

Testimony of Rostin Behnam
Chairman, Commodity Futures Trading Commission
Oversight of Digital Commodities
U.S. Senate Committee on Agriculture, Nutrition, and Forestry
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Introduction

Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the opportunity to appear before you today as Chairman of the Commodity Futures Trading Commission (CFTC or Agency) to discuss the state of the digital asset commodity market. Before I begin, I would like to recognize and thank my fellow CFTC Commissioners and CFTC staff for their dedication and commitment to serving the American public.

State of the Digital Asset Commodity Market

During my almost seven-years at the CFTC as both a Commissioner and as Chairman, I have observed the digital asset market evolve significantly, expanding and collapsing, at times with periods of high volatility. It has also facilitated countless scandals and fraudulent activity, some very small and typical in criminal form, others massive in scale and profile. I have watched the market as it has piqued the interest of both novice and sophisticated investors, and have seen some of our nation’s most established financial institutions build businesses driven by digital assets.

What has concerned me most throughout the expansion of this digital asset class is that while everyday Americans fall victim to one digital asset scam after another, there remains no completed legislative response. I have repeatedly been asked by members of Congress what I am doing to protect their constituents. I believe the single most important thing I have done, and continue to do, is advocate to this body to fill the regulatory gap. I am not alone in my concerns. In 2022, a Financial Stability Oversight Council report highlighted that there is a gap in regulation of the spot market for digital assets that are not securities.¹ This gap for non-security tokens continues to constitute a majority of the digital asset market measured by market capitalization.² Given the risks that this unregulated market poses to U.S. investors, I have consistently and publicly called for new legislative authority for the CFTC,³ including before this Committee.⁴ Congress must act

¹ Financial Stability Oversight Council, *Report on Digital Assets and Financial Stability Risks and Regulation* (Oct. 2022), [Report on Digital Asset Financial Stability Risks and Regulation 2022 \(treasury.gov\)](#).

² <https://coinmarketcap.com/>

³ See, Rostin Behnam, Chairman, CFTC, Testimony Before U.S. House Committee on Agriculture, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42> (Mar. 6. 2024); see also, Rostin Behnam, Chairman, CFTC, Testimony [on The Future of Digital Assets: Providing Clarity for Digital Asset Spot Markets Before the U.S. House Committee on Agriculture](#), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam42> (Mar. 6. 2023).

⁴ See, Rostin Behnam, Chairman, CFTC, Testimony Before the U.S. Senate Committee on Agriculture, Nutrition, & Forestry, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam32> (Mar. 8, 2023).

quickly in order for regulators, like the CFTC, to provide basic customer protections that are core to U.S. financial markets.

Further, based on my observations as Chairman, I do not believe inaction will quash public interest for digital assets; it will only result in greater risk to our financial markets and investors. As the digital asset market continues to integrate into traditional financial institutions, concerns regarding broader market resiliency and perhaps even financial stability will ripen. In short, our current trajectory is not sustainable. Federal legislation is urgently needed to create a pathway for a regulatory framework that will protect American investors and possibly the financial system from future risk.

Enforcement

It has been almost nine years since the CFTC brought its first enforcement action in connection with an illegal Bitcoin operation.⁵ Since that time, the agency has been aggressive in using our powerful, but limited anti-fraud and anti-manipulation authorities. In total, the CFTC has brought over 135 digital commodity cases resulting in billions in penalties and restitution. All along, CFTC enforcement staff has worked closely with our civil and criminal law enforcement partners at the federal and state levels. The escalating rate of digital asset enforcement cases since 2020 mirrors the accelerated and sustained adoption of digital assets by U.S. investors.

Just last week, a District Court in the Northern District of Illinois entered summary judgment in favor of the CFTC in a case involving fraud by an unregistered entity that promised steady returns in digital asset commodities such as Bitcoin and Ether.⁶ In its decision, the court re-affirmed that both Bitcoin and Ether are commodities under the Commodity Exchange Act.

In fiscal year 2023, actions involving digital asset-related allegations comprised almost half of our enforcement docket.⁷ Of the 47 enforcement actions involving digital assets commodities, 35 alleged misconduct in the spot market. Ultimately, the CFTC, whose primary responsibility is overseeing the multi-trillion-dollar U.S. derivatives markets, is committing nearly half its enforcement resources to a market it does not have the authority or appropriated resources to regulate.

Nearly a decade of digital asset experience has given CFTC staff a deep understanding of the market and underlying technology that supports it. Market regulators like the CFTC were built precisely for situations we find ourselves in today. The flawed notion that regulating an asset class legitimizes it misses the point of our responsibilities.

⁵ See Press Release Number 7231-15, CFTC, CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering (Sept. 16, 2015), [CFTC Orders Bitcoin Options Trading Platform Operator and its CEO to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering | CFTC](#).

⁶ See Press Release Number 8931-24, CFTC, Federal Court Enters Summary Judgment Against Oregon Man and Orders \$83 Million in Restitution for Fraud Victims (July 3, 2024), [Federal Court Enters Summary Judgment Against Oregon Man and Orders \\$83 Million in Restitution for Fraud Victims | CFTC](#).

⁷ See Press Release Number 8822-23, CFTC, CFTC Releases FY 2023 Enforcement Results (Nov. 7, 2023), [CFTC Releases FY 2023 Enforcement Results | CFTC](#).

International Progress

Concurrent with my duties as CFTC Chairman, I have the privilege of serving as the Vice-Chairman of the International Organization of Securities Commissions, more commonly known as IOSCO. IOSCO's member agencies regulate more than 95% of the world's securities markets in over 130 jurisdictions.⁸ In this role, I have observed both major and developing economies establish regulatory frameworks for digital assets. From Asia, the Middle East, the European Union, the United Kingdom, and South America, what started as pilot programs and draft legislation just a few years ago, has developed into established global regulatory systems.

The delta between the U.S. and our international counterparts preserves weaknesses that are exploited by bad actors, and prohibits us from much needed coordination efforts. Further, and primarily for the members of this Committee to consider, any potential economic benefits and innovation arising from this technology ultimately will be stymied without regulatory certainty.

Legislative Priorities to Achieve Success

As this Committee continues to consider legislation to fill the regulatory gap, I would like to focus your attention on the components of a framework that would ensure the CFTC has the tools to provide customer and market protections.

First, the principles-based oversight model has served the CFTC and its regulated markets well, striking an appropriate balance between clear outcomes-based requirements, and measured flexibility to meet those outcomes. Core principles such as compliance with fair and orderly trading, system safeguards, financial resource requirements, and products not being readily susceptible to fraud or manipulation, to name just a few, serve as a solid foundation to build transparent and resilient markets, regardless of asset class. In light of the novel nature of digital assets, the CFTC would then, consistent with a legislative mandate, tailor rules to meet the risk and characteristic profile.

Second, appropriate funding is necessary to meet the mandate of any legislatively enacted regulatory program. A permanent fee-for-service model, exclusively assessed on digital asset registrants, and that is commensurate with the responsibilities outlined in a bill, is critical. As with other fee-for-service models, congressional appropriators and the agency should work in tandem to set budget levels and subsequently set fees to meet those budget levels.

Third, given the retail-oriented nature of the digital asset market, legislative authority for the CFTC to require registrants to provide a comprehensive disclosure regime regarding a commodity token's structure, purpose, market-based characteristics, and general risks is also critical to ensure investors have access to material information.

Fourth, it is essential that legislation provide comprehensive authority for anti-money laundering, know-your-customer, and a customer identification program, built off of existing requirements for market participants.

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

Fifth, given the important role the Securities and Exchange Commission (SEC) plays in the oversight of security-based digital tokens, the Committee should consider a disciplined, balanced framework for the determination of tokens as commodities or securities under existing law. The SEC and CFTC have a longstanding partnership that facilitates strong, robust regulation of securities and derivatives markets. I am confident that the two agencies will continue working closely, ensuring a reliable, fair, and efficient system for listing and trading of digital assets on regulated exchanges.

Finally, given the broad adoption of digital assets by a significant portion of the American population,⁹ a comprehensive education and outreach program, building off of the CFTC's Office of Customer Education and Outreach, will enable the investing public to understand both the risks and opportunities of this technology.

Conclusion

I am encouraged by this Committee's continued efforts, dating back to 2022, to fill the gap in regulation, prioritizing customer protections and market stability. In addition to this Committee's work, there have been other important steps taken in Congress to address the need for comprehensive regulation of the digital asset commodity market. The principles and regulatory foundations that have made our capital markets and derivatives markets the deepest, most liquid, and most resilient in the world provide an effective model for the digital asset commodity market. We need to act thoughtfully, but with urgency, to fill this harmful regulatory gap in order to give American investors the protection they deserve.

I thank the Committee for your focus in this area, and look forward to answering your questions.

⁹ [Financial Literacy, Risk Tolerance, and Cryptocurrency Ownership in the United States \(kansascityfed.org\)](https://www.kansascityfed.org/financial-literacy-risk-tolerance-and-cryptocurrency-ownership-in-the-united-states).