proposed section 1a(c)(2)(F)(i) to read something like “shall have exclusive jurisdiction over, any account, agreement, contract, or transaction involving a digital commodity trade, except in instances where such an account, agreement, contract, or transaction involves trading a digital commodity for a security in which the Securities and Exchange Commission may have concurrent jurisdiction under the securities laws.” The Committee may also wish to include language in the DCCPA providing that “Before commencing any rulemaking or issuing an order regarding an agreement, contract, or transaction involving both a digital commodity and a security, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.” This language is similar to that which Congress included in Title VII of the Dodd-Frank Act.¹⁰⁷

Conclusion

In sum, the Digital Commodities Consumer Protection Act is important legislation that Congress should take up. The bill would impose significant customer protections for traders of crypto commodities; provide the Commodity Futures Trading Commission with much needed regulatory authority to oversee crypto commodity brokers, trading facilities, and other platforms; and contains provisions to help address systemic risks, crypto’s consequences for climate change, and the problems with financial inclusion. Importantly, the DCCPA would ensure that the Securities and Exchange Commission retains authority over crypto assets that are appropriately deemed securities. I encourage this Committee to approve this bipartisan bill and Congress to enact it expeditiously.

Thank you, and I am happy to answer any questions.

¹⁰⁵ See Carol Robinson, “Bitcoin Mining – How Do Miners Process Transactions Inside The Blockchain?,” CryptoAdventure, May 23, 2020, available at <https://cryptoadventure.com/bitcoin-mining-how-do-miners-process-transactions-inside-the-blockchain/>.

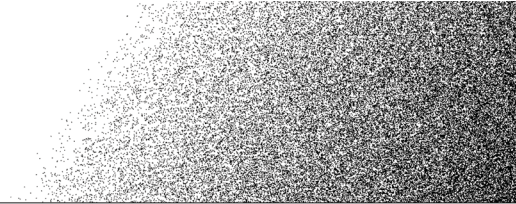
¹⁰⁶ See DCCPA § 3, proposed CEA section 2(c)(2)(F)(i).

¹⁰⁷ See 15 U.S.C. § 8302.

Appendix A

Regulator Authority by Crypto Asset Type				
	Crypto Security	Crypto Commodity	Non-Fungible Token	Stablecoin
Securities and Exchange Commission	Full authority			Full authority if assets invest in securities and not issued by a bank
Commodity Futures Trading Commission		Anti-Fraud Authority		Full authority if not invested and not issued by a bank
Bank Regulators		Full authority if issued by a bank	Full authority if issued by a bank	Full authority if issued by a bank
Federal Trade Commission		Authority over unfair or deceptive acts or practices in spot transactions not involving banks		
Consumer Financial Protection Bureau		Regulatory authority if a consumer financial product or if used as payments		Regulatory authority if a consumer financial product or if used as payments
Financial Stability Oversight Council	Designate systemically important issuers and market infrastructure			

Crypto Council for Innovation



Testimony of Sheila Warren, Chief Executive Officer, Crypto Council for Innovation

Before the United States Senate Senate

Committee on Agriculture, Nutrition, and Forestry

“Legislative Hearing to Review S.4760, the *Digital Commodities Consumer Protection Act*”

September 15, 2022
10:00 AM

I. Introduction

Chairwoman Stabenow, Ranking Member Boozman, and members of the committee –

Thank you for the opportunity to testify today on both the tremendous benefits and opportunities associated with the adoption of digital assets in the United States.

There is a pressing need for regulatory clarity that promotes innovation and protects consumers. The legislation being considered today can provide some of the certainty needed to help spur international economic growth, create jobs, improve financial inclusion, and enhance privacy and security.

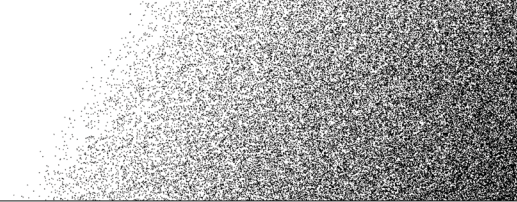
I am pleased to represent the Crypto Council – a global alliance of industry leaders across the digital assets and Web3 space. We use an evidence-based approach to support institutions and leaders worldwide who are shaping and encouraging the responsible regulation of this innovation.

Over the past two decades, my time as an attorney, entrepreneur, product builder, and NGO executive has focused on the intersection of technology, law, diversity & inclusion, civil rights and Web3. Over the past 6 years, I’ve worked across 16 countries to advance the responsible and inclusive adoption of this new technology.

[Info@cryptocouncil.org](mailto:info@cryptocouncil.org)

San Francisco | Washington, D.C. | New York | Denver | London | Hong Kong

Crypto Council for Innovation



Now, I see crypto as this generation's best chance of addressing inequity in current financial and technical systems. Crypto can provide a more equal playing field for people and communities that don't have meaningful access to these systems.

And as we shift to a more ownership-based global digital economy, the building of an open and transparent regulatory framework is crucial. The *Digital Commodities Consumer Protection Act* is a pivotal step in achieving the clarity and oversight that are greatly needed, and I applaud this committee for its bipartisan work on this legislation.

II. Crypto refers broadly to a wide range of use cases and applications. At its core is the idea of an ownership-based, digital economy.

The history of crypto and explanations of the technology underpinning it are well-documented. Rather than repeat this content, I want to highlight what is new about crypto and the vast range of activities covered within the Web3 ecosystem. If I can leave you with one message, it is that the industry is wide-ranging and moving quickly. This makes nuanced policymaking and educational efforts vital.

A. Crypto's Value

First, what's new?

Crypto is a broad term that covers a wide range of use cases and applications. The core shift it represents is from the current model of intermediated interactions to an ownership-based digital economy. For a long time, we have relied on third parties to facilitate trust in many aspects of our lives, such as transactions, identity provision, and governance. In many cases, intermediaries have handsomely profited from intermediation. And, at worst, some intermediaries have exacerbated inequalities,¹ sown distrust,² and restricted much-needed access to individuals.³

What if we could put some of this power back into the hands of individuals and give consumers a broader set of choices? This is the question at the core of Web3.

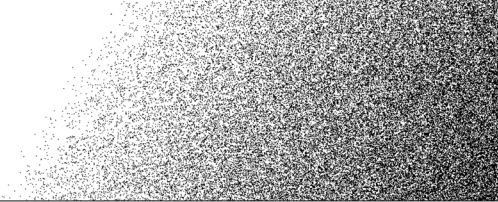
Using a unique combination of cryptography, incentive design, and decentralized operations, blockchain technology allows for a decentralized form of record keeping and value exchange. As the recent Executive Order explains, blockchain "refers to distributed ledger technologies

¹ <https://journals.sagepub.com/doi/pdf/10.1177/0027642211003162>

² https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef22042en.pdf

³ <https://documents1.worldbank.org/curated/en/52411525105603327/pdf/The-decline-in-access-to-correspondent-banking-services-in-emerging-market-trends-impacts-and-solutions-lessons-learned-from-eight-country-case-studies.pdf>

Crypto Council for Innovation



where data is shared across a network that creates a digital ledger of verified transactions or information among network participants and the data are typically linked using cryptography to maintain the integrity of the ledger and execute other functions, including transfer of ownership or value.⁴

This fundamentally new innovation has opened a new model for peer-to-peer value exchange in the digital economy. Though the first use case was financial, the innovation found in the Bitcoin white paper⁵ has opened a world of possibilities. Conversations about central bank digital currencies (CBDCs),⁶ digital art and non-fungible tokens (NFTs),⁷ digital identity,⁸ and decentralized finance⁹ – some of which I will dive into shortly – would not be possible without this fundamental transformation.

B. Examples of Crypto in Action

Now, I turn to what this all means in practice. While it is important to understand the basics of the technology, I think there needs to be a shift from asking, "crypto: how does it work?" to "crypto: what is it good for?". I highlight some examples of crypto in action, though this list is by no means exhaustive.

Decentralized Finance (DeFi)

Another example is decentralized finance, or DeFi, which provides financial services without the traditional intermediaries. DeFi is perhaps one of crypto's most prominent use cases, given its market sizing and value transacted. One of the core tenets of DeFi is to be part of building an open monetary system, accessible to everyone globally to provide basic banking service options.

It is well known that there is a burgeoning fringe banking industry in the United States. Through a variety of predatory lending practices, money lenders are able to charge high fees on loaning money to individuals with pressing needs for capital.

The scale of predatory lending is massive. There are more than 23,000 payday lenders in the United States.¹⁰ To put that into perspective, that's almost twice the number of McDonald's restaurants.¹¹ And that doesn't even include various other lending mechanisms, including

⁴ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>

⁵ <https://bitcoin.org/bitcoin.pdf>

⁶ <https://www.bis.org/pub/bsfcpf/bsfcp125.htm>

⁷ <https://nft.com/5847720nft-art/>

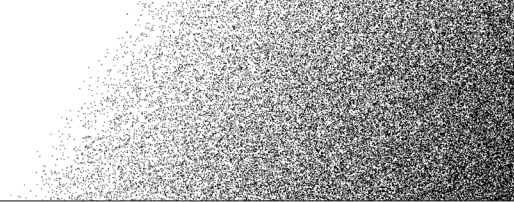
⁸ <https://www.comptek.com/podcasts/comptek-money-reimagined/getting-internet-identity-right-30-years-on/>

⁹ <https://www.vox.com/finance/2021/02/16/21816161/money-makers-decentralized-finance-defi-podcast/>

¹⁰ <https://www.cnbc.com/2021/02/16/money-makers-decentralized-finance-defi-podcast.html>

¹¹ *Id.*

Crypto Council for Innovation



rent-to-own services, auto title loans, or pawnshops. People resort to payday loans and fringe banking because of barriers to the traditional financial system. These include the punitive nature of credit scoring in the traditional banking world, minimum balances to keep accounts open, and other barriers to participate in the traditional financial system.

There are innovative products in crypto that offer alternative ways to trustlessly take out loans without agreeing to predatory practices. Though crypto lending is not without risk, the risk factors look very different. More importantly, opting into crypto and DeFi is to opt out of predatory and discriminatory banking practices. Crypto owners were more likely than the average U.S. adult to cash checks or purchase money orders from non-bank providers, pay bills through services like MoneyGram or Western Union, take out payday loans, and take out auto title loans.¹²

Throughout crypto, the total market capitalization of lending protocols is around \$4 billion, a fraction of the \$8 trillion market capitalization of the world's largest banks. To date, \$393 million in dollars have been lent via crypto platforms, with 95 percent of that amount from the past calendar year alone.¹³ Notably, compared to the traditional loan options: the average personal loan interest rate in the US is 10 percent (9.38% in 2021),¹⁴ while crypto loan rates tend to be significantly lower, with rates ranging from 0.01-3.8% in 2021 across four major decentralized lending platforms.¹⁵

DeFi can also be used beyond traditional finance. For instance, academic literature has suggested that the unique combination of decentralization, interconnected autonomy, openness, and intelligence makes blockchain technology a key enabler of various energy-related use cases.¹⁶ These include peer-to-peer energy transactions, efficiency gains in electric vehicle charging, carbon emissions certification and trading, synergy of the multi-energy system, and more.¹⁷ Once again, these are not theoretical propositions. Initiatives like "regenerative finance" – or ReFi – are working to bring these climate-focused projects to life.¹⁸ In one such example, the Climate Collective mapped more than 250 projects spanning carbon credits, biodiversity, energy markets, waste management, and more.¹⁹

¹² https://go.morningconsult.com/rs/850-TAA-511/images/220530_State_of_Cryptocurrency_Report.pdf

¹³ <https://tokenterminal.com/terminal/markets/lending>

¹⁴ <https://www.burgesstiller.com/personal-finance/cryptocurrency-personal-loan-interest-rates>

¹⁵ <https://coin.aveo.com/interest-rates/borrow/historical/repayval1>

¹⁶

https://ojs.semanticscholar.org/handle/10293/3440/a35aa155671023062aa31c72e64a.pdf?_ga=2.88485663.1428055600.1655216566-2003207878.1655216566

¹⁷

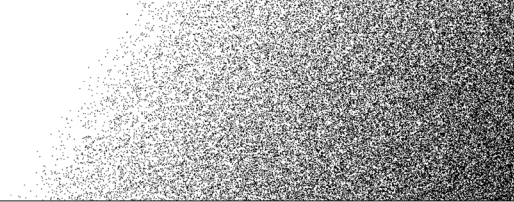
https://www.researchgate.net/publication/330089877_Blockchain-Based_Management_of_Shared_Energy_Assets_Using_a_Smart_Contract_Ecosystem

¹⁸

<https://www.coindesk.com/layer2/minioneweek/2022/03/27/crypto-carbon-can-blockchain-networks-fix-carbon-offsets/>

¹⁹ <https://kumi.io/climate-collective/web3-climate-map>

Crypto Council for Innovation



Crypto Assets in Philanthropy and Aid

Recent events in Ukraine present one such example. Following the start of the war, the crypto community quickly galvanized to raise approximately \$100 million to aid the Ukrainian government.²⁰ Working with a local exchange, the Ukrainian government was able to receive and use the cryptocurrency quickly to buy essential items for the war effort.²¹ This was supplemented by other efforts, such as crypto-based charity Ukraine DAO, which raised millions of dollars via the sale of NFTs.²²

Michael Chobanian, a Ukrainian entrepreneur and president of the Blockchain Association of Ukraine, testified before the US Congress in May 2022, describing the essential nature of the crypto relief campaign. He detailed how “the minute the crypto landed on these addresses, the government could use them so immediately. No bureaucracy.” In short, Chobanian emphasized that blockchain and crypto “will be the technology that we’re going to use to rebuild our country.”²³

Crypto has also provided immediate aid in other high-stake crisis situations. Following the second wave of COVID-19 in India, the crypto community quickly mobilized to raise money for the “India COVID Crypto Relief Fund.”²⁴ Several key players in the space donated and encouraged others to do the same. This included a donation from Ethereum co-founder Vitalik Buterin, which was worth more than \$1 billion at the time of donation.²⁵ The funds were used for beds, training, and augmenting the country’s public health infrastructure. Importantly, the fund was community driven and helped finance local, grassroots COVID-19 relief efforts.²⁶

We have seen in these times of crisis that people want to organize and help, but traditional tools and cumbersome requirements can create friction or even stand in the way of these altruistic efforts.

Crypto Assets in Remittances and International Payments

The best-known use case is crypto assets. Crypto assets have been used in a number of arenas, but show particular promise for international payments and remittances because these transactions have historically been high-cost and heavily intermediated.

²⁰ <https://www.coindesk.com/business/2022/03/09/ukraine-has-received-close-to-100-million-in-crypto-donations/>

²¹ <https://donate.thedigital.gov.ua/>

²² <https://cointribemag.com/news/ukraine-dpoc-raises-over-6m-via-nft-gate-to-aid-ukrainian-citizens>

²³ <https://www.protocol.com/newsletters/protocol-fintech/crypto-ukraine-senate-hearing>

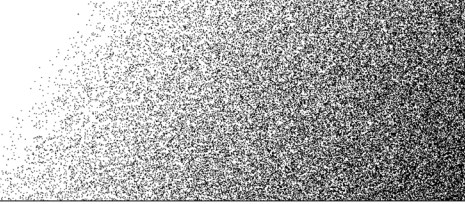
²⁴ <https://cryptorelief.in/>

²⁵

²⁶ <https://www.forbes.com/sites/ninabambysheva/2021/05/12/ethereums-co-founder-vitalik-buterin-donates-over-1-billion-to-india-covid-relief-fund-and-other-charities/?sh=4a804cb36548>

²⁷ *Id.*

Crypto Council for Innovation



Remittances – estimated to reach \$630 billion in 2022 – represent a significant opportunity. According to the World Bank's Remittance Prices Worldwide database, the global average cost of sending \$200 was 6.4 percent in the first quarter of 2021, which is more than double the Sustainable Development Goal target of 3 percent by 2030.²⁷ Estimates show that cross-border payments underpinned by blockchains could save approximately \$4 billion a year.²⁸

Crypto operators have stepped in to provide these services at a lower cost. For example, in Sub-Saharan Africa, banks are the most expensive agents for sending money, charging 10.2 percent in fees on average. This is closely followed by 7.7 percent from money transfer operators, while post offices charge 5.5 percent. Meanwhile, crypto service providers such as BitPesa, LocalBitcoins, and Paxos can process remittance payments with 1 to 3 percent in fees on average, representing significant cost savings for those who need them most.²⁹

MoneyGram, one of the world's largest cross-border transfer services, is partnering with Stellar, a decentralized digital currency protocol, to allow users to send USDC (a stablecoin) to recipients. Recipients can cash out in local currencies via the MoneyGram network.³⁰ Similarly, Coinbase has a cash-out service across 37,000 convenience stores, supermarkets, and department stores in Mexico. Customers have the choice of cashing out or investing their balance into cryptocurrencies.³¹ This is an example of tailoring services to the needs of the customer. In Mexico, 86 percent of all transactions are in cash.³²

Cryptocurrencies are also increasingly used in countries where access to financial institutions is slow and cumbersome, or where such access has been otherwise significantly depleted because of war, disaster, or terrorism.³³ I have personally worked in this area – including building a product designed to facilitate international donations – and can attest to the complexity involved.³⁴

Non-Fungible Tokens (NFTs)

NFTs are yet another use case opening up new opportunities for individuals, especially in arts and culture.

A classic challenge for entertainers, artists, and other content creators is reaching an audience and generating sufficient income. Digital media crystallized this challenge. The Internet radically

²⁷ <https://www.worldbank.org/en/news/press-release/2021/11/17/remittance-flows-recover-robust-7-3-percent-growth-in-2021>

²⁸ <https://www.mckinsey.com/industries/financial-services/our-insights/blockchain-and-central-bank-keeping-the-connection>

²⁹ <https://forcast.news/cryptocurrencies/remittance-africa-blockchain-bitcoin-money-transfers-fees/>

³⁰ <https://ir.moneygram.com/news-releases/news-release-details/moneygram-announces-innovative-partnership-stellar-development>

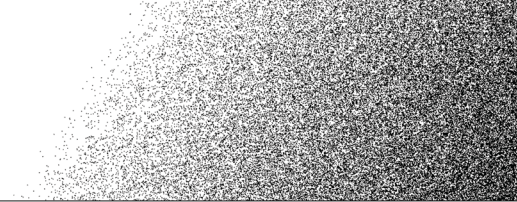
³¹ <https://www.coindesk.com/business/2022/02/15/coinbase-enables-mexican-users-to-easily-cash-out-of-crypto-sent-to-them/>

³² <https://www.coinbase.com/press-releases/coinbase-enables-users-to-easily-cash-out-of-crypto-sent-to-them-21h095d8324>

³³ <https://www.coindesk.com/podcasts/coindesk-money-remained/a-best-of-2021-holiday-special-hallis-transition-into-modern-finance/>

³⁴ <https://www.coinnetwork.org/coin-blogs/shells-warmen-wagmi-women-of-the-weak-ly8kp-s835-57dy-32hr-R-dwvxm-mk8m-sm7z/>

Crypto Council for Innovation



reduces the costs of copying and distributing digitally based work in comparison to its physical counterparts, making it harder for creators to monetize their work. Blockchain applications can help address this challenge. Specifically, NFTs can help creators manage digital rights to the content they create.

Such NFTs represent unique or quantity-limited digital items – like a work of art or piece of music – linked to blockchain records. Each individual NFT has a unique identifier. Entries on the blockchain record information about ownership of, and associated with, the NFT. Subsequent entries can record transactions, such as transfer or sale. Smart contracts can also be programmed to pay creators royalties from the work's secondary market transactions.³⁵ Artists and their families can sell their digital art and receive royalties for the lifetime of the NFT. This is very different to traditional art where an artist sells for one-time payment.

NFTs expand opportunities for creators and their audiences to connect directly. Traditional artists like poets and fine artists can reach a broader audience by representing poems or pictures in NFTs than they can by relying solely on books, auctions, and dealers for distribution.³⁶ For example, the poet Ana Maria Caballero makes NFTs from spoken-word performances of her award-winning poetry.³⁷ Blockchain technology allows her to reach her audience without the need for a third-party seller, which is limited for poetry.³⁸ Similarly, musicians can sell NFTs incorporating their songs that embed royalty rights in the smart contracts.³⁹ This allows audiences to support their favorite musicians and feel more connected to the music.⁴⁰ DJ Steve Aoki noted that he made more money from one NFT drop than in 10 years of music advances.⁴¹

We have also seen how NFTs have opened up opportunities for those who may not have had opportunities within traditional arts and entertainment. A 2019 analysis of 18 major art museums found that 85 percent of artists were white and 87 percent were male.⁴² As of 2018, art by African American artists made up just 1.2 percent of the global auction market.⁴³ Additionally, artists are exploring new mediums and venues for displaying their art, as the world is becoming increasingly digital. However, this can raise several challenges, especially for digitally-native artists, including monetization models, intellectual property rights, and attribution.

By contrast, NFTs do not have the same gatekeepers. As such, we have seen cultural movements enabled by this novel technology. For example, there have been emerging

³⁵ <https://support.opensea.io/hc/en-us/articles/150009575457-How-do-creators-earnings-work-on-OpenSea->

³⁶ <https://www.entrepreneur.com/article/472999>

³⁷ *Id.*

³⁸ *Id.*

³⁹ <https://time.com/6124814/music-industry-nft/>

⁴⁰ *Id.*

⁴¹ <https://decrypt.co/92938/steve-aoki-more-money-nfts-decade-music>

⁴² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6426176/>

⁴³ <https://www.seibelsys.com/en/articles/for-african-american-artists-the-market-remains-woefully-unbalanced>

Crypto Council for Innovation

collectives of artists of color, LGBTQ+ artists, and neurodivergent artists.⁴⁴ Moreover, several artists have said that NFTs have changed their lives, especially those that create in a digitally-native manner.⁴⁵ Entire communities – as discussed later in this comment – have burgeoned around NFT projects, bringing together individuals from around the world.

Blockchain technology can also improve the operation of the secondary market for media to the benefit of the creators. For physical media, it may be difficult for a creator to track the resale or transfer of their work, or encourage the exchange of it among fans. Tokenizing their work in the form of NFTs may create a more robust market and may facilitate the creation of communities around the work, all to the benefit of artists and their audiences.⁴⁶

Finally, the programmability of NFTs opens new possibilities. For example, in August 2021, NFT platform Art Blocks raised more than \$23.5 million for charity through its platform.⁴⁷ A documentary project raised nearly \$2 million in two days via the sale of NFTs.⁴⁸ Other industries have recognized the potential as well, with explorations and applications across restaurant groups⁴⁹, real estate⁵⁰, live events⁵¹, and even domain names⁵². This has given rise to the rapid growth and adoption of NFTs in the luxury⁵³, sports⁵⁴, and gaming⁵⁵ industries.

Decentralized Autonomous Organizations (DAOs)

Decentralized autonomous organizations (DAOs) are an emerging form of membership organization that relies on these concepts. Generally, membership interests in a DAO are represented by tokens, ownership of which can be tracked on blockchains. DAOs then place decision-making in the hands of members who directly exercise those rights by voting with their tokens. DAOs may also deploy smart contracts to govern their operations and execute the decisions made by their members.⁵⁶

⁴⁴ <https://www.forbes.com/sites/irebelab/2021/11/02/4-the-future-of-nft-artists-and-inclusion-potential-of-nfts/?sh=2e126303178>

⁴⁵ <https://fortune.com/2021/08/08/nft-art-portfolio-fortune-cover-ethereum-defi-how-crypto-changed-my-life/>

<https://www.coindesk.com/nft-all-stars-now-live-found-my-people-how-nfts-changed-few-voices-file/>

<https://techcrunch.com/2021/03/11/the-price-89-million-nft-sale-marks-a-potentially-transformative-moment-for-the-art-world/>

⁴⁶ <https://www.coindesk.com/podcasts/coindesk-money-remained-funding-culture-and-empowering-artists-with-nfts-feat-lethabo-huma-and-cuy-shelfie/>

<https://cryptobriefing.com/art-blocks-nfts-raise-23-5m-for-charity-august/>

⁴⁷ <https://www.coindesk.com/markets/2021/07/19/ethereum-documentary-featuring-vitalik-buterin-raises-1036-eth/>

⁴⁸ <https://foodfortheuniverse.com/>

⁴⁹ <https://www.entrepreneur.com/science-technology/how-nfts-could-change-real-estate/382818>

⁵⁰ <https://www.coindesk.com/news/ethereum-2022-07-29/why-we-need-nft-tickets-for-sports-events/>

<https://www.coindesk.com/business/2021/10/28/nft-ticketing-nets-boost-with-mobile-app-from-reelworkhaart/>

<https://www.coindesk.com/business/2022/08/21/ticketmaster-partners-with-blockchain-firm-dancerlabs-to-issue-nfts-for-live-events/>

⁵¹ <https://www.fox.com/>

⁵² <https://www.bloomberg.com/news/articles/2022-08-03/luxury-brands-succi-iffany-co-dive-into-nfts-despite-slump?ref=ICVCMIBO>

⁵³ <https://www.coindesk.com/news/sports-nfts-how-to-get-in-the-game/>

⁵⁴ https://www.espn.com/nfl/story/_/id/32141411/nfl-gaming-fundraiser

⁵⁵ https://cooperhooltopia.mit.edu/~FDyndes/IDoQNGZ4Kk7JL05rGkkEiBa_a-6VEWw/

⁵⁶ <https://www.governing.com/community/can-we-lum-shareholders-into-public-decision-makers>

Crypto Council for Innovation

At its core, a DAO is an organizational structure with blockchain technology and tokens underpinning the operations. As such, there have been a diverse set of applications of the DAO model and explosive growth in this area. It is estimated that the number of participants in DAOs grew in 2021 from 13,000 to 1.7 million people worldwide.⁵⁷

I will highlight a few examples:

Gitcoin is a DAO that is focused on funding open source software. A public good, open source software has been historically under-valued and difficult to create a business model for.⁵⁸ Using a DAO model for decision-making about priorities and fundraising, Gitcoin has raised approximately \$64.7 million in funding for open source software to date.⁵⁹ Its community includes 312,000 monthly active developers, and there have been almost 3,200 grants funded through its platform.⁶⁰

Komorebi DAO is another model for providing capital within the industry. This DAO was created specifically to fund female and non-binary founders, who are historically under-represented as founders receiving venture capital funding (women received just 2 percent⁶¹ of venture capital funding in 2021). As Komorebi states: "An overarching ethos of crypto is to serve and equalize access to financial and non-financial applications and opportunities across all segments of the global population. We believe this begins with backing founders that represent the diverse group of people we are building for." With the intent of leveling the playing field, the DAO invested almost \$500,000 into seven women and nonbinary-led projects over the course of one year.⁶²

Yet another type of DAO is one that makes decisions on the future of a given project or protocol. We have seen these DAOs throughout the decentralized finance space. Examples include Aave,⁶³ Compound,⁶⁴ and Uniswap.⁶⁵ Many of these DAOs manage billions of dollars in their treasury, using this capital to both make product improvements and invest in public goods for the ecosystem.⁶⁶ This is a part of "progressive decentralization," wherein projects teams hand over the reins to a decentralized community over time.⁶⁷

DAOs have also become a tool for organizing around arts and culture – often going hand in hand with my previous example, NFTs. For example, Crypto Coven is a project started by five

⁵⁷ <https://www.yesforum.org/agenda/2022/08/are-dao-the-business-structures-of-the-future/>

⁵⁸ <https://gitcoin.co/blog/2021/04/08/why-open-source/>

⁵⁹ <https://gitcoin.co/>

⁶⁰ <https://gitcoin.co/>

⁶¹ <https://www.bloomber.com/news/articles/2022-01-11/women-founders-raised-just-2-of-venture-capital-money-last-year?ref=hlCVCdmkG>

⁶² <https://medium.com/komorebi-collective/reflecting-on-a-year-of-komorebi-dao-8a1d6117d>

⁶³ <https://governance.aave.com/>

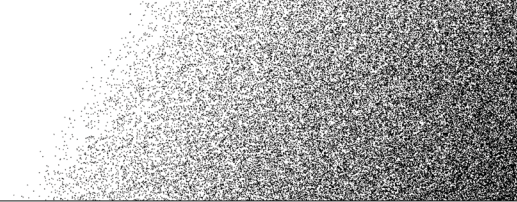
⁶⁴ <https://compound.finance/governance>

⁶⁵ <https://gov.uniswap.org/>

⁶⁶ https://coopsahltoppa.mirror.xyz/_FDyndcs9iDoQvNGZ1IKL7Jil_o5rCkkEiBa_a-6VElWw

⁶⁷ <https://a16z.com/2020/01/09/progressive-decentralization-crypto-product-management/>

Crypto Council for Innovation



women that generated more than \$20 million in sales.⁶⁸ The collection of 9,999 witches is owned by more than 5,000 addresses.⁶⁹ Owning an NFT is only one aspect of the project – a community has been built that offers education, in-person meetings, and building stories and games through multimedia. From the start, there was also a focus on diversity and inclusion.⁷⁰ For instance, in November 2021, the project partnered with leaders in the space to give away NFTs, with a focus on those who were curious about learning and did not yet own an NFT.⁷¹ Another example is PleasrDAO. Originally convened to support a specific artist (ppleasr), the DAO has since evolved and is “experimenting with novel concepts in digital and community art ownership.” These ideas include fractionalizing art pieces, allowing for partial ownership, and applying innovations within DeFi to distribute value back to the community.⁷²

Digital identity and Privacy

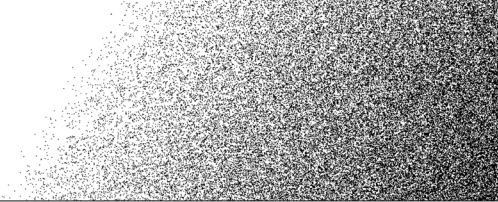
Another area that holds significant promise is reimagining identity systems – especially in a privacy-preserving manner. Current models are structured so that the individual is neither privy to sole ownership of their own identities, nor the proprietary data associated with each individual. As discussed, for many, the promise of Web3 lies in the ability to own and manage your personal information and data. Critically, the difference between decentralized identities and the status quo is that decentralized identification is neither “account based”, nor solely provided by a centralized intermediary.

One example is the World Food Programme’s Building Blocks initiative. Currently the world’s largest implementation of blockchain technology for humanitarian assistance, it aims to facilitate the provision of identity to refugees (as of 2018, 80 percent of the roughly 65 million refugees in the world did not have identification).⁷³ The program is active in Jordan and Lebanon and supports over 1 million people per month. It is estimated that Building Blocks provided \$325 million in cash assistance, processed 15 million transactions, and saved \$2.5 million in bank fees.⁷⁴ Another example is a company called Aid.Tech. It has been working to establish digital identity infrastructure for aid. Over the company’s lifetime, they have disbursed \$300 million in funds across 500,000 users.⁷⁵

Other projects have focused on providing the technical underpinnings for identity services. Spruce ID is building a toolkit for decentralized identification, as well as a product that allows individuals to keep a “personal data vault” that allows individuals to store digital credentials,

⁶⁸ <https://www.businessinsider.com/crypto-coven-nft-witches-popular-with-women-in-web3-vc-2022-2?r=US&IR=T>
⁶⁹ <https://cointopia.io/collection/cryptocoven/>
⁷⁰ <https://www.futuhelvetia.com/en/cryptocoven-digital-history-web3>
⁷¹ <https://twitter.com/cryptocoven/status/1464788199496726057?as=20&lang=en&source=embed>
⁷² <https://pleasr.com/>
⁷³ <https://www.wfp.org/2018/05/10/blockchain-refugees-identity-vfp.html>
⁷⁴ <https://innovation.vfp.org/project/building-blocks>
⁷⁵ <https://www.aid.tech/about>

Crypto Council for Innovation



private files, and media to blockchain accounts.⁷⁶ Espresso Systems is building privacy-preserving technology to allow parties to verify user credentials without seeing all the details.⁷⁷ The technology is designed to be used across a number of use cases, including decentralized finance, credit scoring, and payments⁷⁸. Ceramic Network is a decentralized network for composable data that can be used to store any kind of signed information. The network is particularly well-suited as a universal routing layer for storing decentralized identifiers (DIDs) and their associated metadata, data schemas, policies for usage of web services, access control permissions, and other documents that collectively enable boundless interoperability between an ecosystem of connected wallets, applications, databases, and services.⁷⁹

Digital identification tokens, zero knowledge proofs, and sophisticated forms of encryption present can also support improved approaches to customer identification and verification, including the ability for customers to gain more control over their digital identities and, for example, to be able to satisfy successive financial institutions that their identity already has been verified without having to provide sensitive personal information to another financial institution.

Novel mechanisms can be used to create and maintain digital identity records, including (but not limited to) the adoption of digital identity verification techniques that can use a combination of decentralized blockchain based technologies and secure "off-chain" data repositories. Specifically, there are tools under development that can allow digital identity information to be stored securely, and that use digital markers or tokens to enable the persons whose identity information is requested to confirm for a financial institution at onboarding that their identity has been verified, without providing the sensitive PII itself. This provides a mechanism for customers to control the dissemination of information about his or her identity, thus better protecting privacy, while also enabling access to financial services.⁸⁰

We discuss this concept in greater detail in our February 2022 Response to FinCEN's Request for Information on the Modernization of U.S. AML/CFT Regulatory Regime.⁸¹

III. Crypto represents an opportunity for historically excluded populations, both in the United States and abroad.

A. Domestic Opportunities

⁷⁶ <https://www.storucid.com/>

⁷⁷ <https://www.espresso.com/>

⁷⁸ <https://www.espresso.com/blog/configurable-asset-privacy-case-studies-payments>

⁷⁹ <https://blog.ceramic.network/introduction-to-the-ceramic-protocol/>

⁸⁰ <https://www.caoca.com/media/3496/FinCEN-2022-08-01-Request-for-Information-Declaratory-Statement-Disrupting-KYC.aspx>

⁸¹ <https://www.forbes.com/sites/forbestechcouncil/2021/12/10/how-decentralized-identity-is-reshaping-privacy-for-digital-identities/?sh=247c3a6e3226>

⁸² <https://cryptoinnovation.org/wp-content/uploads/2022/08/Comment-Letter-FinCEN-Feb-2022.pdf>

Crypto Council for Innovation

Crypto represents an unprecedented opportunity for historically excluded populations. We know that almost 20 percent of Americans have neither access to a bank account nor adequate access to financial services through other means.⁶² The rates are higher among adults with lower income, adults with less education, and Black and Hispanic adults. As discussed, these individuals are served by alternative financial services like payday, pawn, or car title lending.⁶³

The report on the Economic Well-Being of U.S. Households in 2021 by the US Federal Reserve found that, though financial well-being rose in the US, there are parts of the US economy that the financial system underserves.⁶⁴ Some one in five Americans said they are “just” getting by or find it “difficult” to get by financially.⁶⁵ Even more surprising, 6 percent of adults (nearly 20 million Americans) do not have a bank account. This increases as the numbers break down further: Black (13 percent) and Hispanic (11 percent) adults are more likely not to have a bank account.

The most recent FDIC Survey of Household Use of Banking and Financial Services found the most-cited reasons for not having a bank account were: (1) not having enough money to meet minimum balance requirements and (2) a lack of trust in banks.⁶⁶ This paints a fairly clear picture of who is getting left behind: poor households and those who historically have reason to distrust formal institutions.

The data shows that these individuals are turning to crypto. Those with no bank account, no credit card, and no retirement savings were more likely to select “crypto for transactions” than “no crypto” and “crypto for investment.”⁶⁷ So, their crypto use was not focused on speculation – it was focused on filling a gap in financial services. This is in line with findings from the Atlanta Federal Reserve, which reported that “today, instead of focusing on helping these people become banked to increase financial inclusion, a more effective approach could be giving cash users access to digital payment vehicles that don’t depend on traditional bank accounts.”⁶⁸

For many, it is impossible to have a discussion about money without talking about power and structural forces. A description of the Black Blockchain Summit notes: “online and in person, on the campus of Howard University in Washington, D.C., an estimated 1,500 mostly Black people have gathered to talk about crypto – decentralized digital money backed not by governments but by blockchain technology, a secure means of recording transactions – as a way to make money while disrupting centuries-long patterns of oppression.”⁶⁹ Leaders from Black and

⁶² <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-banking-and-credit.htm>

⁶³ <https://www.fdic.gov/analysis/quarterly-banking-services-of-fdic-quarterly/2009-vol9-17dic14-quarterlyvol9no1-ofe-final.pdf>

⁶⁴ <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-executive-summary.htm>

⁶⁵ <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>

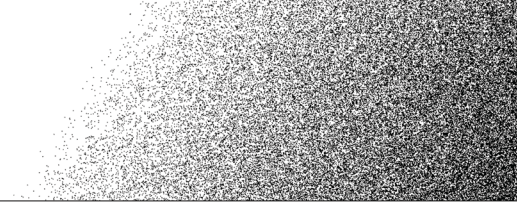
⁶⁶ <https://www.fdic.gov/analysis/household-surveys/index.html>

⁶⁷ <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-banking-and-credit.htm>

⁶⁸ <https://www.atlantafed.org/-/media/documents/promoting-safer-payments-innovation/publications/2020/09/30/shifting-the-focus-digital-payments-and-the-path-to-financial-inclusion/Shifting-the-Focus-Digital-Payments-and-the-Path-to-Financial-Inclusion.pdf>

⁶⁹ <https://time.com/6106706/bitcoin-black-investors/>

Crypto Council for Innovation



Indigenous communities have highlighted ownership and transparency as a key to building generational wealth for these communities.⁹⁰ Others have traced the ways in which historical and structural forces may be driving interest in crypto amongst minorities and social justice communities.⁹¹

Banks and financial institutions have had decades to serve these populations effectively and they have not. Crypto represents a unique opportunity to build systems from the ground up, using models of inclusive design that are responsive to community needs. Everyone deserves options that work for them. More can be done to ensure equal access for all and this is something that crypto was designed to do. It should be thought of as a tool in the policymaker's toolbox. Importantly, more data is needed here. Crypto is in its early days and while some efforts are underway, additional work is needed to understand these complex dynamics and how crypto can further contribute to financial inclusion.⁹²

As many have noted, technologists have made claims of democratization and promoting equity in the past, but at the end of the day, whether a technology lives up to its promise depends on decisions made in the early stages.

To this end, I am heartened by what I have seen in the crypto community. First, we have seen organic movements focused on education and a recognition that historically excluded populations need to be a part of shaping crypto. For example, Black Bitcoin Billionaires grew out of a room on the technology platform, Clubhouse, growing from 2,000 to 130,000 club members in one year.⁹³ The community's development attracted institutional support from major industry players, like CashApp.⁹⁴ Second, we are seeing deliberate attempts from the industry to measure itself and understand how to build more inclusive communities. This includes, for instance, crafting "hyper-local" hackathons and researching how to create better structures for diversity and inclusion in the industry.⁹⁵ In fact, there are entire academic communities dedicated to evaluating digital self-governance within the industry.⁹⁶ These issues are complicated and require intentional focus – crypto is asking the hard questions.

Crypto has been used as a tool for enabling "local" currencies that re-invest in communities. For example, the BerkShares project in Massachusetts has kept more than \$10 million in local circulation since the program's inception in 2006.⁹⁷ As one project team member notes, this "represents money that didn't leak out of the designated economic area." A recent shift to

⁹⁰ <https://www.youtube.com/watch?v=jH4vFcyCoM4>

⁹¹ <https://www.coindesk.com/bitcoin/2022/02/16/why-bitcoin-is-a-tool-for-social-justice/>

⁹² <https://time.com/6106708/bitcoin-black-investors/>

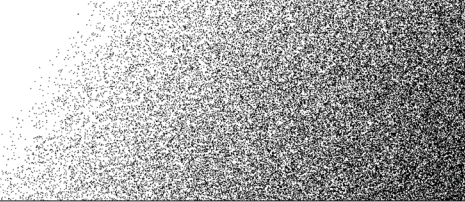
⁹³ <https://www.blackbitcoinbillionaire.com/>

⁹⁴ https://projectcatali.net/en/site/Crypto-Research-and-Design_Lab-50a7127f34ed4c88ad95c7cedf7ba36

⁹⁵ <https://majaay.org/>, <https://commonsstack.org/>

⁹⁶ <https://www.wbur.org/news/2022/07/07/berkshares-local-currency-crypto-digital>

Crypto Council for Innovation



crypto-enabled, digital models is designed to bring even more people into the system and ensure that value is retained at the community level, rather than accruing to intermediaries.⁹⁸ A similar model is being developed in Oakland, California, with the intention of "creating a cheaper payments network for Oakland businesses, allowing more of each transaction to go towards merchants and community initiatives."⁹⁹ This is accompanied by local crypto education efforts and community-directed funding.¹⁰⁰

B. Opportunities Abroad

In many places in the world, especially where people are living under authoritarian regimes or suffer from hyperinflation, crypto can provide a lifeline to store value out of the reach of corrupt or poorly run governments. It has also been a tool in enabling advocates of democracy – particularly in areas where free speech and dissidence are not protected.

There are numerous examples of dissidents using crypto as a tool in speaking out "against powerful and entrenched politicians who largely control trust within their borders."¹⁰¹ Bitcoin was a critical tool in Nigeria's #EndSARS campaign against police brutality, after the Feminist Coalition's bank account was shut down.¹⁰² Previously, individuals used it as a mechanism for circumventing police corruption.¹⁰³ A dynamic of censorship also led the Hong Kong Free Press to rely on Bitcoin donations.¹⁰⁴ Similarly, in Russia, a crackdown on independent media has prompted news organizations to collect and use crypto to keep the lights on – especially as many have had to cease operations around the country.¹⁰⁵ Following a controversial 2020 election in Belarus, protesters faced mass arrests, Internet shutdowns and other backlash. A non-profit in Belarus provided Bitcoin grants to individuals who were affected by repression and financial monitoring.¹⁰⁶ Put simply: having options like crypto matters for democracy and freedom.¹⁰⁷

Indeed, countries that have had significant crackdowns or bans on crypto have historically not prioritized democratic principles.

Further examples of where crypto has been able to support local populations can also be found in Latin America. In 2020, digital assets provided one of the few means by which the US

⁹⁸ <https://www.politico.com/news/magazine/2022/08/04/crypto-coop-farm-to-table-00048309>

⁹⁹ <https://www.oakcommunity.org/>

¹⁰⁰ *Id.*

¹⁰¹ <https://www.forbes.com/sites/rogerhuang/2020/10/19/dissidents-are-turning-to-cryptocurrency-as-protests-mount-around-the-world/?h=32911ff584c>

¹⁰² <https://www.coindesk.com/tech/2020/10/16/nigeria-banks-shut-them-out-so-these-activists-are-using-bitcoin-to-battle-police-brutality/>

¹⁰³ <https://www.coindesk.com/tech/2020/09/25/unofficially-usable-using-bitcoin-to-resist-police-exploitation-in-nigeria/>

¹⁰⁴ <https://www.forbes.com/sites/rogerhuang/2020/10/19/dissidents-are-turning-to-cryptocurrency-as-protests-mount-around-the-world/?h=32911ff584c>

¹⁰⁵ <https://www.bloomberg.com/news/articles/2022-05-10/russia-crackdown-sushes-independent-russian-media-into-crypto?ref=cr/cr/20220510>

¹⁰⁶ <https://www.coindesk.com/policy/2020/09/09/belarus-nonprofit-halves-protesters-with-bitcoin-grants/>

¹⁰⁷ <https://time.com/5486673/bitcoin-venezuela-authoritarian/>

Crypto Council for Innovation

government was able to deliver assistance to individuals with acute needs in Venezuela.¹⁰⁸ For many, it represents something very fundamental: choice in a time of instability and uncertainty.¹⁰⁹ Venezuelan residents have noted the criticality of crypto assets in the face of hyperinflation.¹¹⁰

This has been the case in other regions as well. For example, civilians in Afghanistan, where financial services have become unreliable, have been using crypto in part to hedge against Taliban seizure of assets.¹¹¹ Sanzar Kakar is an Afghan American who created an app that helps Afghans transfer crypto. Kakar says the country's "crypto revolution" is a result of the US sanctions against the Taliban and Haqqani group, who are now in power. In its first three months, the app registered more than 2.1 million transactions and had 380,000 active users.¹¹²

This type of adoption curve is not uncommon in frontier economies. Brazil's largest digital bank reached 1 million users in just one month.¹¹³ One in five individuals in Vietnam have used crypto.¹¹⁴ A total of 56 percent of adults in Nigeria and 54 percent of adults in Turkey trade crypto at least once a month.¹¹⁵ A Mastercard survey found that one-half of Latin Americans have used crypto, with more than one-third saying they have made an everyday purchase with a stablecoin.¹¹⁶ This is compared to a worldwide average of 11 percent saying they have made a purchase with a digital asset. Asia accounts for one-half of all crypto users.¹¹⁷ In 2021, worldwide adoption grew 880 percent, with emerging markets largely driving this growth.

IV. The United States urgently needs to take a forward-looking approach to policymaking.

A proactive approach to policymaking is critical for international competitiveness, national security, and consumer protection.

A. International Competitiveness

Given the global nature of crypto, it is critical that US lawmakers engage in proactive policymaking to maintain a competitive position in the international market. The countries that

¹⁰⁸ <https://www.coindesk.com/markets/2020/11/20/us-government-enlists-usdc-for-global-foreign-policy-objective-in-venezuela-circle-ccc/>

¹⁰⁹ <https://medium.com/open-money-initiative/money-on-the-edge-discovering-openings-in-a-closed-system-dad55d0bd7bd>

¹¹⁰ <https://www.nytimes.com/2019/02/23/opinion/sunday/venezuela-bitcoin-inflation-cryptocurrencies.html>

¹¹¹ <https://www.nytimes.com/2022/04/24/world/asia/crypto-banking-south-of-taliban.html>

¹¹² <https://www.nytimes.com/news/2022/04/24/crypto-banking-south-of-taliban.html>

¹¹³ <https://www.bbc.co.uk/news/world-asia-60715707>

¹¹⁴ <https://www.coindesk.com/business/2022/07/26/venezuela-bitcoin-largest-digital-bank-announces-1m-crypto-users-after-just-a-month/>

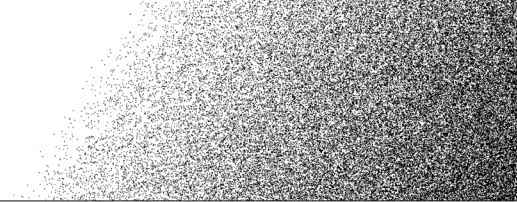
¹¹⁵ <https://www.barrons.com/articles/why-crypto-is-taking-moat-in-emerging-markets-5163323319>

¹¹⁶ <https://az.com/africa/2187447/more-than-half-of-nigerias-adults-are-monthly-active-crypto-traders/>

¹¹⁷ <https://mastercard.com/contentexchange.com/news/latin-america/en/newsroom/press-releases/pr-en/2022/june/latin-america-s-crypto-conquest-is-driven-by-consumers-needs/>

¹¹⁸ <https://www.ft.com/content/1ea829ed-5ddc-4f6e-bc11-99392bd0788>

Crypto Council for Innovation



lead on policy can pave the way for innovation and consumer protection, while jurisdictions that try to shut it down will face tremendous opposition and stifle economic growth and innovation.

Companies will establish themselves in jurisdictions that are hospitable to them – where they can have certainty that they can continue to provide products for consumers. They are interested in bringing to market demand-driven products in a safe, secure, and compliant manner. This is why countries are moving quickly to create clear rules of the road.

Simply put, other countries are not waiting for the US to act. The European Union recently came to a landmark political agreement on their Markets in Crypto Assets (MiCA) package.¹¹⁸ The United Kingdom set out its plan “to make the UK a global cryptoasset technology hub.”¹¹⁹ Singapore has announced its intention to hold public consultations on crypto regulatory proposals in October.¹²⁰ Australia is ramping up its regulatory efforts, beginning with a token mapping exercise and public consultation.¹²¹ And, the text of South Korea’s Digital Asset Basic Act is anticipated by the first half of 2023.¹²² This asset class is continuing to grow as more people understand it and come to rely on it.

On the technical side, 90 percent of central banks around the world are exploring central bank digital currencies, or CBDCs.¹²³ Some countries have made considerable progress. For example, Cambodia deployed its digital currency, Bakong, in October 2020. Since then, it has reached approximately 7.9 million people.¹²⁴ According to the Atlantic Council, “Nineteen of the Group of Twenty (G20) countries are exploring a CBDC, with sixteen already in the development or pilot stage. This includes South Korea, Japan, India, and Russia, each of which has made significant progress over the past six months... Of the G20, only the United States, United Kingdom, and Mexico are still in the research stage.”¹²⁵

Notably, China is farthest along in these explorations. China has a six-year head start, and the People’s Bank of China (PBOC) has filed more than 120 patents for the Digital Yuan.¹²⁶ It is clear that China will seek to leverage its Digital Yuan as a tool to achieve its foreign policy goals in emerging markets and beyond.

¹¹⁸ <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/>
¹¹⁹ <https://www.gov.uk/government/news/government-sets-out-plan-to-make-uk-a-global-cryptoasset-technology-hub>
¹²⁰ <https://www.bloomberg.com/news/articles/2022-08-24/singapore-mulls-crypto-consumer-suitability-coverage-takes-2nd-in-q2-cyber>
¹²¹ <https://www.bloomberg.com/news/articles/2022-08-22/australia-to-map-crypto-tokens-as-part-of-regulatory-ramp-up>
¹²² <https://forkast.news/south-korea-crypto-law-what-we-know-so-far>
¹²³ <https://www.bis.org/pub/bopdf/bisn22125.pdf>
¹²⁴ <https://asia.nikkei.com/Business/Finance/Cambodia-s-digital-currency-reaches-nearly-half-the-population>
¹²⁵ <https://www.atlanticcouncil.org/blogs/news-atlantic/central-banks-are-embracing-digital-currencies-will-the-us-lead-or-follow/>
¹²⁶ <https://www.wired.co.uk/article/digital-yuan-china-bitcoin-libra>

Crypto Council for Innovation

Today, four of the five largest banks in the world are from China¹²⁷, and Chinese bank presence in other countries has increased significantly.¹²⁸ The rise of the smartphone and low credit card penetration has led to rapid outgrowth of mobile payments in China, creating the largest mobile payments market in the world. In an April 2019 speech, PBOC Governor Yi Gang discussed progress in financial support made in these and other areas. At the time, Chinese financial institutions had provided more than \$440 billion for the Belt and Road projects, a key component of their goal to spread Chinese principles in macroeconomics, monetary and fiscal policy, financial regulation, governance and more¹²⁹. According to Goldman Sachs research, by 2029 the Digital Yuan could have as many as one billion users, see as much as \$240 billion in issuance and have an annual payment volume of \$3 trillion.¹³⁰

B. National Security and Law Enforcement

The myth that crypto is used for criminal activity has been debunked. Data shows crypto is not being used for wide-scale illicit activity due to insufficient liquidity and blockchain's inherent traceability.¹³¹ Officials from across the US government have concluded that crypto is unlikely to be used for large-scale evasion of sanctions.¹³² Compliant exchanges are already focused on identifying and addressing potential illicit activity – and blockchain should be considered an under-utilized tool for detection and seizures.¹³³ We have seen this in significant actions against illicit actors in the past few years.¹³⁴

And, as these actions ramp up, we anticipate that criminal actors will learn that crypto is not a good tool for illicit activity. As former CIA Acting Director Michael Morell noted, "[Growing use of blockchain forensics] will essentially be the counterterrorism equivalent of Usama bin Ladin never again, for the rest of his life, using a phone after learning that the US government could listen to his calls."¹³⁵ Dialogue and partnership with industry players is key to detecting emerging threats early and often.

C. Consumer Protection

Finally, proactive policymaking is key to consumer protection. There are real humans behind these transactions and stories. They deserve to make the most of the opportunity that crypto

¹²⁷ <https://www.spglobal.com/marketing/intelligence/en/news-insights/latest-news-headlines/the-world-s-100-largest-banks-2022-69651785>

¹²⁸ <https://www.bis.org/publ/voek892.pdf>

¹²⁹ <https://news.ccn.com/news/3r3d414f2e516ad34457a6333566654/index.html>

¹³⁰ <https://www.coinbase.com/price/2020/11/18/will-main-stream-cryptocurrency-reach-the-users-within-10-years/>

¹³¹ <https://blog.chainalysis.com/reports/2022-crypto-crime-report-introduction/>

¹³² <https://www.euolico.com/news/2022/07/25/usia-crypto-sanctions-0011886>

¹³³ <https://cryptoinnovation.org/wp-content/uploads/2022/07/An-Analysis-of-Bitcoins-Use-in-Illicit-Finance-By-Michael-Morell.pdf>

¹³⁴ <https://www.cnbc.com/2020/11/05/1-billion-worth-of-bitcoin-linked-to-the-silk-road-seized-by-the-us.html> <https://www.thomsonreuters.com/en-us/products/investigation-fraud-and-risk/criminal-sabotage-ransom-hands/>

¹³⁵ <https://www.cnbc.com/2022/02/03/etec-seize-300m-in-bitcoin-stolen-from-hackfinex-hack.html> <https://blog.chainalysis.com/reports/axie-infinity-ronin-bridge-dprk-hack-seizure/>

¹³⁶ <https://cryptoinnovation.org/wp-content/uploads/2022/07/An-Analysis-of-Bitcoins-Use-in-Illicit-Finance-By-Michael-Morell.pdf>

Crypto Council for Innovation

presents, while being protected from undue risks. Education and grassroots outreach efforts – across consumers, policymakers, and industry – are key. There are many in the crypto industry that value consumer protection above all and eagerly want to partner with policymakers and regulators alike.

Importantly, financial inclusion is a complicated topic; no technology will be a silver bullet for solving it. Research from the World Economic Forum found a number of factors that could contribute to financial exclusion.¹³⁶ For example, globally these may include socio-cultural and demographic barriers might include distrust of the traditional financial system or governments, challenges around digital or financial literacy, physical safety concerns, or others like religious and gender-based barriers or cultural views of money. Infrastructure barriers may include weak or unreliable electricity supply, limited internet connectivity, limited mobile phone access, lack of identity documentation, or lack of physical proximity to services. Financial barriers could be high prices and fees for financial services, lack of digital financial history, or minimum account balance requirements. We've seen many of these reflected in the data cited within this testimony.

To move the needle on this issue, we need thoughtful work on outreach and education. This includes: (1) Community engagement models that involve "building with, not for." Members of the communities know people's stories, their needs, and the barriers they are facing. Often, the missing piece is the resourcing and on-the-ground partnership. (2) Conducting more research and gathering more data. We know the broad trends, as discussed – but we need practical information on what things like drivers of distrust and gaps and education look like in practice. (3) Understandable disclosures. At the end of the day, consumer protection is about ensuring that average consumers can make informed decisions within a set of choices that work for them. Information should be presented in a manner that doesn't require a law degree or technical background to understand.

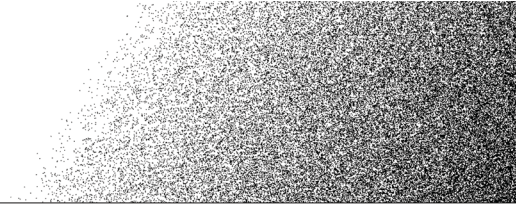
One example of these ideas in action is the Crypto Research and Design Lab (CRADL), which I co-founded. The goal of CRADL is "to put people at the center of crypto." The lab combines three functions – design, crypto, and social impact – that often operate in silos.¹³⁷ Current initiatives include research projects focused on Crypto in Black Communities, The Woes (and Wins) of Web3 Onboarding, and Building Inclusive Web3 Communities.¹³⁸ CRADL is also co-hosting the Web3athon a hyperlocal, people-first hackathon that is focused on community-centered issue areas including Generational Wealth Building, Financial Health, Sustainable Communities and Culture, Disaster Relief and Response, and Environmental Well-Being.

¹³⁶ https://www3.weforum.org/docs/WEF_Value_Proposition_of_Stablecoins_for_Financial_Inclusion_2021.pdf

¹³⁷ <https://medium.com/cradl/introducing-cradl-the-crypto-research-and-design-lab-95ca6429815b>

¹³⁸ <https://project-cradl.notion.site/Crypto-Research-and-Design-Lab-50a717734e4d4c88a995c7ceaf7ba36>

Crypto Council for Innovation



Getting to the heart of people's needs – and how we ensure that new systems are intentionally built to serve them – is the type of work that is critical as we write the rules for a new, digital economy.

V. S. 4760 the Digital Commodities Consumer Protection Act

Given the wide range of use cases, how quickly the space is evolving, and the need for deliberate design choices at this early stage, policymaking for crypto requires a great deal of nuance.

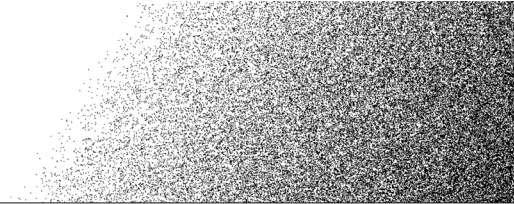
The establishment of an open and transparent regulatory framework is crucial. *The Digital Commodities Consumer Protection Act* is a pivotal step in achieving the clarity and oversight that are greatly needed, and we applaud this committee for its bipartisan work on this legislation. This will pave the way for innovation in the US, opening opportunities for new entrants regardless of their size.

As I hope I have demonstrated in my testimony, crypto represents a once-in-a-generation opportunity to build a system from the ground up. We are already seeing how historically excluded populations view the industry as potentially transformative. However, it takes deliberate design choices at the earliest stages to ensure that consumers are not left behind or exploited.

In this legislation, we were pleased to see the inclusion of a provision which directs the Commission to produce a Report on Historically Underserved Customers Participating in Digital Commodity Markets. Education and outreach to these communities that have in many cases been left out of the financial system will be crucial, and the findings of this report will serve as a critical step in ensuring that the promise of crypto is realized.

Importantly, this bill establishes consumer protection standards that are badly needed by the industry. Specifically, we support the creation of a meaningful and practical disclosure regime that includes information regarding material risks and conflicts of interest. Fair communication and advertising standards will also give investors and consumers transparency into financial tools and products and the entities which may be facilitating them.

Crypto Council for Innovation



We commend the efforts to provide clarity on definitions. However, the bill leaves unclear the precise definition of “digital commodity.” Classifying Bitcoin and Ether directly in the definition as digital commodities could be problematic down the road for digital assets that are not expressly enumerated. More specifically, the bill leaves it to the agencies and the Courts to determine whether a digital asset, other than Bitcoin and Ether, is a security or not. To date, this approach has not worked well, with significant implications for consumers, and is why the industry has made numerous calls for proactive regulation, rather than regulation by enforcement.

Although outside of the scope of this legislation and jurisdiction of this committee, it will be critical that the SEC act as a regulatory partner to the CFTC, and that the question, “what is a security?” is definitively answered through the appropriate legislative and regulatory processes. We are hopeful that a productive partnership will result in appropriate outcomes. As Chairman Gary Gensler’s recently commented, “To the extent the Commodity Futures Trading Commission (CFTC) needs greater authorities with which to oversee and regulate crypto non-security tokens and related intermediaries, I look forward to working with Congress to achieve that goal consistent with maintaining the regulation of crypto security tokens and related intermediaries at the SEC.”¹³⁹

As a general comment, policymakers should consider the need to balance congressional directives with agency rulemaking.

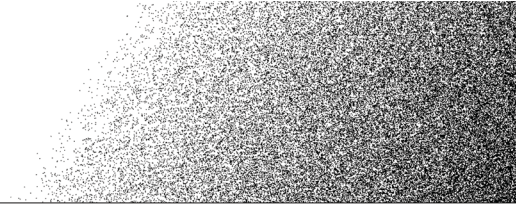
Moreover, the bill limits brokers, dealers, and trading facilities to transacting only in “transactions” or “digital commodities” that are not “readily susceptible to manipulation”, but it does not attempt to define what “readily susceptible to manipulation” means, or the factors one would consider when making such a determination. The way that the CFTC has traditionally interpreted “readily susceptible to manipulation” for commodities may not apply to digital assets, which increases the need for clarity on this point.

We also note that further specification around jurisdictional authority may be needed, given the global nature of crypto.

We want to note that decentralized finance, or DeFi, is fundamentally different from the centralized spot market models we see today. This raises new questions about risk and policymaking, which have been outlined elsewhere. Additional clarity on the relationship between the Act’s provisions and decentralized protocols is needed in light of the recognition that compliance with these provisions is unworkable.

¹³⁹ <https://www.sec.gov/news/speech/gensler-sec-speaks-090822>

Crypto Council for Innovation



Prior to potentially imposing registration requirements on software programs, which would produce the unintended consequence of stifling the development of the technology in the US, an expeditious study in consultation with industry, consumer protection groups, and other interested parties is necessary.

VI. Conclusion

Thank you again for the opportunity to discuss these important topics and your support for the regulatory certainty that will be established by this legislation. I look forward to answering your questions.



Testimony of Christine Parker

Vice President and Deputy General Counsel for
Regulatory Legal

Before the U.S. Senate Committee on Agriculture

September 15, 2022

10:00AM ET

Good morning Chairwoman Stabenow, Ranking Member Boozman, and members of the committee. Thank you for inviting me to testify about the importance of developing a comprehensive, robust regulatory regime for digital assets. My name is Christine Parker and I am the Vice President and Deputy General Counsel for Regulatory Legal at Coinbase.

Prior to joining Coinbase, I was a Partner at Reed Smith LLP, and Special Counsel at Sullivan & Cromwell LLP for more than 12 years. I also spent nearly five years working for Senate Majority Leader Chuck Schumer, where I developed a deep respect for policy and the work of the U.S. Senate.

While in private practice, my work focused on regulatory, enforcement and transactional matters related to commodities, derivatives, and digital assets. I spent the early part of my legal career advising clients on the legal, regulatory compliance obligations associated with the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. More broadly, I advised both registered and non-registered market participants in connection with matters related to the Commodity Exchange Act and Commodity Futures Trading Commission (“CFTC”) regulations, as well as related Securities and Exchange Commission (“SEC”) and prudential requirements. In particular, I focused on legal, regulatory and compliance matters related to trading platforms and exchanges. I have also advised both US and non-US market participants in the development of digital assets and related technologies including token sales, market infrastructure, trading, clearing, and settlement solutions on distributed ledger technology.

I believe we are at a crossroads when it comes to digital assets. Collectively, we have the opportunity to come together to ensure the United States remains at the forefront of innovation, by establishing a comprehensive federal legislative framework for digital assets that are not securities. The Digital Commodities Consumer Protection Act of 2022 does just that. It appropriately grants the CFTC authority to ensure that customers are protected and market participants have sufficient clarity to confidently innovate in a compliant way.

Crypto is the future of innovation. It is the foundation of Web3, which will define the next era of technological advancement across the globe. The United States is well poised to help drive that innovation, and we want to work with this Committee and other lawmakers and regulators to make sure it does.

What is Coinbase’s role in the cryptoeconomy?

Coinbase is the largest and only publicly-traded crypto trading platform in the United States. Coinbase was founded in 2012 as an easy and trusted place to buy and sell

Bitcoin. Since then, Coinbase has helped fuel the development of an entire industry with thousands of different blockchains, tokens, and projects. Today, we offer much more than bitcoin trading, enabling 98 million verified users in over 100 countries to easily and securely invest, spend, save, earn, and use crypto. We currently list 219 assets for trading and 301 assets for custody on our platform, all of which undergo rigorous legal, compliance, and security review before being added to the platform. We have also invested in more than 300 teams and projects in recent years through Coinbase Ventures, building everything from layer 1 protocols, web3 infrastructure, centralized on-ramps, decentralized finance, NFTs, metaverse technologies, developer tooling, and more.

Our mission is to increase economic freedom in the world. In order to do that, we have worked to build a company that is the most trusted, secure, and compliant onramp to the cryptoeconomy. Our early focus on regulatory compliance, consumer protection, and innovation has helped build an active consumer base across the country that rely on us for a safe platform on which to transact. That focus has also been core to the development and growth of products and services. We are a leading provider of end-to-end financial infrastructure and technology for the cryptoeconomy. Coinbase Global, Inc. (COIN) is a public company registered with the SEC that began trading on the Nasdaq in April 2021. Our primary operating company, Coinbase, Inc., and our affiliates (collectively, "Coinbase") make up one of the largest digital asset financial infrastructure platforms in the world, which includes our trading platform for digital assets.

We power the cryptoeconomy by combining the best of both emerging blockchain technology and traditional finance to create trusted and easy-to-use products for the industry. We have built a robust backend technology platform to support the global, real-time, and 24/7/365 demands of crypto asset markets. We invest heavily in regulatory compliance, and have pioneered industry-leading security practices for safeguarding crypto assets. Our early focus on trust and usability has allowed us to become the primary onramp to the cryptoeconomy from the fiat-based financial system.

Nearly 100 million users around the world rely on Coinbase to provide a safe, trusted, and easy-to-use crypto account to buy, sell, store, spend, earn, and use crypto assets. We also offer a comprehensive solution that combines advanced trading, custody services, and financing for roughly 13,000 institutional customers. On top of our retail and institutional services, we provide technology and services, such as Coinbase Cloud, that enable more than 230,000 developers to build crypto-based applications and securely accept crypto assets as payment. These numbers reflect our belief that crypto can and will be based on the following three pillars:

Crypto as...

1. **A new financial system.** Crypto is opening up a new financial system, which will create new opportunities and benefits for consumers. For example, crypto can offer services that are lower cost, more widely accessible, less complex (due to fewer intermediaries), and more transparent. Crypto also has the remarkable capability to provide real-time settlement, which matters when consumers need immediate access to funds. The shift to this new system is already happening. On average, 54% of our monthly transacting customers engaged in activities beyond buying and selling crypto. We are building products accordingly, and supporting external projects that drive new financial use cases. Stablecoins as a payment method, decentralized finance, smart contracts, and other new technologies will drive innovation and exponentially expand opportunities to improve our financial system in the United States and across the globe.
2. **An app platform.** Crypto and blockchain technologies will provide the next app platform. Fundamental to crypto is the decentralization of ownership, which gives individuals the opportunity to develop new financial and non-financial applications, like non-fungible tokens (NFTs). Coinbase is building tools that enable individuals, institutions, and app developers to plug into the existing crypto infrastructure to create new products, as well as benefit from the distribution and use of these products. By supporting both the development of and access to these new applications, Coinbase can help fuel the development of web3.
3. **An Opportunity.** We want to empower everybody to achieve economic freedom through buying and using crypto. At Coinbase, we believe we can enable customers to buy, sell, and hold crypto in a safe, informed, and compliant way. The world of crypto has expanded far beyond Bitcoin to include assets with diverse use cases and characteristics, and we are working to give consumers the tools they need to make informed decisions, including participating in Earn campaigns to learn about new crypto assets.

How are we currently regulated?

Coinbase was founded on the principle that we would be the most trusted, safe, and secure platform for engaging in the crypto economy. We have taken regulation seriously from Day 1, including an early team dedicated to compliance and investigating illegal activities like scams and fraud. The current regulatory environment for digital assets is complex and disjointed. Laws and regulations for digital assets have emerged over the last decade at the state level with little consistency across jurisdictions, while the federal government has relied on laws that have failed to evolve as technology changes today's markets. As a result, we are currently regulated by more than 50 agencies in the United States alone, including:

- **45 state banking divisions**, who issue and monitor our money transmitter licenses;
- **15 state regulators**, who have authorized us to engage in consumer lending;
- The **New York Department of Financial Services**, which regulates our primary crypto trading entity (under a “BitLicense”) and our primary custody entity (under a New York Trust Charter);
- The **Treasury’s Financial Crimes Enforcement Network (FinCEN)**, which regulates us as a money services business;
- The **Commodity Futures Trading Commission (CFTC)**, which has anti-fraud and anti-manipulation authority over digital asset commodity spot markets, regulates derivatives markets, and regulates our Designated Contract Market, or futures exchange. We are also seeking registration as a CFTC-regulated Futures Commission Merchant, or futures broker; and
- The **Securities and Exchange Commission (SEC)**, which regulates our two broker-dealer entities.

In addition, Coinbase operates under the same rules as other businesses in having obligations to operate in a fair, transparent way. These requirements are administered by the above agencies, along with others that include:

- The **Federal Trade Commission (FTC)**, which enforces federal consumer protection laws to prevent fraud and unfair or deceptive business practices; and
- The **Department of Justice (DOJ)**, which has general law enforcement powers and which works with companies like Coinbase to use the blockchain for investigative purposes, including to prevent money laundering, illicit finance, and terrorist finance.

Despite the plethora of regulations, we often hear this is an unregulated space. That could not be further from the truth. The problem is these regulations are fragmented, inconsistent, and require extensive legal analysis to correctly apply.

At the root of the regulatory Gordian knot is the question related to **what is a digital asset: is it a currency, a commodity, a security, or something else entirely different?**

This question matters because the United States has a bifurcated regulatory system at the federal level: the SEC regulates securities, while the CFTC regulates futures and derivative contracts for commodities and even some securities. But, there is no federal regulator for commodity spot markets. The CFTC’s authority is limited to anti-fraud and anti-manipulation authority over commodity spot markets.

That is why we applaud Chairwoman Stabenow, Ranking Member Boozman, and Senators Booker and Thune for introducing the Digital Commodities Consumer Protection Act of 2022, which gives the CFTC the authority to regulate at the federal level commodity spot markets for digital assets. Coinbase would welcome this regulation, given we do not list

securities on the Coinbase platform. We make this determination using a rigorous listing process to determine 3 primary things:

1. Does this asset meet our **legal requirements**, meaning does it satisfy the key legal standards for determining whether or not an asset is a security?
2. Does this asset meet our **security requirements**, meaning does the technology protect consumers from harmful cybersecurity risks?
3. Does this asset meet our **compliance requirements**, meaning is it not associated with scammers, fraud, and illicit activity?

Our listing process gives us confidence that we do not list securities. But that means we are primarily regulated at the state level, with varying rules and requirements. This bill would help ensure centralized crypto platforms like Coinbase have a federal regulator with explicit Congressional authority and direction to apply consistent and comprehensive consumer and market protections to digital assets.

Commodities Futures Trading Commission

The CFTC currently has clear authority under the Commodity Exchange Act (CEA) to regulate futures and derivatives referencing digital assets. It also has anti-fraud and anti-manipulation authority over commodity spot markets, including digital asset commodity spot markets.

- As stated by CFTC Chairman Heath Tarbert in May 2020, “The CFTC has a unique history and tradition of being a principles-based regulator.”¹ “Principles-based regulation is not intended to be ‘light-touch.’”² Rather, the focus on principles has enabled the CFTC to be relatively nimble and focus on promoting innovation, while being diligent about protecting the markets and their participants. Mandatory registration requirements for market participants, including designated contract markets (DCMs), futures commission merchants (FCMs), and designated clearing organizations (DCOs), among other registrants, helps ensure a level, efficient, and safe playing field. This structure can and does fit for digital asset futures and derivatives, and it can form the appropriate starting point for regulation of digital asset commodities.

The CFTC has shown early leadership in the digital asset space. We thank and applaud Chairman Behnam for his leadership and that of his fellow Commissioners in asking the right questions and working to ensure US global leadership and continued innovation in the US. Although we may not always see eye-to-eye, the CFTC has shown a commitment

¹<https://www.cftc.gov/PressRoom/PressReleases/8183-20#:~:text=%E2%80%9CThe%20CFTC%20has%20a%20unique,compliance%20with%20detailed%2C%20prescriptive%20rules.>

²<https://www.cftc.gov/PressRoom/PressReleases/8183-20#:~:text=%E2%80%9CThe%20CFTC%20has%20a%20unique,compliance%20with%20detailed%2C%20prescriptive%20rules.>

to transparency, public engagement, and process. For example, the CFTC recently held a public roundtable on a direct clearing model in order to gather information and receive input from a wide variety of stakeholder groups regarding the impact the model could have on CFTC-registered exchanges and clearing organizations. We believe this reflects a commendable interest in gathering information from market participants and feedback from the public, while exploring the appropriate approach to regulating innovative structures.

Perhaps most importantly, the CFTC is well-equipped to directly regulate digital asset commodity cash markets. It has experience effectively regulating complex derivatives markets and ensuring their safety, even in times of extreme volatility. Since 2014, this has included derivatives referencing digital assets.³

The CFTC also has experience utilizing disclosures to equip customers with the information they need to understand the risks of trading a particular asset. When a DCM 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 CEA, 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 asset[s].”

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.

They 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 NFA to require FCMs that offer virtual currency futures to provide additional disclosure to customers specific to the risks of trading in that asset class.

³https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/background_virtualcurrency01.pdf

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 eight decades had overseen the futures market. This confidence in the CFTC was well placed."⁴

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. Before I talk further about the bill, I want to address three myths and talk a little about the role of the Securities and Exchange Commission. This is an important and relevant topic given the interconnectedness between the SEC and the CFTC.

Securities and Exchange Commission

The Securities Act of 1933 and the Securities Exchange Act of 1934 grant the SEC authority to regulate securities at the federal level. If an asset is a security, the SEC generally has federal authority over its offering and sale, and over the many functions that support these transactions. Notably, the federal securities regime is a disclosure-based regime. The SEC is not a merit regulator, meaning it does not decide what is a "good" investment. It is also not a prudential regulator, meaning that it is given the task of ensuring "safety and soundness." Rather, it is a regulator that ensures fair, orderly, and efficient markets with appropriate investor protections, as well as and facilitates capital formation.

The SEC's broad authority turns on whether an asset is within the definition of "security" found in the relevant statutes. Yet, the definition is not precise. Some assets are seemingly self-explanatory, such as "stocks" or "bonds, while others like "investment contracts" and "notes" have required more consideration by the courts. Specifically, the Supreme Court has had to weigh in on both of these terms, resulting in the now well-known cases *SEC v. W. J. Howey Co.*⁵ and *Reves v. Ernst & Young*,⁶ which provided tests for determining whether a scheme is an investment contract or a note, respectively. Under *Howey*, a scheme is an investment contract if it (1) involves an investment of money (or value) (2) in a common scheme (3) with the expectation of profit (4) derived primarily from the managerial efforts of others. *Reves* stands for the idea that, in general, a note is presumed to be a security unless it "bears a strong family resemblance" to one

⁴ <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-155>

⁵ 326 U.S. 293 (1946).

⁶ 494 U.S. 56 (1990).

of seven non-security instruments. In determining whether such a “family resemblance” exists, the Court looked to four factors: the motivations of a reasonable buyer and seller in entering the transaction, the plan of distribution of the note, the expectations of the investing public, and whether there was another regulatory regime designed to reduce the risks so as to make the application of the securities laws unnecessary.

When viewed within the context of the Securities Act, which the Court was interpreting when issuing its opinions, the rationale for these tests becomes clear. The Securities Act of 1933 addresses the need for a means of ensuring that investors and the market have material information needed to evaluate an offering of securities. It is designed to take the information that company insiders have about the operations and condition of the company and push that information out into the public, remedying the information asymmetries that are inherent to the relationship between issuer and investor, absent issuer disclosures. A scheme that satisfies the *Howey* test has a number of insiders whose efforts are material to the question of whether the scheme is likely to produce a profit. Similarly the performance of a loan that is a note under *Reves* will depend on the operations of the issuing company and therefore investors need the material non-public information that the issuer’s insiders uniquely can access and disclose.

While both notes and investment contracts involve investment of value with an expectation of profit, that is not dispositive in securities law. Other assets (e.g., precious metals, collectibles, fine art, and others with consumptive or utility function) are often bought with the expectation of profit. The connection between the security’s value and the activities of the issuer is essential to the nature of a security, and creates the need for disclosure to potential investors of these activities. This connection is reflected in the “efforts of others” prong of the *Howey* test. The investors are not involved in creating the value and therefore require disclosures of those “others” whose activities are material. Additionally, the existing disclosure regime makes sense only when there is a single organization whose nonpublic activities drive the value of the asset. That entity therefore has the obligation, under the federal securities laws, to make necessary disclosures and to assume liability for their accuracy. Without a central entity, there is no unique access to material information or any connection between the quality of the disclosures and the assumption of liability for their accuracy.

I would also like to discuss three myths related to the SEC that might be helpful as this Committee moves forward with your deliberation.

Myth #1: This bill is taking authority away from the SEC.

As noted before, digital assets have different characteristics and different risks: some function like a currency used for payments, some perform like commodities that provide utility and functionality, some operate like securities, and some look like none of the above. Regulations should be designed to address the risks of specific types of assets;

applying a securities regime to commodities trading will not increase consumer protection and may even result in consumer harm. It is, therefore, critical that policymakers take a calibrated and targeted approach to the regulation of digital assets and apply rules relevant to the function of a particular digital asset, which in some cases may mean designing new rules and new requirements to address the specific risks presented by specific types of digital assets. The SEC has an important role to play in unlocking what could be a vibrant and sophisticated market for securities in the digital asset space, and we urge the SEC to engage in a transparent rulemaking process that considers input from a diverse set of stakeholders.

Myth #2: Every crypto trading platform should simply register with the SEC.

First, as mentioned above, the SEC's authority, structure, and mission is granted and effective solely for securities and security intermediaries. If something is not a security, then both the asset and its intermediaries should not be regulated as such. Second, registering with the SEC under its existing rules is a challenge because the SEC's existing rules do not align with the current market structure of digital assets (e.g., real-time settlement, custody) and were designed to meet security needs in an analog world.

Registration under the current regime, even if feasible, would not accomplish the goals of regulators, provide adequate consumer protection, positively affect capital formation, or assist the SEC in ensuring fair and orderly markets. It is not that there is no way to create rules that do fit. A tailored regulatory regime for digital assets is essential to ensure that all market participants can enter these markets confidently, enabling them to develop into the deep, liquid, and transparent securities markets for which the U.S. is known worldwide. Developing the right rules for registration will require regulators to develop an in-depth understanding of the unique characteristics of crypto and find ways to apply the rules to truly protect consumers and the markets. To be clear, this type of adjustment happens all the time as new technology creates new opportunities for efficiency. That is why Congress gives agencies the authority to make the rules and revise them as necessary. More on this in a moment.

Myth #3: All digital assets, except Bitcoin and Ether (maybe), are securities.

This is a false and misleading statement under any reasonable reading of existing securities laws. Despite news headlines and public statements to the contrary, it remains very much a fact and circumstances analysis under U.S. case law to ascertain if any digital asset is a security. Commodities, derivatives, and securities share certain features, such as investment opportunities and secondary market trading. However, like commodities, digital assets have a core consumptive function that is not found in securities. As a primary example, digital assets are used to reward decentralized nodes to confirm transactions that build out and operate decentralized blockchains. Without digital assets there are no decentralized blockchains. Furthermore, digital assets are the first instruments that combine proof of ownership, a bespoke mix of rights and

opportunities, the potential for increased value, and a number of other functions in a single asset, unlike traditional securities. Even if a token project may entail an offering of securities when first launched, it is not clear that remaining a security for the entire existence of the token is the correct outcome. Given the purpose of the federal securities laws—to ensure that insiders disclose material nonpublic information—it is hard to understand how continued disclosure obligations would promote investor protection or support orderly markets if there is no longer a central issuer.

Even as securities lawyers and courts have successfully applied the “Howey test” to determine if a digital asset is a security, the underlying facts of the case remain relevant today.⁷ Parsing through the features of each asset and applying rigorous legal analysis is, indeed, a detailed process. Despite the work involved, we remain confident that Coinbase’s rigorous asset review process keeps securities off our platform. But this approach is not ideal for innovation, and equally problematic, it can discourage compliance with the laws. While a large company like Coinbase can invest in such diligence, small projects, founders, and innovators who are developing the next big thing, may lack the legal expertise and funds to engage in this rigorous process. The challenge that we and others face is that even highly capable and reasonable lawyers can and do reach different good faith conclusions on whether a digital asset is a security, given the absence of clear statutory and/or regulatory guidance. To alleviate this burden, Congress should provide clarity around the definition of digital assets that reflects their consumptive value and provides much needed certainty to the market.

Securities and Exchange Commission

The myths noted above explain just a few of the challenges with the conventional notion that we should simply “come in and register” with the SEC. That is why Coinbase filed a [petition for rulemaking](#) on July 21, 2022 with the SEC requesting that the SEC propose and adopt new rules to govern the regulation of securities that are offered and traded via digitally native methods. The petition calls for public input through the notice and comment process, as many of the unresolved issues are complicated, and arriving at efficient and effective solutions requires a broad understanding of the technology underpinning developing market practices and products. Further, the petition calls on the SEC to work with market participants to consider how appropriately tailored rules, interpretive guidance and no-action relief could facilitate new activities within existing regulatory frameworks.

⁷ *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). There are two critical elements to the case - the orange grove and the service contract to manage the orange grove and provide the purchaser’s with a percentage of the product from the sale of the oranges. The Supreme Court found the service contract and the land deed to the orange groves to be an investment contract and therefore a security. By itself, the land deed to the orange grove was not an investment contract. Thus, investment contracts contain both elements of securities and commodities.

The petition calls on the Commission to engage stakeholders in an open and transparent process. The petition asks 50 detailed questions that are critical to resolving these issues. Concepts highlighted in the petition include:

Classification of digital assets as securities:

- Absent Congressional action, the SEC could help provide clarity, in the context of digital assets, as to what constitutes a security.
- This should be done through appropriate rulemaking, provided that the definition is true to the purposes of the Securities Act and Securities Exchange Act. Regardless of the means, it is critical to the future of the industry that the determining factors for what is a security (in relation to a digital asset) are predictable, consistent, replicable, and applicable by all market participants with reliable results.

Issuance of digital asset securities:

- Our petition asks the SEC to consider whether there is a need to establish appropriate registration rules for digital asset security issuers, particularly when the “issuer” is not structured in a manner similar to a traditional public company.
- The SEC should also consider tailoring the disclosure requirements for digital asset securities offerings so that investors are not unduly exposed to novel risks, which may mean requiring additional disclosures specific to digital asset linked securities.

Trading digital asset securities:

The SEC should consider what rules need to be adopted in order to ensure consumers can benefit from innovations enabled by blockchain technology and the trading of digitally native securities. For example:

- The SEC should consider what rules will need to be adopted to accommodate real time settlement, which significantly reduces (if not eliminates) the settlement and credit risk that generally exists in traditional finance.
- While blockchain technology provides a benefit in providing a transparent and immutable record of transactions, it also introduces the question of how regulation should address the immutability of transactions that cannot be reversed in the case of fraud or error.
- Existing custody rules assume certain physical characteristics of securities records that are not the same as digital assets. Therefore rules related to how custodians establish possession and control of traditional securities are simply inappropriate for establishing possession and control of digital asset linked securities, requiring different regulations to ensure the same level of protection.

I wanted to share this background, because we believe it can help the Committee distinguish between the important roles of the regulators. Both the CFTC and SEC need to engage on digital assets. Each oversees a regulatory regime tailored to the specific needs and risks presented by the assets and markets in each commission’s jurisdiction. Ensuring that all U.S. markets have appropriately designed and administered regulations is

key to maintaining the U.S.'s leading role in world financial markets. Effective U.S. regulatory leadership in crypto will enable the sound principles underpinning U.S. markets to be disseminated globally as this new type of asset and markets develop.

This finally brings me to the most important part of my testimony – discussing the strengths of the Digital Commodities Consumer Protection Act of 2022 and highlighting the areas that could potentially be improved.

Why do we need the Digital Commodities Consumer Protection Act of 2022?

The Digital Commodities Consumer Protection Act amends the Commodity Exchange Act to create a much-needed comprehensive and robust regulatory framework for spot markets for digital asset commodities. This framework would fill an existing gap in federal oversight that would lead to more consistent consumer protection requirements across the country and enable more vigorous enforcement authority for bad actors. I would like to highlight several key areas that we believe should be the foundation of any law going forward, and note some areas that could be improved:

- **Defines Digital Commodities:** The bill defines digital commodities to include – but critically not limited to – Bitcoin and Eth. However, while the bill includes a carve-out for securities, it does not explicitly define what is or is not a security (through the application of the Howey test or otherwise). We *strongly* recommend including a specific definition for both digital asset commodity and digital asset security before the bill passes into law. I would also note the bill importantly allows for stablecoins to trade as a Digital Commodities, which is an appropriate characterization for stablecoins and which means that stablecoins can be used to purchase Digital Commodities.
- **Activities Covered:** Digital asset markets are evolving quickly and reflect many traditional financial activities. This bill recognizes this important point by identifying and covering a range of activities, including spot trading, lending, retail margin, and custody.
- **Applies to Digital Commodity platforms (DCPs):** The bill is comprehensive in that it creates a regulatory framework that is rooted deeply in the existing structures at the CFTC for market participants. It applies to entities that have an “identifiable business” (e.g., not occasional activity) as one or more of the following: trading facility, broker, dealer, and/or custodian (except for Insured Depository Institutions and Insured Credit Unions).
- **Registration with CFTC Required:** The bill includes mandatory registration when engaged in the activities listed above, and also appropriately preempts money transmission licensing registration regimes. This would resolve what could be

competing or duplicative regulatory requirements that could lead to confusion for both consumers and participants. The bill includes some important safeguards, including the ability of CFTC to permit an entity or affiliates to register in multiple capacities for multiple activities, subject to conflicts of interest requirements that will ensure customers are protected. The bill also includes registration fees to pay for the new regime. We support this measure.

- **Application of Commodity-Broker Insolvency Regime:** The bill applies the tested commodity broker insolvency regime to entities registered with the CFTC as DCPs. We know this regime works because it has effectively protected customer assets in FCM insolvencies.
- **FCM-like Segregation Requirements for Platforms that hold Customer Assets:** The bill currently requires books and records segregation, with operational commingling of funds of multiple customers permitted in a customer omnibus account or digital wallet held with a registered platform or an insured depository institution. The bill permits the CFTC to make rules that allow other assets to be added to the customer omnibus account under certain circumstances, but on the condition that funds held with customer assets are “treated as belonging to customers,” ensuring that customers have a “super priority” claim on any funds held in an customer omnibus account or wallet in a platform’s bankruptcy. This is a critical provision because it allows the CFTC to consider limited circumstances where a platform might need to add assets from its own inventory to the customer omnibus account to preserve the efficient and safe operation of digital asset markets (e.g., to facilitate order routing or real-time settlement). We believe this provision could be strengthened by providing example circumstances where it may be appropriate for the CFTC to exercise this authority in order to highlight how this provision may operate differently than equivalent language applied to cleared derivatives markets.
- **Principles-based Approach to Regulation:** We applaud the cosponsors for adopting the same principles-based approach currently employed by the CFTC and applying it to digital assets. This will help ensure the rules continue to evolve as the technology creates new opportunities and new risks. The bill enumerates the core principles for platforms, broker-dealers, custodians, and trading facilities.
- **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 products. Specifically, it allows a trading facility to list for trading a Digital Commodity and approve/implement a new rule or amendment via a self certification process, and gives the Commission 30 days to review contracts not yet listed on another exchange or 10 days if already listed. Like with DCMs, the Commission may stay a certification for 90 days because there is a novel or complex issue, inadequate explanation, or potential inconsistency with the Act. In considering the listing, the Commission can consider additional factors that are somewhat unique to digital assets, including:
 - Cybersecurity;
 - Functionality to protect holders from operational failures;

- Digital Commodity is not susceptible to manipulation; and
- For digital commodities that purport to have a fixed value (such as fiat-backed stablecoins), an identification and description of the issuer of the Digital Commodity, the collateral and reserves backing the Digital Commodity, the terms by which the issuer will redeem, and whether the Digital Commodity and the market for the Digital Commodity are not readily susceptible to manipulation.
- **Product listing for Digital Commodity Brokers and Dealers:** The bill establishes that brokers and dealers may only trade or arrange a trade that is not readily susceptible to manipulation, AND in assets that have met disclosure, listing and certification requirements above.
- **Consumer Protection:** We believe the consumer protection section is the heart of this bill. Key provisions include:
 - Requirements for platforms to disclose information on material risks and characteristics of Digital Commodity contracts and conflicts of interest that the platform may have;
 - A duty for platforms to communicate in a fair and balanced manner based on principles of fair dealing and good faith, similar to existing FCM requirements;
 - Standards governing platform marketing and advertising, including testimonials and endorsements, similar to existing FCM requirements; and
 - Other standards in the public interest as adopted by the Commission.

In summary, Coinbase believes the Digital Commodities Consumer Protection Act of 2022 creates a strong foundation for the regulation of digital assets. We understand the bill will continue to evolve, particularly as the full Senate considers the other issues and agencies that intersect with the regulation of digital asset commodities, and we hope to continue working with all interested parties to pass a law as soon as possible in this important area.

I'd like to commend Chairwoman Stabenow and Ranking Member Boozman for their leadership on crypto and their efforts to pass meaningful legislation that will truly help usher in a new era of innovation in a safe and reliable way. I look forward to answering your questions.



**Statement of Heath P. Tarbert on the Digital Commodities
Consumer Protection Act before the Senate Committee on
Agriculture, Nutrition, and Forestry
September 15, 2022**

Chairwoman Stabenow, Ranking Member Boozman, and distinguished members of this Committee, thank you for inviting me to speak today on the Digital Commodities Consumer Protection Act of 2022. I am honored to share my perspective as the most recent past Chair and Chief Executive of the Commodity Futures Trading Commission (CFTC), the world’s premier derivatives regulator, as well as the current Chief Legal Officer of Citadel Securities, one of the world’s leading market makers.

The last time I appeared before this Committee I was the nominee to serve as the 14th CFTC Chair.¹ I stated then—and continue to believe—that the U.S. derivatives markets set the “global standard” for integrity, resilience, and vibrancy. Indeed, our financial markets are the envy of the world. Unfortunately, the same cannot be said for our digital asset markets. This Bill would help change that.

I. Digital Asset Markets Require Clear and Coherent Regulation

I appear before this Committee as neither a crypto evangelist nor a crypto denier. I believe that distributed-ledger technologies like blockchain—and many of the digital assets dependent on those technologies—embody the spirit of American innovation. They fuse two of our Nation’s greatest competitive advantages: technological ingenuity and vibrant financial markets. But digital asset markets currently lack the kind of coherent regulatory framework that enables other U.S. financial markets to flourish. The recent “crypto winter” has laid bare the

¹ Statement of Heath P. Tarbert, of Maryland, to be Chairman and Commissioner of the Commodity Futures Trading Commission before the Senate Committee on Agriculture, Nutrition, and Forestry (Mar. 13, 2019).

 CITADEL | Securities

predictable consequences of these deficiencies—ranging from market collapses to fraudulent products to outright theft.² Those deficiencies also threaten to undermine the integrity of even the most widely traded digital assets, such as bitcoin.³ Indeed, a recent study by *Forbes* across 157 crypto exchanges globally found that “51% of the daily bitcoin trading volume being reported is likely bogus.”⁴

As CFTC Chair, I emphasized the duality of digital assets. I acknowledged the potential opportunities of this burgeoning asset class while also warning of its risks.⁵ I thought—just as I continue to think today—that it is critical for the CFTC to play an active role in the digital commodity space. Under my leadership, the Commission elevated the agency’s innovation office and successfully encouraged several of the largest crypto trading facilities to apply to become CFTC-regulated venues. At the same time, I used the tools available to the CFTC to crack down on crypto-related fraud, manipulation, and other violations of the Commodity Exchange Act. During my tenure, the agency brought nearly 20 crypto-related enforcement actions.⁶ Among these was a \$100 million penalty against an illegal,

² See Jonathan Ponciano, *Crypto Winter Watch: All the Big Layoffs, Record Withdrawals and Bankruptcies Sparked by the \$2 Trillion Crash*, FORBES (Aug. 18, 2022); Ryan Browne, *Hackers have stolen \$1.4 billion this year using crypto bridges*, CNBC (Aug. 10, 2022); Daniel Van Boom, *Luna Crypto Crash: How UST Broke and What’s Next for Terra*, CNET (May 25, 2022); MacKenzie Sigalos, *From \$25 billion to \$167 million: How a major crypto lender collapsed and dragged many investors down with it*, CNBC (July 18, 2022).

³ Sir Jon Cunliffe, Deputy Governor of the Bank of England, recently emphasized this point: “Crypto-technologies offer the prospect of substantive innovation and improvement in finance. But to be successful and sustainable innovation has to happen within a framework in which risks are managed: people don’t fly for long in unsafe aeroplanes.” Speech at Eden Hall, *Some Lessons from the Crypto Winter* (Jul. 12, 2022).

⁴ Javier Paz, *More than Half of All Bitcoin Trades Are Fake*, FORBES (Aug. 22, 2022).

⁵ See, e.g., Heath P. Tarbert, *Why the CFTC is the most important regulator you’ve never heard of*, FOXBUSINESS (July 29, 2019) (explaining that while “[t]echnological innovations such as blockchain hold great promise, and the rise of digital ‘currencies’ has created a new asset class,” we must remain vigilant against “emerging threats”).

⁶ See generally Div. of Enforcement, Commodity Futures Trading Comm’n, FY2020 Division of Enforcement Annual Report, at 7 (2020); Div. of Enforcement, Commodity Futures Trading Comm’n, FY2019 Division of Enforcement Annual Report, at 11 (2019).

 CITADEL | Securities

unregistered futures exchange that offered bitcoin products to U.S. customers.⁷ In approving this action and others like it, I reflected that while “[d]igital assets hold great promise for our derivatives markets and for our economy,” innovation “can flourish only if there is market integrity.”⁸

But market integrity does not materialize in a vacuum. It requires a coherent regulatory framework through which market participants respect clear and consistent rules of the road. At Citadel Securities, we know this to be true not just in theory but in practice. As a leading market maker in the United States, Citadel Securities provides liquidity across the equities, options, futures, swaps, and fixed income markets.⁹ Because Citadel Securities typically serves as a reliable buyer or seller to investors looking to trade, our presence in virtually any market reduces trading costs, increases transparency, improves market resiliency, and broadens access. We are proud of our 20-year track record of helping retail investors, institutional asset managers, alternative asset managers, pension funds, and other clients obtain better pricing and meet their investment goals. We have long advocated for sound regulation here in America and beyond.¹⁰

⁷ CFTC, Press Rel. 8270-20, “CFTC Charges BitMEX Owners with Illegally Operating a Cryptocurrency Derivatives Trading Platform and Anti-Money Laundering Violations” (Oct. 1, 2020); CFTC, Press Rel. 8412-21, “Federal Court Orders BitMEX to Pay \$100 Million for Operating a Cryptocurrency Trading Platform and Anti-Money Laundering Violations” (Aug. 10, 2021).

⁸ CFTC, Press Rel. 8270-20, *supra* note 7 (internal quotation marks omitted).

⁹ Citadel Securities executes approximately 35% of all U.S.-listed retail equity volume, acts as a specialist or market maker in more than 4,000 U.S. listed-options names, and ranks as a top liquidity provider on the major U.S. options exchanges. We are the largest Designated Market Maker on the floor of the New York Stock Exchange, and one of the world’s largest ETFs traders. We are also recognized as a leading market maker in interest rate swaps, U.S. Treasuries, and foreign exchange products.

¹⁰ As a Firm, we have long championed the core regulatory principles of fairness, efficiency, and transparency. See Citadel Securities, *Enhancing Competition, Transparency, and Resiliency in U.S. Financial Markets* (May 2021).

 CITADEL | Securities

But it is difficult, if not impossible, for established institutions like ours to participate and provide those benefits to a market where the regulatory landscape is uncertain, fragmented, and opaque. Because the digital asset markets lack sound regulation, much of the traditional financial sector remains on the sidelines. For investors, the absence of these trusted institutions results in higher costs, less transparency, and greater volatility. But this absence is neither inevitable nor intractable. We at Citadel Securities, like many other traditional financial firms, believe we could play a significant and constructive role in the digital asset markets. But established firms like ours are reluctant to meaningfully engage in a new market absent clear rules of the road.

That is why the Digital Commodities Consumer Protection Act of 2022 is so critical. The Committee has recognized that a clear and coherent regulatory framework is a prerequisite for safe and secure digital asset markets falling within its jurisdiction.

II. The Bill Achieves Three Essential Goals for Digital Commodities

On behalf of Citadel Securities, I am pleased to support this historic and bipartisan legislative initiative. The Bill would enhance integrity, resilience, and vibrancy in the U.S. digital commodity markets by achieving three essential goals. Specifically, the Bill: (1) addresses a critical gap in the CFTC's jurisdiction; (2) promotes U.S. leadership in digital assets; and (3) is designed to stand the test of time.

1. The Bill addresses a critical gap in the CFTC's jurisdiction.

Since its inception in 1975, the CFTC has been responsible for regulating traditional commodity derivatives, such as futures and options contracts on energy and agricultural products. In the intervening decades, those futures and options

 CITADEL | Securities

contracts expanded to cover interest rates, foreign exchange, and all kinds of financial and non-financial assets. In response to the financial crisis of 2007–2009, Congress further expanded the CFTC’s jurisdiction to include swaps—a related family of financial derivatives.¹¹ But while the CFTC has long regulated derivatives—and despite its name starting with the word “commodity”—it has *never* had regulatory authority over the cash commodity markets that underlie those derivatives. To give a simple example, although the CFTC may regulate futures and options on dairy products, it does not directly regulate the sale of milk.

For traditional commodities markets, the CFTC’s limited jurisdiction makes sense. After all, why would we need a federal financial regulator in Washington to set the rules for the sale of grain between a neighborhood farmer cooperative and a mill, or for the sale of electricity from a generation plant to the local power company? Many of these local activities have been subject to effective state regulation since the late nineteenth century, while others are also subject to industry-specific federal regulation. In short, there is no regulatory gap for the CFTC to fill in these markets. And while Congress did provide the CFTC with certain enforcement authority to combat fraud and manipulation in cash commodity markets, it did so on the theory that such misconduct could ultimately harm the associated U.S. derivatives markets. That authority, however, is backward-looking. The agency can intervene only *after* harm occurs. It can punish bad behavior, but it cannot create regulations to prevent it.

While targeted enforcement authority may be well-suited for traditional cash commodity markets, it is woefully inadequate for policing the national and global digital commodity markets that have emerged during the last few years. It is

¹¹ See Heath P. Tarbert & Daniel J. Grimm, *The CFTC’s Swap Data Overhaul*, 20 FLA. ST. U. BUS. REV. 1, 10–11 (2021) (discussing swap-market reforms after the financial crisis).

 CITADEL | Securities

undisputed that some of those digital assets qualify as “commodities” within the CFTC’s jurisdiction. But they are unlike traditional physical commodities in key ways. Digital assets are financial instruments residing in cyberspace and on various forms of decentralized blockchain technology, so they are by their nature incompatible with local regulation. And unlike traditional commodities, digital assets can be traded by anyone with an internet connection. Those differences have opened digital commodity markets to millions of everyday retail investors in the United States.¹² Unfortunately, because of the current regulatory gap, many of those retail investors have also suffered catastrophic losses as a result of hacks, fraud, and bankruptcies.

Some states have attempted to fill this regulatory gap by applying money-transmitter licensing requirements to digital commodities,¹³ but those laws are limited in reach and ill-suited to regulate this nationwide financial market. At the same time, market participants understandably struggle to navigate dozens of disparate regulatory regimes. A national market requires national regulation. And national regulation requires a national regulator. The CFTC is a natural fit, given its existing authority over fraud and manipulation in digital commodity markets. But under its current regulatory authority, the CFTC can only intervene long after such fraud or manipulation has occurred. That is simply too little, too late.

The Bill addresses this glaring regulatory gap by granting the CFTC authority to regulate direct trading—and not merely futures and derivatives—

¹² As the current CFTC Chair has observed, “[u]nlike most cash commodity markets, which are dominated by wholesalers and large financial institutions facilitating the transfer of commodities for commercial use and consumption, the cash market for digital assets is currently characterized by a high number of retail investors mostly engaged in price speculation.” See CFTC Chairman Rostin Behnam, Senate Committee on Agriculture, Nutrition, & Forestry, “Examining Digital Assets: Risks, Regulation, and Innovation” (Feb. 9, 2022), written statement at 2.

¹³ See CFTC Chairman Rostin Behnam, Senate Committee on Agriculture, Nutrition, & Forestry, Hrg., “Examining Digital Assets: Risks, Regulation, and Innovation” (Feb. 9, 2022), Tr. at 10.

 CITADEL | Securities

involving “digital commodities,” which would include digital assets like bitcoin, ether, and related products.¹⁴ The CFTC would no longer need to wait until fraud and manipulation occur but could act proactively to prevent them. With this authority, the CFTC could provide consistent and appropriate “rules of the road,” removing much of the guesswork and confusion that constrains U.S. digital commodity markets today. This is a clear win for all participants in digital commodity markets, as the Bill would allow those markets to grow responsibly within the same kinds of regulatory guardrails that have made traditional U.S. financial markets the envy of the world.

2. *The Bill promotes U.S. leadership in digital asset markets.*

The Bill takes the critical first step of closing a harmful regulatory gap for digital commodities and establishing a strong foundation for American leadership in digital asset markets.¹⁵ But just as importantly, it does so in a forward-thinking way. The Bill would create a sound regulatory framework to foster digital commodity markets with integrity, resilience, and vibrancy. These are the very factors that have made the United States a leader in traditional financial markets such as equities, futures, bonds, and swaps.

The cornerstone of a well-functioning market is integrity, which results from customer protection and transparency. To enhance customer protection, the Bill would require digital commodity platforms to prohibit abusive trading practices,

¹⁴ Proposed Section 2(a)(18) of the Bill.

¹⁵ See e.g., President Joseph R. Biden, Executive Order on Ensuring Responsible Development of Digital Assets (Mar. 9, 2022) (“Digital Asset EO”) (“The United States has an interest in ensuring that it remains at the forefront of responsible development and design of digital assets and the technology that underpins new forms of payments and capital flows in the international financial system”); President’s Working Group on Financial Markets, *Statement on Key Regulatory Supervisory Issues Relevant to Certain Stablecoins* (Dec. 23, 2020) (encouraging policymakers to establish a regulatory landscape that balances responsible innovation with effective risk management and regulatory oversight).

 CITADEL | Securities

eliminate or disclose conflicts of interest, and maintain sufficient capital and liquidity to protect customer assets.¹⁶ To enhance transparency, the Bill would require digital commodity platforms to “establish governance arrangements that are transparent to fulfill public interest requirements.”¹⁷ That is a marked difference from today, when rules, ownership, and other vital aspects of digital asset trading platforms are often opaque, leaving retail and institutional investors alike with little information to assess the safety, security, and fairness of transacting on a particular venue. The Bill would further require digital commodity platforms to capture and publish trading information in a timely manner,¹⁸ similar to how traditional financial exchanges operate today. All these enhancements to market integrity would strengthen U.S. leadership in responsible digital commodity trading.¹⁹

American leadership also requires our financial markets to be resilient and vibrant. The Bill would enhance the resilience of digital commodity trading facilities and broker-dealers alike by subjecting them to financial resource requirements and system safeguards for cybersecurity and other operational risks.²⁰ The Bill would promote vibrancy by way of optional self-certification, which

¹⁶ See SEC Chairman Gary Gensler, *Prepared Remarks on Crypto Markets*, Penn Law Capital Markets Association Annual Conference (Apr. 4, 2022) (noting that “unlike traditional securities exchanges, crypto trading platforms also may act as market makers and thus as principals trading on their own platforms for their own accounts on the other side of their customers”); Vice Chair Lael Brainard of the Federal Reserve, *Crypto-Assets and Decentralized Finance through a Financial Stability Lens* (Jul. 8, 2022) (observing that “crypto-trading platforms and crypto-lending firms not only engage in activities similar to those in traditional finance without comparable regulatory compliance, but also combine activities that are required to be separated in traditional financial markets”).

¹⁷ Proposed Section 5i.(b)(4)(G) of the Bill.

¹⁸ Proposed Section 5i.(b)(2)(G) of the Bill.

¹⁹ See *supra* note 2 (identifying recent dislocations in digital asset markets).

²⁰ Proposed Sections 5i.(b)(4)(D) & (E) of the Bill.

 CITADEL | Securities

would allow responsible and more rapid innovation of new exchange products.²¹ At the same time, digital commodity trading facilities would be required to provide “impartial access,” which would reduce stagnation by ensuring that new and traditional institutional participants can easily enter these markets.²²

3. *The Bill is designed to stand the test of time.*

Perhaps the greatest feature of the Bill is that it is neither a quick fix nor a knee-jerk reaction to the emergence of digital commodity markets. Rather, the Bill is designed to stand the test of time. It is crafted on a bipartisan basis, adopts a principles-based approach, harnesses the power of self-regulation, and recognizes the important role played by other regulators. Together, these features ensure that this new legislation would continue to effectively and sensibly govern in the future, even as digital asset markets rapidly evolve.

First, history teaches that financial regulatory legislation enacted with broad bipartisan support is more likely to weather the winds of political change.²³ Much of the last decade has been spent fighting and refighting the battles that culminated in the Dodd-Frank Act, portions of which became highly partisan. The result has been delays followed by uncertainty as the relevant rules and regulations are in

²¹ Proposed Section 5i.(d) of the Bill.

²² Proposed Section 5i.(b)(2)(B)(2) of the Bill.

²³ See Secretary of the Treasury, Janet L. Yellen, *Remarks on Digital Assets* (Apr. 7, 2022) (“[R]esponsible innovation should reflect thoughtful public-private dialogue and take account of the many lessons we’ve learned throughout our financial history.”); Chris Giancarlo & Justin Browder, *Foundational Principles for US Crypto Asset Regulation* (Feb. 17, 2022) (“To ensure that any resulting legislation enjoys wide and long-lasting political legitimacy, it must be accomplished with broad bipartisan support.”); Christopher Dodd, *10 Years of Dodd-Frank: Looking Back, And Ahead*, Law360 (Jul. 20, 2020) (“Even when elusive, working to achieve bipartisan participation is important.”); Shaun Kern, *A Return to Bipartisanship in Banking*, ABA Banking Journal (June 1, 2018) (noting that a “bipartisan approach typically made better public policy . . . [and] also helped ensure that the changes Congress made to our banking laws were more durable, since both parties had meaningful input into the legislative process”).

 CITADEL | Securities

constant flux as opposed to a steady evolution.²⁴ That has not been the case with Title VII of the Dodd-Frank Act, which was drafted by this Committee with broad, bipartisan support.²⁵ As with Title VII, the bipartisan nature of this Bill is a testament to the well-founded belief on both sides of the political aisle that regulatory clarity and coherence are preconditions to safe and sound innovation in the digital commodity space.

Second, the Bill responsibly advances the CFTC’s longstanding and time-tested approach of principles-based regulation.²⁶ This is the idea that the most effective regulatory solutions are often built upon “clearly stated principles” rather than “detailed, prescriptive rules.”²⁷ As former CFTC Chair, I believe that principles-based regulation is ideal for markets undergoing rapid change and innovation because principles are flexible by design—they chart broad requirements while allowing market participants to fill in the details in ways that are reasonable and effective.²⁸ I also think that principles-based regulation prevents market participants from exploiting the kinds of loopholes that can arise when regulations are too detailed to keep up with a rapidly evolving market.²⁹ Most critically, when reasonably and fairly implemented by a regulator such as the CFTC, principles-based regulation encourages responsible market innovation by

²⁴ See, e.g., Chairman Behnam, *supra* note 13 at 10.

²⁵ Heath P. Tarbert, *The Enduring Legacy of the Dodd-Frank Act’s Derivatives Reforms*, 6 J. FIN. REG. 159, 171 (2020).

²⁶ Heath P. Tarbert, *Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation*, 10 HARV. BUS. L. REV. 1 (2020).

²⁷ *Id.* at 2. It is important to recognize, however, that there are several circumstances in which rules are ideal. See *id.* at 9–11.

²⁸ See *id.* at 6–8.

²⁹ See *id.* at 8 (“Principles-based regulation also discourages ‘loophole’ behavior and ‘checklist’ style approaches to compliance with the law,” in part because “rules may allow actors to comply with the ‘letter of the law’ but not the ‘spirit of the law.’”).

 CITADEL | Securities

creating space for private-sector advancements to propel markets forward, while simultaneously making them safer and more secure.³⁰

In my view, the Bill adopts a principles-based approach that seeks to balance flexibility with clarity. It would mandate the establishment of “core principles for digital commodity platforms,” and allow platforms to exercise “reasonable discretion in establishing the manner” of their compliance with those principles.³¹ This flexibility would allow digital commodity platforms to evolve with the markets they serve and to adjust policies, procedures, and standards to reflect the unique digital products they offer. Trading facilities would have reasonable discretion in establishing their own rulebooks, and those rulebooks would in turn provide clear standards to which market participants can be held accountable.

Importantly, regulatory flexibility should not be confused with “light touch” regulation, nor a regime where market participants are left guessing what is permissible until an enforcement action comes their way.³² Regulated entities may have choices, but the CFTC remains responsible for ensuring that those choices are objectively reasonable. At the same time, the Bill would not give the CFTC a license to conduct rulemaking by enforcement. Instead, the Bill would vest in the CFTC the authority to impose additional requirements to implement or supplement the core principles “by rule or regulation.”³³

Third, the Bill reserves an important role for industry self-regulation to supplement the CFTC’s new jurisdiction, effectively creating a self-regulatory first line of defense. Specifically, it would require digital commodity trading facilities

³⁰ *Id.*

³¹ Proposed Section 5i.(b) of the Bill.

³² See Tarbert, *Principles*, *supra* note 26, at 7.

³³ Proposed Section 5i.(b)(1)(A)(ii) of the Bill.

 CITADEL | Securities

to promulgate and enforce their own rules “to prevent manipulation, price distortion, and disruptions of the delivery or settlement process.”³⁴ Trading facilities would do so “through surveillance, compliance, and disciplinary practices and procedures, including investigations [and] sanctions.”³⁵ The Bill also recognizes the enormity of the administrative burden that the CFTC would face to implement the initial screenings and registration requirements for digital commodity trading facilities, dealers, brokers custodians, and all their associated persons. The Bill would lessen that burden by requiring those entities and persons to join a registered futures association to which the CFTC may delegate some of its more perfunctory regulatory duties.³⁶ The use of self-regulatory organizations to supplement government regulation is a tried-and-true method that has long been effective in the futures and swaps markets, particularly through the contributions of the National Futures Association (NFA).³⁷

Finally, while the Bill acknowledges that the CFTC is well-suited to regulate digital commodities, it also prioritizes cooperation and coordination with other federal agencies. The acute need for a regulatory framework governing digital commodities is the driving force behind the Bill—and its text is thoughtfully tailored to that objective. At the same time, the Bill implicitly recognizes the complexity of the U.S. financial system and the cross-cutting array of issues that

³⁴ Proposed Section 5i.(b)(2)(C)(iii)(II) of the Bill.

³⁵ *Id.*

³⁶ Proposed Section 5i.(i) of the Bill.

³⁷ See Heath P. Tarbert, *Self-Regulation in the Derivatives Markets: Stability Through Collaboration*, 41 NW. J. INT'L L. & BUS. 175, 184–87 (2021). As of June 2021, the NFA oversaw the day-to-day registration and supervision of approximately 3,176 entities and nearly 44,000 individuals within the U.S. derivatives industry. See *2021 Annual Review*, Nat'l Futures Assoc. (Nov. 8, 2021). In carrying out its responsibilities, the NFA also writes rules and standards of behavior that supplement those of the CFTC. The Financial Industry Regulatory Authority performs a similar self-regulatory function for the securities markets.

CITADEL | Securities

digital assets raise for banking, securities, consumer finance, payments, monetary policy, money laundering, and even national security.³⁸ The Bill appropriately stops short of trying to address every issue and does not foreclose Congress from doing so in the future.³⁹ In particular, the Bill would specifically exclude from the definition of “digital commodity” digital currencies backed by the U.S. government.⁴⁰ It would also exclude any “security” that would fall within the SEC’s purview.⁴¹

At its core, the Bill ensures that there is a relevant federal regulator to fill a persistent regulatory gap. That regulator may often be the CFTC. But it need not always be, and the Bill recognizes the contributions of other regulators—who also have critical roles to play—and seeks to avoid confusion about where responsibility lies.

III. The Bill Would Benefit from Further Refinements

All told, this Bill is a critically important first step to establishing a legal and regulatory framework for the purchase and sale of digital commodities in the United States. While the Bill successfully answers many of the most important questions facing this market, as this legislation progresses, we hope to continue to

³⁸ See e.g., Jay Clayton, *The Peculiar Challenges of Crypto Regulation*, WALL ST. J. (Aug. 25, 2022) (“[T]he word ‘crypto’ refers to a spectrum of products under multiple regulatory bodies . . . Proactive cooperation among regulators, an often cumbersome endeavor, is essential.”); Digital Asset EO, *supra* note 15.

³⁹ For example, certain digital assets such as “stablecoins” pose unique risks and implicate different regulatory frameworks and, as a result, may require more tailored legislative actions.

⁴⁰ Proposed Section 2(a)(18)(C)(iii) of the Bill.

⁴¹ Proposed Section 2(a)(18)(C)(ii) of the Bill. See also SEC Chairman Gary Gensler, *The SEC Treats Crypto Like the Rest of the Capital Markets*, WALL ST. J. (Aug. 19, 2022) (“Across decades of cases, the Supreme Court has made clear that the economic realities of a product—not the labels—determine whether it is a security under the securities laws.”).

 CITADEL | Securities

engage with the Committee on potential improvements. I would like to make three suggestions to the Committee today.

First, the new categories of registrants created by the Bill could be more clearly defined. For example, the Bill currently defines a digital commodity dealer to include “a person that . . . has an identifiable business of buying or selling digital commodities for conversion into other digital commodities, currency, or other consideration.”⁴² The Bill also defines a digital commodity broker to include any person that “arrang[es] digital commodity trades on behalf of another person.”⁴³ These definitions could be interpreted broadly to capture persons—such as investment funds, their advisers, and even persons investing for their own account—who are generally not thought of as “dealers” or “brokers,” and not treated as such in similar regulatory frameworks. To avoid impairing these kinds of actors and activities, the definitions should be closely tailored to the specific activities Congress intends to regulate.

Second, given the acute uncertainty regarding the status of particular digital assets now and in the future as either digital commodities or securities, I believe market participants should be able to reasonably rely on the processes in the Bill for the listing and trading of new digital commodities. This includes the self-certification process to identify digital assets that are digital commodities. Market participants who register and trade such products in good-faith compliance with the Bill’s regulatory framework should be protected from adverse retroactive government or private actions if digital commodities certified in accordance with the Bill are subsequently reclassified as securities.

⁴² Proposed Section (2)(a)(21)(A)(iv) of the Bill.

⁴³ Proposed Section (2)(a)(19)(A)(iii) of the Bill.

CITADEL | Securities

Finally, and more broadly, while I am supportive of applying principles-based regulation to evolving technologies like digital commodities, it is important to ensure that market participants who reasonably apply and rely on those principles in good faith are not later subject to arbitrary, post hoc enforcement actions. While the CFTC has not typically engaged in rulemaking by enforcement, it is important for Congress to make its intent on this point crystal clear. Unlike the notice-and-comment process,⁴⁴ rulemaking by enforcement deprives market participants of the opportunity to weigh in on important questions of policy, fails to provide nuanced and comprehensive guidance that would allow market participants to adjust their behavior, and creates an uncertain regulatory system whereby participants are forced to divine an agency's policy. Using federal administrative resources in this way is simply inappropriate and unfair.

IV. The Challenge Posed By Digital Commodities Is Nothing New

I want to close not by looking to the future but to the past. Digital commodities may be new, but the challenge they pose to U.S. financial markets is not. In fact, 2022 looks a lot like 1922. One hundred years ago this very Committee helped to create the Grain Futures Act.⁴⁵ That watershed statute, enacted on September 21, 1922, was the precursor to the Commodity Exchange Act.⁴⁶ It established the Grain Futures Commission, an early forerunner of the CFTC.

The problem this Committee was trying to solve then was strikingly similar to the one it is working to solve now. A century ago, futures in wheat, corn, and

⁴⁴ Although I believe notice-and-comment rulemaking is more appropriate than other kinds of agency guidance when it comes to material policy changes, what matters even more is that market participants understand with clarity the standards to which they will be held to account. *See* CFTC Chairman Heath P. Tarbert, *Directive on the Use of Staff Letters and Guidance* (Oct. 27, 2020) (noting that "Staff Letters should supplement, rather than replace, rulemakings").

⁴⁵ 42 Stat. 998 (1922), 7 U.S.C. §§ 1–17 (1926).

⁴⁶ Grain Futures Act, 42 Stat. 998–1003 (1922).

 CITADEL | Securities

other grains emerged as a truly national financial market. But the exchanges and venues on which those products traded were subject to a patchwork of conflicting state laws⁴⁷ that failed to protect American farmers and their families from fraud and manipulation.⁴⁸ Then, as now, the solution was the same: a robust yet flexible federal regulatory framework that offers market participants clarity and coherence. The Digital Commodities Consumer Protection Act of 2022 will establish just such a framework. It would enable firms like Citadel Securities to make these markets work better for buyers and sellers of digital assets. We are pleased to support this important legislative initiative.

* * *

Thank you again for the opportunity to address this esteemed Committee on the topic of digital commodity markets. I applaud you and your Staff for leading the charge with this important Bill, which I hope will move forward on a bipartisan basis. As you and your Staff make further refinements to the legislation in the coming days, my colleagues and I at Citadel Securities look forward to sharing our expertise and experience in improving investor protection, transparency, and market resiliency. I welcome questions from the Committee.

⁴⁷ See *State v. Christopher*, 318 Mo. 225, 247 (1927) (holding “that the effect of the Grain Futures Act was to restrict the operation of State laws . . . so as to make them inapplicable to transactions coming within the terms of the Grain Futures Act, conducted on a ‘contract market’ according to the rules prescribed by that market”).

⁴⁸ Grain Futures Act, Sec. 3.

Testimony of Denelle Dixon, CEO and Executive Director, Stellar Development Foundation
Before the United States Senate Committee on Agriculture, Nutrition, and Forestry
Regarding “Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act”

September 15, 2022
Washington, D.C.

Good morning, Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee.

Thank you for inviting me to testify today. I'm honored to speak with you, and I look forward to discussing the Digital Commodities Consumer Protection Act (DCCPA).

My name is Denelle Dixon, and I am the CEO and Executive Director of the Stellar Development Foundation. I took on this role and joined the blockchain industry three and a half years ago. In my prior role as Chief Operating Officer of Mozilla — the maker of the Firefox browser — I spent my time at the intersection of business, technology, and public policy. At Mozilla, we used our unique role in the ecosystem to advocate for the internet's core principles of openness, accessibility, privacy, security, and interoperability, along with regulations and rules that would protect and allow those principles to flourish.

Today's blockchain and cryptocurrency industry and the policymakers responsible for regulating it are navigating these same issues. How can we preserve and advance the core principles of this technology as we consider the appropriate regulatory framework for this industry? How will we encourage innovation and competition and protect consumers as they interact with this technology and all it offers? The answers to these questions will help decide this technology's future, just as they did with the internet. I believe the regulatory clarity the DCCPA seeks to create is essential to that discussion.

Before I speak about the opportunities of the DCCPA, I'd like to share more about the Stellar Development Foundation, the Stellar network, and, most importantly, the real-world solutions built with this technology.

The Stellar Network and the Stellar Development Foundation

The Stellar Development Foundation, or SDF, was established alongside the Stellar network in 2014 with the mission of using the technology to create equitable access to the global financial system. SDF is a non-stock, non-profit organization with no shareholders, no owners, and no profit motive. This unique structure allows us to be laser-focused on fulfilling our mission without competing with a profit motive or shareholder demands. To achieve this mission, we focus our work on a few top priorities: we shepherd the code base for the Stellar network,



475 Brannan St. Suite 400
 San Francisco, 94107 CA
hello@stellar.org

participate in the ecosystem surrounding Stellar, support the growth of the ecosystem and the use cases built on top of Stellar, in addition to supporting global public policy and education around Stellar and blockchain.

What is Stellar? Stellar is an open, permissionless, decentralized ledger — or blockchain network — optimized for payments and asset issuance, particularly stablecoins. No single entity, including SDF, controls the codebase of the network or its growth. You don't need permission to use the technology; just like the internet's underpinnings, it is open and ready for use.

The Stellar network has been operating for over seven years. More than 5 billion operations have been processed, with nearly a billion last quarter alone, from over 7 million accounts, and an ecosystem of products and services that grows daily. Stellar is best for asset issuance, making it possible to create, send, and trade digital assets backed by nearly any form of value. The network's design works *with* the traditional financial system to leverage the benefits of blockchain technology to enhance, not supplant, existing economic infrastructure. This critical distinction guides our work and the use cases built on the network.

Because of the headlines that dominate the crypto and blockchain space, you probably haven't heard much about the Stellar ecosystem or the real-world use cases built on Stellar. These headlines, especially from this summer, have left most believing that the world of blockchain and cryptocurrency is only lending, trading, borrowing, and speculation. So, I'd like to take my time with you today to highlight a payment service built on Stellar — launched in the dead of the 2022 "crypto winter" — with MoneyGram International (MGI). This use case represents the power and promise of the technology and its impact on those with limited access to the traditional financial system. Moreover, it is a true testament to SDF's mission to expand economic opportunity and financial inclusion.

Cash to Crypto: A gateway to the digital economy and financial inclusion

As an industry, we talk a lot about how the digital economy promises to let people freely send, receive, and hold their wealth as digital assets whenever and wherever they want. Though the reality is that today, it is nearly impossible to access the digital economy without a bank account or a credit card. While that can be an inconvenience for most crypto enthusiasts, it is an outright impediment for the unbanked and the underbanked.

Why does that matter? Because it's not enough for blockchain to only make the financial system better for those already using and benefiting from it. This is particularly important for SDF - an organization with a mission focused on boosting financial empowerment and opportunity. The true potential of this technology is to help reach those excluded from the current financial system and all that it unlocks. To do that, we need quick, secure, and affordable ways for the 60% of the world's population — or nearly 2 billion people — that rely on cash to convert their money into digital assets and back without exposing them to undue



475 Brannan St. Suite 400
 San Francisco, 94107 CA
 hello@stellar.org

risk of price volatility.¹ Solving this problem is key to greater adoption and financial inclusion; building the necessary technology and finding the best partners to deliver the right solutions to address this problem has been the focus of the Stellar network since day one.

I am proud to say that in June, a lot of hard work put in by several organizations paid off. The Stellar network took a significant step forward to opening the door for more people to enter the digital economy. With MoneyGram International, Circle Financial, and a growing number of digital wallets, a first-of-its-kind global service enables anyone to convert cash to digital assets without a bank account or credit card.

How does it work? The service utilizes the Stellar blockchain and Circle's USDC Coin (USDC) to allow cash funding and payout in different currencies of the consumer's choice. The Stellar network provides the digital rails to make payments fast and secure. USDC provides a stable digital asset, a true stablecoin backed by fiat currency that is particularly well suited to payments and remittance use cases because it eliminates the risk of volatility of other types of cryptocurrencies. MoneyGram provides a global network of cash-in and cash-out locations.

What does that mean in practical terms? It means that an immigrant farm worker in Kansas, or Idaho, or California, or anywhere in the U.S., can send her hard-earned cash to family in her home country without experiencing outsized fees and uncertain wait times. She can walk into a local MoneyGram location — typically a supermarket or pharmacy — with one hundred dollars in cash and, in minutes, have one hundred virtual dollars in USDC deposited into her digital wallet. With her money available in a stable digital asset, she has the option to send it to another digital wallet anywhere in the world, like to her parents back home.

This is available to her right now, knowing that more of her money will make it to her family because MoneyGram offers this service with zero fees for the first year. She can also do it with confidence that the funds will arrive at their destination almost instantly. And all of this speed, certainty, and cost savings does not even require a bank account or credit card.

These benefits extend to the other side of the transfer; her parents could visit their local MoneyGram location and cash out of USDC into their local fiat currency when needed.

But sending digital assets is only one available option. She can also save her money in her digital wallet as USDC — a safer option than cash. Or, she can choose to engage with the growing number of products and services on the blockchain. This novel service finally gives neglected, unbanked, and cash-reliant populations a pathway to enter the digital economy with a stable currency opening the doors to new opportunities in the future.

It's been incredible to see the Stellar global community interact with the service, with testimonials from Florida to South Africa, to Canada and Mexico. With more than 420,000 agent locations in 200 countries, MoneyGram serves nearly 150 million people worldwide.

¹ [Women and men in the informal economy: A statistical picture](#), International Labour Organization, 2018



475 Brannan St. Suite 400
 San Francisco, 94107 CA
 hello@stellar.org

Today, consumers in 14 countries can cash-in or convert crypto to local currency for instant pickup at MoneyGram locations in their regions. Likewise, cash-out, or converting your crypto back into cash, is available globally at participating MoneyGram locations. In the three months since launch, we've seen cash-out happen in more than 60 countries. Millions now have a safe and secure way to send money to friends and family worldwide with zero fees and a safe way to store value. That's only today. Tomorrow, the possibilities are endless.

New partners and services

Those future possibilities come from bridging the gap between the physical and digital worlds so that businesses that have only been available digitally can now plug into physical locations worldwide. As a result, companies will be able to reach new users, notably those who rely heavily on cash, and, in turn, offer services that have been historically unavailable to this population. As mentioned earlier in this testimony, at SDF, we believe that collaborative ecosystems building together, including the traditional system, will take this industry further and to a much broader audience than building alone. These services are the vehicles for us to bring the most critical benefits of crypto to the people this technology was designed to include.

And we are already seeing more companies joining to offer these services. Coinme, one of the largest cryptocurrency cash networks with over 21,000 locations nationwide, announced it would also integrate with the Stellar network to offer cash-in of USDC. This integration will also expand to Latin America, giving 79 million Americans and 70% of those unbanked or underbanked a new option to access a vital pathway into digital finance and financial inclusion.² We hope to see more players follow.

I am hopeful that clarity from legislation, like the DCCPA, can help bring more traditional financial players to the table and enable the entire blockchain industry to continue building solutions and products to create a more equitable global financial system. With that, I would like to turn to the importance of an appropriate regulatory framework and the role of the CFTC in that framework.

The Importance of Getting it Right

Digital assets and blockchain may be one of the most meaningful technological developments of the 21st century. They will continue to foster innovation, job creation, and investment for industries and businesses with applications beyond finance and investing. As adoption grows, this technology can drive greater financial inclusion and be the catalyst for the next wave of digital innovation that unlocks economic opportunity in our nation. However, to reach its full potential and for our country to realize the benefits of this next-generation technology through use cases like what MoneyGram has built on Stellar, we must establish a policy and regulatory framework appropriate and fit for purpose. This means ensuring that key agencies, including both the SEC and CFTC, have clear mandates.

² [CoinMe announces USDC-powered global, borderless digital cash and P2P payments](#), June 2022



475 Brannan St. Suite 400
San Francisco, 94107 CA
hello@stellar.org

When Bitcoin was created over a decade ago, few envisioned the numerous use cases we see today that stem from the blockchain, let alone those that will develop in the next decade. Just as the internet required regulations for the explosion of new products and services built on new technology, digital assets and blockchain need rules based on future use cases rather than regulations aimed at legacy products and institutions. As a country, we have always been successful by regulating the *use* of technology rather than the underlying technology itself, putting safeguards in place without stifling innovation. This approach has allowed the U.S. to foster the growth of internet technologies and in doing so, realize the social and financial benefits of the digital age.

Lack of Regulatory Clarity

Today, no single federal regulator is responsible for digital assets in the U.S. Instead, entities and individuals engaged in the digital asset business are subject to a confusing, complicated patchwork of rules from federal and state regulators. Regulation is often inconsistent and duplicative. Each regulator views the industry and claims jurisdiction over it through its unique lens, its own set of rules, and its own authorizing statutes, often without regard to the burdens imposed by other related regulators.

As a result, one entity can interact with scores of state regulators, the CFTC, the SEC, FINCen, the OCC, and others. The costs can be crippling or even prohibitive for new and existing businesses. Worse still, the lack of clear and consistent regulations across the industry has given rise to "regulation by enforcement," an approach that is often so narrowly tailored to specific facts and circumstances that it fails to provide actionable guidance to the industry. It is an approach that also sidelines many compliance-oriented businesses hesitant to embrace this new frontier until more regulatory clarity is available and could encourage new businesses in the U.S. to move to other jurisdictions where lawmakers set the ground rules early and clearly.

These reasons have pushed the digital asset community to seek regulatory clarity from U.S. lawmakers and regulators. It may seem like the industry pushes for clarity because it's an easy thing to lament or because it doesn't agree with current proposals. Neither is true. The truth is, we are stuck. We all agree that the public deserves transparency, disclosures, and protections when buying particular items, no matter if those items are consumer products, commodities, or securities. The challenge comes in the correct method of ensuring these protections exist. When it comes to digital assets, many of which are necessary components to make a network run, the "how" the protections are imposed is crucial. It must be done in a manner that does not interfere with the intended use of those digital assets to keep the networks operating as they were designed. Our laws are here to protect and inform people, not to deprive them entirely of the opportunity to benefit from new technologies, services, or products in the name of that protection.

As CEO of a foundation supporting the growth of one of the most mature blockchain protocols, I talk to people across industries about solving their problems or enhancing product offerings through blockchain technology. When I started this role, it was sometimes hard to get in the



475 Brannan St. Suite 400
 San Francisco, 94107 CA
 hello@stellar.org

door to have those conversations. Then, over the last three plus years, understanding of the utility and impact of this technology has grown and doors have begun to open. Today, when I sit with some of the most well-known financial services and fintech companies, I'm no longer convincing them that blockchain is worth considering as they are eager to incorporate blockchain into their business. Instead, I'm spending our time together talking about stablecoins and whether there are regulatory concerns if they use them in their products. I tell them that the regulatory clarity we need, along with the necessary guardrails and oversight, is coming. These are the required steps and reassurances these companies need to take the plunge with this technology, to bridge traditional and digital finance and help bring it to the masses.

The call for greater regulatory clarity is a real one because it is existential. It's not because we are looking for a different answer; we are looking for clear, definitive rules that are not subject to one's interpretation. We need it. We need it to build and operate with the knowledge that we are making the right decisions. We need it to understand how best to protect consumers. We need it to bring the full power of this technology to the masses with the collaboration of companies and institutions already integrated into our everyday lives. That is why the DCCPA is a welcome step forward.

Digital Commodities Consumer Protection Act

Clear Regulatory Structure

This legislation focuses on ensuring that the CFTC has the authority to oversee digital commodities, with the understanding that both the SEC and CFTC have key roles to play in regulating digital assets, depending on their specific attributes. The most crucial aspect of the DCCPA is the creation of a spot market regulator in the CFTC. The agency has a long history of vetting and approving new types of exchanges to trade new innovative products, including climate, interest rate, and event contracts. In addition, it already regulates a large swath of digital asset markets by regulating digital asset futures markets. The CFTC has also exercised its anti-fraud and anti-manipulation spot market authority by bringing several enforcement cases against fraudsters in the digital asset space over the last seven years. With this experience in mind, the CFTC is ideally suited to take on the responsibilities set out in the DCCPA.

A more robust CFTC, working alongside the SEC, will provide consumers and the industry a clearer path forward.

Stablecoins

Stablecoins are an essential ingredient for safe, secure, and fast payments. Because of that, consistent and transparent regulation of stablecoins is a priority. Regulated businesses are already issuing stablecoins on Stellar. Those stablecoins move value from one fiat currency in one country to another fiat currency in another quickly, at low cost, and without exposure to the signature volatility of other cryptocurrencies. Backed by fiat currencies held in insured



475 Brannan St. Suite 400
 San Francisco, 94107 CA
 hello@stellar.org

bank accounts, these *true* stablecoins are a bridge between traditional finance and blockchain networks.³

Given the importance of stablecoins in payment use cases, we support sensible legislation that acknowledges both the role of open-source software and technology companies (in addition to insured depository institutions), and safeguards that protect consumers and the public trust.

In fact, it was encouraging to see the DCCPA set out a process for stablecoins, or “fixed value” digital commodities, to be listed on Digital Commodity Trading Facilities, as stated in Section 5(i)(d) of the Act. We appreciate the drafters’ focus on the key considerations for stablecoins such as the identity of the issuer, the collateral or reserves backing the stablecoin, and the terms by which the issuer will redeem the stablecoin.

Consistent with this legislation, SDF has publicly stated that stablecoins should be required: (1) to be fully reserved, and (2) those reserves should be held at insured depository institutions in bankruptcy remote segregated accounts. A regulatory framework should also set standards for the regular audit and public disclosure of stablecoin reserves to help inform consumers and establish eligibility parameters for stablecoin reserve assets. For example, reserve assets could be limited to cash, cash equivalents, and other high-quality, highly liquid assets like short-dated U.S. Treasuries and investment-grade debt securities. Additionally, we believe that some standardization of key contractual terms between stablecoin issuers and stablecoin holders around redemption would benefit the market. This bill implicitly notes, consistent with the President’s Working Group on Financial Markets’ Report on Stablecoins, that payment stablecoins are not securities. We agree. As such, it is appropriate that they be regulated and traded as commodities under the DCCPA.

While some have advocated for legislation that focuses on the status of the stablecoin issuer (i.e., issuers should be limited to insured depository institutions), to the extent other lawmakers are considering the regulation of stablecoins, we encourage them to focus on stablecoin reserves in a manner consistent with this bill rather than the status of the issuer.

Energy

The DCCPA calls for a study of the energy impact of digital assets. This study is an essential bill provision that we at SDF welcome. Recently, SDF enlisted a major international consultancy to develop a framework to assess electricity consumption and emissions of blockchain protocols. The first-of-its-kind assessment framework is meant to enable blockchain and financial services organizations to consider further measurement of their environmental footprints. The framework aims to quantify the material environmental impacts of blockchain, building on existing research in the market. Within the framework, quantitative considerations include electricity use, greenhouse gas emissions, e-waste/embodied carbon, and differences in consensus mechanisms.

³ We refer to the conversion to and from fiat USD to USDC as the “onramps” and “offramps” of the blockchain network.



475 Brannan St. Suite 400
 San Francisco, 94107 CA
 hello@stellar.org

In evaluating the Stellar Consensus Protocol through this framework, we confirmed that this consensus mechanism (proof of agreement) — a form of Federated Byzantine Agreement unique to the Stellar network — is incredibly efficient. Guided by these findings and to address the environmental footprint the network does have, SDF, together with the Stellar ecosystem has established an ongoing Carbon Dioxide Removal (CDR) commitment for the removal of the carbon footprint of the network.

We believe that a transparent, consistent environmental assessment framework is critical to reducing emissions in any industry. SDF is proud to help bring such a framework to the blockchain industry, and true to our open-source roots, we have shared the methodology. Additionally, we actively engage with others in the industry through direct conversations, trade associations, and membership in the World Economic Forum’s Crypto Impact and Sustainability Accelerator (CISA). We aim to establish a common approach so that all blockchain networks can determine their carbon impact with a consistent methodology for measurement. We also hope to encourage greater transparency from legacy players to share their data so we can all have visibility into the sustainability of financial services as a whole. We would welcome the opportunity to share our work with the CFTC and this Committee on this issue as part of any study conducted under the DCCPA.

Customer Protection, Education, and Historically Underserved Customers

We are pleased that the DCCPA requires the CFTC to engage and promote customer outreach and education. And we are especially attuned to the requirement to focus and report on ways to reach and craft appropriate protections for historically underserved customers participating in digital markets. As an organization with a mission of financial inclusion, we could not agree more that consumer protection and education are necessary to achieve that goal. And we believe this is accomplished best in partnership between the public and private sectors. Like many technologies, blockchain can be complicated, but the products and services that leverage the technology don't have to be. We use the internet to ease our daily activities — but we don't need a detailed understanding of how it works. Companies have harnessed the power of the internet with the consumer in mind ensuring that knowing how the technology works is not a requirement for its use. We in the blockchain industry have some work to do in this area — making the technology simple and safe with a focus on solving everyday problems with the user and user's needs in mind. We support user-centric design through our relationships with builders in the Stellar ecosystem and advocacy. We would be honored to serve as a resource and, in turn, also learn from the CFTC as they execute this mission.

Areas for Further Consideration

By designating the CFTC as the market regulator for the spot market in digital assets, the DCCPA creates a regulatory structure that will move us towards the clarity the industry needs. However, we also know that creating the “rules of the road” at a principles level is crucial. With that in mind, we offer two suggestions where we believe additional structure could help foster innovation in the U.S., and lead to better products serving more people.



475 Brannan St. Suite 400
 San Francisco, 94107 CA
 hello@stellar.org

Commodity vs Security

Rightfully, the DCCPA has defined a Digital Commodity while recognizing the SEC's jurisdiction over securities. However, unfortunately, it fails to address the fundamental question that has plagued the industry for far too long: when is a digital asset considered a commodity versus security? Since at least 2017, courts and the SEC have applied the Howey Test on a case-by-case basis to digital assets and their issuers or promoters in enforcement actions. Yet, the industry still has no clear way to determine when a particular set of facts and circumstances amount to an "investment contract." The Howey Test does not, nor has it ever, offered regulatory clarity. It is a court-made test created based on facts and circumstances far afield from digital assets. It is not a principles-based rule. The industry desperately needs a practical definition not a multi-factored "test" susceptible to results-oriented application. The DCCPA is the perfect vehicle to deliver such a definition. Again, we hope to have the opportunity to work with this Committee to supplement the language to ensure that the bill addresses how to bring clarity to determining the classification of all digital assets.

As a first step, we hope this definition acknowledges that all digital assets are not created equal. Time and again, we have raised the importance of considering the activity and purpose of each asset — not just that it is digital — when evaluating the appropriate rules or regulations, because many tokens and digital assets serve different purposes. For instance, many tokens in this space are core to the workings of the blockchain. Others run on top of the networks, but are not essential to the networks' functionality. These differences call for different approaches to attaining the regulatory goals of consumer protection, transparency, and disclosure.

What exactly does it mean for a digital asset to be "core to the workings of the blockchain"? Take the Minnesota or Iowa State Fair. When you arrive at the fair, your entrance fee gives you access to the grounds, but you must buy tickets to play the games, ride the rides, or, my personal favorite, buy a delicious funnel cake. These tickets are essential if you wish to experience the full value of the fair through engaging with the attractions - much like you need certain digital assets to engage with particular networks. These tickets serve as a tool for fair attendees and the fair - and they may even be sold peer-to-peer when an attendee departs from the grounds. Alternatively, an attendee may hold her unused tickets hoping that she will be able to use them at the following year's fair when the ticket prices may be higher. However, these tickets do not give attendees any ownership stake in the fair, nor does the peer-to-peer sale or decision to hold the tickets turn the tickets into investment contracts. These tickets exist only to keep the fair running smoothly. While it is important for the fair organizers to ensure that fair-goers understand what the tickets are and how to use them, we can all agree that the organizers need not register them as securities. Much like understanding the attributes of these tickets, the definition of digital asset must include a framework for assessing the asset's functionality vis-a-vis the relevant network.



475 Brannan St. Suite 400
San Francisco, 94107 CA
hello@stellar.org

Regulating Activity, Not Technology

As discussed above, the DCCPA would give entities and individuals engaged in the business of digital assets a clear path through the maze of regulators that claim jurisdiction over their products, services, and activities today. Consolidating the oversight responsibilities would be a tremendous step towards establishing clear and consistent guardrails that will allow these businesses to thrive. However, as currently drafted, some could interpret the text to cover aspects of the technology rather than the participants offering products and services that leverage the technology. As I mentioned above, technology is a tool that evolves so quickly and can bring about previously unimagined benefits if allowed to flourish. Regulation aimed at the technology itself, rather than its use, will only stifle the innovation we all invariably want to see. Finally, reaching a definition that can provide clarity regarding the businesses and individuals who would be subject to these regulations is a priority for the industry. We look forward to participating in any way necessary to achieve it.

Conclusion

With an appropriate and clear policy and regulatory framework, digital assets and blockchain have great potential to usher in a new era of innovation and economic opportunity for the U.S., in a way that improves access to financial services for millions of people. I believe that the DCCPA is a consequential step towards creating this innovative and inclusive financial system. The proper tools and legislative authority paired with a coordinated federal approach, will promote American innovation and demonstrate our leadership on this technology to the many around the globe considering similar regulatory questions. SDF looks forward to working with Congress, and with this Committee specifically, to determine and craft the appropriate regulatory structure, one that clearly delineates regulatory roles for the digital assets industry and ultimately allows this industry to achieve its potential.

Thank you again for the opportunity to testify today.

**DOCUMENTS SUBMITTED FOR THE
RECORD**

SEPTEMBER 15, 2022

Hon. J. Christopher Giancarlo
787 Seventh Avenue
New York, NY 10019-6099

September 15, 2022

The Honorable Debbie Stabenow, Chairwoman
The Honorable John Boozman, Ranking Member
U.S. Senate Committee on Agriculture, Nutrition & Forestry
Washington, DC 20515

Re: Senate Bill 4760 The Digital Commodities Consumer Protection Act of 2022

Dear Senators,

I write in support of your consideration of the Digital Commodities Consumer Protection Act of 2022.

As Congress contemplates an appropriate legal and regulatory framework for digital assets it is unsurprising that attention is directed to the Commodity Futures Trading Commission (CFTC). As you well know, the CFTC has been at the forefront of US financial market innovation since the agency's inception. 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 US Dollar's primacy as the world's reserve currency.¹ During the past decades, the CFTC has deftly overseen more new financial product innovation than almost any other market regulator.² 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. Two years later, the CFTC greenlighted the self-certification of bitcoin futures initiating 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 commodities (the largest digital asset category by volume) trade in orderly and transparent markets under close CFTC

¹ Leo Melamed, *Man of the Futures: The Story of Leo Melamed & the Birth of Modern Finance* (Harriman House 2021).

² See generally, Written Testimony of Chairman J. Christopher Giancarlo before the Senate Banking Committee, Washington, D.C., (February 6, 2018) at: <https://www.banking.senate.gov/imo/media/doc/Giancarlo%20Testimony%202-6-18b.pdf>.

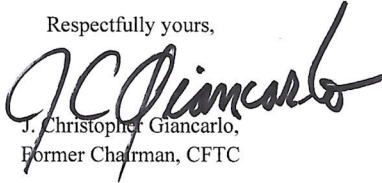
supervision, fostering Dollar-based pricing, with healthy liquidity and high levels of open interest despite volatile current economic conditions.³ These markets provide the CFTC with regulatory visibility supporting robust enforcement that is second to no other market regulator in prosecuting perpetrators 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 Digital Commodities Consumer Protection Act of 2022 (the "Act") 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 US derivatives markets to police against fraud, manipulation and abuse. CFTC Chairman Rostin Behnam reported to your committee earlier this year 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 Act that extend the CFTC's oversight to cover spot digital commodity markets.

The world is once again experiencing a fundamental new innovation in finance. Thoughtful, clear-eyed and unbiased American leadership is needed. American consumers and financial innovators alike deserve the benefit of the CFTC's seven years of market supervision, expert analysis and product engagement in digital asset markets. It is time to close the regulatory gap over spot digital commodities with the oversight of the world's most experienced and farsighted crypto regulator: the Commodity Futures Exchange Commission.

I urge Congress to draw upon the CFTC's expertise and competence to meet the challenge of digital asset innovation and face the digital future of finance it portends.

Respectfully yours,



J. Christopher Giancarlo,
Former Chairman, CFTC

³ CME Bitcoin Liquidity Report, September 2, 2022, at:
https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf

QUESTIONS AND ANSWERS

SEPTEMBER 15, 2022

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act
September 15, 2022
Questions for the Record
The Honorable Rostin Behnam

Ranking Member John Boozman

Chairman Behnam, we are hearing arguments from opponents of efforts to provide the CFTC lead regulatory authority over the digital commodities market. A prime argument is that the commission is weaker on enforcement, and less equipped to regulate a largely retail or consumer facing market.

- Do you agree with this? And if not, how does our bill ensure the CFTC is equipped to protect retail consumers from fraud and abuse, while also supporting innovation in the marketplace?

Response: No, I do not agree. As principle regulator of the derivatives markets, the Commodity Futures Trading Commission (CFTC) has brought almost 60 enforcement digital asset related cases since 2015, including a recent matter involving a \$1.7 billion fraudulent bitcoin scheme.

Between fiscal years 2012 and 2021, our average budget was just over \$244 million, per year. In that same ten-year period, the Commission's enforcement actions resulted in the assessment of penalties, on average, of over \$1.5 billion per year, so six times plus return on investment for the American taxpayer in enforcement penalties. Moreover, each fiscal year, enforcement actions arising out of harm to the retail market participant have comprised a significant portion of the Commission's enforcement docket, be it retail fraud involving digital assets, precious metals, forex, pool fraud involving regulated products, or fraud by other registrants.

The CFTC, if given regulatory authority over the digital asset spot markets, will bring the tools and expertise it has developed as a market regulator of the derivatives markets and as a robust protector of retail customers to oversight of the digital asset markets and continue its outstanding record of enforcement.

Senator Reverend Raphael Warnock

Thank you for your testimony, Chairman Behnam. I have previously raised concerns regarding energy consumption in digital commodity markets. The legislation introduced by Chair Stabenow and Ranking Member Boozman, the *Digital Commodities Consumer Protection Act*, includes a provision that would require your Commission to complete a report studying the energy consumption and sources of energy used in connection with the creation and transfer of digital commodities.

- If enacted, how would this legislation strengthen the CFTC's ability to understand and address energy use and climate risks within digital commodity markets?

Response: The *Digital Commodities Consumer Protection Act* (DCCPA) will provide the CFTC with the authority to examine, in collaboration with the other Federal regulatory agencies that the CFTC deems appropriate, energy consumption data for the most widely traded digital commodities to better inform the agency of the magnitude of greenhouse gas emissions associated with those digital commodity products listed and traded in CFTC-regulated markets. This data could better inform staff's understanding of the terms and conditions of CFTC-regulated digital commodities spot and derivatives products that are intended to be designed to manage climate-related financial risk.

- The legislation requires this information to be published on the CFTC's website and periodically updated. As we work to address the climate crisis, what is the value of this information, including estimates of energy consumption and sources of energy utilized by the most widely traded digital commodities, being publically available?

Response: Publicly available data on the CFTC's website that states the amount and sources of energy used to create and transfer the most widely traded digital commodities will provide the public with an easily identifiable, authoritative resource that builds on the data and expertise from our fellow Federal regulatory agencies. This up-to-date information will empower market participants to better understand the magnitude of the greenhouse gas emissions associated with their digital commodities ownership and trading activities so that they can act accordingly to reduce their environmental impact.

Senator John Hoeven

The Commodity Futures Trading Commission has the mission to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets, many of which are utilized as risk management tools for the agriculture and energy industries.

The Digital Commodities Consumer Protection Act would expand the CFTC's regulatory authority and grant your agency oversight over the cash (or spot) markets for digital assets, including over Bitcoin and Ethereum, which make up the majority of digital asset market trading.

- Should this bill be enacted, how will you ensure that the CFTC does not become just a "bitcoin regulator" but also continue to ensure the soundness of the traditional derivatives markets that our farmers, ranchers, and energy producers rely on to hedge risk?

Response: If the CFTC is given the opportunity to implement the DCCPA, I will ensure that the agency applies its new authority effectively and in a manner that does not distract or undermine our existing authority over the derivatives market. The CFTC has proven its ability to effectively integrate new authority, as reflected by the implementation of our swaps regime in the wake of Dodd-Frank. Dodd-Frank also gave the Commission anti-fraud and anti-manipulation authority which the Commission has judiciously used in conjunction with its other authorities to address wrongdoing in its regulated markets as well as wrongdoing occurring off-exchange and impacting the retail customers involving regulatory products as well as related spot transactions.

We remain committed to our core mission and to ensuring that the U.S. derivatives markets remain competitive, safe markets for farmers, ranchers, and all other market participants seeking to hedge price risk. The DCCPA contemplates a parallel but separate regulatory regime applicable to digital commodity platforms, which is funded through user fees on participants in those markets. Finally, I note that the DCCPA specifically excludes products currently regulated by the CFTC from its scope to ensure that there is no overlap or inconsistent regimes impacting participants in the derivatives market.

The current U.S. regulatory regime for digital assets is a patchwork of federal market regulations and state money-transmission laws. This has led to confusion, increased risk, stifled innovation, and ultimately harm to consumers.

- In light of the current absence of federal market supervision for spot trading of digital commodities, in your view, would the Digital Commodity Consumer Protection Act better protect investors, and if so, how?

Response: The CFTC facilitates customer protections through an oversight and disclosure regime aimed at transparency, integrity and the security of transactions.

The DCCPA builds on this regime and leverages the CFTC's strength as a market regulator by requiring registration and supervision of digital commodity platforms and digital commodity intermediaries, as is required in CFTC regulated derivatives markets. Under the DCCPA, digital commodity facilities will be subject to compliance with similar rules and core principles ensuring that the platforms establish and enforce rules, minimize conflicts of interest, prohibit abusive trade practices, establish system safeguards to minimize cybersecurity and other operational risks, and ensure the financial integrity of transactions and intermediaries and protecting customer funds.

Furthermore, the bill requires that all digital commodity platforms must maintain adequate financial, operational and managerial resources, segregate customer funds and comply with commission requirements for the treatment of customer assets. These tools have proven effective in preserving customer funds and market operations in times of instability, uncertainty or market misconduct.

The DCCPA directly addresses the increased role of retail participants in the digital commodity asset markets, by directing the Commission to adopt customer protection rules, requiring digital commodity platforms to disclose to customers material conflicts of interest and material risks of trading digital commodities, establishing duties to communicate in a fair and balanced manner and establishing standards for the platform's marketing and advertising.

- Knowing the inherent transparency of the distributed ledger blockchain technology, and therefore the ease of being able to supervise cryptocurrencies- what guardrails is the CFTC contemplating putting in place to protect investors?

Response: The DCCPA implements a comprehensive regulatory regime applicable to digital commodity platforms, including trading facilities, brokers, dealers, and custodians. These

platforms are required to comply with core principles that ensure customer protections by establishing standards for mitigating conflicts of interest, requiring appropriate disclosures, implementing cybersecurity safeguards and following other regulatory requirements consistent with the investor protection requirements from traditionally regulated derivatives markets. The transparency of certain blockchains serves as another tool to assist in the CFTC's surveillance of these platforms and the digital commodity market more generally but is no substitute for a comprehensive regulatory regime such as the one contemplated by the DCCPA.

- I continue to hear concerns from end-users about the potential manipulation of aluminum benchmark pricing. As well, I understand from press reports that the Department of Justice is investigating suspected manipulation of energy pricing benchmarks.
- What steps are being taken by the CFTC to assure end users that there is not fraud and manipulation in benchmark pricing assessments?

Response: The CFTC holds primary regulatory authority over Designated Contract Markets (“DCMs”) and Swap Execution Facilities (“SEFs”). These markets are overseen by the CFTC and are required to comply with core principles and associated CFTC regulations that govern the operation of their facilities. Those regulated platforms, when listing contracts, must be sure they are complying with Core Principle 3 of the agency's regulations, which mandates that these entities only list contracts that are not readily susceptible to manipulation.

The CFTC has no direct regulatory authority over Price Reporting Agencies, such as Platts or Harbor. However, as noted above, the CFTC does have enforcement authority and can bring actions, as appropriate, for manipulative activity, including false reporting, and fraud, as we have done in the past.

Senator Charles Grassley

Last year, my bill, S.409, was signed into law to protect the CFTC whistleblower program. This bipartisan legislation ensures that the CFTC whistleblower program can continue to function even when awards to whistleblowers exceed the program fund's balance. I have long been active in ensuring that our whistleblower programs continue to benefit taxpayers, something I will continue to do going forward.

- Do you believe the CFTC whistleblower program would need any updates in order to properly handle complaints regarding cryptocurrencies?

Response: The CFTC's Whistleblower Office plays a key role in the agency's efforts to enforce compliance with its rules and regulations. The CFTC's Whistleblower Office (WBO) is funded through the Customer Protection Fund, as authorized by the Dodd Frank Act.¹ In recent years the WBO has issued whistleblower awards that have depleted the fund, leaving the office and its staff vulnerable to furloughs. With your leadership and that of Chairwoman Stabenow, Congress has authorized an account to set aside funds for operation of the WBO and the Office of

¹ See Pub. L. No. 111-203, title VII, subtitle A, pt. II § 748, 124 Stat. 1376, 1742-43 (July 21, 2010), *codified at* 7 U.S.C. § 26(g).

Customer Education and Outreach (OCEO) in the event the agency issues a fund depleting award. We are very appreciative of your support of these short-term efforts and look forward to continued discussion about a more permanent fix that assures both offices are never at risk of not having the resources needed to carry out their mission and that of the agency's mission and that there are sufficient funds available to make timely awards to whistleblowers who qualify for such awards. These issues will become more acute if the agency is given additional regulatory authority over the digital asset spot markets.

- What is the plan moving forward to cooperate with the SEC on issues of digital commodity vs security determinations? What is the test to determine when a digital asset crosses the threshold of a security to a digital commodity?

Response: The DCCPA is narrowly focused on addressing what is currently a gap in regulation for the spot market for digital assets that do not meet the definition of a security. The bill accomplishes this by giving the CFTC oversight authority over platforms for trading "digital commodities," which are defined to exclude assets that meet the definition of a security.

If the bill were to pass and be signed into law, the CFTC would begin its work to write rules detailing the process by which assets are analyzed prior to being listed on a platform. It is expected that there will be instances in which there are questions about whether a digital asset meets the definition of a security, in which case the CFTC staff will consult with the SEC staff consistent with how the agencies have worked in the past to ensure that market participants have clarity about the rules of the road and our financial system is protected.

- There are a number of platforms or trading facilities that may technically fit under the bill but may not be entities the bill is intended to regulate.
- If the bill were to pass, would there be a flexible approach to enforcement given that the market is nascent and the regulation could be burdensome especially for small entities?

Response: The bill gives the CFTC flexibility in regulating digital commodity platforms. For example, the CFTC is able to write rules that clarify the types of platforms that need to register and be subject to regulation. Moreover, these platforms will have some flexibility in how they comply with the core principles regime created by the bill. Ultimately, through the rulemaking process, which relies on input from the public, the CFTC will have a procedure to craft a clear regulatory regime appropriately suited for the digital commodities markets. With such a regime in place, the CFTC will be able to use its enforcement authority consistently in order to ensure fair treatment within the marketplace and punish wrongdoers.

- What are the standards for determining whether a digital commodity is readily susceptible to manipulation?

Response: In determining whether to allow listing of a digital commodity, the DCCPA contemplates that the Commission may look to such elements as the operating structure of a digital commodity and how it may be materially altered, how the digital commodity is designed, and the activity in the existing market for the digital commodity. Moreover, the CFTC will write rules after notice and comment that reflect what other factors should be considered when analyzing whether a digital commodity is readily susceptible to manipulation. Ultimately, it is

important that the products offered to investors in CFTC-regulated markets meet appropriate standards that ensure investors are not unnecessarily exposed to risk from fraudulent actors.

Senator John Thune

- From your perspective as chairman of the Commodity Futures Trading Commission, does the Digital Commodities Consumer Protection Act, as drafted, provide the Commodity Futures Trading Commission jurisdiction over the transmission of fiat currency? If so, why?

Response: The DCCPA does not give the CFTC jurisdiction over the transmission of fiat currency. The DCCPA gives regulatory jurisdiction to the CFTC over digital commodity platforms. Such platforms may handle exchanges of fiat currency for crypto-currency, and such platforms are required to register and are pre-empted from state money transmitter registration requirements. Fiat money transmission activities, if they do not involve exchanges for crypto-currencies, are not subject to the DCCPA.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act
September 15, 2022
Questions for the Record
Mr. Todd Phillips

Senator Cory Booker

- 1) **I'm particularly interested in ensuring that crypto commodity marketplaces are able to grow and foster innovation – for everyone's benefit – while creating commonsense guardrails to protect our economy from hackers, terrorists, and other bad actors, including those beyond our borders. Can you talk about how the DCCPA supports those priorities?**

If enacted, the DCCPA would put in place a number of provisions that would protect the digital commodity markets and allow legitimate transactions to occur. For instance, to put a stop to money laundering and theft—by foreign governments as well as other actors—the DCCPA would require digital commodity platforms to comply with federal anti-money laundering laws and conduct Know-Your-Customer checks of market participants and would have the CFTC write cybersecurity and other system safeguard regulations. To prevent trading fraud and market manipulation, the DCCPA would require digital commodity platforms to facilitate trades only in assets that are not readily susceptible to manipulation, enact rules to monitor trading and protect participants from abuse, and collect and publish trade information, among other provisions. Further, the DCCPA would also require trading platforms to provide trade information to the CFTC for use in effectively enforcing its anti-fraud and -manipulation statutes. The DCCPA would also permit the CFTC to assess and collect fees on digital commodity registrants, potentially providing it with additional and necessary resources to support its work in this area.

- 2) **One of the several characteristics in this bill is its mandatory registration requirement for crypto platforms. In your testimony, you argue that mandatory registration of crypto platforms can help prevent a “race to the bottom.” Can you say more about how optional registration can erode consumer protections?**

Although registration may appear to simply be an act of filling out and submitting a form with the CFTC, it is an effective method for ensuring high standards across the industry. Without registration, any platform may begin operation without alerting regulators. Although many platforms may meet or exceed statutory and regulatory standards, others may be fly-by-night operations that do not implement effective customer protection standards. For the CFTC to shut down these platforms in the absence of mandatory registration, it would need to bring complex enforcement actions that require significant staff resources to investigate in order to demonstrate that customers had been harmed or regulations had been violated. In the time between when these platforms launch and

regulators shut them down (which could be years), they could operate with cheaper expenses than platforms that follow the law and provide consumer protections, taking market share and revenues while putting investors at risk. This puts downward pressure on platforms that would otherwise operate with integrity to cut corners and reduce important customer protections.

This race to the bottom can be avoided through registration. Registration would allow for easier yet just as effective enforcement actions to be brought against unregistered actors; evidence of failure to register is easier to obtain than, for example, failure to stop market manipulation, and frees up agency personnel to ensure that registered platforms are complying with the law. In addition, registration would likely require platforms to have and provide to the CFTC corporate bylaws, rules governing platform operations and trading, the names of corporate directors and senior officers, and more. Having this information provided to the CFTC before the platform launches would enable the CFTC to ensure compliance with the law before customers are hurt and facilitates greater enforcement of other regulatory violations.

- 3) As you and others have noted, in the century since the Great Wall Street crash, Congress and the Executive Branch have developed a robust regulatory space across the financial sector to protect investors, traders, consumers, and businesses alike. I agree that whatever legislation Congress moves forward with must keep the wellbeing of the American people at its core, both here in the Agriculture Committee overseeing commodities markets and across Congressional jurisdictions, and federal regulators, that oversee the digital asset space. Can you talk a little bit about this condition of shared responsibility? Are there steps you would suggest lawmakers consider that could further clarify jurisdiction between the SEC and CFTC?**

Although the financial regulators are fragmented between the three banking regulators (i.e., Federal Reserve, OCC, FDIC) and two markets regulators (i.e., SEC, CFTC), the crypto ecosystem is not. All have a role and responsibility in ensuring that crypto is well regulated. If one regulator falls down on the job, it is impossible for the others to be as successful as they could otherwise. In part to ensure that does not happen, Congress created the Financial Stability Oversight Council, a body comprised of state and federal financial regulators, in the Dodd-Frank Act.

It is particularly important that the SEC and CFTC work together. As the nation's two market regulators, each oversees sections of crypto and neither has complete jurisdiction over the whole of the crypto markets.

To ensure that the SEC and CFTC work together to ensure the effective regulation of crypto markets, Congress should consider adding language to the DCCPA to require this interagency cooperation. In Title VII of the Dodd-Frank Act, Congress included such a directive for the regulation and oversight of the derivatives markets, and accordingly, the

SEC and CFTC have worked together to ensure not only effective regulation, but also dual registration of market participants that operate in both regulatory regimes.

- 4) **One of the most significant blackeyes on the face of the digital assets ecosystem is the seemingly rampant use of energy to power the network of blockchains like Bitcoin and Ethereum - I'm watching the effects of the Merge closely to see how that changes energy use - with shocking headlines coming out seemingly every other week about the energy consumption equaling that of several small countries. Mr. Phillips, as you are aware, there is a provision included in S.4760 to address the energy consumption concerns associated with digital asset mining. How will the increased transparency over crypto mining help the U.S. stay on track with our climate goals?**

President Biden's Executive Order 14008 announced a target for the United States to achieve at least a 50 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030 and be net-zero by 2050. However, the electricity required to power proof-of-work crypto mining threatens not only these goals, but those of nations worldwide. By some estimates, Bitcoin alone is responsible for 0.4% of the world's electricity consumption and has a carbon footprint equal to that of Denmark or New Zealand. Researchers also estimate that current emissions from U.S. miners are about 25 to 50 million metric tons, or 0.4% to 0.8% of overall U.S. emissions. Although this may not seem significant, a single bitcoin transaction is estimated to use more energy than 100,000 Visa transactions. If the U.S. wants to meet its goals and crypto is to become a part of the U.S. payment system, the power usage of crypto mining must be addressed.

The DCCPA, if enacted, would help in this effort by requiring the CFTC to disclose estimates of the energy consumption and sources of energy used in connection with the creation and transfer of the most widely traded crypto commodities. Anyone purchasing crypto tokens would have ready access to the energy efficiencies of those tokens' blockchains and could migrate their investments away from energy-intensive projects or towards energy-efficient ones. With this improved capital allocation, token issuers would be incentivized to migrate to increasingly greener blockchains and blockchain validators would be incentivized to utilize cleaner electricity. These changes could contribute to changes in consumer behavior that facilitate significant reductions in the crypto industry's overall greenhouse gas emissions, thereby helping the U.S. meet its climate goals.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act
September 15, 2022
Questions for the Record
Ms. Sheila Warren

Senator Cory Booker

The legislation we are considering today establishes consumer protection standards and education and outreach requirements, which I think are particularly important as we see the pool of folks engaging with commodities trading. We have seen some illegitimate projects fail in recent months and consumers ultimately experience, in many cases, significant losses. While professional traders on the floor are familiar with the market and its risks, this emerging class of retail investors engaging in this space may not be. How do you think the standards and rules in this bill will help both consumers and the digital assets space continue to grow and innovate?

- **How do you think the standards and rules in this bill will help both consumers and the digital assets space continue to grow and innovate?**

The industry has been calling for regulatory clarity for quite some time. Rules of the road help to clarify the expectations that consumers should have of service providers, while providing certainty for digital assets service providers operating in the U.S. This bill is a critical step toward building bipartisan consensus and avoiding a regulation by enforcement approach. This will pave the way for innovation in the US, opening opportunities for new entrants regardless of their size.

Importantly, this bill establishes consumer protection standards that are critical for the industry. Specifically, we support the creation of a meaningful and practical disclosure regime that includes information regarding material risks and conflicts of interest. Fair communication and advertising standards will also give investors and consumers transparency into financial tools and products and the entities which may be facilitating them.

Crypto has the potential to spark meaningful change in critical areas. For example:

- **Finance:** The average personal loan interest rate in the US is 9.41%¹, while crypto loan rates tend to be significantly lower, with rates ranging from 0.01-3.8%² in 2021 across four major decentralized lending platforms. Crypto owners were more likely³ to cash checks or purchase money orders from non-bank providers, pay bills through services like MoneyGram or Western Union, take out payday loans, and take out auto title loans.

¹ <https://www.businessinsider.com/personal-finance/average-personal-loan-interest-rates?r=US&IR=T>

² <https://liven.apo/interest-rates/borrow/historical?interval=1>

³ https://go.morningconsult.com/rs/850-TAA-511/images/220630_State_of_Cryptocurrency_Report.pdf

- **Remittances:** The cost of sending \$200 across border is 6.4%⁴ on average – twice the World Bank target. Crypto can cut remittance costs by 93%⁵. Crypto companies are already facilitating remittances at 1-3%⁶. Partnerships like MoneyGram & Stellar⁷ and Coinbase & local stores⁸ are bringing money to individuals at lower cost – and where they need it. Crypto owners were almost 3x⁹ more likely to send remittances than non-crypto owners.
- **Philanthropy & Aid:** This year, over \$100 million¹⁰ was mobilized for Ukraine via crypto donations in partnership with the government. Over \$1 billion¹¹ was raised for COVID relief in India. Funds were traceable and raised quickly when there was acute need and time was of the essence.
- **Arts & Culture:** NFTs are creating new business models for digital artists, minorities, and beyond. For example, DJ Steve Aoki noted¹² that he made more money from one NFT drop than in 10 years of music advances. Smart contracts can be programmed to pay creators royalties for secondary market transactions. Artists can sell digital art and receive royalties for the lifetime of the NFT.
- **Are your members supportive of these provisions in the bill?**

A proactive approach to policymaking is critical for international competitiveness, national security, and consumer protection. This bill offers an important starting point. The Crypto Council for Innovation is broadly supportive of the bill and looks forward to working closely with policymakers on important aspects of the bill's details, particularly around definitional considerations and the treatment of decentralized finance (DeFi), which remain challenging.

- **How can education and outreach efforts required by this bill improve outcomes for consumers?**

To achieve meaningful impact on this issue, we need thoughtful work on outreach and education. This includes: (1) Community engagement models that involve “building with, not for.” Members of the communities know people’s stories, their needs, and the barriers they are facing. Often, the missing piece is the resourcing and on-the-ground partnership. (2) Conducting more research and gathering more data. We know the broad trends, as discussed – but we need practical information on what things like drivers of distrust and gaps and education look like in practice. (3) Understandable disclosures. At the end of the day, consumer protection is about ensuring that average consumers can make informed decisions within a set of choices that work

⁴ <https://www.worldbank.org/en/news/press-release/2021/11/17/remittance-flows-register-robust-7-3-percent-growth-in-2021>

⁵ <https://techerunch.com/2022/02/23/cryptocurrency-payments-key-to-lowering-cross-border-remittance-charges-and-boosting-microwork-uptake-in-africa-study-shows/>

⁶ <https://foxbusiness.com/news-releases/remittance-africa-blockchain-bitcoin-money-transfers-fees/>

⁷ <https://ir.moneygram.com/news-releases/news-release-details/moneygram-announces-innovative-partnership-stellar-development>

⁸ <https://blog.coinbase.com/theres-now-a-cheaper-easier-way-for-your-friends-and-family-in-mexico-to-cash-out-the-crypto-you-2fb095df8324>

⁹ https://go.morningconsult.com/rs/850-TAA-511/images/220630_State_of_Cryptocurrency_Report.pdf

¹⁰ <https://www.economist.com/the-economist-explains/2022/04/05/how-is-ukraine-using-crypto-to-fund-the-war>

¹¹ <https://www.forbes.com/sites/ninabambysheva/2021/05/12/etheriums-co-founder-vitalik-buterin-donates-over-1-billion-to-india-covid-relief-fund-and-other-charities/?sh=4a804cb36548>

¹² <https://decrypt.co/92938/steve-aokimore-money-nfts-decade-music>

for them. Information should be presented in a manner that doesn't require a law degree or technical background to understand.

One example of these ideas in action is the Crypto Research and Design Lab (CRADL), which I co-founded.¹³ The goal of CRADL is “to put people at the center of crypto.” The lab combines three functions – design, crypto, and social impact – that often operate in silos.¹⁴ Current initiatives include research projects focused on Crypto in Black Communities, The Woes (and Wins) of Web3 Onboarding, and Building Inclusive Web3 Communities.¹⁵ CRADL is also co-hosting the Web3athon a hyperlocal, people-first hackathon that is focused on community-centered issue areas including Generational Wealth Building, Financial Health, Sustainable Communities and Culture, Disaster Relief and Response, and Environmental Well-Being.

Question: I'm also deeply concerned about the impact the local impacts mining has had on communities across the nation. One crypto-mining operation located in North Carolina was described by residents living nearby as: “it's like sitting on the tarmac with a jet engine in front of you. But the jet never leaves.” reported the Washington Post. **THIS PART ABOVE NEEDS TO BE IN BOLD**

- **What are your members doing to change these real concerns from host community residents, who are oftentimes living in rural, low-income communities?**

While our membership does not include mining companies, we recognize the importance of these conversations. Crypto should be considered within the broader landscape of data centers powering our digital economy.¹⁶ We look forward to continued industry discussions on how crypto data centers can lead in contributing sustainably to local economies – and towards a zero-carbon future.¹⁷

The DCCPA directs the CFTC to examine racial, ethnic and gender demographics of customers participating in digital commodity markets and to use that information to inform its rulemaking and provide outreach to customers.

- **How would this provision help ensure that the new regulatory system around digital asset commodities is a more fair and equitable financial ecosystem that expands wealth creation opportunities to communities which have been underrepresented in traditional finance?**

As covered in my testimony, crypto represents an unprecedented opportunity for historically excluded populations. I will underscore a few points here:

¹³ <https://project-cradl.notion.site/Crypto-Research-and-Design-Lab-50a7127f34ed4c88ad95c7cedf7be36>

¹⁴ <https://medium.com/@cradl/introducing-cradl-the-crypto-research-and-design-lab-95ca6429819b>

¹⁵ <https://project-cradl.notion.site/Crypto-Research-and-Design-Lab-50a7127f34ed4c88ad95c7cedf7be36>

¹⁶ <https://slate.com/technology/2014/05/data-centers-are-full-of-servers-that-emit-a-consistent-and-loud-white-noise.html>

¹⁷ <https://www.forbes.com/sites/seansteinsmith/2022/06/05/crypto-power-usage-is-helping-to-spur-renewable-energy-investments/?sh=3410fa242cb6>

We know that almost 20 percent of Americans have neither access to a bank account nor adequate access to financial services through other means.¹⁸ The rates are higher among adults with lower income, adults with less education, and Black and Hispanic adults. These individuals are served by alternative financial services like payday, pawn, or car title lending.¹⁹

The most recent FDIC Survey of Household Use of Banking and Financial Services found the most-cited reasons for not having a bank account were: (1) not having enough money to meet minimum balance requirements and (2) a lack of trust in banks.²⁰ For many, it is impossible to have a discussion about money without talking about power and structural forces.²¹ This paints a fairly clear picture of who is getting left behind: poor households and those who historically have reason to distrust formal institutions.

The data shows that these individuals are turning to crypto. Those with no bank account, no credit card, and no retirement savings were more likely to select “crypto for transactions” than “no crypto” and “crypto for investment.”²² So, their crypto use was not focused on speculation – it was focused on filling a gap in financial services. This is in line with findings from the Federal Reserve Bank of Atlanta, which reported that “today, instead of focusing on helping these people become banked to increase financial inclusion, a more effective approach could be giving cash users access to digital payment vehicles that don’t depend on traditional bank accounts.”²³

Banks and financial institutions have had decades to serve these populations effectively and they have not. Crypto represents a unique opportunity to build systems from the ground up, using models of inclusive design that are responsive to community needs. Everyone deserves options that work for them. More can be done to ensure equal access for all and this is something that crypto was designed to do. It should be thought of as a tool in the policymaker's toolbox – but more data is needed here.

Crypto is in its early days and while some efforts are underway, additional work is needed to understand these complex dynamics and how crypto can further contribute to financial inclusion.²⁴

Senator John Hoeven

As you know, 90 percent of central banks around the world are exploring central bank digital currencies (CBDCs), including China.

¹⁸ <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-banking-and-credit.htm>

¹⁹ <https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2009-vol3-1/fdic140-quarterlyvol3no1-afs-final.pdf>

²⁰ <https://www.fdic.gov/analysis/household-survey/index.html>

²¹ <https://time.com/6106706/bitcoin-black-investors/>

²² <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-banking-and-credit.htm>

²³ <https://www.atlantafed.org/-/media/documents/promoting-safer-payments-innovation/publications/2020/09/30/shifting-the-focus-digital-payments-and-the-path-to-financial-inclusion/Shifting-the-Focus-Digital-Payments-and-the-Path-to-Financial-Inclusion.pdf>

²⁴ <https://medium.com/cradl/crypto-or-not-successful-financial-inclusion-projects-share-these-two-factors-36c2d1818d52>

It is no secret that for China, the Digital Yuan goes hand-in-hand with the Belt and Road initiative and acts as a tool for surveillance and a way to achieve China's foreign policy goals in emerging markets around the world.

In your testimony, you suggest that by 2029, the Digital Yuan could have as many as one billion users.

- **How should Congress be thinking about the ways in which our adversaries like China and Russia are leveraging digital assets?**

CBDCs are being explored around the world. As you note, 90 percent of central banks globally are exploring central bank digital currencies, or CBDCs.²⁵ According to the Atlantic Council, “Nineteen of the Group of Twenty (G20) countries are exploring a CBDC, with sixteen already in the development or pilot stage. This includes South Korea, Japan, India, and Russia, each of which has made significant progress over the past six months. . . Of the G20, only the United States, United Kingdom, and Mexico are still in the research stage.”²⁶

Notably, China is farthest along in these explorations. China has a six-year head start, and the People's Bank of China (PBOC) has filed more than 120 patents for the Digital Yuan.²⁷ It is clear that China will seek to leverage its Digital Yuan as a tool to achieve its foreign policy goals in emerging markets and beyond.

Since my testimony, the Bank of International Settlements completed a pilot between Hong Kong, Thailand, China and the United Arab Emirates along with 20 commercial banks from those regions. According to reports, “more than \$12 million worth of value was issued onto the test platform, which facilitated 164 foreign exchange transactions and cross-border payments between the participating firms totaling over \$22 million worth of value.”²⁸

China has also reportedly launched “Yuanguanxia,” a smart contract prepaid fund management product²⁹ and expanded its pilot program to its most populous province³⁰. Earlier this year, China tested e-CNY payment for public transport – a critical step in the integration of the product into citizen's daily lives.³¹

So, the growth and progress here is rapid and changes are happening day by day in China³², as well as in Russia³³ (though their development is not as far along as China's). It is important that the United States stay apprised of these developments and understand the political and strategic goals of such efforts.

- **How can we ensure that this does not grow into a greater national security concern or hinder our ability to compete with China?**

²⁵ <https://www.bis.org/publ/bppdf/bispp125.pdf>

²⁶ <https://www.atlanticcouncil.org/blogs/new-atlanticist/central-banks-are-embracing-digital-currencies-will-the-us-lead-or-follow/>

²⁷ <https://www.wired.co.uk/article/digital-yuan-china-bitcoin-libra>

²⁸ <https://cointeltegraph.com/news/bis-marks-cbdc-pilot-as-successful-with-22m-transacted>

²⁹ <https://blockchain.news/news/chinas-central-bank-releases-digital-cny-smart-contract-prepaid-fund-management-product>

³⁰ <https://cointeltegraph.com/news/china-will-expand-cbdc-trials-to-most-populous-province-report>

³¹ <https://blockchain.news/news/china-quangzhou-public-transport-launches-digital-rmb-payment-function>

³² <https://cbdctracker.org/currency/china-e-cny>

³³ https://cbdctracker.org/currency/russian_federation-digital_ruble

The United States must act quickly as other countries continue their progress in this dynamic space.

We support recent efforts to study central bank digital currencies in the United States and agree that a measured approach is key – rushing into CBDC could have significant negative consequences. The international soft power of the United States resides in the US dollar being the global reserve currency. Accordingly, the United States should have a clear understanding of its strategic interests in the global digital economy as it considers new law and policy. The Center for New American Security is currently preparing a report on this issue.

Future efforts could focus on cross-jurisdictional collaboration. Moreover, the United States should not only be involved in – but should lead on – technical-standard setting in this area. The US will need to lead not only with a digital dollar but also with a global blockchain payment infrastructure.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act
September 15, 2022
Questions for the Record
Ms. Christine Parker

Senator Cory Booker

Coinbase is one of the top centralized exchanges in the United States and the place where a lot of Americans make their first steps into the crypto space. You've added many new tokens over the last years, but still far fewer than the maybe 10,000 total tokens available on the wider unregulated market. I'd be interested in hearing a bit about how your company makes decisions about what to list for trading or not on your platform.

- Do you believe that the crypto tokens traded on your platform should be considered commodities or securities? Can you explain why?

Answer 1: Coinbase does not list securities, and we are confident that no token listed on our platform falls within the *Howey* definition of a security. Coinbase has a rigorous process to analyze and review each digital asset before making it available on our exchange — a process that the SEC itself has reviewed. This process includes an analysis of whether the asset could be considered to be a security, and also considers regulatory compliance and information technology security aspects of the asset. To be explicit, the majority of assets that we review are not ultimately listed on Coinbase. We'd be happy to discuss the process in more detail.

- Do you think the committee or Congress at large should define what a digital commodity is? What would your definition be?

Answer 2(a): Yes, Congress should clearly define what is a digital commodity and what is a digital security. Ultimately, clear definitions enable innovation: projects can be built with an understanding of the rules of the road. We appreciate the definition of digital commodity included in the Digital Commodities Consumer Protection Act, but we would recommend Congress also define digital security to clearly draw a line between security and non-security. The SEC has clear jurisdiction over securities, and we believe that should extend to digital assets that are securities. The problem is existing statutory definitions and Supreme Court precedent related to securities create a nuanced test that can be open to interpretation and, at the margins, can result in highly trained lawyers coming to conflicting decisions. Congress has the opportunity to create statutory clarity that will enable developers to build, confident that regulatory uncertainty will not prevent a project being brought to market.

Answer 2(b): We believe drawing a line between securities and commodities based on the presence, or absence, of a centralized entity would align with existing securities law and regulations, as well as the common understanding of a commodity. We suggest that the definition of commodity include, at the end of (A), “, and that is not primarily

controlled by a centralized entity.” The Supreme Court, in the case of *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946), has a four-part test for what is a security. One of those elements is the “efforts of others.” A definition that references decentralization should ensure any token that could be considered a commodity is not a security.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act
September 15, 2022
Questions for the Record
Dr. Heath Tarbert

Ranking Member John Boozman

- **Using a private sector perspective, and noting the recent announcement that Citadel will soon be rolling out EDX Markets, can you discuss how our proposed regulatory framework will encourage greater participation in the digital asset marketplace by traditional finance, and how such engagement may benefit investors and the market as a whole?**

It is difficult for established institutions like ours to participate in the digital asset marketplace where the regulatory landscape is uncertain, fragmented, and opaque. This is, in part, due to the increased risks of participating in a market that lacks sound regulation and oversight. Without a clear regulatory framework, traditional finance firms cannot be certain that the trading venues or other market participants are operating fairly. As a result, they will generally seek to avoid the potential business and reputational risks that could arise in such a market. Additionally, to the extent there is uncertainty regarding the status of particular digital commodities, established institutions run the risk of conflicting or adverse regulatory actions from their current regulators, which may cause harm to other aspects of their business.

For investors, the lack of regulatory framework creates similar concerns. Without a comprehensive regulatory framework, investors are more likely to interact with intermediaries that operate with opaque fee structures, conflicts of interest, or have a history of misconduct. Importantly, there is no “cop on the beat” ensuring that intermediaries adhere to a baseline standard of conduct, have the financial resources to meet their obligations, and are otherwise complying with applicable law.

The regulatory framework proposed by the Digital Commodities Consumer Protection Act of 2022 (“DCCPA”) is an important step to establishing a competitive, efficient, and fair marketplace for digital commodities. We at Citadel Securities, like many other traditional financial firms, believe we could play a significant and constructive role in the digital asset markets. As a leading market maker in the United States, Citadel Securities serves as a reliable buyer or sell to investors looking trade. Our presence in markets reduces trading costs, increases transparency, improves market resiliency, and broadens access. We are proud of our 20-year track record of helping retail investors, institutional asset managers, alternative asset managers, pension funds, and other clients obtain better pricing and meet their investment goals.

Senator John Hoeven

As the most recent past-Chair of the Commodity Futures Trading Commission, you have a unique understanding of the CFTC’s capabilities.

- **Can you speak to why some traditional market participants may hesitate to participate in the digital commodity markets, and how the bill before us may help address those concerns?**

It is difficult for established institutions like ours to participate in the digital asset marketplace where the regulatory landscape is uncertain, fragmented, and opaque. This is, in part, due to the increased risks of participating in a market that lacks sound regulation and oversight. Without a clear regulatory framework, traditional finance firms cannot be certain that the trading venues or other market participants are operating fairly. As a result, they will generally seek to avoid the potential business and reputational risks that could arise in such a market. Additionally, to the extent there is uncertainty regarding the status of particular digital commodities, established institutions run the risk of conflicting or adverse regulatory actions from their current regulators, which may cause harm to other aspects of their business.

For investors, the lack of regulatory framework creates similar concerns. Without a comprehensive regulatory framework, investors are more likely to interact with intermediaries that operate with opaque fee structures, conflicts of interest, or have a history of misconduct. Importantly, there is no “cop on the beat” ensuring that intermediaries adhere to a baseline standard of conduct, have the financial resources to meet their obligations, and are otherwise complying with applicable law.

The regulatory framework proposed by the Digital Commodities Consumer Protection Act of 2022 (“DCCPA”) is an important step to establishing a competitive, efficient, and fair marketplace for digital commodities. We at Citadel Securities, like many other traditional financial firms, believe we could play a significant and constructive role in the digital asset markets. As a leading market maker in the United States, Citadel Securities serves as a reliable buyer or sell to investors looking trade. Our presence in markets reduces trading costs, increases transparency, improves market resiliency, and broadens access. We are proud of our 20-year track record of helping retail investors, institutional asset managers, alternative asset managers, pension funds, and other clients obtain better pricing and meet their investment goals.

- **Do you have any suggestions on how to improve the bill, including those that may provide additional regulatory clarity to the digital asset marketplace?**

The DCCPA is an important first step to establishing a legal and regulatory framework for the purchase and sale of digital commodities in the United States. While the DCCPA successfully answers many important questions facing this market, we believe there are important improvements and clarifications the Committee should consider. There are two suggestions I would like to emphasize below.

First, we believe the staff should consider tailoring the definition and corresponding requirements of “Digital Commodity Dealer” to a more specific set of criteria. We note that the concept of dealing in digital commodities, while evolving, is likely more limited than in the swaps and securities markets and the definition should reflect this more limited role. Unlike in the securities markets, dealing in digital commodities will not involve the complex and capital-intensive

underwriting process accompanying the public offering of securities, nor do we anticipate dealers will extend or arrange for the extension of credit.¹ Unlike the swaps markets, we do not expect dealing will involve non-standardized, over-the-counter instruments that create ongoing counterparty obligations. Thus, we believe the Committee should consider the types of activities that should be regulated as “dealing” in digital commodities, and narrowly tailor the definition and substantive requirements to that activity and any perceived regulatory gaps.

Second, we believe the Committee should eliminate the ambiguous execution principle in favor of a discretionary CFTC or SRO rulemaking. We believe the DCCPA’s proposed execution principle will create significant challenges and burdens for market participants.² Given the global nature of the digital commodity market and disparate trading across trading venues (including across U.S. trading venues), establishing a baseline for fair and objective pricing is inherently subjective. This is particularly true given the lack of a consolidated tape or an identified national best bid and offer similar to what exists in the U.S. equity markets. Additionally, the basis for a price of a particular digital commodity transaction depends on a variety of factors that do not lend themselves to a simple disclosure. We therefore believe the CFTC or the appropriate SRO would be better positioned to adopt tailored requirements regarding customer executions as digital commodity markets develop.

¹ We note that, to the extent a dealer did so, it would risk implicating the Commodities Exchange Act and existing CFTC guidance. See *Retail Commodity Transactions Involving Certain Digital Assets*, 85 Fed. Reg. 37734 (June 24, 2020).

² Section 51.(b)(3)(A) of the DCCPA would establish an “execution” principle. Specifically, the statute would require a digital commodity dealer or broker to (i) establish prices fairly and objectively; (ii) disclose the basis for those prices; and (iii) not disrupt market functioning or hinder the price discovery process.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act
September 15, 2022
Questions for the Record
Ms. Denelle Dixon

Senator Cory Booker

Q: One of the topics in our bill that receives the most attention is the distinction between a security and a commodity. In your view, what are some of the principles that the CFTC should consider when determining whether a token is a digital commodity?

A: As currently defined under federal law, “[t]he term ‘commodity’ means...all []goods and articles, except onions,...and motion picture box office receipts...and all services, rights, and interests...in which contracts for future delivery are presently or in the future dealt in.” Commodity Exchange Act of 1936, Section 1a(9). Congress intentionally made the definition of a commodity very broad. In fact under this definition, a security is a type of commodity, but because it also meets the definition of a security it is regulated by the SEC rather than the CFTC. So while all securities are commodities, not all commodities are securities.

Some of the principles that the CFTC should consider in determining whether a token is a digital commodity are:

- The determination of whether a token is a digital commodity should be based on the activity at issue and the relationships created - if any - between the issuer/promoter and the token holder.
- The fact that a token may be acquired or held for investment or speculative purposes is not - on its own - determinative of whether a token is a digital commodity or a digital security, as both can be held for these purposes. Rather, one should determine if there are non-investment uses for the digital asset.
 - For instance, even if a token may be held for an investment, if the token has some underlying utility or use it is a digital commodity.
 - By way of example, a token is a digital commodity and not a digital security if it:
 - can be used to access a network,
 - is core to the functionality of a network,
 - can be used to transfer value,
 - can be used as an in-application payment mechanism, or
 - can be used to access a good or service, to pay a network fee, etc.
- Assets that are freely tradable and interchangeable among individuals are commodities.
 - If the assets involve a legal contract or even an implied legal

relationship between counterparties, this determination may shift as such assets are more like a security.

- Tokens for which the immutable blockchain ledger is all that is required to record changes in the rights and ownership are digital commodities.
 - If an accurate record of ownership or rights requires an agent or a broker the token may have more qualities of a security.
- Assets that do not entitle the holder to any payments from the issuer or promoter akin to a bond or certificate of deposit are digital commodities.
- Assets that do not grant voting rights over the governance of the issuer or promoter that influence their decision-making are digital commodities.
 - Note, this is distinct from governance rights over self-executing code that is often associated with certain governance tokens.
- Assets that derive their utility and value intrinsically, much like gold or agriculture products are digital commodities.
 - This determination may shift if the value of the asset is tied directly and materially to the efforts of a central party such that an investor in the asset would gain actionable insights into the future value of the asset through the disclosure of material information by that central party.
- Assets that do not represent indebtedness or a profit-sharing agreement are digital commodities.
 - Tokens that denote future action or rights with respect to the future value of a third asset -- akin to a put, call, or option – may have more qualities of a security than a commodity.
 - Assets that reference a group of other assets or interests -- potentially similar to an index may have more qualities akin to a security.

Q: The real world benefits of cryptocurrencies and blockchain technology are spoken of often as amazing things for the future, but to be honest, a significant proportion of the activity in the space has been around speculation. One of the specific early examples of the good the technology could enable was the efficiency it could bring to remittances: these sums of money that so many around the world use to support folks back home.

Can you explain how the Stellar network is being used or will be used to reach low- income populations, including in the case of remittances? Will this legislation help achieve this vision?

A: Our view is that the DCCPA would further the SDF mission of increasing global access to financial services for underserved populations. The legislation would provide for further clarity with regard to the regulatory treatment of digital assets, making it more transparent for consumers to use these services and for companies to build projects for

low- and moderate-income populations. We welcome this legislation and support its advancement.

With regard to reaching low-income populations, Stellar currently has several projects that accomplish this goal, while others are in the planning stages and will be launched in the near future. Below, we discuss several of these projects.

Cash to Crypto: A gateway to the digital economy and financial inclusion

In June, the Stellar network announced a partnership with MoneyGram International, Circle Financial, and a growing number of digital wallets that will establish a first-of-its-kind global service to enable anyone to convert cash to digital assets without a bank account or credit card.

The service utilizes the Stellar blockchain and Circle's USDC Coin (USDC) to allow cash funding and payout in different currencies of the consumer's choice. The Stellar network provides the digital rails to make payments fast and secure. USDC provides a stable digital asset, a true stablecoin backed by fiat currency that is particularly well suited to payments and remittance use cases because it eliminates the risk of volatility of other types of cryptocurrencies.

MoneyGram provides a global network of cash-in and cash-out locations.

What does that mean in practical terms for low- or moderate income populations? It means that an immigrant farm worker working in the U.S. can send her cash to family in her home country without experiencing outsized fees and uncertain wait times. She can walk into a local MoneyGram location — typically a supermarket or pharmacy — with one hundred dollars in cash and, in minutes, have one hundred virtual dollars in USDC deposited into her digital wallet. With her money available in a stable digital asset, she has the option to send it to another digital wallet anywhere in the world, like to her parents back home.

This is available to her right now, knowing that more of her money will make it to her family because MoneyGram offers this service with zero fees for the first year. She can also do it with confidence that the funds will arrive at their destination almost instantly. And all of this speed, certainty, and cost savings does not even require a bank account or credit card.

These benefits extend to the other side of the transfer; her parents could visit their local MoneyGram location and cash out of USDC into their local fiat currency when needed.

But sending digital assets is only one available option. She can also save her money in her digital wallet as USDC — a safer option than cash. Or, she can choose to engage with the growing number of products and services on the blockchain.

With more than 420,000 agent locations in 200 countries, MoneyGram serves nearly 150 million people worldwide. Today, consumers in 14 countries can cash-in or convert crypto to local currency for instant pickup at MoneyGram locations in their regions. Likewise, cash-out, or converting your crypto back into cash, is available globally at participating MoneyGram locations. In the three months since launch,

we've seen cash-out happen in more than 60 countries. Millions now have a safe and secure way to send money to friends and family worldwide with zero fees and a safe way to store value.

This novel service finally gives neglected, unbanked, and cash-reliant populations a pathway to enter the digital economy with a stable currency opening the doors to new opportunities in the future. Many in these communities distrust banks and often their own governments, allowing them to hold and control their wealth without any intermediaries creates powerful independence.

But this example reaches far beyond day-to-day remittances. In the last nine months, we've seen crypto play an emerging role in aid situations. And we see real potential also to leverage this solution in times of need and conflict. For instance, an immigrant from Ukraine living here in the U.S. could use this solution to send USDC to family and friends in Ukraine or to those who have fled to neighboring countries. Even more, this example doesn't need to stop with individuals. Aid organizations worldwide could also use this same payment flow in their work to provide funds to refugees or displaced individuals. In addition to the ease of use, the transparency of the system could be highly valuable for donors and aid organizations alike.

In addition to the MGI solution, other businesses are using the Stellar network to develop innovative solutions for financial services designed specifically for underserved populations in their communities.

Leaf Global Fintech: Banking beyond borders

Another project built on Stellar that is furthering financial inclusion is Leaf Global Fintec, which has built a solution on Stellar for refugees in Africa. Their digital wallet is an example of how blockchain can begin to give access to the financial services we take for granted, like safe storage, to those who need it most.

According to data from the United Nations High Commissioner for Refugees (UNHCR), the number of people forcibly displaced from their country of origin climbed to 89.3 million by the end of 2021, which is an increase from the 42.7 million people who remained forcibly displaced at the end of 2012¹. This crisis has made the ability to quickly and affordably send money across borders essential and more important than ever. This problem led Leaf's founders to build a digital wallet for people with cross-border financial needs, whether they are refugees bringing their money to a new country or cross-border goods traders who are vulnerable to theft while carrying cash across borders.

With Leaf's wallet, users can save their money in multiple digital assets, benefit from free Leaf-to-Leaf wallet cross-border transfers, and pay for goods and services. That functionality is only possible because they leverage Stellar's ability to issue stablecoins and exchange value with low transaction fees and high speeds. That allows them to keep remittance costs down and make these payments more accessible.

Take Augustin, a young man living in a refugee camp in Rwanda. Augustin uses Leaf to save time and money by allowing him to send money with a touch of a button from anywhere instead of going physically to an agent. He uses Leaf to send money to his

friends and family who live in Kenya—including to send money to his sister in Kenya while she was planning her wedding.

In countries with high populations of refugees, these services must be accessible. Unfortunately, refugees are 50% less likely than the general population to have an internet-enabled phone. And women in low and middle-income countries are 23% less likely² to use internet-enabled devices than men. These disparities are why Leaf's product team prioritized making services accessible to people even without smartphones or data. As a result,

Leaf is the first cross-border digital wallet to offer its services over USSD so that non-smartphone users can easily access their money. This use case is live and operational today.

Tala: Unlocking financial services

Cross-border payments are a critical use case on the Stellar network, but blockchain can also open the door to other traditional financial services for underserved populations. Currently operational in Kenya, Mexico, India, and the Philippines, Tala, based in California, aims to provide the unbanked access to financial services that they do not have via traditional means. Tala is best known for its mobile lending app, powered by advanced data science, which enables its customers to apply for a loan and receive an instant decision, regardless of their credit history. If the loan is approved, then the borrower receives the money (ranging from \$10-500) in their mobile money account in a matter of minutes.

Building upon their depth of experience using traditional rails to reach these underserved populations, Tala is now working to expand their offerings by using blockchain technology, specifically, Stellar assets and stablecoins, to help customers with credit by allowing borrowing, spending, saving, investing, and sending/receiving. Since 2014, Tala has delivered more than \$2.7 billion in credit to more than six million customers across emerging markets, with thousands of new users joining daily. Now that it plans to harness the Stellar network to expand its product offerings, Tala is set to help even more people, in new markets, to access the kinds of financial services we know can unlock life-changing opportunities.

Vibrant: A refuge from devaluation and inflation

This week, we saw Argentina in the news again for eye-popping inflation at nearly 80%, making it harder and harder for those in the country to pay for everyday essentials like food and medicine. As a result, about 37 percent of Argentines live in poverty today, up from 30 percent in 2016. And with inflation rates expected to reach 100% by the end of 2022, the peso's depreciation continues to threaten Argentines.³

To combat this, Argentines typically preserve their wealth by exchanging the Argentine peso for the U.S. dollar. This process usually involves opening foreign bank accounts and holding onto the physical cash at home, stuffing bundles of American bills into old clothes and beneath floorboards. Unfortunately, this ongoing economic crisis has left Argentines with no safe way to store or use their money and in desperate need of new and secure tools to protect themselves from devaluation.

One such solution is available on Stellar. Vibrant, a digital wallet, allows Argentines to convert their pesos to peso-backed stablecoins (ARST) and buy and hold USDC – a U.S. stablecoin – quickly, cheaply, and efficiently. Vibrant users can hold the USDC as a stable alternative to the local currency, and convert back into the local currency when they need to. It is a simple solution to a very real and local problem, and importantly it puts the control of their wealth in their own hands.

The strength of Stellar (and blockchain generally) is that it allows builders on a global basis to build without permission and to solve real problems and challenges that are facing their communities. These projects are leveraging the Stellar network to create more equitable financial solutions and more opportunities for low income populations. With regulatory clarity and guidance, we believe that even more projects will grow and flourish - helping to solve some of the most incomprehensible challenges of our time.

¹ UNHCR, [Global Trends Report 2021](#)

² IRC, [Covid-19 and Refugees' Economic Opportunities, Financial Services and Digital Inclusion](#), Nov. 2020

³ Buenos Aires Times, [Argentina's inflation rate to hit 100% by end of 2022, EcoGo says](#), July 2022