



Testimony of Paul Grewal

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Agriculture

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Good afternoon. Thank you Chairman Thompson, Ranking Member Scott and members of the committee for inviting me to testify today about why we need a clear rulebook for crypto in the United States and also about the bill you recently released with Financial Services Chairman McHenry, and Subcommittee Chairmen Johnson and Hill.

My name is Paul Grewal and I am the Chief Legal Officer at Coinbase. I joined Coinbase in August 2020 following four years as Vice President and Deputy General Counsel at Facebook, Inc. Prior to Facebook, I served for six years as a U.S. Magistrate Judge for the U.S. District Court of the Northern District of California, a partner at Howrey LLP, and a Judicial Law Clerk for the U.S. Court of Appeals for the Federal Circuit and the U.S. District Court for the Northern District of Ohio. As Coinbase's Chief Legal Officer, I am responsible for assessing, mitigating, and addressing American and international regulatory risks associated with operating the largest U.S. crypto platform.

I am pleased to speak with you today about Coinbase and our views on regulation, as well as our thoughts regarding the Digital Asset Market Structure Discussion Draft, as released on Friday. There are three main points I would like to share with you today in my testimony. At a high level:

1. **First, the US is falling behind.** Distributed ledger and digital asset technology is – as the White House has stated – critical and foundational.¹ Despite being identified as potentially critical to US economic and national security, the US is pushing the technology and the innovators overseas due to lack of clear rules and regulations for crypto. The rest of the world is not waiting for us, and they are taking advantage of our absence. The European Union, the UK, Australia, Singapore and China - through Hong Kong - just to name a few, are putting in place regulatory frameworks that are creating room for innovation while also protecting consumers. Allowing others to leapfrog the United States in a foundational area of technology is not just bad for our economic future, but also our national security as a broad range of use cases emerge in the years ahead.
2. **Second, crypto is solving real-world problems and we need a clear path forward to protect responsible innovation.** Digital assets are unique and diverse. They are creating new ways to store and transfer value, while also making existing systems – like the financial system – better. Today's digital asset use cases range from cheaper, faster, and more reliable international payments to digital IDs to healthcare records on the blockchain. But digital assets do not collectively fit into any single existing regulatory box: some are commodities, some are securities, some are neither, and some simply don't map onto existing categories. With more than 20 percent of Americans owning and using crypto, we need a regulatory framework that will protect consumers and enable the critical uses of this new technology to continue and grow.

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<https://www.whitehouse.gov/wp-content/uploads/2022/02/02-2022-Critical-and-Emerging-Technologies-List-Update.pdf>

3. **Third, the Digital Asset Market Structure Discussion Draft is a strong step forward in providing overdue regulatory clarity.** Congress needs to draw the lines between when digital assets and the technology that underpins them should be regulated as commodities, when they should be regulated as securities, and when financial regulations should not apply or simply would make no sense. As the legislative process unfolds this bill will no doubt evolve, but we believe it already offers a strong foundation on which to build a workable and balanced regulatory framework for crypto innovation within the U.S. In addressing both CFTC and SEC authority, the Discussion Draft builds on existing regulatory frameworks, while also recognizing the unique properties and opportunities of digital assets. It would also provide much-needed Congressional authority and guidance to allow our financial system to evolve. With respect to the CFTC, the bill draws from portions of the existing framework of the Commodity Exchange Act, and also builds on five years of deliberations in the House Agriculture Committee on the Digital Commodities Exchange Act and a similar Senate bill, the Digital Commodities Consumer Protection Act. With respect to the SEC, it provides necessary adaptations to the existing frameworks of Regulation A, Rule 144, and the regulations related to Alternative Trading Systems to create a regime that could be used broadly by crypto market participants. The Discussion Draft also thoughtfully draws from many of the key findings of President Joe Biden's Executive Order and the agency reports that came out of the EO, most notably by ensuring that we will have a federal regulatory framework over the spot trading of crypto commodities. Overall, it is a thoughtful effort and represents a major step forward. We urge Congress to move swiftly to consider and pass digital asset legislation.

I'd like to share more background on why I am here, and Coinbase's approach to our customers, our regulators, and compliance overall.

Coinbase Introduction

Coinbase has embraced regulation since we were founded over a decade ago, and we have extensive experience building and implementing robust consumer protection controls, prudent risk management, and industry-leading security practices. The SEC allowed us to become a public company in April 2021, which makes us unique in the crypto industry. We believe we are uniquely qualified to discuss the Discussion Draft and why we need a clear federal framework of crypto regulation in the U.S.

Coinbase was founded in 2012, with the goal of being the world's most trusted, secure, and compliant onramp to the cryptoeconomy. Our mission is to increase economic freedom in the world, and our products enable tens of millions of consumers, institutions, and developers around the world to discover, transact, and engage with crypto assets and web3 applications. We enable our customers to trade and custody assets, but we list assets only after they have been through a rigorous legal, compliance, and information security review.

Coinbase is currently regulated by more than 50 regulators in the U.S. alone: we are a money services business registered with the US Treasury Department and subject to FinCEN rules, we

have 45 state money transmission licenses, and a BitLicense and state trust charter from the New York Department of Financial Services (“NYDFS”). Somewhat less known is that Coinbase also has two broker-dealer licenses (both of which are dormant at this time) and that Coinbase Asset Management is a registered investment advisor under the SEC. We are a licensed designated contract market (“DCM”) regulated by the CFTC and our Coinbase Financial Markets, Inc. subsidiary has applied for registration as a futures commission merchant (“FCM”) with the National Futures Association.

Coinbase also strives to be the market leader when it comes to consumer protection. We hold our customer assets 1:1 at all times, which means we do not lend or rehypothecate customer assets without being directed by them to do so. We safeguard customers’ assets – both crypto and fiat – using bank-level security standards. Our security technology is designed to prevent, detect, and mitigate inappropriate access to our systems by internal or external threats. We have developed and maintain administrative, technical, and physical safeguards designed to comply with applicable legal requirements and industry standards. At all times, we also appropriately ledger, properly segregate, and diligently maintain separate accounts for our corporate crypto assets and customers’ crypto assets.

In addition to safeguarding customer assets on the platform, Coinbase is focused intently on the prevention and detection of illicit activity and keeping Coinbase customers and the U.S. financial system safe from bad actors. We have implemented a comprehensive Financial Crimes Compliance program that adheres to U.S. BSA / AML and sanctions requirements as is required under our existing licenses. It is also consistent with the standards required of traditional financial institutions.

Coinbase also rigorously assesses each and every crypto asset before listing it on our platform to ensure it meets our legal, information security, and compliance requirements. Our legal review is particularly relevant to this Committee’s work because our process includes an analysis of whether the asset could be considered to be an SEC-regulated security or a commodity. Coinbase does not list securities on our platform and our processes are so rigorous that we reject the vast majority of assets considered for listing. But we are eager to work with this Committee, the House Financial Services Committee, the CFTC, the SEC, other industry participants, and the public to help advance legislation and regulations that help develop a market for the offering of digital asset securities in the future.

The US is Falling Behind

Thirty years ago, the U.S. made a historic and strategic decision to not only embrace, but become a leader, in the development and deployment of a new technology, collectively known as the World Wide Web. The World Wide Web is not just one technology – it’s the amalgamation of numerous software programs working together to give users a seamless experience today. Thirty years ago the terms “Uniform Resource Locator (URL)”, “HyperText Transfer Protocol (HTTP)”, and “Hyper Text Markup Language (HTML)” were new to the American public. Today, these protocols fit seamlessly into our everyday lives.

At the time, the approach of President Clinton’s Administration to the Internet — as an issue of US national interest — was not intuitive given that its economic and social applications were only beginning to emerge. The decision needed in 2023 on crypto is no different; digital asset technology represents the next critical evolution of the Internet. Crypto is a revolutionary technology that allows ownership interest and value to be recorded on a distributed ledger that anyone can hold or transmit simply and cheaply, and without needing to use an intermediary. This simple innovation is profound in its implications, particularly as we increasingly manage our lives in ways enabled by the internet.

Crypto technology can both modernize our financial system and transform other systems like livestock management, pharmaceutical distribution, car titles, and healthcare. Crypto enables low cost and rapid transfers of value and enables capital market trades to settle instantaneously, rather than the 2-3 days common today.

Major economies and financial centers like the U.K., European Union, Canada, Japan, Singapore and Hong Kong have taken significant steps to embrace crypto through adoption of both the technology and new rules and regulations specifically tailored to the unique characteristics of crypto. The EU, for example, is working to implement the Market in Crypto-Assets (“MiCA”) regulation, which created a comprehensive regulatory framework intended to close the gaps in existing financial services legislation and establish a harmonized set of rules designed for crypto asset issuers, intermediaries, and others who participate in the crypto ecosystem.

While the rest of the world is moving ahead, the U.S. has struggled to keep pace in terms of a clear and workable federal regulatory framework.

I want to share a few statistics that inform and drive the work we do at Coinbase, and also underscore the importance of the bill now being considered:

- According to research from Morning Consult, 80% of Americans think the current financial system is unfair, and 61% believe providing access to cryptocurrency helps democratize finance; 52% think it makes the financial system more fair.²
- Crypto is also responsible for thousands of jobs in the U.S. and overseas. According to recent reports, crypto will produce more than a million jobs by 2030. Those jobs will inevitably develop in regions and countries where clear regulatory frameworks exist.³

But we are behind in the race to build the kind of regulatory infrastructure that will foster innovation here at home and serve the growing number of Americans who are part of the cryptoeconomy. We know the risks associated with sending innovation offshore: while we once dominated the semiconductor industry, the shifts that pushed development offshore in the 1980s

² Morning Consult. *Crypto Currency Perception Study*. Commissioned by Coinbase. 24 Feb 2023. https://assets.ctfassets.net/c5bd0wqjc7v0/WvuOkBwNXZsqhd6EWtkEL/7f94f8b6fbb222f3faf4d0346e473012/Morning_Conult_Cryptocurrency_Perception_Study_Feb2023_Memo__1_.pdf

³ *Developer Report*. Electric Capital. <https://www.developerreport.com/>

and 1990s still haunt us today. For the past few years, chip shortages have negatively impacted industries across our economy. We should keep these lessons in mind as we consider the modern rules and regulations that will define breakthrough technologies like crypto and the blockchain, and we should ensure the power to shape them stays here in America.

We believe the US still has the opportunity to take the reins to ensure we lead from the front on crypto and reap the geopolitical and economic benefits the leadership provides. But we are on the clock. If Congress fails to act, other countries will continue to quickly step in to attract new legitimate builders and innovators, while certain overseas actors in the crypto industry will continue to dodge American values and our commitment to the rule of law.

Crypto is Solving Real-World Problems and We Need a Clear Path Forward to Protect Responsible Innovation

Congress alone can address this urgent need for the U.S. to create a comprehensive regulatory framework for digital assets. The Discussion Draft is a significant and commendable step toward doing just that. The Discussion Draft begins by establishing definitions for digital commodities, and delineating between the types of assets that will be regulated by the CFTC (“digital asset commodities”) and those that will be regulated by the SEC (“restricted digital assets”).

Starting with definitions is critical because digital assets are diverse and fuel diverse use cases. Although many *existing* use cases today are related to improving our financial system, such as smoothing international transfers and allowing real-time settlement of transactions, we are seeing developers leverage digital assets and the blockchain to create new projects every day related to agriculture, rural wifi access, energy management, climate and conservation, social media, privacy, and many more. That is why being clear as to how and when digital assets are subject to certain regulatory requirements is critical. Many of the digital assets available today are designed to enable simple functions that provide economic gates to commercial applications and services. They are not securities. They are commodities and their value is determined by adoption and use. And adoption of these assets will grow as the cryptoeconomy grows.

For example, decentralized identification or DiD is a use case that will provide countless benefits to American consumers. DiD technology is growing rapidly, with public and private innovations poised to integrate DiD tokens into our everyday lives. There are companies and blockchains today that use naming services and token attestation to provide the convenience of cloud-based, Internet login services while also letting users retain control over the information they share with other websites. This means centralized Web2 sites can verify a user’s identity and other relevant information without needing to store sensitive personal or financial information on their own servers. In a world where information is regularly stolen from centralized servers as a result of cyber attacks and data breaches, storing that information on fewer servers provides tangible value.

Governments are also starting to embrace DiD. A project sponsored by the European Commission is [developing interoperable DiD solutions](#) that would facilitate faster and more

reliable security checks for EU citizens.⁴ And as part of its national blockchain strategy, India is building a [decentralized, digital platform](#) that will host IDs and documents related to education, healthcare, and agriculture.⁵ Cities like Buenos Aires are also spearheading efforts to construct DiD platforms in order to give residents access to [city services](#) and financial service providers.

All of these projects run on blockchains, and all blockchains need digital assets or tokens to operate. These digital assets are used to govern, manage, and reward participation in a blockchain protocol or project – in other words, these digital assets have utility. They often function like oil or gold. For example, bitcoin is a store of value just like gold. It fluctuates based on market forces and its value is rooted in the belief that it can be used globally as a payment mechanism, a way to hedge against inflation, and a protective layer between fiat and value in a volatile country.

ETH works much like Bitcoin as a way of sending, receiving, or storing value. But it also has a special role on the Ethereum network. Because users pay fees in ETH to execute smart contracts, it is the fuel that keeps the entire network running. It is also why those fees are called “gas”. If Bitcoin is “digital gold,” then ETH can be seen as “digital oil.” They are commodities and should be regulated as such at the federal level. It’s the power of innovation and market forces combining to create new ways to store and move value.

As discussed above, the Digital Asset Market Structure Discussion Draft would help create a regulatory line between digital commodities and securities. In the absence of this kind of legislative clarity, regulators have disagreed with one another and at times themselves about how to categorize specific digital assets under existing standards. The bill is thorough and detailed, and aims to help resolve this uncertainty plaguing the industry and consumers.

The Digital Asset Market Structure Discussion Draft is a Strong Step Forward in Developing Regulatory Clarity

The Discussion Draft as introduced builds on existing regulatory frameworks, while recognizing the unique properties and opportunities for digital assets that are not and cannot be addressed without Congress. Given the jurisdiction of this Committee, I will first focus on the role of the CFTC and the regulatory framework established for digital asset commodities.

The bill, as drafted, would amend the Commodity Exchange Act to create a much-needed and robust federal regulatory framework for the CFTC to oversee the spot markets for digital asset commodities. This framework would fill an existing gap in federal oversight and would lead to more consistent consumer protection requirements across the country and enable more

⁴ See [The European Self-Sovereign Identity Framework Lab](#). The selective sharing capability of DiD is especially useful for federated governments like the United States, EU, and others, where personal information is often stored by multiple countries or states with varying security infrastructures.

⁵ See [National Strategy on Blockchain, Ministry of Electronics & Information Technology](#), Government of India (Dec. 2021).

vigorous enforcement authority for bad actors. The bill builds upon the CFTC's existing authority under the Commodity Exchange Act to regulate futures and derivatives referencing digital asset commodities, and its anti-fraud and anti-manipulation authority over commodity spot markets, including digital asset commodity spot markets.

The CFTC is equipped to regulate spot markets for digital commodities. It has experience utilizing disclosures to equip customers with the information they need to understand the risks of trading a particular asset. For example, when a DCM licensee submits a new product to the CFTC for self-certification, it does so in a public filing that describes the contract and how it complies with the Commodity Exchange Act, including why the contract is not readily susceptible to manipulation. The self-certification requires rigorous analysis that focuses on the characteristics and features of the asset and the underlying cash market, to ensure the financial integrity of the futures contract and the market, while deterring fraud and manipulation. By contrast, disclosures required by the SEC focus on disclosure about companies, their management and their financial results—topics that are largely irrelevant to the decentralized and open-source nature of blockchain-based digital assets. It is appropriate that the bill borrows from the existing DCM self-certification process and requires different and tailored disclosure requirements for digital commodities.

The CFTC has shown it is qualified to regulate new markets effectively, either by working within its existing authority or by implementing new regulatory frameworks that achieve participant and consumer protection. When DCMs started to list digital asset futures, the CFTC took several steps to address and better understand the nascent risks presented by this asset class.

The agency applied a heightened review process to DCM self-certifications of digital asset futures, including implementing mechanisms to ensure that DCMs and the CFTC are able to monitor settlement and other prices in digital asset cash markets to identify anomalies. The CFTC also worked with the National Futures Association to require FCMs that offer virtual currency futures to provide additional disclosure to customers specific to the risks of trading in that asset class.

The CFTC has been diligent in policing the digital commodity cash markets for fraud and manipulation and has pursued enforcement actions against actors in the digital commodities derivatives markets for failure to comply with existing derivatives regulations. It has brought over 70 enforcement actions involving digital commodities. As Chair Behnam testified in March, more than 20 percent of the CFTC's enforcement actions in the last fiscal year related to digital commodities.

Finally, the CFTC's global leadership and speed in implementing swaps regulation after the 2008 financial crisis demonstrate its capacity to undertake the important and exacting task of drafting a regulatory framework to address the risks in digital asset commodity cash markets. As noted by former CFTC Chairman Gary Gensler in 2013, "when the President was formulating

his financial reform proposals, he placed tremendous confidence in this small agency, which for eight decades had overseen the futures market. This confidence in the CFTC was well placed.”⁶

Given the CFTC’s experience in effectively regulating existing markets, taking enforcement action that carries out the mandates given to it by Congress, and protecting customers and market participants, we believe the CFTC is well qualified to regulate the spot market for digital asset commodities and support the new framework laid out in the Discussion Draft that allows crypto companies to operate and innovate within reasonable, understandable parameters. I’d like to highlight a few specific aspects of the Discussion Draft that are particularly important to delivering a workable regulatory framework for crypto:

- **Defines Digital Commodities:** As I have shared, drawing clear and workable jurisdictional lines is critical to ensuring that customers are appropriately protected, and understand the regulatory framework that applies to their activities.
- **Creates a Comprehensive Regulatory Structure:** The bill creates a regulatory framework that is rooted in the existing structures at the CFTC for market participants and the market as a whole. It applies to entities that act as an exchange, broker, or dealer for digital commodities. The CFTC’s existing regulatory model established pursuant to the Commodity Exchange Act for futures contracts and swaps works. It serves as a good model for regulating digital commodity spot markets, and is appropriately the foundation for the Discussion Draft. The current model also demonstrates that joint rulemaking between two primary regulators – the SEC and CFTC – can and does work when Congress provides a proper mechanism for it.
- **Workable Registration Pathways:** The bill recognizes that centralized intermediaries should be regulated, and it creates transparency through registration, disclosure requirements, and inspection and examination authority. The bill includes mandatory registration as a digital commodity exchange (“DCE”), digital commodity broker (“DCB”), or digital commodity dealer (“DCD”) for entities engaged in the activities listed above. Importantly, this is a fit-for-purpose registration framework that doesn’t attempt to shoehorn market participants into preexisting but ill suited frameworks that are *not* mapped to actual risks and consumer needs. And critically, the bill provides a framework for those registration pathways to work in practice, not just in theory. It also appropriately preempts money transmission licensing registration regimes to resolve what could be competing or duplicative state regulatory requirements that could lead to confusion for both consumers and market participants.
- **Multiple Registrations Permitted:** The bill allows certain entities that are already registered with the CFTC for their futures and swaps activities to register as a DCE, DCD, or DCB. It also allows for entities to register in multiple capacities for the digital commodity activities. In each case, multiple registrations are subject to important safeguards, including conflicts of interest requirements that will ensure customers and the markets are protected. These rules

⁶ <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-155>

apply to all market participants – and not based on targeted settled enforcement actions or bespoke exemptive relief – which creates a level playing field, consistent application of consumer protections.

- **Side by Side Trading:** Entities registered with the CFTC are also permitted to register in parallel with the Securities Exchange Commission. This would be a new path created by Congress to enable companies to offer side-by-side trading of digital commodities and digital securities.
- **Segregation Requirements for Entities that hold Customer Assets:** The bill requires the CFTC to designate certain entities subject to supervision by the CFTC, SEC, a Federal banking agency or a state banking supervisor as qualified digital commodity custodians. DCEs, DCBs and DCDs must hold customer digital commodities at a qualified digital commodity custodian and segregated from the DCE, DCB, or DCD's own assets. The segregation requirement in the bill mirrors the segregation requirements for FCMs that protect futures customer funds today.
- **Application of Commodity-Broker Insolvency Regime:** The bill applies the tested commodity broker insolvency regime to entities registered with the CFTC as DCEs, DCBs and DCDs. We know this regime works because it has effectively protected customer assets in insolvencies of FCMs.
- **Product Listings, Rules, and Rule Amendments for Trading Facilities:** The bill reflects a long-standing practice at the CFTC for DCMs to self-certify new futures products. The specific requirements of the digital commodity self-certification regime are tailored to digital commodities and cover areas such as the digital commodity's purpose and use, consensus mechanism, and governance structure, among others.

I would also like to take the opportunity to briefly discuss the important role of the SEC, and our support for creating a comprehensive approach that spans both the CFTC and the SEC. Similar to the CFTC regime, the Discussion Draft would establish a fit-for-purpose regulatory framework for restricted digital assets – those that may be determined to be securities – under the jurisdiction of the SEC, which does not exist today. The bill articulates guardrails and requirements to protect investors, and ensure transparency and consistency for all market participants.

The Securities Act of 1933 and the Securities Exchange Act of 1934 grant the SEC authority to regulate securities in the US. If an asset is a security, the SEC generally has federal authority over its offering and sale, and over many functions that support these transactions. If the asset is not a security, the SEC does not have that authority. Notably, the federal securities regime is a disclosure-based regime. The SEC is not a merit regulator, so it does not decide what is a “good” investment or a “bad” investment. Rather, it ensures fair, orderly, and efficient markets with appropriate investor protections, while facilitating capital formation.

The Discussion Draft is grounded in this authority, directing the SEC to create new market structure rules that would work for digital asset securities more broadly based on the principles that have been the foundation of our unmatched capital markets for 90 years. Coinbase has long supported a regulatory framework for digital asset securities, as we do not currently list securities but would like to do so in the future when a workable regulatory framework becomes available. Last July, we filed a formal petition with the SEC asking for rulemaking for digital asset securities.

The Discussion Draft addresses many of the questions we raised in the petition. Specifically, Coinbase supports the aspects of the Discussion Draft that:

- Provide the needed Congressional authorization for side-by-side trading of digital commodities and securities, and establish a dual registration structure once CFTC has spot authority.
- Allow registration for digital asset securities trading platforms as an Alternative Trading System, which better aligns with the technical realities and consumer benefits of how crypto transactions work, including real-time settlement on the blockchain.
- Create a principles-based approach to disclosure obligations for digital asset securities that accommodates the practical realities of the industry. For example, many asset issuers have no intention of growing into large companies, nor should they. Disclosure obligations should reflect that. There also should be a path for exiting those disclosure obligations when a project decentralizes and disclosures no longer serve any purpose for consumers.
- Acknowledge that tokens themselves are and should continue to be used for non-securities functions and transactions, even if initially offered through a securities offering.

Closing

In closing, Coinbase strongly supports creating a fit-for-purpose, comprehensive regulatory regime for digital asset commodities, securities, and market participants with strong consumer protections. Only Congress can do this. Although legislation can always be improved around the edges, the Discussion Draft would create a workable foundation for consumers, investors, and market participants alike. We urge Congress to act on it as soon as possible. We also welcome the opportunity to continue participating in this dialogue and serving a resource to you as you move forward.