

Congress of the United States
Washington, DC 20510

January 12, 2022

The Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Dear Chairman Behnam:

Congratulations on your confirmation as Chairman of the Commodity Futures Trading Commission (CFTC). During your nomination hearing before the Senate Agriculture Committee, you discussed the digital asset marketplace, including its rapid growth, popularity among retail customers, and the CFTC's role in policing fraud and abuse in this market. You also mentioned, however, that we have only seen the "tip of the iceberg" with respect to digital assets and you requested that our committees consider expanding the CFTC's regulatory authority in this area.

The definition of "commodity" under the Commodity Exchange Act (CEA) is broad and includes "goods and articles, . . . and all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in." This includes traditional agricultural commodities and has grown over the years to include a wide variety of products, including energy, electricity, metals, U.S. treasuries, interest rate indices, and foreign currencies.

The CFTC has long considered certain digital assets to be commodities and courts have agreed. In fact, the two largest digital assets by market capitalization are commodities: Bitcoin and Ether. These two digital assets alone make up approximately 60% of the \$2.7 trillion market. Futures contracts on Bitcoin and Ether are currently traded on CFTC-registered derivatives exchanges.

In addition to derivative markets, digital assets are also traded on spot markets. The CEA authorizes the CFTC to bring enforcement actions against entities committing fraud or manipulation in commodity spot markets or offering certain commodities without Commission registration—including markets and products for certain digital assets. The CEA also directs the CFTC to regulate certain transactions where retail consumers are using leverage or margin to finance their trading.

In turn, the CFTC has been active in prosecuting persons and entities engaging in misconduct in digital asset markets under its jurisdiction. The CFTC has also issued interpretive guidance on retail transactions in certain digital assets and educated the public on the technology underlying this marketplace and its attendant risks.

Despite the CFTC's responsible engagement, this industry is still subject to risks of abuse, including consumer fraud and cybercrime. Consumers reported losing nearly \$82 million to

cryptocurrency scams between the fourth quarter of 2020 and first quarter of 2021, more than 10 times the amount from the same six-month period a year earlier.

A growing number of digital assets are traded on decentralized financial (DeFi) protocols, where there is no intermediary or centralized system through which transactions are processed. The value of digital assets traded on DeFi protocols reportedly reached \$89 billion in May 2021. With DeFi, consumers can access financial services directly without going through a broker or financial adviser, which can lower transaction costs, reduce settlement times, and provide more people with access to financial services. However, there are still questions about who is responsible for monitoring DeFi markets for fraud and manipulation, safeguarding customer funds, and ensuring parties meet their obligations to one another. We also are concerned about any DeFi protocols offering derivatives contracts on unregistered exchanges—the subject of a recent CFTC enforcement action.

The CFTC has a critical role to play to ensure the integrity of digital asset markets. While some of these technologies have the potential to modernize the financial system, it is imperative that customers are protected from fraud and abuse and that these markets are fair and transparent.

To understand the scope and size of digital asset markets, the benefits and risks presented by these emerging technologies, and the role of the Commission with respect to these markets, please respond to the following questions:

1. What is the current estimated size of the digital asset marketplace? How does this marketplace compare in size and participation to those markets directly regulated by the Commission?
2. What proportion of the digital asset market do you estimate is currently traded by U.S. persons?
3. Within the United States, what is the estimated scope of retail participation in digital asset markets? How does this compare to the level of retail participation in derivatives markets for other commodities?
4. In what ways are digital asset markets and intermediaries different than the existing markets and intermediaries under the CFTC's jurisdiction? In what ways are they similar? Are there principles for market regulation that can be applied to both?
5. Discuss the types of misconduct the CFTC has observed in the digital asset marketplace and how, if at all, this differs from misconduct found in traditional financial markets.
6. How has LabCFTC been working with stakeholders in the digital asset and DeFi space to support innovation and development, while also ensuring customer protection and financial market integrity?

7. Discuss how the CFTC has collaborated with other federal financial regulators regarding digital assets.
8. Do you foresee any shortfalls in the Commission's authorities to protect customers and ensure market integrity as the digital asset marketplace grows in volume and scope?

Thank you for your attention to this matter and we look forward to hearing from you.

Sincerely,



Debbie Stabenow
Chairwoman
Senate Committee on Agriculture,
Nutrition, and Forestry



John Boozman
Ranking Member
Senate Committee on Agriculture,
Nutrition, and Forestry



David Scott
Chairman
House Committee on Agriculture



Glenn 'GT' Thompson
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