



# THE DIGITAL COMMODITIES CONSUMER PROTECTION ACT

In the wake of the FTX collapse, the consumer protections in the bipartisan Digital Commodities Consumer Protection Act (DCCPA) are needed now more than ever. The DCCPA would have prohibited the misconduct and risky behavior undertaken by FTX. It is clear that Congress needs to act.

## Have Senators been focused on the risks posed by the crypto industry?

Members of the U.S. Senate have been working on a bipartisan basis over the past several months to draft legislation to bring needed safeguards to this industry. In fact, the DCCPA was designed to address the very risks that caused FTX's collapse. **It applies time-tested rules of financial regulation to crypto firms, to protect customer assets and eliminate conflicts.**

In a recent article on lessons learned from the FTX collapse, the Bloomberg editorial board stated: "Consumer protections are essential. Billions of dollars in FTX customers' funds have effectively gone missing, lost to a tangle of entities and at least one apparent hack. This was possible in part because FTX—**with the exception of its US derivatives-trading subsidiary**—operated in a regulatory vacuum, with none of the requirements governing capital, liquidity, segregation of funds, cybersecurity or conflicts of interest that traditional intermediaries must meet."

**The DCCPA mandates that crypto firms offering digital commodities to customers comply with every one of these principles, bringing necessary protections to customers trading crypto.** It also requires these firms to disclose the risks of trading in digital commodities and gives the Commodity Futures Trading Commission (CFTC) real-time visibility into digital commodity transactions to prevent fraud before it happens. **The FTX meltdown proves that all these legislative tools are needed.**

## Who should be the primary regulator for the crypto industry?

Because crypto assets perform a variety of different functions, **a whole-of-government approach is required to regulate the industry.** No one financial regulator has the expertise to regulate this industry alone.

Under the DCCPA, the CFTC would be one part of a more comprehensive regime. There is currently no federal oversight of the spot market for crypto assets that are not securities. The White House and the Financial Stability Oversight Council have urged Congress to close this gap. The DCCPA does that by granting the CFTC additional authority to regulate the market for non-security crypto assets, which the bill refers to as "digital commodities." **The DCCPA would ensure greater protections for all customers trading crypto assets, regardless of how they are classified.**

## **What is the role of the Securities and Exchange Commission?**

Many crypto assets are securities and are regulated by the SEC. **The DCCPA does not alter that authority.** To the contrary, it expressly exempts securities from the definition of “digital commodity” and from CFTC oversight. Today, both agencies share jurisdiction over the swaps markets and work together to implement regulations. That process is expected to continue under this bill.

SEC Chair Gary Gensler has stated that the SEC does not need additional authority to regulate the trading of crypto assets that are securities. **To the extent that the SEC has authority to register and oversee exchanges offering crypto securities, it should be using that authority.**

## **What authority does the CFTC currently have to protect crypto customers?**

The CFTC regulates derivatives—swaps and futures contracts that are based on the future value of certain commodities like oil and wheat. However, the CFTC does not have the power to regulate the trading of the underlying “spot” commodities themselves. So while the CFTC has the authority to regulate exchanges that offer Bitcoin futures contracts, for example, it has no authority over the exchanges offering the Bitcoin tokens themselves. Nor does the SEC, which can only regulate securities. **So there is a gap in our regulatory regime and consumers are paying the price.**

The FTX subsidiary that offered Bitcoin futures—FTX US Derivatives—is registered with the CFTC. Notably, FTX US Derivatives has not filed for bankruptcy and customer assets are accounted for. This is because FTX US Derivatives was required to segregate customer assets and this process was monitored by the CFTC. If the rules that apply to FTX's derivatives entity had also applied to FTX's other platforms, **this situation may have been prevented. This is why the DCCPA is so critical.**

## **Why do we need new laws when the government already has fraud enforcement authority?**

Fraud prosecutions are a critical law enforcement tool, but they are reactive. Prosecutions are often brought after customers have already lost their money. As CFTC Chair Rostin Behnam correctly predicted one year ago at his confirmation hearing, **the CFTC's ability to prosecute fraud in the crypto markets was only touching “the tip of the iceberg.” Regulations that prevent fraud from occurring are urgently needed.**

## **Who wrote the DCCPA?**

**The lead authors of the legislation consulted with a vast number of stakeholders**, including the CFTC, SEC, Treasury and other financial regulators, market participants in the crypto and traditional financial markets, and consumer advocates. Its provisions mirror those in the Commodity Exchange Act, which govern the trading of derivatives and have been proven over decades to protect the integrity of those global markets. In addition to these traditional principles of derivatives regulation, the DCCPA contains additional protections specific to spot crypto markets such as disclosure requirements. These requirements will ensure customers have fair and balanced information about their investments.

## **Does the CFTC have the resources to regulate crypto spot markets?**

The DCCPA authorizes the CFTC to collect user fees on digital commodity platforms above and beyond the amount it receives in annual appropriations. **This will ensure that the CFTC has the resources it needs to fully fund its oversight of digital commodity markets.**