FIA.org

August 5, 2025

U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Scott, Senator Lummis, Senator Hagerty, and Senator Moreno,

The Futures Industry Association ("FIA")[1] is grateful for the opportunity to submit the below response to the request for information published by the Senate Committee on Banking, Housing, and Urban Affairs ("Committee") on July 22, 2025 regarding its discussion draft of digital asset market structure legislation and related matters.

As the leading global trade organization for the futures, options, and centrally cleared derivatives markets, FIA strongly supports the ongoing legislative efforts to craft a regulatory regime that will foster healthy, vibrant digital asset markets, just as U.S. derivatives markets have become the envy of the world in large part because of their clear, sensible, and flexible regulatory framework. FIA's membership includes clearing firms who play an essential role in derivatives markets, ranging from providing key customer protections to offering liquidity and price discovery opportunities to performing market surveillance and oversight. FIA's members will similarly play a key role in fostering the growth and success of U.S. digital asset markets, and FIA provides these comments with the hope of supporting these markets in reaching their full potential in the United States.

With the passage of the GENIUS Act, the United States took an important first step in solidifying a robust, comprehensive regulatory framework for digital assets. We commend the Committee's leadership in drafting this important legislation and guiding it to enactment. In market structure legislation, Congress has another key opportunity to help establish the United States as the global leader in digital asset innovation.

We stand ready to assist the Committee with any further input or consultation it may find useful as it pursues these efforts. Please do not hesitate to contact FIA with any questions or requests for additional feedback.

Sincerely yours,

Walt Lukken

Walt Lukken
President & CEO
FIA

[1] FIA is the leading trade organization for the futures, options and cleared derivatives markets globally. FIA's membership includes clearing firms, exchanges, clearinghouses, principal traders, asset managers, execution firms, commodity brokers, end users and those legal, technology and other professionals who serve this community. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and promote high standards of professional conduct.

FIA.org

*   *   *

1. The proposed legislation aims to provide clarity on how to allocate jurisdiction over digital assets between the CFTC and the SEC. Does the legislation strike the right balance?

It is FIA's understanding that the discussion draft proposed by the Committee is intended to be paired with a separate draft to be proposed by the Committee on Agriculture, Nutrition, and Forestry ("Senate Agriculture"), which will provide for CFTC oversight of markets for spot digital asset transactions that do not serve a capital formation function, or markets in "digital commodities." To the extent this understanding is correct, FIA looks forward to reviewing and commenting on Senate Agriculture's proposal and ultimately the combined Senate bill.

In the event that FIA's understanding is incorrect, we would urge the Committee to reconsider the decision to exclude a regulatory role for the CFTC from its framework. FIA believes that the CFTC should have regulatory authority over spot digital commodities, consistent with the CLARITY Act, H.R. 3633, as passed by the House of Representatives; the July 30th report of the President's Working Group on Digital Asset Markets ("President's Working Group Report");[2] and FIA's recommendations below.

As we have seen over the last several years, the lack of clarity regarding the allocation of jurisdiction between the CFTC and the SEC has resulted in significant confusion for digital asset market participants and end users, regulatory overreach, and a general stifling of innovation in the digital asset space. It is critical that market structure legislation strike the appropriate balance in allocating jurisdiction in a manner that reflects each agency's specialized expertise, experience, and statutory remit. Any failure to do so, including the assignment of regulatory responsibilities that are outside of a regulator's historical specialization, may ultimately be to the detriment of the digital asset markets.

For the SEC, with its specialty in regulating capital formation, this means overseeing digital asset offers and sales by an identifiable issuer or promoter for capital-raising purposes. Such activities are analogous to the issuance of traditional debt and equity securities historically overseen by the SEC, in that the sale proceeds are expected to go to the issuer or promoter to finance its development of an enterprise (here, a network or ecosystem to which the digital asset relates).

In contrast, the CFTC is best equipped to regulate spot digital asset transactions that do not serve a capital formation function, which in federal courts have repeatedly been, and are most naturally categorized as, commodities rather than securities transactions.[3] The CFTC has the expertise and experience necessary for this role as a result of its historical close connection to commodities markets, decade-long record of productive engagement with and oversight of digital commodity markets, innovation-forward statutory mandate, and half-century of experience administering a

---

[2] *See* President's Working Group on Digital Assets Markets, *Strengthening American Leadership in Digital Financial Technology* 6 (2025).
[3] See, e.g., *In re Coinflip, Inc.*, 29 Comm. Fut. L. Rep. (CCH) ¶ 33,538 (Sept. 17, 2015); *Commodity Futures Trading Comm'n v. Ikkurty*, No. 22-CV-02465, 2024 WL 3251348, at *5 (N.D. Ill. July 1, 2024); *see also SEC v. Ripple Labs*, 682 F. Supp. 3d. 308, 328 (S.D.N.Y. 2023); *SEC v. Binance Holdings*, 1:23-cv-01599, Doc. 248, at *37-43; Letter from Cumberland DRW LLC to SEC Crypto Task Force (Mar. 16, 2025).

flexible, principles-based regulatory framework well-suited to rapidly evolving technology and markets.

Though today the CFTC does not have plenary regulatory authority over spot commodity markets, it does have anti-fraud and anti-manipulation authority. It has used this authority to enhance the integrity of digital commodity markets, aggressively and successfully pursuing fraud and manipulation in spot and derivatives products—and multiple failure-to-register cases involving digital commodity derivatives—since 2015.[4] Its Divisions of Market Oversight and Enforcement closely monitor and surveil spot markets for digital and other commodities, given that the derivatives contracts under the CFTC's exclusive jurisdiction reference spot commodity prices. In short, the CFTC has dedicated the past 50 years to studying and improving commodities markets and related markets for commercial risk transfer.

The CFTC also has developed considerable digital assets expertise over its extensive history of constructive engagement with this asset class. As noted, it began policing fraud and manipulation in these markets 10 years ago. It worked closely with exchanges and their clearinghouses ahead of the first Bitcoin futures listings in 2017[5] to ensure appropriate risk management, contract resistance to manipulation, and adherence to other exchange core principles, and did the same with Ether futures listings in 2019.[6] Today, markets for these products are deep, liquid, vibrant, and consistently growing, thanks in no small part to the CFTC's careful but innovation-minded approach.[7] The range of products has greatly expanded since 2017, with 60 digital commodity futures and options contracts traded on seven CFTC-registered exchanges today.[8]

The CFTC's oversight of digital commodity markets is not only long-running, but also battle-tested: in the 2022 failure of digital asset exchange operator FTX, while other FTX trading platforms suffered a total $8.9 billion shortfall in customer funds and went into bankruptcy, FTX's CFTC-regulated futures exchange, swap execution facility, and clearinghouse survived without any loss of customer assets and remain in operation today under new ownership.

This digital assets experience and expertise garnered over the past decade positions the CFTC well to take on the responsibility of overseeing spot digital commodity markets.

Finally, in addition to its established record of constructive engagement with this asset class, the CFTC's flexible statutory framework and innovation-oriented mission round out the case for the CFTC as the natural regulator for digital commodity markets. Among the key purposes of the Commodity Exchange Act ("CEA") are to promote "responsible innovation and fair competition." Since they were added to the statute by the Commodity Futures Modernization Act

---

[4] *See, e.g.*, *CFTC v. Samuel Bankman-Fried*, Case No. 1:22-cv-10503-PKC (S.D.N.Y. Aug. 7, 2024); *CFTC v. Changpeng Zhao (Binance Holdings)*, Case No. 1:23-cv-01887 (N.D. Ill. Dec. 14, 2023); *see also In re Coinbase*, Comm. Fut. L. Rep. (CCH) ¶ 34,925 (Mar. 19, 2021).
[5] The CFTC also created an office for digital asset engagement and education, "LabCFTC," in 2017.
[6] *See, e.g.*, Remarks of Hon. J. Christopher Giancarlo, Chairman, CFTC, to the ABA Derivatives and Futures Section Conference, Naples, Florida (Jan. 19, 2018).
[7] *See, e.g.*, CME Group, *CME Group Sets New May ADV Record of 28.9 Million Contracts, Up 11% Year Over Year (*June 2025) (available here) (noting a 145% year-over-year increase in average daily volume of Bitcoin and Ether products).
[8] Lukken, note 17, *infra*, at 3.

of 2000 ("CFMA"), the CFTC has been guided by these statutory purposes—including in its approach to digital commodities.

The CFMA furthered these purposes by replacing prescriptive requirements with outcomes-based core principles for exchanges under the CFTC's jurisdiction, recognizing the value of this approach in helping the CFTC keep pace with technological advances and market evolution. This flexible structure has allowed the futures industry to flourish through the rapid introduction of innovative products, reducing the time to market "from years to days."[9] Since the enactment of principles-based regulation twenty-five years ago, the trading volume of futures on U.S. exchanges has increased from 491 million contracts in 2000 to 5.809 billion in 2024, an increase of more than 1,000%. In overseeing this explosive growth in the markets under its jurisdiction, the CFTC has carefully balanced regulatory flexibility with the equally important objectives of protecting customers and upholding the price discovery function and financial integrity of the marketplace.

An analogous principles-based approach to regulation of spot digital commodity markets could foster similar exponential growth of these markets in the United States, reversing the offshoring of digital commodity trading that we have seen in recent years. We believe the CLARITY Act, as passed by the House of Representatives and supported by the President's Working Group Report, presents a workable framework for such an approach.

4. Should legislation allow market participants the freedom to choose between being subject to SEC jurisdiction or CFTC jurisdiction? If so, how?

Efficient, non-duplicative regulation is a laudable objective, as discussed in greater detail in the response to Question 11 below, and FIA supports measures to ease the regulatory burden on activities potentially implicating multiple regulators' jurisdiction. But a framework that affords each agency holistic oversight over the market in which it specializes is critical to bring to bear the unique expertise and perspective that each agency offers. The CFTC should have oversight over spot digital commodity markets as a whole, in addition to derivatives products based on digital commodities, while the SEC should oversee capital-raising transactions involving digital assets, as discussed above.

Allowing market participants engaged in digital asset activities properly under the jurisdiction of both the SEC and the CFTC to choose to be subject to only one agency's oversight could lead to fragmentation in market regulation, monitoring, surveillance, and enforcement. The CFTC and SEC each have their own statutorily grounded regulatory reporting regimes, intended to allow each agency to oversee its markets on a holistic basis.[10] Were swathes of a market otherwise under an agency's jurisdiction removed from its oversight at market participants' election, the agency could miss crucial details regarding market events and trends, and over time could be left with an incomplete understanding of the market under its jurisdiction. Ultimately, carving up

[9] Hearing on the Commodity Futures Modernization Act of 2000: Hearing Before the S. Committee on Banking, Housing and Urban Affairs, 109th Cong. (2005) (testimony of Terrence A. Duffy, Chairman, Chicago Mercantile Exchange Holdings, Inc.), available here.
[10] *See, e.g.*, 17 CFR Parts 15 *et seq.* and 45 (CFTC reporting requirements) and 17 CFR 242 (SEC security-based swap reporting requirements).

either market between two regulators could result in a situation in which neither regulator can see the full picture in its market of expertise, and major market disruption, manipulation, fraud, or other issues could arise without warning.

This could also result in regulatory arbitrage or a "race to the bottom" wherein entities choose the regulator they perceive to be more lenient, with each agency incentivized to offer such lenient treatment to attract more registrants to its oversight. And it could risk customer harm or market confusion by attempting to stretch a regulatory regime to cover activities where it does not fit. For example, if an SEC-registered broker-dealer engaged in digital commodity activities opted into the securities-law framework alone and out of a digital commodity regulatory regime that includes Bankruptcy Code protections for commodity broker customers as in the CLARITY Act, its customers could end up without bankruptcy protections for their digital commodities, as the Securities Investor Protection Act ("SIPA") would not apply to the digital commodities.[11] Similarly, there are important differences between the concepts of "insider trading" in securities and commodities markets, respectively, and indiscriminately applying securities insider trading law to digital commodities trading could have a chilling effect on legitimate commercial hedging and market activity.[12]

Market intermediaries and market operators commonly hold multiple registrations with different regulators for different activities today. For example, many entities are registered with the CFTC as futures commission merchants ("FCM") or swap dealers and with the SEC as broker-dealers or security-based swap dealers. Concerns regarding duplication, burden, or inconsistency for dual-agency registrations can be and are addressed in a targeted, tailored fashion via an agency's exercise of its exemptive authority, rather than a wholesale opt-out provision for regulated firms.[13] Forms of "alternative compliance" or similar deference are also provided in certain specific areas of overlap, such as in CFTC capital rules adopting elements of SEC net capital rules for dual registrants.[14] Similarly, portfolio margining is available in certain cases for related products under different agencies' jurisdiction—such as Treasuries under SEC jurisdiction and Treasury futures under CFTC jurisdiction—with expansion of such margining programs keenly awaited as the SEC's Treasury clearing mandate deadline approaches. Providing corresponding margin reductions when offsetting transactions in products under different regulatory regimes are risk-reducing incentivizes prudent risk management and hedging activity in both digital and traditional markets. We support statutory language that instructs the CFTC and SEC to allow for cross-margining between offsetting positions in both the digital and the traditional markets under their jurisdiction. Relatedly, we support language instructing the banking regulators to ensure that their capital rules recognize the risk reduction resulting from these offsetting positions through cross-product netting agreements. These related changes will increase intermediaries'

[11] Though they are "securities" for purposes of other statutes, SIPC protection also would not apply to investment contracts involving digital assets unless they are registered under the Securities Act of 1933. *E.g.*, Division of Trading and Markets, SEC, *Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology*, Question 5 (May 15, 2025).
[12] *See, e.g.*, CFTC, Final Rule, Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41398, 41403 (July 14, 2011) ("The Commission recognizes that unlike securities markets, [commodity] derivatives markets have long operated in a way that allows for market participants to trade on the basis of lawfully obtained material nonpublic information.").
[13] *See, e.g.*, Section 4(c) of the CEA, 7 U.S.C. § 6(c).
[14] *See, e.g.*, 17 CFR 23.101(a)(1)(ii); *see generally* 17 CFR 1.17.

capacity to provide customers with access to digital and traditional products, facilitating these products' continued growth. Regulators should continue to coordinate on these and other appropriate initiatives to minimize the cost and burden of oversight by multiple regulators.

But beyond these efficiency-enhancing measures, each agency should have holistic oversight over the digital asset markets most clearly within its own expertise and experience, promoting the vibrant, innovative, and well-regulated markets that market participants, digital asset entrepreneurs, and the American people deserve.

8. How should Congress amend the Bankruptcy Code to address the failure of digital asset intermediaries, and how should such amendments differ based on entity type?

a. Should legislation add a new "digital asset broker" subchapter (similar to the Code's subchapter on commodity brokers)?

The Bankruptcy Code's subchapter on commodity brokers[15] and Part 190 of the CFTC's Rules issued thereunder provide critical protections for customers in the event that an FCM or clearinghouse becomes insolvent. Key among them is the bankruptcy priority accorded to customers over other creditors of the broker and the preference for transfer rather than liquidation of customer positions. We support the CLARITY Act provisions extending bankruptcy priority to customers of a digital commodity broker, as defined in the bill, through targeted amendments to subchapter IV. We would urge the Senate to consider similar targeted amendments to subchapter IV, or legislative language instructing the CFTC to make corresponding changes to Part 190. We would further support provisions facilitating transfer of digital commodity broker customer property to another digital commodity broker unless a customer opts to have the property returned to it or liquidated for cash, analogous to the preference for transfer in the commodity broker bankruptcy regime as it stands today.

We believe the above could be accomplished without a new subchapter of the Bankruptcy Code. The commodity broker bankruptcy regime is capable of taking on new types of instruments without such a heavy legislative lift. For example, following the financial crisis of 2007-08 and the swaps market reforms under Title VII of the Dodd-Frank Act, Part 190—along with other CFTC rules—was updated to address cleared swaps, which were brought under the CFTC's jurisdiction. Similar updates to Part 190 could be made for digital commodities and digital commodity brokers.

9. How else should legislation address investor protection in insolvency proceedings?

In addition to establishing a workable resolution regime, legislation should ensure appropriate investor protections in insolvency proceedings through requirements during business as usual, *before* insolvency is on the horizon. Legislation should look to existing FCM customer

[15] 11 U.S.C. Chapter 7, subchapter IV.

protection requirements to segregate customer assets from proprietary assets, guard against shortfalls in customer omnibus accounts at all times, and otherwise treat customer assets as belonging to the particular customer rather than to the FCM or any other person, which are critical to ensuring that assets are returned to customers promptly and in full in the event of an insolvency. Please see further discussion of segregation requirements in the response to Question 15.f. below.[16]

11.c. Should legislation create a new pathway to register intermediaries involved in the trading of digital assets? If so, how?

As noted, FIA and its members strongly support efforts to establish a clear federal regulatory framework for digital assets. Such a regulatory regime will encourage the growth and development of digital asset markets, while cementing the United States as the global leader in digital asset innovation. In implementing a new regulatory framework, Congress should look toward those previously developed for traditional markets, many of which have shown their merit for the better part of a century. For example, under the CEA's framework for futures and cleared swaps, CFTC-registered FCMs play a significant role in ensuring well-functioning and well-regulated markets. FCMs fulfill a number of critical responsibilities in addition to facilitating customer trading activity, including preventing fraud, abuse, market manipulation, and customer misconduct; assisting the CFTC and self-regulatory organizations such as the National Futures Association and exchanges in market oversight and surveillance; ensuring protection of customer assets; and contributing to market stability by meeting or exceeding rigorous capital and risk management standards.[17]

FIA believes that intermediaries should play a similar role supporting the health of digital commodity markets, and Congress must establish an appropriately tailored registration requirement for digital commodity brokers and other intermediaries. While digital assets present tremendous opportunities, the digital asset space has also seen unfortunate instances of fraud, manipulation, and abuse, in no small part because of the vacuum of clear regulation in the space to date. Particularly for centralized digital commodity markets, regulated intermediaries fulfilling a compliance "gatekeeper" role analogous to that which FCMs currently hold in derivatives markets would contribute to the customer protections, professionalism, financial stability, and risk management capabilities needed to allow U.S. digital commodity markets to flourish to their full potential.

That said, it is important to avoid overburdening market intermediaries with duplicative registrations with the same agency. For example, it is likely that many FCMs already registered with, and regulated by, the CFTC will also seek to serve as intermediaries in digital commodity markets. Requiring entities to be fully registered with the CFTC as both an FCM and a spot

---

[16] As an additional effort at customer protection, it may be appropriate for the CFTC to consider requiring entities that are dually registered as a derivatives clearing organization and a digital commodity exchange to establish a separate waterfall of default resources for digital commodities, particularly if digital commodity exchanges are to be permitted to offer margined, leveraged, or financed spot digital commodity trading, or if such spot trading will not be fully prefunded.

[17] *See Stakeholder Perspectives on Federal Oversight of Digital Commodities Before the S. Comm. on Agric., Nutrition, & Forestry,* 119th Cong. (2025) (Testimony of Walt Lukken, President and CEO, Futures Industry Association) (available here).

digital commodity broker could impose a potentially onerous and duplicative regulatory regime while only providing minimal, if any, benefit from the regulator's perspective. Accordingly, Congress should consider a reasonably tailored registration exemption for CFTC-registered FCMs seeking to engage in digital commodity brokerage activity, subject to conditions designed to ensure the regulatory regime applicable to such FCMs is fit for purpose for spot digital commodity markets. Examples of such conditions could include provisions subjecting digital commodities held or traded by the FCM on behalf of a customer to customer protection obligations similar to those under Section 4d of the CEA and CFTC Rule 1.20 *et seq.*, discussed below (e.g., statutory language clarifying that the phrase "the trades or contracts of any customer" in Section 4d includes trades in spot digital commodities).

If a complete exemption is not palatable, legislation could alternatively provide for a streamlined registration status for dual FCM and digital commodity broker registrants, allowing such registrants to satisfy certain digital commodity broker requirements by complying with analogous FCM requirements where appropriate. In a similar vein, the legislation should allow an FCM to be provisionally registered as a digital commodity broker and operate a digital commodity business while the rulemakings and registration applications provided for in legislation are pending with regulators. By contrast, digital commodity brokers that are *not* registered as FCMs—and thus are not subject to the rigorous FCM customer protection regime—should be subject to a robust registration and regulatory framework like that set forth in the CLARITY Act.

11.d. What other activities involving digital assets, including digital asset securities and commodities, should intermediaries like broker-dealers, exchanges and alternative trading systems be permitted to engage in? What changes, if any, are required to accommodate those activities?

As discussed above, we believe that intermediaries engaged in digital asset activities implicating the securities laws (e.g., capital-raising digital asset sales involving investment contracts, and activities involving tokenized forms of traditional securities) should be registered with the SEC, while intermediaries engaged in digital commodities activities should be registered with the CFTC. Allowing broker-dealers, exchanges, or alternative trading systems to intermediate digital commodities transactions without registering with the CFTC would risk fragmenting oversight of digital commodity markets and diminish the benefit to such markets from the CFTC's expertise and experience, gained through its history of productive engagement with these markets as detailed above.

13. How should legislation address the benefits and risks of vertical integration in digital asset markets?

In recent years, there has been a distinct trend in derivatives and spot digital asset markets toward vertically integrated business models. For example, a single entity may hold multiple registrations to operate as an FCM, exchange, and clearinghouse, or a spot exchange may have an affiliated market maker trading on its platform. This varies from the traditional derivatives market structure, wherein market functions are divided among independent legal entities. These models raise potential conflicts of interest and anticompetitive concerns as well as broader systemic risk issues, which must be addressed head-on in any market structure legislation.[18]

These concerns and their application to digital asset markets are not new. In 2022, FIA filed comments on FTX US Derivatives' application before the CFTC to authorize it to combine all market functions under one roof, without unaffiliated market intermediaries (who traditionally play an important role in reducing customer-specific and systemic risks, as noted).[19] These comments illustrated how collapsing the existing multi-tiered system of independent entities, with its inherent checks and balances, ultimately could put customers, as well as the broader marketplace, at risk. Non-exclusive examples of scenarios presenting such concerns include an exchange granting an affiliated market maker preferential exchange access or access to other market participants' position or other data, or exercising self-regulatory functions over an affiliated broker or market maker or competitors of such affiliate.[20]

The CLARITY Act seeks to address this by instructing the CFTC to conduct a rulemaking to establish requirements for the identification, mitigation, and resolution of conflicts of interest as they may arise in the context of vertically integrated market structures. We would encourage the Senate to adopt similar language in its bill.

15.f. What reasonable exceptions to prohibitions on commingling are appropriate?

FIA believes that the CFTC's FCM customer protection regime provides critical safeguards that have served customers and markets well in cases of defaults in the futures markets. These protections include obligations upon FCMs to segregate, reconcile, and confirm customer balances daily and provide a guaranty against shortfalls and losses in the event that customers default.[21] Additional information regarding the FCM customer protection regime is available on FIA's website.[22]

Intermediaries in spot digital commodity markets should be subject to similar customer protection requirements, which are particularly critical in such markets given their volatile and retail-heavy nature.

However, FIA supports reasonable exceptions to the prohibitions on commingling and recommends that Congress look as precedent to CEA Section 4d and CFTC rules issued

---

[18] *See, e.g.*, Lukken, note 17, *supra*, at 6.
[19] *See* Comments from the Futures Indus. Ass'n on FTX's Request to Amend Derivatives Clearing Organization Registration Ord. (May 11, 2022) (available here).
[20] In the context of cleared derivatives markets, market participants have also expressed concerns about a clearinghouse handling an affiliated clearing member's default.
[21] The requirement for FCMs to contribute to a "rainy day" default fund should a single FCM not be able to cover its losses provides an extra layer of customer protection on top of segregation and related requirements.
[22] FIA, *Protection of Customer Funds: Frequently Asked Questions* (Nov. 2014), available here.

thereunder.[23] Under this framework, assets received from multiple customers may be commingled in an omnibus account, for convenience, if deposited with a bank, trust company, or derivatives clearing organization, or another FCM. In addition, assets may be withdrawn to pay any expenses as might arise in the normal course of business, such as those associated with margining, securing, or settling a contract, or any applicable fees or taxes.[24] We believe these exceptions appropriately balance operational and commercial considerations with customer protection imperatives. They have stood the test of nearly a century, remaining unchanged from the original text of the Commodity Exchange Act of 1936.[25]

We note that the CLARITY Act largely incorporates these exceptions, with some relevant updates such as permitting the commingling of assets when deposited with a "qualified digital asset custodian" as defined by the bill. FIA supports this approach as well as the CLARITY Act's authorization for digital commodity exchanges to remove assets from segregation to provide blockchain services—such as protocol staking to support the relevant blockchain's consensus mechanism and participation in network governance—with the customer's written consent.

24. What, if any, legal or regulatory barriers to the tokenization of securities or investment funds, including money market funds, exist today? a. If barriers exist, what changes or clarifications should Congress consider to reduce such barriers? b. What, if any, changes should Congress consider to facilitate retail access to tokenized money market funds?

The following comments focus on the use of tokenized assets as collateral, a topic FIA has considered closely. There is strong demand among market participants to use both cash and non-cash tokenized assets to satisfy regulatory margin requirements. The use of tokenized assets has the potential to streamline and simplify the margin payment process as well as expand the pool of assets available to satisfy and pay margin.

Recently, FIA published a white paper discussing the potential application of tokenization to enhance collateral mobility in the cleared derivatives industry.[26] As noted in the white paper, thanks to the CFTC's flexible core principles-based regulatory regime, FIA is of the view that no regulatory changes are *required* in order to implement the use of tokenized collateral in cleared derivatives markets, provided the asset being tokenized is otherwise eligible collateral and CFTC registrants and registered entities satisfy risk management and other requirements in their use of blockchain technology for such collateral. Tokenization does not change the character of the underlying asset and thus should not affect collateral eligibility, as CFTC rules do not dictate the

---

[23] 17 CFR 1.20 *et seq.*
[24] While less relevant in the context of spot digital asset trading absent the use of margin or leverage, as another exception to the prohibitions on commingling, under CFTC Rules 1.20, 1.22, and 1.23, an FCM may deposit its own funds or unencumbered securities in customer segregated accounts to prevent such accounts from becoming undermargined (and, indeed, must maintain proprietary residual interest covering the extent of any undermargining).
[25] 49 Stat. 1494-95.
[26] FUTURES INDUS. ASS'N, ACCELERATING THE VELOCITY OF COLLATERAL: THE POTENTIAL FOR TOKENISATION IN CLEARED DERIVATIVES MARKETS (2025) (available here).

technology that must be used to transfer and record interests in collateral. This conclusion is consistent with a report issued by the Digital Asset Markets Subcommittee of the CFTC's Global Markets Advisory Committee in late 2024.[27] However, in the interest of regulatory certainty, it would be helpful for Congress to confirm this conclusion explicitly in legislation, or to instruct the CFTC to do so. It would also be very helpful to have legislative language making explicit what the GENIUS Act makes implicit: stablecoins issued by permitted payment stablecoin issuers will be eligible as cash or cash-equivalent margin and collateral for FCMs, derivative clearing organizations, broker-dealers, registered clearing agencies, and swap dealers.[28] We believe the use of reliable, well-regulated stablecoins as margin could facilitate faster, cheaper payments and support expanded trading hours in markets where this is appropriate.

We acknowledge that widespread adoption of the use of tokenized assets for margin will take time and operational, legal, risk management, and other resources. Significant collaboration across the cleared derivatives ecosystem will be needed. While the white paper outlines several of our recommendations to help facilitate the broader usage of tokenized collateral, we recommend that legislation direct the CFTC to convene a working group made up of the various stakeholders involved in the clearing process, such as clearinghouses, brokers, market participants, service providers, and others, to advance the implementation of tokenized margin payments.

34. What, if anything, should Congress consider to encourage better cooperation between the SEC and CFTC regarding digital asset regulation? Should Congress consider a self-regulatory organization, or something similar, with participation by the SEC and CFTC?

Close cooperation between the SEC and the CFTC regarding digital asset regulation is imperative to avoid the kind of regulatory confusion and overreach we saw driving digital asset markets and entrepreneurs offshore over the last several years. We believe Congress could best support a productive interagency working relationship through clear legislative mandates for agency action that minimize the need for joint rulemaking, as well as crisply drawn jurisdictional lines to avert interagency conflicts. Joint rulemaking may be appropriate in some cases, and is certainly preferable to relegating one agency to a mere consultative role (or no role) in areas where it offers valuable expertise. But by seeking, wherever possible, to provide clear, self-executing legislative mandates that obviate the need for detailed rulemaking for implementation, Congress can free up capacity for the agencies to focus cooperative efforts in the most critical areas of jurisdictional overlap.

Congress may also wish to encourage or instruct the agencies to revive efforts at a joint advisory committee or designation of a Commissioner or senior officer from each agency to serve as point

---

[27] COMMODITY FUTURES TRADING COMM'N, RECOMMENDATIONS TO EXPAND USE OF NON-CASH COLLATERAL THROUGH USE OF DISTRIBUTED LEDGER TECHNOLOGY 4–5 (2024), available here.

[28] *See* Section 3(g) of the GENIUS Act, which provides that stablecoins *not* issued by permitted payment stablecoin issuers may *not* be put to such use.

person for interagency coordination on digital assets, similar to approaches taken under previous Administrations with respect to other areas of overlapping SEC-CFTC jurisdiction.

35. Should federal legislation preempt certain state laws, and if so, how?

Market structure legislation should preempt state law with respect to registered digital asset markets and intermediaries. At present, there is a patchwork of burdensome and often duplicative state laws addressing digital assets in a host of contexts. These range from New York's all-encompassing "BitLicense" regime to state money transmitter laws to state attorneys general actions to enforce state securities laws against digital asset trading platforms and intermediaries. This state-led regulatory effort impedes the kind of national marketplace that the CEA's preemptive provisions have fostered for derivatives markets, which have become the deepest and most liquid in the world in part because of their ability to operate uniformly on a national scale. State-by-state compliance obligations undermine U.S. firms' ability to compete in the global digital assets marketplace, particularly for new entrants that lack the resources for 50-state-plus compliance operations. Such firms have largely moved overseas due to the lack of regulatory clarity at the federal level and surfeit of regulation at the state level, ultimately to the benefit of foreign markets with a more hospitable—or at least a more internally uniform—regulatory environment. Subjecting markets and market participants to the vagaries of (at least) 50 state regulators risks a landscape of liquidity fractured state-by-state that is significantly weaker than the sum of its parts.

To address this, FIA recommends that the proposed legislation include language expressly preempting CFTC- and SEC-registered digital asset markets and market participants from state registration and regulatory frameworks. This degree of preemption, similar to that provided for in the CLARITY Act (which in turn is analogous to the CEA's preemptive provisions), will ensure that U.S. digital asset firms are on equal footing nationally and competitive internationally, rather than being kneecapped by the burdens of 50-state regulation.