

DESIGNING A U.S. DIGITAL ASSET REGULATORY FRAMEWORK



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Introduction

The lack of a federal regulatory framework for digital assets undermines the competitiveness of U.S. markets relative to other global financial centers. For example, the European Union (“EU”), Hong Kong, Japan, United Arab Emirates (“UAE”), and United Kingdom (“UK”) have all implemented or are implementing regulatory regimes for digital assets. In this report, the Committee on Capital Markets Regulation (the “Committee”) sets forth 10 key principles that should guide the design of a regulatory framework for digital assets and position the United States as a global leader in digital assets.

We begin by clarifying key definitions and the scope of the report. A digital asset is an asset, often referred to as a token, that is transferable using a decentralized ledger system, often referred to as a blockchain.¹ This report will focus on the regulation of digital asset securities and digital asset commodities.

A digital asset security is a digital asset that represents an ownership interest in a business enterprise or a right to profits therefrom (i.e., a tokenized version of a traditional security), or a transaction involving a digital asset where the purchaser is promised significant value from the efforts of the digital asset’s developers and the developer uses the proceeds of the sale to fund those efforts.² Digital asset securities are subject to the federal securities laws. The Securities and Exchange Commission (“SEC”) has identified fewer than 10 digital asset securities that have registered with the SEC, including “Stacks token” and “INX token.”³

A digital asset commodity does not represent an ownership interest in or a claim on the profits from a business enterprise. Instead, the value of a digital asset commodity is determined by market demand. Bitcoin and Ether are both examples of digital asset commodities. There is no federal regulatory framework for digital asset commodities, however the Commodity Futures Trading Commission (the “CFTC”) has regulatory authority over derivatives on digital asset commodities and has anti-fraud authority for digital asset commodity markets.⁴

¹ COMMODITY FUTURES TRADING COMMISSION [“CFTC”], *Digital Assets Primer* (Dec. 2020), <https://www.cftc.gov/digitalassets/index.htm>.

² See *SEC v. Howey*, 328 U.S. 293 (1946).

³ AXIOS, *The Few Crypto Firms that Have Registered with the SEC* (Mar. 6, 2023), <https://wwwaxios.com/2023/03/06/crypto-register-sec-securities-exchange-commission>.

⁴ CFTC *supra* note 1.

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To implement an effective regulatory framework for digital asset securities and digital asset commodities, U.S. policymakers should:

- 1. Establish tailored registration regimes for digital asset trading platforms and broker-dealers.**
- 2. Implement custody requirements for digital assets that protect customer assets and permit customer choice.**
- 3. Create clear criteria for distinguishing between digital asset commodities and digital asset securities.**
- 4. Provide the CFTC with authority over digital asset commodities and the SEC with authority over digital asset securities.**
- 5. Tailor disclosure rules for digital asset commodities and digital asset securities.**
- 6. Permit combined services for traditional financial assets, digital asset commodities, and digital asset securities.**
- 7. Preserve the role of broker-dealers while allowing for un-intermediated trading of digital assets with safeguards.**
- 8. Recognize pre-existing registration status and implement a compliance transition period.**
- 9. Clarify federal preemption of state laws for digital assets.**
- 10. Clearly limit cross-border scope and consider international reciprocity standards.**

Recommendations 1 through 8 are broadly consistent with the 2024 proposed digital asset market structure bill “Financial Innovation and Technology for the 21st Century Act” (“FIT21”) and the subsequent discussion draft modelled on FIT21 released by the House Committee on Financial Services and House Committee on Agriculture in May 2025.⁵ Recommendations 9 and 10 address topics beyond the scope of these proposals. SEC Chairman Paul Atkins also recently expressed support for several principles that are consistent with our recommendations.⁶

We now review each of our recommendations in greater detail and identify specific aspects of our recommendations that are also addressed by these legislative proposals.

⁵ H.R. 4763 FINANCIAL INNOVATION AND TECHNOLOGY FOR THE 21ST CENTURY ACT, 118th Cong. 2d Session (Sept. 9, 2024), <https://www.congress.gov/118/bills/hr4763/BILLS-118hr4763rfs.pdf> [“FIT21 Act”]; U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES; HOUSE COMMITTEE ON AGRICULTURE, Digital Asset Market Structure Discussion Draft Discussion Draft (May 5, 2025), https://agriculture.house.gov/uploadedfiles/tbaa_xml.pdf [“HFSC 2025 Draft”].

⁶ SEC Chairman Paul S. Atkins, *Keynote Address at the Crypto Task Force Roundtable on Tokenization* (May 12, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225>.

1. Establish tailored registration regimes for digital asset trading platforms and broker-dealers.

Trading platforms and broker-dealers are critical components of digital asset markets. Trading platforms aggregate market liquidity, increase trade execution and settlement speed, and provide a convenient point of access to digital asset markets. Broker-dealers can provide additional value to investors by aggregating access to multiple trading platforms and by supporting liquidity and price discovery.⁷

However, the existing registration and compliance framework for securities exchanges was not designed for the trading of digital assets and thus includes elements that are unnecessary or inappropriate for digital asset markets. Moreover, the legal scope of this framework is limited to the small minority of digital assets that are securities.⁸ Digital asset trading platforms therefore have not registered with the SEC as securities exchanges and seek to exclude all digital asset securities from their trading platforms, as facilitating transactions in a digital asset security would trigger an obligation to register as a securities exchange. However, under the prior Administration, the SEC unsuccessfully sought to compel digital asset trading platforms to register as securities exchanges by bringing enforcement actions claiming that the trading platforms were facilitating transactions in digital asset securities and were therefore operating as unregistered securities exchanges.⁹ The trading platforms disputed the SEC's claims that certain of the digital assets they listed were securities.¹⁰ These cases were ongoing at the time of the change in Administration and the SEC has now dropped those cases on the basis that "the dismissal will facilitate the [SEC's] ongoing efforts to reform and renew its regulatory approach to the crypto industry."¹¹

The SEC's approach to regulating broker-dealer activity in digital asset securities has also been unsuccessful.¹² In particular, a 2021 SEC policy statement requires that a broker-dealer trading in digital asset securities register as a "specialized broker-dealer" and refrain from transacting in stocks, bonds, or digital asset commodities.¹³ As a result, only two entities have registered as

⁷ PROGRAM ON INTERNATIONAL FINANCIAL SYSTEMS [“PIFS”], *A Review of Cryptoasset Market Structure and Regulation in the United States* (2023), <https://www.pifsinternational.org/cryptoasset-market-structure-and-regulation-in-the-u-s/>.

⁸ COMMITTEE ON CAPITAL MARKETS REGULATION [“CCMR”], *Cryptoasset Trading Platforms Cannot Register as Securities Exchanges* (June 2, 2023), <https://capmktsreg.org/wp-content/uploads/2023/06/CCMR-Crypto-Exchanges-Cannot-Register-With-the-SEC-06-06-23.pdf>.

⁹ SECURITIES & EXCHANGE COMMISSION [“SEC”], *SEC Charges Coinbase for Operating as an Unregistered Securities Exchange, Broker, and Clearing Agency* (2023-102), <https://www.sec.gov/newsroom/press-releases/2023-102>.

¹⁰ See, e.g., Leo Schwartz, *Coinbase Scores Win Against SEC as Judge Agrees to Escalate Dispute over Crypto Security Definition* FORTUNE (Jan. 8, 2025), <https://fortune.com/crypto/2025/01/08/coinbase-legal-victory-sec-failla-paul-grewal-gary-gensler-crypto/>.

¹¹ SEC, *SEC Announces Dismissal of Civil Enforcement Action Against Coinbase* Press Release 2025-47 (Feb. 27, 2025), <https://www.sec.gov/newsroom/press-releases/2025-47>.

¹² SEC, Commissioner Hester M. Peirce, Statement, *The Journey Begins* (Feb. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.

¹³ SEC, *Custody of Digital Asset Securities by Special Purpose Broker-Dealers*, 86 FED. REG. 11,627 (Feb. 26, 2021), <https://www.federalregister.gov/documents/2021/02/26/2020-28847/custody-of-digital-asset-securities-by-special-purpose-broker-dealers>. See also SEC Chairman Atkins, *supra* note 6 (“Additionally, it may be necessary to repeal and replace the “special purpose broker-dealer” framework with a more rational regime.”).

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specialized broker-dealers of digital asset securities,¹⁴ as there is virtually no trading activity in these securities.

With respect to trading in digital asset commodities, like Bitcoin and Ether, the SEC and CFTC lack the regulatory authority to require trading platforms or broker-dealers to register.

On the other hand, each of the EU, Hong Kong, Japan, UAE, and UK has implemented tailored registration frameworks for digital asset trading platforms and broker-dealers. And clear signs are emerging that the lack of a comparable framework in the United States has driven digital asset market activity and jobs offshore.¹⁵ For example, as of Q1 2025, U.S.-based platforms host only 10% of global on-platform digital asset transactions, compared to approximately 50% of transaction volume in exchange-traded equities.¹⁶ And the percentage of global digital asset trading volume denominated in U.S. dollars or U.S.-issued digital assets has declined from roughly 30% in 2018 to approximately 15% as of 2025.¹⁷ By comparison 90% of global foreign exchange volume is denominated in U.S. dollars.¹⁸

U.S. policymakers must implement workable registration frameworks for digital asset trading platforms and broker-dealers or risk falling behind other international financial centers. Policymakers can create these frameworks by integrating digital assets into existing regulatory structures with tailoring adjustments and clarifications of existing regulatory categories.¹⁹ In particular, these frameworks should preserve customer protections that exist under existing frameworks, tailored as necessary to digital asset markets, and should seek to accommodate innovation, customer choice, and the market efficiency-enhancing aspects of digital assets. They should also seek to exclude aspects of traditional frameworks that are not applicable or beneficial in digital assets markets. These include, for example, trading standards that require the availability of current financial statements from an asset's issuer, and disclosure requirements that relate to companies, their management, and financial results.²⁰

For example, trading platforms and broker-dealers should be required to provide pre- and post-trade transparency, to refrain from and prohibit abusive and manipulative trading practices such as front-running and wash trading, to execute customer orders fairly, and, in the case of platforms, to provide non-discriminatory access for reasonable fees. Trading platforms and broker-dealers should also be required to disclose prominently all fees and spread mark-ups in a format that allows

¹⁴ FORTUNE, *SEC and FINRA make tZero second recipient of special crypto license following controversial Prometheus approval* (Sept. 10, 2024), <https://fortune.com/crypto/2024/09/10/tzero-special-purpose-broker-dealer-license-finra-sec-gensler-prometheus-crypto/>.

¹⁵ PIFS, *Implementing an Effective Cryptoasset Regulatory Framework in the United States* (2024), <https://www.pifsinternational.org/implementing-an-effective-cryptoasset-regulatory-framework-in-the-unites-states/>.

¹⁶ THE BLOCK, Cryptocurrency Monthly Exchange Volume, <https://www.theblock.co/data/crypto-markets/spot/cryptocurrency-exchange-volume-monthly> (last visited Mar. 28, 2025); WORLD FEDERATION OF EXCHANGES, Statistics Portal (2018-2024 data), <https://statistics.worldexchanges.org/>.

¹⁷ THE BLOCK, Share of Trade Volume by Pair Denomination (2018-2025 data), <https://www.theblock.co/data/cryptomarkets/spot/share-of-trade-volume-by-pair-denomination>.

¹⁸ FOREIGN EXCHANGE COMMITTEE, FEDERAL RESERVE BANK OF NEW YORK, FX Volume Survey (2018-2024 data), <https://www.newyorkfed.org/medialibrary/Microsites/fxc/files/2025/Volume-Survey-Press-Release-02052025>.

¹⁹ Both FIT21 and the HFSC 2025 Draft establish such frameworks. *See* FIT21, Titles III-IV; HFSC 2025 Draft, Titles II-III.

²⁰ *See, e.g.*, 15 U.S.C. § 78m; 17 C.F.R. § 240.15c2-11.

customers to easily compare trading costs across venues. As a condition of listing or executing transactions in digital assets, trading platforms and broker-dealers should also be required to disclose potential conflicts of interest, publish criteria that govern the listing, and disclose to the customer basic information about the digital asset that is being traded. Trading platforms should have the flexibility to tailor their own listing criteria subject to certain market-wide minimum standards.

These registration frameworks should also reflect the other key principles included in this report.

2. Implement custody requirements for digital assets that protect customer assets and permit customer choice.

In digital asset markets trading platforms commonly hold custody of customer assets. This is unlike traditional financial markets, where custody of customer assets generally must be provided by a third-party bank or broker-dealer and not the exchanges on which assets trade.

During the prior Administration, policymakers failed to implement standards for the custody of customer digital assets by trading platforms and other third parties, and both the SEC and federal banking regulators discouraged banks and broker-dealers from extending their services to digital assets. The SEC also pursued an ineffective and illegal remedy to the lack of custody standards by seeking to expand the custody requirements for investment advisers beyond their statutory scope, which is limited to cash and securities, to encompass all “client assets,” including digital assets (the current Administration should confirm the invalidity of this approach).²¹ Although many digital asset platforms have voluntarily implemented effective best practices for the custody of customer assets, the lack of regulatory policies for custody has in the past exposed digital asset customers to the risk of fraud and loss, as best exemplified by the collapse of FTX in 2022.

In recent months, the new Administration has taken positive steps towards enabling banks and broker-dealers to provide custody services for digital assets. In January 2025, the SEC rescinded Staff Accounting Bulletin 121, which made digital asset custody unworkable for SEC-registered broker-dealers and banks.²² And in March 2025, the Office of the Comptroller of the Currency reversed prior guidance that discouraged banks from custodying digital assets.²³ While these are positive steps toward an effective custody regime, policymakers should take further steps to implement a comprehensive framework that maintains rigorous protection for customer assets while also allowing for customer choice.²⁴

²¹ CCMR, *Letter to the SEC Re. File Number S7-04-23— Safeguarding Advisory Client Assets* (May 8, 2023), <https://capmktsreg.org/wp-content/uploads/2023/05/CCMR-Comment-Letter-Safeguarding-Advisory-Client-Assets-S7-04-23-05.08.23.pdf>.

²² SEC, *Staff Accounting Bulletin No. 122* (Jan. 23, 2025), <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122>.

²³ OFFICE OF THE COMPTROLLER OF THE CURRENCY *OCC Letter Addressing Certain Crypto-Asset Activities* (Mar. 2025), <https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1183.pdf>.

²⁴ The FIT21 Act and HFSC 2025 Draft bar the prohibition of self-custody by regulators and contemplate the provision of custody by trading platforms. FIT21 Act §§ 104, 405; HFSC 2025 Draft §§ 310, 405. *See also* SEC Chairman

Critical aspects of this framework should include:

- *Permitting platform custody with safeguards:* Permitting trading platforms to custody digital assets offers significant potential advantages for U.S. digital asset markets. Indeed, legislative proposals including the FIT21 Act permit trading platform custody.²⁵ The potential advantages of platform custody include:
 - *Faster and more secure trading:* In contrast to traditional securities markets, where a trade is settled the day after it is executed, blockchain technology enables real-time settlement. Digital asset trading platforms are also able to settle customer trades in real time by book entry by holding custody of customer assets. While further innovation may enable the combination of third-party custody and real-time settlement, this is currently only possible if the platform can custody customer digital assets at the time of a trade. Real-time settlement allows customers to transact faster, increases market liquidity, and can increase market stability by eliminating settlement risk.
 - *Customer convenience:* Allowing customers to trade and hold their assets with a trading platform reduces the number of intermediaries that the customer must interact with.
 - *U.S. market competitiveness:* Other major jurisdictions, including the EU and Japan, have permitted trading platform custody under their digital asset frameworks, which could cause investors to prefer those markets if the U.S. prohibits trading platform custody.

All third-party custodians, including trading platforms, broker-dealers and banks, should be subject to additional protections that seek to protect against the misuse of customer assets and ensure that the customer's digital assets are not subject to a custodian's creditors in the event of insolvency or legal liability. These additional protections include:

- *Segregation, disclosure, and operational requirements:* The third-party custodian should be required to legally segregate customer assets from the custodian's assets so that the customer assets are not subject to the claims of the custodian's creditors in the event of insolvency. The custodian should also be required to design and implement operational security measures and provide disclosure to customers about those procedures and more generally about the risks and benefits of entrusting custody to a third party versus retaining custody of one's own digital assets.
- *Separate legal entities:* Third-party custodians that also operate trading platforms should be required to operate their trading platform businesses and custodian

Atkins, *supra* note 6 (“I support providing registrants with greater optionality in determining how to custody crypto assets. . . [T]he custody rules may need to be updated to allow advisers and funds to engage in self-custody under certain circumstances.”).

²⁵ *Id.*

services in separate legal entities, and to implement governance and operational standards to ensure that the separateness of the entities will be respected in the event of insolvency, subject to limited exceptions allowing the platform to hold customer assets as necessary to process customer transactions. Furthermore, any leverage provided to customers by a trading platform should be provided by a separate entity and any assets that the customer pledges to secure such leverage should be identified as being subject to liens and be permitted to be rehypothecated by the leverage provider in order to fund the leverage.

- *Regulatory supervision:* Customers of failed trading platform FTX's global entity lost their assets due to misappropriation and fraudulent conduct that went undetected by regulators as regulators lacked oversight authority. Third-party custodians should therefore be required to undergo regular examinations by regulators to monitor compliance with custody-related standards.
- *Permitting self-custody:* The blockchain technology that underlies digital assets allows investors to maintain custody of their digital assets. Customers should be permitted to hold custody of their own assets, provided that retail customers receive adequate disclosures about the risks of doing so.
- *Legislative reforms clarifying the treatment of custodied digital assets:* U.S. courts have already ruled that properly segregated customer digital assets are, like traditional financial assets, shielded from the custodian's creditors.²⁶ But to provide additional certainty, the Securities Investor Protection Act ("SIPA") should also be amended to provide that SIPA coverage extends to digital asset securities that a broker-dealer custodies for its customers. This clarification will increase customers' confidence in their ownership rights when transacting in digital asset markets. Policymakers should also consider extending coverage to digital asset commodities.

3. Create clear criteria for distinguishing between digital asset commodities and digital asset securities.

Most digital assets, including the most valuable and commonly traded digital assets (Bitcoin and Ether), are not securities. And a recent SEC staff statement concludes that U.S.-dollar backed stablecoins (which account for over 90%²⁷ of stablecoin market capitalization) are not securities.²⁸ Thus, granting the CFTC comprehensive jurisdiction over digital asset commodity spot markets and creating registration frameworks for the platforms and broker-dealers that facilitate transactions in such assets creates a framework that covers most trading in digital assets markets.

²⁶ Dietrich Knauth, *BlockFi Gets Court Permission to Return \$297 Million to Wallet Customers* REUTERS (May 11, 2023), <https://www.reuters.com/legal/blockfi-gets-court-permission-return-297-million-wallet-customers-2023-05-11/>.

²⁷ Kenechukwu Anadu et al., FED. RESERVE BANK OF NY *Stablecoins and Crypto Shocks: An Update* (Apr. 23, 2025), <https://libertystreeteconomics.newyorkfed.org/2025/04/stablecoins-and-crypto-shocks-an-update/>.

²⁸ SEC, DIVISION OF CORP. FIN., Statement on Stablecoins (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.

However, any residual lack of clarity regarding the potential scope of traditional securities regulations in digital asset markets has the potential to have an outsized negative effect on digital asset markets by creating legal uncertainty for investors and service providers. And past litigation between the SEC and digital asset trading platforms underscores the importance of clarifying the criteria for distinguishing digital asset commodities and digital asset securities, so market participants and intermediaries have legal certainty regarding the regulations that apply to them. Indeed, other major jurisdictions have adopted detailed criteria that market participants can rely on to determine the regulations that apply to digital assets.²⁹

U.S. policymakers should create a taxonomy for digital assets to reduce unnecessary legal uncertainty.³⁰ This taxonomy should consist of three principal categories: (i) digital asset securities, (ii) digital asset commodities, and (iii) stablecoins:

- i. *Digital asset commodities*: A digital asset commodity does not represent an ownership interest in or a claim on the profits from a business enterprise, and the value of a digital asset commodity is determined by market demand rather than by seeking parity with a reference asset. Digital asset commodities include the two largest and most commonly traded tokens: bitcoin and ether, which as of April 2025 have market capitalizations of \$1.7 trillion and \$225 billion and together account for approximately 70% of total digital asset market capitalization.³¹
- ii. *Digital asset securities*: A digital asset security is a digital asset that represents an ownership interest in a business enterprise or a right to profits therefrom (i.e., a tokenized version of a traditional security), or a transaction involving a digital asset where the purchaser is promised significant value from the efforts of the digital asset's developers and the developer uses the proceeds of the sale to fund those efforts (i.e., the transaction is an “investment contract” under the traditional *Howey* test).³² Digital asset securities should generally be regulated like traditional securities under the federal securities laws, with necessary modifications (e.g., disclosures, see Principle 5) for issues specific to digital assets. Digital asset securities currently constitute a very small portion (likely less than 1%) of market capitalization in digital asset markets.³³

Policymakers should confirm that digital assets that do not represent rights in a business or the profits therefrom and sales of digital assets that are not part of an “investment contract” as defined under the traditional *Howey* test are not securities.³⁴

- iii. *Stablecoins*: A digital asset designed for use as a means of payment that seeks to maintain a fixed price in another asset, often a fiat currency. Stablecoins typically seek to maintain

²⁹ PIFS, *supra* note 15.

³⁰ Both the FIT21 and HFSC 2025 Draft create such taxonomies. *See* FIT21 Title I, HFSC 2025 Draft Title I.

³¹ COINMARKETCAP, *Cryptocurrency Prices by Market Cap*, <https://coinmarketcap.com/> (last visited Apr. 01, 2025).

³² *See SEC v. Howey*, 328, U.S. 293 (1946).

³³ PIFS, *supra* note 15.

³⁴ *See* FIT21 Title II; HFSC 2025 Draft Title II. *See also* SEC Chairman Atkins *supra* note 6 (“I intend for the Commission to establish clear and sensible guidelines for distributions of crypto assets that are securities or subject to an investment contract.”).

their parity with their target fiat currencies by granting all or a subset of token holders the right to redeem the stablecoin for the relevant value in fiat currency. The two largest and most commonly traded stablecoins are U.S.D Tether and U.S.D Coin, which as of April 2025 have market capitalizations of \$144 billion and \$60 billion and together account for approximately 87% of total stablecoin market capitalization.³⁵ This report does not focus on policy issues with respect to stablecoins.

The taxonomy should also recognize that the categorization of a given digital asset may change over time and set parameters for identifying when this occurs. In February 2025 SEC Commissioner Peirce informally proposed a concept of “network maturity” that could be used to delineate a digital asset security from a digital asset commodity. Specifically, a digital asset that is a digital security at its inception could transition to the digital commodities regime when the network on which the digital asset is based is no longer “economically or operationally controlled . . . or unilaterally changed by any single person, entity, or group of persons or entities under common control.”³⁶ For example, if a digital asset issuer sells tokens as part of an investment contract to investors with an understanding that the proceeds will be used to finance further development of the blockchain network, the transaction should fall within the regime for digital asset securities. But subsequent sales of the token in the secondary market that are not based on further efforts of the developer should be subject to the regulatory regime for digital commodities. The process of exiting the regulatory regime for digital asset securities should be based on objective criteria and should not be conditioned on a regulator’s pre-approval.

Policymakers should also consider creating a safe harbor from securities regulation for transactions known as “airdrops,” where digital assets are distributed to users for no monetary consideration. Airdrops are often conducted by developers in order to build toward decentralization, and U.S. securities law has long recognized that transactions for no consideration do not implicate the same regulatory concerns as typical securities offerings.³⁷

4. Provide the CFTC with authority over digital asset commodities and the SEC with authority over digital asset securities.

Any legislation implementing a digital asset regulatory framework in the U.S. should assign regulatory jurisdiction over digital asset commodities to the CFTC and regulatory jurisdiction over digital asset securities to the SEC.³⁸ It should require the SEC and CFTC to establish reasonable guidance and regulations. This is consistent with the approach of other major jurisdictions, which have allowed their regulators reasonable discretion within legislatively defined boundaries. It

³⁵ COINMARKETCAP *supra* note 31.

³⁶ SEC Commissioner Hester M. Peirce, Statement, *There Must Be Some Way Out of Here* (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.

³⁷ Darcy W.E. Allen et al. *Why Airdrop Cryptocurrency Tokens?* 163 J. Bus. RES. 113,945 (2023). Cf. *SEC v. Harwyn Industries Corp. et al.*, 326 F. SUPP. 943 (1971) (finding that a corporation’s distribution to its shareholders of a subsidiary’s stock for no consideration constituted a securities offering because the distribution created a secondary market for the subsidiary’s stock, which was valuable to the distributing corporation).

³⁸ Both FIT21 and the HFSC 2025 Draft would similarly divide jurisdiction. See FIT21 § 401; HSFC 2025 Draft § 401.

should also require the SEC and CFTC to be accountable to Congress for the effectiveness of their regulations in facilitating capital formation and protecting investors. More specifically, the legislation should require that any SEC rulemakings implementing a digital asset securities framework not be unnecessary or unduly burdensome and be consistent with the SEC's mission to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." The legislation should also require the Chairs of the SEC and CFTC to report annually to Congress assessing: (1) the effectiveness of their digital asset regulations in facilitating capital formation; and (2) whether other jurisdictions have implemented regulatory frameworks that are more successful than the U.S. framework. Moreover, any legislative mandate to the SEC, CFTC, or any other agency to establish regulations for digital assets should require cross-agency cooperation. This is necessary for the establishment of a coherent and workable digital asset regulatory framework.

5. Tailor disclosure rules for digital asset commodities and digital asset securities.

The U.S. disclosure rules for securities are largely ineffective for digital asset commodities because they require the provision of irrelevant or inapplicable information while failing to deliver relevant information to digital asset investors and users. For example, issuers of registered securities must provide ongoing public disclosures about the issuer's officers and board of directors, the issuer's business activities, and the issuer's audited financial statements. In addition, broker-dealers are prohibited from providing quotes for securities unless certain information about those securities and their issuers is both current and publicly available.³⁹ But digital asset commodities, including those with the highest trading volume and largest market capitalization, such as bitcoin and ether, lack officers or a board of directors, business activities or audited financial statements.⁴⁰ Furthermore, digital asset commodities have features that securities disclosure frameworks do not contemplate and that are relevant to investors' decisions. This includes information about the digital asset's developers, the quantity of the asset that the developers retain and any restrictions on developer sales, the process for verifying transactions and "mining" tokens, the relative degree of centralization of the underlying blockchain, and whether and how amendments to the blockchain's protocols are possible.⁴¹ U.S. policymakers must therefore enact a disclosure framework that ensures that the purchasers of digital asset commodities receive comprehensible and relevant disclosures about those assets.⁴²

In the case of digital asset securities, the existing securities disclosure requirements should be tailored for digital asset securities in view of the unique technical features of digital assets (e.g., risks associated with the development and trading of securities using blockchain technology).⁴³

³⁹ CCMR, *supra* note 8 at 2-3.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See HFSC 2025 Draft § 404.

⁴³ See SEC Chairman Atkins *supra* note 6 ("While the SEC has previously adapted its forms for offerings of asset-backed securities and by real estate investment trusts, it has not done so for crypto assets despite increased investor interest in this space over the past few years. We cannot encourage innovation by trying to fit a square peg into a round hole.").

In each case, this framework must carefully address the division of disclosure responsibilities between the creators of a digital asset and the trading platforms and other intermediaries that facilitate trading in the digital asset. This division becomes particularly critical when a digital asset has become sufficiently decentralized that there is no longer an identifiable creator or issuer that can be vested with the responsibility for fulfilling ongoing disclosure obligations. For instance, in the case of digital asset commodities, market participants could look to third party providers of commercial market research, in a similar fashion to markets for commodity derivatives.

6. Permit combined services for traditional financial assets, digital asset commodities and digital asset securities.

Policymakers should permit trading platforms, broker-dealers and other intermediaries to facilitate transactions in digital asset securities and digital asset commodities as well as traditional financial assets, provided they comply with the relevant regulatory requirements for each category of asset in which they facilitate transactions.⁴⁴ This is consistent with the approaches of other major jurisdictions including the EU, Japan, Hong Kong, and UK and will reduce unnecessary transaction costs and complexity. Furthermore, trading platforms, banks, and broker-dealers should be subject to non-punitive capital or liquidity requirements as a result of providing digital assets-related services.

7. Preserve the role of broker-dealers while also allowing for un-intermediated trading of digital assets with safeguards.

Broker-dealers are integral to a well-functioning digital asset market structure and can provide customers with additional protections beyond those that trading platforms offer (e.g., by aggregating access to multiple trading venues to seek better execution terms). However, the technological innovations underlying digital assets that allow investors to custody their own assets (which is not possible in traditional securities markets) have also allowed for direct trading of digital assets by customers on trading platforms without the intermediation of broker-dealers. Other major jurisdictions, including the EU, Hong Kong and Japan, have accommodated this innovative aspect of digital asset markets by allowing investors to access digital asset trading platforms either with or without the intermediation of a broker-dealer.

A digital asset regulatory framework in the U.S. should seek to facilitate the availability of digital asset brokerage services to customers by providing workable registration and compliance frameworks based on the principles set forth herein. The framework should however also permit customers, including retail customers, to choose to access trading platforms without the intermediation of a broker-dealer, provided the trading platform is properly registered and compliant, and customers receive the necessary disclosures from the trading platform about the

⁴⁴ Both FIT21 and the HFSC 2025 Draft would adopt this approach. *See* FIT21 § 309; HFSC 2025 Draft § 106. *See also* SEC Chairman Atkins *supra* note 6 (“I am in favor of allowing registrants to trade a broader variety of products on their platforms and in response to market demand, activities which previous Commissions had prevented.”).

risks of doing so. Trading platforms that allow customers direct access should have a continuing obligation to provide clear disclosure about trade execution terms, spread mark-ups, and fees, and to treat customer orders in a fair and non-discriminatory manner.⁴⁵

8. Recognize pre-existing registration status and implement a compliance transition period.

In implementing a new digital asset regulatory regime, policymakers can avoid causing market disruptions by recognizing registration status under existing regulatory frameworks and by providing transition periods.⁴⁶

Service providers in traditional financial markets, including broker-dealers, trading platforms, and custody providers are often already registered and compliant under regulatory frameworks that meet or exceed the requirements described herein. These service providers should be permitted to extend their activities to digital assets without undergoing a new registration process by certifying that they have the critical functions and policies in place to comply with relevant digital asset-specific requirements. Their certifications should be subject to verification by regulatory supervisors, which already have the monitoring systems in place to verify that such service providers' compliance practices meet or exceed the requirements described herein. Doing so will reduce compliance costs and facilitate the entrance of service providers into digital asset markets. Other jurisdictions, including the EU and Japan, have adopted similar approaches.

Furthermore, a transition period allows market participants to come into compliance with newly implemented regulations before penalties for non-compliance come into effect. A transition period is especially critical when implementing new disclosure requirements for digital assets that may already have an active trading market.

9. Clarify federal preemption of state laws for digital assets.

Federal legislation for digital assets should provide explicitly that its provisions preempt contrary state law to the maximum extent constitutionally permissible. Doing so will help to increase regulatory certainty for compliant actors.

10. Clearly limit extraterritorial scope and consider international reciprocity standards.

The cross-border scope of the U.S. digital asset framework for spot and derivatives transactions should be limited to transactions involving U.S. persons, defined using the same bright-line

⁴⁵ The HSFC 2025 Draft contemplates direct access by customers to trading platforms. See HFSC 2025 Draft § 111.

⁴⁶ FIT21 and HFSC 2025 Draft provides for streamlined registration processes for registrants under existing regulatory frameworks. See, e.g., HFSC 2025 Draft § 106.

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location test (i.e., physical presence or incorporation in the United States) that governs the cross-border scope of the existing futures regime.⁴⁷ Limiting cross-border scope in this manner will allow service providers to operate with greater legal certainty and provide customers with greater clarity about the scope of the U.S. framework's protections.

Furthermore, in view of the inherently cross-border nature of digital asset markets, policymakers should consider working with regulators in other major jurisdictions to establish a framework for global recognition or substituted compliance. Such policies allow market participants to satisfy domestic regulatory requirements by complying with comparable regulatory requirements in a foreign jurisdiction (or vice versa). Global recognition and substituted compliance can thereby avoid unnecessary duplicative regulatory requirements. There is a recent precedent for substitute compliance under U.S. law with respect to the regulation of global swaps markets.⁴⁸

⁴⁷ 17 CFR § 30.1(c).

⁴⁸ Exchange Act Rule 3a71-6; SEC, *Exchange Act Substituted Compliance Applications for Security-Based Swap Markets*, <https://www.sec.gov/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap>.

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