As approved by the Commission
(subject to pre-publication technical corrections)

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 38, and 39

RIN 3038-AF80

Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing an advanced notice of proposed rulemaking regarding section 2(c)(2)(D) of the Commodity Exchange Act ("CEA" or "Act") to provide notice and seek public comment on its intent to develop and establish fit-for-purpose rules implementing section 2(c)(2)(D) of the Act with respect to transactions and markets in crypto assets.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, specifically referencing "Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets" and RIN 3038-AF80, by any of the following methods:

- **Regulations.gov:** Go to *https://www.regulations.gov* and press the "Search" button, then proceed as follows:

1. Under Refine Documents Results – check the box to "Only show documents open for comment";

2. Under Agency – select "See More" and check the box for "Commodity Futures Trading Commission," then press the "Apply" button; and

3. Identify this proposal in the list of CFTC documents open for comment, press the "Comment" button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on *www.federalregister.gov*, click the "Submit A Public Comment" button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to *Regulations.gov*.

- **Mail:** Send to – Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Address to – CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under FOR

FURTHER INFORMATION CONTACT before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as – without limitation – obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

A plain language summary of the proposed rule is available at regulations.gov.

FOR FURTHER INFORMATION CONTACT: Tyler S. Badgley, General Counsel, Office of the General Counsel, rulemaking@cftc.gov, 202–418–5000; Aaron Levine, Deputy General Counsel for Regulation, Office of the General Counsel, rulemaking@cftc.gov, 202–418–5000; Sean Yoo, Senior Assistant General Counsel, Office of the General Counsel, rulemaking@cftc.gov, 202-418-5000; Michael J. Passalacqua, Head, Innovation Task Force, mpassalacqua@cftc.gov, 202-418-5052; or, Hank Balaban, Senior Advisor, Innovation Task Force, hbalaban@cftc.gov, 202-418-

5422, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is issuing an advanced notice of proposed rulemaking ("ANPRM" or "Notice") on section 2(c)(2)(D) of the Act with respect to transactions and markets in crypto assets[1] to provide notice of its intent to establish a comprehensive regulatory framework comprised of fit-for-purpose rules concerning section 2(c)(2)(D), including defining certain terms therein, with respect to the retail commodity transactions described in section 2(c)(2)(D)(i) and that involve crypto assets (such crypto asset transactions referred to herein as, "Crypto Asset Transactions" or "CTXs"). The proposals set forth herein are designed to further the purposes and objectives of the Act, including protecting retail customers from market abuses along with fostering "responsible innovation" and "fair competition" among Commission-registered boards of

[1] As used herein, the term "crypto asset" means any digital representation of value that is recorded on a cryptographically-secured distributed ledger. Any crypto asset, other than a "payment stablecoin" issued by a "permitted payment stablecoin issuer," as such terms are defined in section 2 of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (2025) ("GENIUS Act"), could meet the definition of "commodity" under the Act. *See* CEA 1a(9), 7 U.S.C. 1a(9), as amended by GENIUS Act section 17(f); 12 U.S.C. 5901(22). Although not included in the statutory exclusion from the definition of "commodity" in section 17 of the GENIUS Act, payment stablecoins issued by a "foreign payment stablecoin issuer" (as the term is defined in the GENIUS Act) registered with the Office of the Comptroller of the Currency will generally not meet the definition of "commodity" under the Act. *See* 12 U.S.C. 5901(12). The term "distributed ledger" generally refers to databases that maintain information across a network of computers in a decentralized or distributed manner. These networks commonly use cryptographic protocols to ensure data integrity and consensus mechanisms to ensure data congruity. Blockchains are one type of distributed ledger, and they are often used to issue and transfer ownership of crypto assets. Further, for purposes of this release, "onchain" refers to transactions or data that are processed and recorded directly on a blockchain or similar system and "offchain" refers to transactions or data that are processed and recorded outside of a blockchain or similar system. *See Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, 91 FR 13714, 13715 n. 1 (Mar. 23, 2026) ("Joint Crypto Asset Taxonomy").

trade, other markets, and market participants.[2] The Commission is seeking public comment on all aspects of this Notice and also sets forth specific questions in Sections IV and V, *infra*.

A. Introduction

With certain exceptions, Congress has granted the CFTC exclusive jurisdiction over the transactions subject to the Act.[3] The markets that the Commission oversees pursuant to the Act are "affected with a national public interest" because they facilitate risk management and price discovery "through trading in liquid, fair and financially secure trading facilities."[4] The Commission fosters that national public interest, in part, through sound regulation that protects the American public from fraudulent schemes and abusive practices in transactions over which the Act grants it jurisdiction and markets on which those transactions are executed.[5] The Act also requires the Commission to balance those objectives and purposes with the promotion of "responsible innovation" and "fair competition."[6] To foster such objectives with respect to the transactions and markets subject to the Act, Congress demanded,[7] and the Commission has promulgated, a uniform national market regulatory framework. In 1973, futures exchanges recommended

[2] CEA 3(a)–(b), 7 U.S.C. 5(a)–(b); *see also* Philip McBride Johnson, Thomas Lee Hazen, Susan C. Ervin, Charles R. Mills & Kathryn M. Trkla, *Derivatives Regulation* §2.07 (2d Ed.) ("Johnson et al.") ("The CEA has a bountiful history—a statute at the intersection of financial history and public policy, at ground zero of financial innovation.").

[3] CEA 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A).

[4] CEA 3(a), 7 U.S.C. 5(a).

[5] CEA 3(a)–(b), 7 U.S.C. 5(a)–(b).

[6] *Id*.

[7] CEA 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A). *See also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 355-356 (1982) (stating that the Act "has been aptly characterized as 'a comprehensive regulatory structure'") (quoting H.R. Rep. No. 93-975, at 1 (1974)).

that "federal policy [] be uniform throughout the United States" and not "subject to the vagaries" of different obligations in "different jurisdictions."[8] Congress responded with the creation of the Commission through the Commodity Futures Trading Commission Act in 1974.[9] The establishment of a uniform national system for regulating such transactions codified the Supreme Court's conclusion that an exchange offering transactions in commodity derivatives "is engaged in a business affected with a public national interest and is subject to national regulation" of the rules governing the exchange's conduct.[10]

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[8] *Review of Commodity Exchange Act and Discussion of Possible Changes: Hearings Before the H. Comm. on Agriculture,* 93d Cong. 121 (1973).

[9] The Act "is one of two primary U.S. federal statutes that regulate how financial markets operate. The other, administered by the Securities and Exchange Commission ("SEC"), is the Securities Exchange Act of 1934 ("Exchange Act")." *See* Johnson et al., §6.01. The year following the passage of the Commodity Futures Trading Commission Act in 1974 and its establishment of the CFTC to oversee a uniform national regulatory framework under the Act, the 94th Congress demonstrated a continued focus on the importance of uniform national rules that implement federal market regulation by enacting the 1975 Securities Act Amendments (the "'75 Amendments") to the Securities Act of 1933 ("Securities Act") and the Exchange Act. The impetus for the '75 Amendments resembled that which led to the Commodity Futures Trading Commission Act. Just as the Commodity Futures Trading Commission Act provided for a comprehensive regulatory structure to oversee the national public interest in the commodity derivatives markets, the '75 Amendments "specifically endorsed the development of a *national market system*." *See Regulation of Exchanges*, 62 FR 30485, 30492 (June 4, 1997) (emphasis added). Decades later, the SEC relied in part on the Congressional findings of the '75 Amendments, including that "[t]he securities markets are an important *national asset* which must be preserved and strengthened," as well as the broad discretionary exemptive authority in Section 36 of the Exchange Act that resembles that of CEA 4(c), to adopt a regulatory framework for alternative trading systems. *See Regulation of Exchanges and Alternative Trading Systems,* 63 FR 70844, 70845–46 & nn.6–7 (Dec. 22, 1998) (emphasis added).

[10] *Board of Trade of City of Chicago v. Olsen,* 262 U.S. 1, 41 (1923). *See also* Johnson et al., §2.03 ("The 1974 legislation was a major turning point in U.S. derivatives regulation. The Commodity Futures Trading Commission Act of 1974 greatly expanded the CEA's reach, strengthened the authority and importance of the law's administrator by creating the [Commission] as an independent federal agency, and established a comprehensive framework for regulating the markets."). Congress has repeatedly affirmed its intention to centralize the oversight and regulation of the transactions subject to the Act. The first federal legislation designed to create a comprehensive federal regulatory framework for futures markets was the Future Trading Act of 1921, Pub. L. No. 67-66, 42 Stat. 187 (1921), followed by the Grain Futures Act of 1922, Pub. L. No. 67-331, 42 Stat. 998 (1922). In passing these laws, Congress recognized the importance of uniform federal regulation of futures markets, despite concerns by some members of Congress who objected to the proposed law because it would interfere with state police powers. H.R. Rep. No. 67-1095, at 5 (1922). When Congress expanded federal oversight of futures markets by adopting the CEA in 1936, Pub. L. No. 74-675, 49 Stat. 1491 (1936), the boundary between federal and state authority remained unsettled as futures markets expanded beyond their agricultural origins. Market participants continued to face the

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[11] amended the CEA to require that transactions contemplated by section 2(c)(2)(D) be treated "as if" they were futures contracts under certain provisions of the Act.[12] The Dodd-Frank Act thereby deemed such transactions as affected with the same "national public interest"[13] as other commodity derivatives transactions subject to the Act by mandating that, unless conducted on or subject to the rules of a designated contract market ("DCM"),[14] it is unlawful to offer to enter into, to execute, to confirm the execution of, to conduct any business for the purpose of soliciting any order for, or to otherwise deal in 2(c)(2)(D) transactions (the "on-exchange requirement").[15]

Despite (i) the anti-evasion and customer protection motivations for section 2(c)(2)(D), which are discussed in Sections II.A and II.B, *infra*; (ii) the crypto asset market having "grown exponentially since 2009 [] to an ecosystem supporting trillions of

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persistent threat of state prosecution through a patchwork of state laws and regulations. Congress responded to this uncertainty with the passage of the Commodity Futures Trading Commission Act in 1974. Pub. L. No. 93-463, 88 Stat. 1389 (1974). Amendments to the CEA between 1978 and 2010 repeatedly reinforced and clarified the CFTC's exclusive jurisdiction over the operation of markets involving commodity derivatives. For example, the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294 (1983), further clarified the scope of the CEA's preemption of other federal and state laws and the role of the states in pursuing illegal or fraudulent off-exchange transactions, while still recognizing "the CFTC['s] exclusive jurisdiction to regulate futures trading and enforce the provisions of the Act, thereby preempting any State regulatory laws." H.R. Rep. No. 97-565, at 44-45 & 102-03 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3893-94 & 3951-52.

[11] *See* Dodd-Frank Act, Pub. L. No. 111– 203, 124 Stat. 1376 (2010).

[12] CEA 2(c)(2)(D)(iii), 7 U.S.C. 2(c)(2)(D)(iii). A "2(c)(2)(D) transaction" is, unless an exception applies, "any agreement, contract, or transaction in any commodity that is—(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and (II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis." CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

[13] CEA 3(a), 7 U.S.C. 5(a).

[14] CEA 2(c)(2)(D)(iii), 7 U.S.C. 2(c)(2)(D)(iii); *see also* CEA 4(a), 7 U.S.C. 6(a).

[15] *Id.*

dollars in payments and trades[;]"[16] (iii) the significant customer protection issues that have emerged in connection with obfuscated offers of leverage in those markets;[17] and (iv) "the context of market regulation [that gives rise to the need] for uniform legal rules,"[18] the Commission has not yet adopted rules that answer novel and complex questions regarding how section 2(c)(2)(D) applies to crypto assets, blockchain technologies, and CTXs.

The resulting uncertainty amongst market participants[19] as to how to comply with, among other obligations, the on-exchange requirement, has stymied Congress's intent to bring retail commodity transactions, including CTXs, onto DCMs and under the Act's

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[16] President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology*, at 16 (July 30, 2025) ("President's Working Group's Report"), available at https://www.whitehouse.gov/crypto/.

[17] *See, e.g.*, Press Release, U.S. Att'y's Off. for the S.D.N.Y., *Samuel Bankman-Fried Sentenced To 25 Years In Prison* (Mar. 28, 2024), available at https://www.justice.gov/usao-sdny/pr/samuel-bankman-fried-sentenced-25-years-prison (describing how Samuel Bankman-Fried "orchestrated one of the largest financial frauds in history, stealing over $8 billion of his customers' money [. . .] The scale of his crimes is measured not just by the amount of money that was stolen, but by the extraordinary harm caused to victims, who in some cases had their life savings wiped out overnight."); Section II.C.1, *infra*, for a further discussion around significant customer protection issues in crypto asset markets; *CFTC v. HDR Glob. Trading Ltd.*, No. 1:20-cv-08132, ECF No. 1 at 13 (S.D.N.Y. Oct. 1, 2020) ("BitMEX") ("*BitMEX* allows customers to place buy or sell orders for its various [crypto asset] derivatives with leverage of up to 100 to 1, meaning a customer with $10,000 in his or her account may execute a trade with a notional value of $1,000,000.").

[18] *American Agric. Movement v. Board of Trade of City of Chicago*, 977 F.2d 1147, 1156 (7th Cir. 1992).

[19] *See, e.g.*, Letter from Crypto Council for Innovation ("CCI") to Christopher J. Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025) (highlighting "questions regarding how [CTXs] fit[] within key DCM requirements such as mandatory clearing. [] CCI encourages the Commission to closely examine [] how DCMs can begin to offer these products in a safe and viable manner"); Letter from Coinbase to Christopher J. Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025) ("Coinbase Letter") (emphasizing that "the CFTC should carefully consider the proper application of the CEA to crypto asset spot markets listed and traded on a DCM"); Commissioner Dawn D. Stump, *Concurring Statement Regarding Enforcement Action Against Payward Ventures, Inc.* (d/b/a Kraken) (Sept. 28, 2021), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement092821b ("Stump Payward Statement") (emphasizing that with respect to the on-exchange requirement "it is incumbent upon the Commission to undertake a rulemaking proceeding to supersede [the Commission's now withdrawn 2020 interpretive guidance on section 2(c)(2)(D)] by adopting binding and enforceable rules that will provide certainty to the marketplace and a shared understanding of the 'rules of the road.'"). *See infra* note 87 for a further discussion of the withdrawn interpretive guidance referenced by Commissioner Stump.

uniform federal market regulatory regime applicable to futures contracts. Instead, U.S. retail participants in the crypto asset markets have been forced to rely primarily on state-level regulatory protections. For example, most states impose money transmission licensure regimes that generally apply to businesses offering crypto asset exchanges.[20] Individual states have also promulgated crypto asset-specific licensure regimes, such as New York's BitLicense[21] and California's Digital Financial Assets license.[22] Businesses offering crypto asset exchanges must typically also register with the Financial Crimes Enforcement Network ("FinCEN") of the Department of the Treasury as money services businesses ("MSB") and comply with various federal regulations.[23] Those regulations impose obligations pertaining to recordkeeping, reporting, risk management and "know-your-customer" programs, and other requirements.[24]

Market participants have noted that these fragmented, multi-jurisdictional regulatory frameworks may be duplicative, inefficient, and ultimately incompatible with

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[20] *See* Congressional Research Service, *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation*, at 1 (Aug. 20, 2020), available at https://www.congress.gov/crs_external_products/R/PDF/R46486/R46486.2.pdf (describing how the term "money transmission" typically refers to three general functions: (1) receiving and sending money on behalf of consumers; (2) providing products that receive, store, or send money for consumers; and (3) providing an exchange for currencies); *see also id.* at 16 (quoting testimony of SEC Chairman Jay Clayton that "many of the U.S.-based [crypto asset] trading platforms have elected to be regulated as money-transmission services" and are "predominantly state-regulated").

[21] 23 NYCRR 200.3.

[22] Cal. Fin. Code 3201.

[23] *See, e.g.*, FinCEN, FIN-2016-G001, *Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring* (Mar. 11, 2016); *see also* 31 CFR 1022.320 (requiring MSBs to file with the Department of the Treasury a report of any suspicious transaction relevant to a possible violation of law or regulation, under the circumstances described therein).

[24] *See, e.g.*, 31 CFR 1010.311–314 (currency transaction reporting), 31 CFR 1010.410(e)–(f) (records and information accompanying transmittal of funds), 31 CFR 1022.210(b), (d) (risk-based anti-money-laundering programs, including customer identification verification, reporting, and recordkeeping); *see also* FinCEN, FIN-2019-G001, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies* (May 9, 2019), available at https://www.fincen.gov/system/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.

the commercial realities of effectively operating national and international crypto asset exchanges.[25] Individual state money transmission laws differ in meaningful and fundamental ways, including with respect to the definition of a money transmitter, which determines whether a firm must obtain a particular license to operate in a particular state.[26] Oftentimes, it may also be unclear to market participants which or how regulatory requirements of different jurisdictions apply, due to inconsistencies in state-level regimes.[27] Companies operating in the crypto asset markets are thus often subject to significant uncertainty and differing state-by-state licensing, supervisory, and examination requirements.[28]

Moreover, these state licensing regimes address certain risks associated with payment transactions that materially differ from those risks presented by financial

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[25] Timothy G. Massad, Economic Studies at Brookings, *It's Time to Strengthen the Regulation of Crypto-Assets* (Mar. 2019), available at https://www.brookings.edu/wp-content/uploads/2019/03/Economis-Studies-Timothy-Massad-Cryptocurrency-Paper.pdf ("As a general matter, state regulation would be a weak foundation for an industry that strives to be international. When regulatory requirements vary by state, it is expensive to build compliance systems, and difficult to create national, let alone international, markets. Our securities markets would not have become the envy of the world if we had relied solely on state blue sky laws and never adopted the Securities Act and [] Exchange Act. We should not expect state law to fill the need for this new [crypto asset] sector either."); *see also* statement submitted by the Chamber of Digital Commerce, in *Examining Regulatory Frameworks for Digital Currency and Blockchain: Testimony for the Record United States Senate Committee on Banking, Housing, and Community Affairs Hearing* (July 30, 2019), available at https://www.govinfo.gov/content/pkg/CHRG-116shrg38950/pdf/CHRG-116shrg38950.pdf ("This patchwork of state and federal regulations is expensive[.] For blockchain companies, many of which are growing start-ups with seasoned industry executives, this antiquated and inconsistent framework poses a high barrier to entry. The current framework [. . .] [is] not well-suited for digital companies whose business and service models are inherently global in nature and may not fit the traditional descriptions of 'money transmitters.'").

[26] *See* Congressional Research Service, *supra* note 20, at 2, 4 (describing "49 unique state regulatory frameworks" and noting that the absence of a federal framework has caused numerous efforts to reduce the friction associated with varying regulatory obligations across jurisdictions).

[27] *Id*.

[28] *See generally* U.S. Government Accountability Office, GAO-17-361, *Financial Technology: Information on Subsectors and Regulatory Oversight* (Apr. 2017), available at https://www.gao.gov/assets/gao-17-361.pdf (describing efforts to coordinate multistate licensing exams to address variations among state money transmitter requirements).

markets.[29] Unlike transactions on a properly functioning financial market such as trading facilities subject to the Act, payment transactions involve an identifiable sender instructing an intermediary to transmit a bespoke value to a recipient designated by the sender.[30] Money transmission regulation accordingly primarily pertains to transaction-level (rather than market-wide) risks, including those relating to an intermediary's performance of individualized contractual obligations to each specific customer thereof, transaction error resolution and refund rules, and the appropriate disclosure of fees to customers.[31]

These state licensure regimes that regulate payments activities accordingly do not protect retail customers in the same manner as the federal market structure regulatory framework promulgated under the Act.[32] For example, state licensure regimes neither feature robust rules and regulations designed to ensure orderly and transparent trading nor to prevent conflicts of interests and market manipulation.[33] They also do not address financial market instability or systemic market risk issues that may affect customers

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[29] *See* Congressional Research Service, *supra* note 20, at 2, 4.

[30] *See generally* Benjamin Geva, *The Concept of Payment Mechanism*, 24 Osgoode Hall L.J. 1, 4-5 (1986).

[31] *See, e.g.*, Conference of State Bank Supervisors, Money Transmission Modernization Act §§ 1.02, 9.01-9.03 (2021, as amended), available at https://www.csbs.org/csbs-money-transmission-modernization-act-mtma.

[32] In addition to the congressional findings discussed *supra* note 9, the other primary U.S. federal statute that regulates how financial markets operate, the Exchange Act, provides that "[it] is in the public interest and appropriate for the *protection of investors* and the maintenance *of fair and orderly markets* to assure [] *fair competition* among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets[;] The linking of all markets for qualified securities through communication and data processing facilities will *foster efficiency, enhance competition*, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders[.]" 15 U.S.C 78k-1 (emphasis added).

[33] *See* Financial Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation*, at 5 (Oct. 3, 2022), available at https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.

(including retail customers) in extreme market conditions.[34] Thus, while these state payments regimes may have lent themselves to the appropriate regulation of crypto asset exchanges before other use cases for crypto assets emerged, besides the "peer-to-peer electronic payment system"[35] introduced by Satoshi Nakamoto in 2008, they no longer adequately address risks arising in financial markets in crypto assets with consumptive uses and functionalities that have "move[d] far beyond just currency."[36] Those consumptive uses and functionalities may typically more closely resemble those of traditional commodities than currency, and customers transacting therein should benefit from a national market regulatory framework.

Unlike these state licensure regimes, the Act contemplates, and the Commission's regulatory regime promulgated thereunder addresses, those unique customer abuse concerns that are present in national markets.[37] They do so in part by imposing the aforementioned "uniform set of regulations" that ensures impartial access[38] to commodity derivative markets across jurisdictions and the capacity of the Commission to enforce

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[34] *Id.* at 4.

[35] *See* Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (Oct. 31, 2008), available at https://bitcoin.org/bitcoin.pdf. The Commission notes that "Satoshi Nakamoto" is a pseudonym that was used by the person or group of persons that created the Bitcoin network. *See, e.g.*, LabCFTC*, A CFTC Primer on Virtual Currencies*, at 5 (Oct. 17, 2017), available at https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf.

[36] Vitalik Buterin, *Ethereum: A Next-Generation Smart Contract and Decentralized Application Platform*, at 34 (2014), available at https://ethereum.org/content/whitepaper/whitepaper-pdf/Ethereum_Whitepaper_-_Buterin_2014.pdf. *See also* Sections I.A.1 and II.C.2, *infra*, for a further discussion on how uses of crypto assets have evolved since the introduction of blockchain networks such as Ethereum.

[37] *See, e.g.*, CEA 3(b), 7 U.S.C. 5(b). *See also* Section II.C.1, *infra*, for a further discussion of the effectiveness of the Act's customer protection regime (describing how the customer assets held by a Commission-registered FTX entity remained properly segregated and safeguarded, in contrast to 130 other FTX affiliate entities that entered bankruptcy).

[38] *See, e.g.*, 17 CFR 38.151(b).

against violations of the Act across state lines.[39] They also do so by encouraging competition and efficiencies that benefit market participants,[40] protecting those market participants against manipulative trading activity and other abusive trading practices,[41] mitigating systemic market risks,[42] and ensuring market wide integrity, including the financial integrity of the clearing process.[43] One illustrative example of the difference in customer protections afforded under the Act and money transmission licensure regimes pertains to the segregation and safeguarding of customer property. On the one hand, the Act imposes a comprehensive regulatory regime that is designed to protect, and has

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[39] *See* Massad, *supra* note 25, at 35 (with respect to the limited jurisdiction of state regulators, providing that "it is worth considering whether this licensing requirement can significantly improve the [crypto asset] market. It is difficult for [the New York Department of Financial Services], as a state regulator with limited jurisdiction over these markets, to have much of an impact. One could even question whether its licensing requirement has given a *false sense of legitimacy* to those that have bothered to register.") (emphasis added).

[40] *See, e.g.*, CEA 5(d)(9), 7 U.S.C. 7(d)(9) (mandating the provision of competitive, open, and efficient market and mechanism for executing transactions); CEA 5(d)(16), 7 U.S.C. 7(d)(16) (mandating the minimization of conflicts of interests that could jeopardize the fair operation of a contract market); 17 CFR part 38, appendix C, subparagraph (a)(1) (providing guidance as to how to design contracts that meet the risk management needs of prospective users and promote price discovery of the underlying commodity).

[41] *See, e.g.*, CEA 5(d)(3), 7 U.S.C. 7(d)(3) (prohibiting contracts readily susceptible to manipulation); CEA 5(d)(5), 7 U.S.C. 7(d)(5) (mandating contracts impose position limitations to the extent necessary and appropriate to reduce the potential threat of market manipulation or congestion); CEA 5(d)(12), 7 U.S.C. 7(d)(12) (mandating the establishment and enforcement of rules to protect markets and market participants from abusive practices).

[42] *See, e.g.*, CEA 3(b), 7 U.S.C. 5(b) ("To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk").

[43] *See, e.g.*, CEA 5(d)(11), 7 U.S.C. 7(d)(11) (mandating the establishment and enforcement of rules for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization ("DCO")). A registered DCO is subject to 18 core principles set out in section 5b(c)(2) of the Act. The core principles cover areas ranging from clearing member eligibility standards, risk management, default procedures, treatment of funds, rule enforcement, and legal risk. A DCO must comply with the DCO core principles and the requirements of any rule the CFTC may impose pursuant to its general rulemaking authority. *See* Johnson et al., §6.06; CFTC, Strategic Plan 2011-2015 (2011), available at https://www.cftc.gov/sites/default/files/reports/strategicplan/2015/2015strategicplan04.html.

effectively protected, retail customers' property under extreme market conditions.[44] On the other hand, state money transmission laws vary widely in how they restrict the investment of customer funds, with some states allowing licensees "to invest funds in potentially risky publicly traded securities or accounts receivable, and some states imposing no restrictions at all."[45]

Further, Commission-registered DCMs are not just "commercial enterprises" subject to the Commission's regulatory framework, but also self-regulatory organizations "charged with the public trust"[46] in administering aspects of that regulatory framework in

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[44] *See* Section II.C.1, *infra*, for a further discussion of the effectiveness of the Act's customer protection regime.

[45] Consumer Financial Protection Bureau, *Analysis of Deposit Insurance Coverage on Funds Stored Through Payment Apps* (June 1, 2023), available at https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-analysis-of-deposit-insurance-coverage-on-funds-stored-through-payment-apps/full-report/ (providing, further, that the Consumer Financial Protection Bureau "find[s] that stored funds can be at risk of loss in the event of financial distress or failure of the entity operating the nonbank payment platform, and often are not placed in an account at a bank or credit union and lack individual deposit insurance coverage."); s*ee also* Complaint ¶ 2*, FTC v. Voyager Digital, LLC,* No. 1:23-cv-08960 (S.D.N.Y. Oct. 12, 2023), ECF No. 1 (alleging, among other matters, Voyager Digital, LLC and its affiliates ("Voyager"), which held money transmitter licenses in 13 states, deceived consumers into transferring their fiat and crypto assets to the Voyager platform by portraying Voyager as a safe alternative to the traditional financial system); Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief at 7, *FTC v. Voyager Digital, LLC*, No. 1:23-cv-08960 (S.D.N.Y. Nov. 24, 2023), ECF No. 35 (entering, and suspending, a $1.65 billion judgment). *In re Voyager Digital LLC*, Order No. 22-70-S, at 1 (Alaska Div. of Banking & Sec. Sept. 3, 2022). Voyager pooled customers' crypto assets in an omnibus account and lent those crypto assets to institutional borrowers, including a loan of $350 million (denominated in stablecoins) and 15,250 BTC to Three Arrows Capital. *Id.* at 2–4; Voyager Digital Ltd., *Voyager Digital Provides Market Update* (PR Newswire June 27, 2022), available at https://www.prnewswire.com/news-releases/voyager-digital-provides-market-update-301575492.html. Moreover, at least one state in which Voyager was licensed, permitted money transmitters to hold up to half of the investments backing customer obligations in higher-risk assets such as publicly-traded stocks. *See* Iowa Code 533C.602(2)(b), (3) (2022); Settlement Agreement and Consent Order at 1, *In re Voyager Digital, LLC* (Ariz., Ark., Ill., Iowa, & S.D. Dec. 28, 2022). By contrast, the CFTC's regulatory framework limits investments of customer funds by an FCM or DCO to an enumerated set of low-risk instruments, subject to concentration limits, and requires an independent risk management unit, credit and liquidity risk tolerance limits, and periodic risk exposure reporting, as well as disclosure that customer funds are not insured against intermediary insolvency. *See* CEA 4d(a)(2), 7 U.S.C. 6d(a)(2); 17 CFR 1.11(c), (d), (e)(1)–(2), 1.25(a)(1), (b)(3), 1.55(a), (b)(2)–(c).

[46] *See, e.g., Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap*

the markets in which they operate. The Act vests in DCMs the authority to, among other matters, establish and enforce rules[47] and disciplinary procedures.[48] The Act similarly obliges DCMs to surveil the markets in which they operate for abusive trading activity.[49] Crypto asset exchanges operating under state licensure regimes have no similar legal mechanism, authority, or obligation to self-regulate their markets.

In short, "the consumer and investor protections offered by these state-based jurisdictions vary and are typically fewer and less extensive than federal laws applicable to securities and derivatives markets and products."[50] In this regard, market participants

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Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732, 63736 (Oct. 18, 2010) ("[T]herefore, although each DCM [] is a commercial enterprise, the fact that each entity has self-regulatory obligations means that each entity is not simply a corporation, but a corporation charged with the public trust.").

[47] *See, e.g.*, CEA 5(d)(2), 7 U.S.C. 7(d)(2) (setting forth self-regulatory authority and obligations for DCMs).

[48] *See, e.g.*, CEA 5(d)(13), 7 U.S.C. 7(d)(13) (mandating DCMs establish and enforce disciplinary procedures that authorize the DCM to discipline, suspend, or expel members or market participants that violate the rules of the DCM).

[49] *See, e.g.*, CEA 5(d)(4), 7 U.S.C. 7(d)(4).

[50] U.S. Department of the Treasury, *Crypto-Assets: Implications for Consumers, Investors, and Businesses*, at 9 (Sept. 2022), available at https://home.treasury.gov/system/files/136/CryptoAsset_EO5.pdf.

and regulators have noted,[51] and history has affirmed,[52] the varied regulatory requirements of these regimes have predictably failed to adequately protect retail crypto asset customers against the market abuses that the Act, and section 2(c)(2)(D), were enacted to address.[53]

Recognizing these dynamics and that "[r]etail participants have been a driving

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[51] *See generally* the Honorable Dan Gallagher, Chief Legal, Compliance, and Corporate Affairs Officer, Robinhood Markets, Inc., *Testimony Before the U.S. House of Representatives Committee on Agriculture* (June 6, 2023), available at https://docs.house.gov/meetings/AG/AG00/20230606/116051/HHRG-118-AG00-Wstate-GallagherD-20230606.pdf; *see also* Press Release, SEC, *BlockFi Agrees to Pay $100 Million in Penalties and Pursue Registration of its Crypto Lending Product* (Feb. 14, 2022), available at https://www.sec.gov/newsroom/press-releases/2022-26 (describing (i) that BlockFi Lending LLC ("BlockFi"), which held 47 licenses across 32 states and Washington, D.C., made a false and misleading statement for more than two years on its website concerning the level of risk in its loan portfolio and lending activity, among other matters; and (ii) a resulting $50 million penalty to the SEC and $50 million in parallel state settlements); Declaration of Mark A. Renzi in Support of Debtors' Chapter 11 Petitions and First-Day Motions ¶ 23, *In re BlockFi Inc*., No. 22-19361 (MBK) (Bankr. D.N.J Nov. 28, 2022), ECF. No. 17; Notice of Automatic Suspension, Notice of Intent To Revoke Money Transmission License, Notice of Intent To Issue Order To Cease And Desist, Notice of Intent To Impose Civil Penalty and Notice of Right To Hearing ¶¶ 7–11, 16, *In re BlockFi Trading LLC* (Conn. Dep't of Banking Feb. 14, 2023) (alleging that BlockFi Trading LLC, a Connecticut-licensed money transmitter, engaged in an unsafe or unsound practice by suspending all customer withdrawals before filing for bankruptcy). In the aftermath of the BlockFi collapse, then-Commissioner Kristin N. Johnson urged crypto asset intermediaries to adopt the governance, risk management, and financial reserve safeguards long required of traditional financial market participants. *See* Kristin N. Johnson, *Lessons Learned from the Recent Failures in the Crypto Asset Market*, Eurofi Magazine (Apr. 2023), at 88-89, available at https://www.eurofi.net/wp-content/uploads/2023/06/eurofi_kristin-johnson_lessons-learned-from-the-recent-failures-in-the-crypto-market_stockholm_april-2023.pdf.

[52] *See supra* notes 17, 45, 51 for examples of market abuses and customer protection failures in the crypto asset markets; *see also* Consent Order, *In re Bittrex, Inc*., Order No. 2023-010 (Tex. Dep't of Banking Apr. 5, 2023) (finding that Bittrex, Inc., a licensed money transmitter, failed to maintain the minimum net worth required of Texas money transmission licensees and requiring it to cease money transmission in Texas).

[53] The circumstances that led Congress to pass section 2(c)(2)(D) are discussed further in Sections II.A and B, *infra*. Although those circumstances related to fraud in the retail precious metals markets, and crypto assets were in nascent stages at that time, the legislative history of section 2(c)(2)(D) specifically contemplates that the market abuses addressed by section 2(c)(2)(D) in such precious metals markets would likely emerge in other commodity classes. Thus, section 2(c)(2)(D)'s extension of jurisdiction applies to 2(c)(2)(D) transactions in "any commodity." *See* CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i); *see also Hearing to Review Implications of the CFTC v. Zelener Case Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture*, 111th Cong. 52–664 ("*Zelener* Hearing") (statement of Rep. Collin C. Peterson, Chairman, H. Comm. on Agriculture, providing that "because the scope of the *Zelener* fix was limited to foreign exchange contracts, we need to be aware that similar problems could arise in other product areas like metals, energy, or any other commodity that can be sold to the public without effective regulation.").

force behind the growth of [crypto] asset markets,"[54] the President's Working Group on Digital Asset Markets ("President's Working Group") directed the Commission to, among other matters, "use [] existing rulemaking and exemptive authorities to enable the trading of [crypto] assets,"[55] including with respect to the listing of CTXs.[56] To address the President's Working Group's directive and fulfill its statutory mandates under the Act, the Commission is now undertaking a reevaluation of its regulatory frameworks applicable to CTXs. As a component of that reevaluation, the Commission is issuing this Notice, including proposed Regulation Crypto Asset Transactions (or, "Regulation CTX") in Section III, *infra*, to explicitly identify certain transactions involving crypto assets that it preliminarily understands to be subject to section 2(c)(2)(D). The Commission is also introducing in this Notice, in Section V, *infra*, proposed Regulation Crypto Asset Markets (or, "Regulation CAM"), which tailors "the full array of regulatory requirements applicable to on-exchange futures under the [Act]"[57] to the commercial realities of, and risks posed by, CTXs.

B. The History of the Commission's Regulation of Crypto Assets and 2(c)(2)(D) Transactions

The Commission has engaged with crypto assets for more than a decade across enforcement, adjudication, interpretation, guidance, no-action relief, registration and listing decisions, advisory committee work, and coordination with the SEC and other

[54] President's Working Group's Report at 18.

[55] *Id*. at 51.

[56] *Id.* at 52 (recommending the CFTC "[p]rovide guidance to designated contract markets (DCMs) regarding the listing of leveraged, margined, or financed spot retail commodity transactions on [crypto] assets pursuant to CEA section 2(c)(2)(D)").

[57] 156 Cong. Rec. S5924 (daily ed. July 15, 2010) (statement of Sen. Lincoln, explaining the rationale for the legislation during floor debate on the Dodd-Frank Act).

federal agencies. This section provides a brief overview of that history, including how the Commission's administrative experience in overseeing aspects of crypto asset markets and information gathering efforts informed this Notice, with additional reference to its historical and inadequate regulation by enforcement posture that the Commission is now seeking to remediate.

1. Early Commission Approach to Crypto Asset Markets (2014-2020)

Half a decade after Satoshi Nakamoto launched the Bitcoin network and mined the very first crypto assets,[58] former CFTC Chairman Timothy G. Massad asserted that crypto assets fell within the Commission's jurisdiction.[59] This early period was marked by the Commission's unsure attempts at charting a regulatory path with respect to a commodity "unlike any [it had] dealt with in the past."[60] Several months before Chairman's Massad assertion of jurisdiction, Vitalik Buterin published a whitepaper describing a contemplated blockchain system "with a built-in fully fledged Turing-complete programming language."[61] The principles underpinning that programming

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[58] Satoshi Nakamoto, *Bitcoin v0.1 released*, Cryptography Mailing List (Jan. 8, 2009), available at https://www.metzdowd.com/pipermail/cryptography/2009-January/014994.html (announcing the first public release of the Bitcoin software); *see also* Bitcoin Block 0 (Genesis Block), hash 000000000019d6689c085ae165831e934ff763ae46a2a6c172b3f1b60a8ce26f (Jan. 3, 2009), available at https://mempool.space/block/000000000019d6689c085ae165831e934ff763ae46a2a6c172b3f1b60a8ce26f.

[59] CFTC Chairman Timothy Massad, *Testimony Before the U.S. Senate Committee on Agriculture, Nutrition & Forestry* (Dec. 10, 2014), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opamassad-6.

[60] CFTC, *CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange*, Release No. 7654-17 (Dec. 1, 2017) (quoting former Chairman J. Christopher Giancarlo), available at https://www.cftc.gov/PressRoom/PressReleases/7654-17.

[61] *See* Buterin, *supra* note 36, at 1. The term "Turing-complete" refers to a programmable system that can solve any computational problem. The concept comes from the Turing machine, a theoretical model of computation devised by English mathematician and cryptographer Alan Turing. Conversely, a non-Turing-complete system, such as the Bitcoin network, is limited to performing particular tasks based on pre-

language significantly expanded the possible use cases for crypto assets and blockchain technologies, and significantly complicated any regulatory treatment thereof, by allowing anyone to "create their own arbitrary rules for ownership, transaction formats and state transition functions" with respect to crypto assets.[62]

Thus, while Bitcoin was originally conceived of as an "electronic payment system,"[63] market participants experimented with the Turing-complete functionality of the Ethereum protocol to produce a "Cambrian explosion"[64] of novel use cases for this new "general purpose software primitive."[65] For example, crypto assets may be used as "gas" to obtain access to computational effort on a blockchain system[66] or function as a necessary input to facilitate network consensus.[67] In this context, the consumptive use of

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defined instructions; *see generally* Gavin Wood, *Ethereum: A Secure Decentralised Generalised Transaction Ledger* (Apr. 4, 2022), available at https://ethereum.org/content/developers/tutorials/yellow-paper-evm/yellow-paper-berlin.pdf (explaining the impact of Turing-completeness for Ethereum); *see also* Nick Szabo, *Smart Contracts: Building Blocks for Digital Markets* (1996), available at https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart_contracts_2.html (introducing the concept of smart contracts, which may be designed using a Turing-complete programming language).

[62] *See* Buterin, *supra* note 36, at 13.

[63] *See* Nakamoto, *supra* note 35, at 1.

[64] Fred Ehrsam, *Blockchain Governance: Programming Our Future* (Nov. 27, 2017), available at https://www.fehrsam.xyz/blog/blockchain-governance-programming-our-future.

[65] Chris Dixon, *Read, Write, Own: Building the Next Era of the Internet*, at 75 (2024).

[66] *See Joint Crypto Asset Taxonomy*, *supra* note 1, 91 FR at 13718 ("a functional crypto system may require users to pay transaction (or "gas") fees in the system's native digital commodity. These gas fees—in addition to units of the digital commodity newly generated by the protocol—typically are used as an incentive mechanism to reward participation in and use of the associated functional crypto system."); *see also* Andreas M. Antonopoulos & Gavin Wood, *Mastering Ethereum: Building Smart Contracts and DApps*, ch. 13 (2018), available at https://github.com/ethereumbook/ethereumbook/blob/first_edition_first_print/13evm.asciidoc ("While gas has a price, it cannot be 'owned' nor 'spent.' Gas exists only inside the [Ethereum Virtual Machine ("EVM")], as a count of how much computational work is being performed. The sender is charged a transaction fee in ether, which is then converted to gas for EVM accounting and then back to ether as a transaction fee paid to the miners.").

[67] *See* Proof of Stake Alliance, *U.S. Federal Securities and Commodity Law Analysis of Liquid Staking*

crypto assets resembles that of traditional energy commodities.[68] Beyond gas and consensus, "[v]irtually any type of security, good, service, right, or interest can be represented in a digital format as a crypto asset."[69] That breadth mirrors the scope of the definition of "commodity" in the Act. Recognizing that virtually anything might serve as the underlying for a derivative contract,[70] lawmakers defined the term "commodity" to include "all goods and articles, [] and services, rights, and interests" that may be the subject of a derivative contract,"[71] including intangible commodities in the vein of crypto

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Receipt Tokens, at 2 (Feb. 21, 2023), available at https://www.proofofstakealliance.org/22123-posa-liquid-staking-legal-white-paper ("POSA Liquid Staking Paper") (explaining that blockchains "require a distributed group of users to operate computers, known as 'nodes,' which run all or part of the software necessary for the system to function because it has no central operator. Each blockchain's underlying code incorporates a method for validating transactions called a 'consensus algorithm' to incentivize nodes to contribute valuable resources to the blockchain to provide transaction settlement assurances to the network's users. The consensus algorithm ensures that each node will be rewarded with an amount of a digitally native resource – a crypto asset – in accordance with the rules of the algorithm, for so long as the node remains online and operates in accordance with the blockchain's technical requirements."); *see also* Nic Carter, *It's the settlement assurances, stupid* (July 22, 2019), available at https://medium.com/@nic__carter/its-the-settlement-assurances-stupid-5dcd1c3f4e41.

[68] *See* Ethereum Foundation, *Gas and fees* (June 24, 2026), available at https://ethereum.org/developers/docs/gas/ ("Gas is essential to the Ethereum network. It is the fuel that allows it to operate, in the same way that a car needs gasoline to run."). Crypto assets may also convey rights to artwork, music, videos, trading cards, in-game items, s*ee* Joint Crypto Asset Taxonomy, *supra* note 1, at 13718, perform a practical function, such as a membership, ticket, credential, title instrument, or identity badge, *id.* at 13719, or enable holders to participate in the system's consensus mechanism by staking (or locking up) the system's native crypto asset, or to participate in onchain governance systems, *id*. at 13718. *See also* Ehrsam, *supra* note 64.

[69] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13717.

[70] *See* CEA 1a(9), 7 U.S.C. 1a(9). "Even the SEC envied the CFTC—or soon envied it. Congress buried among the 1974 amendments to the Commodity Exchange Act an expanded definition of the term 'commodity' to include literally anything, with one exception [for onions], which was or might in the future be the subject of futures trading." John H. Stassen, *The Commodity Exchange Act in Perspective: A Short and Not-So-Reverent History of Futures Trading Legislation in the United States*, 39 Wash. & Lee L. Rev. 825, 834 (1982). Congress subsequently added a second exclusion in 2010 for motion picture box office receipts. *See* CEA 1a(9), 7 U.S.C. 1a(9) (excluding "onions . . . and motion picture box office receipts . . . [.]").

[71] *See* Johnson et al., *supra* note 2, §2.03. The breadth of this definition makes clear that lawmakers chose not to fragment regulatory authority over commodity derivatives markets based upon the underlying commodity. They reasoned that "[t]he nature of the underlying commodity is not an adequate basis to divide regulatory authority." Report on S. 2391 of the Senate Agriculture, Nutrition, and Forestry

assets.[72]

Uses for blockchain technologies likewise developed in tandem beyond payment rails to other types of market infrastructure, including infrastructure used to match, route, clear, and settle secondary market transactions,[73] disseminate pricing information to market participants,[74] and otherwise facilitate market-based activity, such as by providing liquidity or extending leverage to market participants via onchain protocols.[75]

Committee, S. Rep. No. 95-850, at 22-23 (1978). While "Federal regulation of most derivatives pivots on whether a 'commodity' is involved," the CEA excludes certain transactions in commodities from the CFTC's jurisdiction. *See* Johnson et al., *supra* note 2, §3.02. For example, although a "security" (as defined in the Federal securities laws, *infra* note 112) may constitute a "commodity" under the Act, CEA 2(c)(2)(D)(ii) excepts from the Commission's jurisdiction thereunder a contract of sale of "any security," regardless of whether the transaction otherwise satisfies the statutory criteria in CEA 2(c)(2)(D)(i). CEA 2(c)(2)(D)(i)–(ii), 7 U.S.C. 2(c)(2)(D)(i)–(ii); Johnson et al., *supra* note 2, §4.03.

[72] CEA 1a(19), 7 U.S.C. 1a(19); *see also* Johnson et al., *supra* note 2, §3.02. The enactment of the Commodity Futures Trading Commission Act dramatically expanded the definition of "commodity," which, before 1974, only encompassed certain itemized agricultural commodities. *Id*. Then, in amendments adopted in 2000, three additional types of commodities were introduced, including "excluded commodities," which is defined to encompass various intangible commodities such as "financial measures, instruments and risks, such as interest rates, exchange rates, currencies, credit risks or measures, securities and macroeconomic indices or measures and the 'occurrence, extent of an occurrence[,] or contingency' subject to various limitations[.]" *Id.*; CEA 1a(19), 7 U.S.C. 1a(19); *see also CFTC v. McDonnell*, 287 F. Supp. 3d 213, 228 (E.D.N.Y. 2018) ("[crypto assets] can be regulated by [the] CFTC as a commodity. They fall well-within the common definition of 'commodity' as well as the CEA's definition of 'commodities' as 'all other goods and articles ... in which contracts for future delivery are presently or in the future dealt in.'").

[73] Hayden Adams, Noah Zinsmeister & Dan Robinson, *Uniswap v2 Core*, at 1 (Mar. 2020), available at https://app.uniswap.org/whitepaper.pdf ("Uniswap v1 is an on[]chain system of smart contracts on the Ethereum blockchain, implementing an automated liquidity protocol based on a 'constant product formula.' Each Uniswap v1 pair stores pooled reserves of two [crypto] assets, and provides liquidity for those two [crypto] assets, maintaining the invariant that the product of the reserves cannot decrease.").

[74] Lorenz Breidenbach et al., *Chainlink 2.0: Next Steps in the Evolution of Decentralized Oracle Networks*, at 1 (Apr. 15, 2021), available at https://research.chain.link/Chainlink-Whitepaper-Next-Steps-in-the-Evolution-of-Decentralized-Oracle-Networks.pdf ("We foresee an increasingly expansive role for oracle networks, one in which they complement and enhance existing and new blockchains by providing fast, reliable, and confidentiality-preserving universal connectivity and [offchain] computation for smart contracts.").

[75] Aave, *Protocol Whitepaper*, at 1 (Jan. 2020), available at https://github.com/aave/aave-protocol/blob/master/docs/Aave_Protocol_Whitepaper_v1_0.pdf ("The birth of the Aave Protocol marks Aave's shift from a decentralized [peer to peer] lending strategy [] to a pool-based strategy. Lenders provide liquidity by depositing cryptocurrencies in a pool contract. Simultaneously, in the same contract,

While market participants have noted that the unique technological properties of blockchain technologies may allow crypto asset markets to function in a manner that is "more open, interoperable, and transparent"[76] than traditional financial markets, crypto asset markets oftentimes continue to rely on intermediation.[77] For example, a broad swath of retail customers access crypto asset markets through centralized crypto asset exchanges, which have developed to perform a variety of critical market intermediary functions.[78] These functions may often closely resemble the traditional activities of financial market intermediaries, yet have historically been subject to payment systems' regulatory regimes that are inapplicable to the risks posed by intermediating financial market activity. The resulting lack of a comprehensive federal framework has resulted in crypto asset exchanges typically offering fewer and less robust protections than those

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the pooled funds can be borrowed by placing a collateral. Loans do not need to be individually matched, instead they rely on the pooled funds, as well as the amounts borrowed and their collateral."); s*ee also* Rebecca Rettig, Michael Mosier & Katja Gilman, *Genuine DeFi as Critical Infrastructure: A Conceptual Framework for Combating Illicit Finance Activity in Decentralized Finance* 11 J. Fin. Reg. 215, 227 (2025), available at https://doi.org/10.1093/jfr/fjaf005 (providing that "DeFi protocols have proliferated in the last half decade to include exchanging or swapping through decentralized exchanges or 'DEXs' (*e.g.*, Uniswap) or DEX aggregators (*e.g.*, Paraswap), liquidity provision and borrowing (*e.g.*, Compound, Aave), yield generation via liquid staking (*e.g.*, Lido), investing (*e.g.*, Enzyme Finance); and insurance (*e.g.*, Nexus Mutual), among others"); *see also* Fabian Schär, *Decentralized Finance: On Blockchain- and Smart Contract-Based Financial Markets*, 103 Fed. Res. Bank of St. Louis Rev. 153, 153 (2021), available at https://www.stlouisfed.org/publications/review/2021/02/05/decentralized-finance-on-blockchain-and-smart-contract-based-financial-markets ("The term decentralized finance (DeFi) refers to an alternative financial infrastructure built on top of the Ethereum blockchain. DeFi uses smart contracts to create protocols that replicate existing financial services in a more open, interoperable, and transparent way.").

[76] Schär, *supra* note 75, at 153 (describing "an immutable and highly interoperable financial system with unprecedented transparency, equal access rights, and little need for custodians, central clearing houses, or escrow services, as most of these roles can be assumed by 'smart contracts.'); *see also* Fabian Schär et al., *The Anatomy of Stablecoin Transactions*, BIS Working Paper No. 1359 (June 2026), available at https://www.bis.org/publ/work1359.pdf.

[77] *See* Kristin N. Johnson, *Decentralized Finance: Regulating Cryptocurrency Exchanges*, 62 Wm. & Mary L. Rev. 1911 (2021).

[78] *See generally* Yesha Yadav, *The Centralization Paradox in Cryptocurrency Markets*, 100 Wash. U. L. Rev. 1725 (2023).

afforded to customers who transact on national exchanges in other U.S. financial markets.

In 2016, then-Commissioner J. Christopher Giancarlo prefaced the significant challenges the CFTC would face in overseeing crypto asset markets when he noted that crypto assets and blockchain technologies "may revolutionize the world of finance" but that their respective development was "at risk of being stymied by disparate and uncertain regulation."[79] Over the years that followed, the Commission contributed to that risk by never settling on a cohesive and transparent regulatory approach. Instead, under former Chairman Massad, the Commission applied section 2(c)(2)(D) to a crypto asset exchange for the first time in June 2016 when it charged BFXNA Inc. ("Bitfinex") with violations of the on-exchange requirement, among other matters.[80]

On March 14, 2017, President Donald J. Trump nominated Commissioner Giancarlo as Chairman of the Commission. Under Chairman Giancarlo's leadership, the Commission swiftly attempted to operationalize a "do no harm"[81] regulatory approach, and earnestly undertook various information gathering initiatives as it sought to understand "the technology, mechanics, and markets"[82] surrounding crypto assets and blockchain technologies. Just months after former Chairman Giancarlo was sworn in, the Commission launched LabCFTC "to help [] bridge the gap from where we are today to

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[79] CFTC Commissioner J. Christopher Giancarlo, *Special Address Before the Depository Trust & Clearing Corporation 2016 Blockchain Symposium* (Mar. 29, 2016), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-13.

[80] *In re BFXNA Inc. (d/b/a Bitfinex),* CFTC Docket No. 16-19, 2016 WL 3137612 (June 2, 2016); *see also* CFTC, *CFTC Orders Bitcoin Exchange Bitfinex to Pay $75,000 for Offering Illegal Off-Exchange Financed Retail Commodity Transactions and Failing to Register as a Futures Commission Merchant*, Release No. 7380-16 (June 2, 2016), available at *https://www.cftc.gov/PressRoom/PressReleases/7380-16*.

[81] *See* Giancarlo, *supra* note 79.

[82] *Request for Input on Crypto-Asset Mechanics and Markets*, 83 FR 64563 (Dec. 17, 2018).

where we need to be: 21st century regulation for today's digital markets."[83] Chairman Giancarlo also stewarded the trading of the first regulated U.S.-bitcoin derivatives products when CME and Cboe self-certified cash-settled bitcoin futures in December 2017. These listings were the product of "rigorous discussions" with market participants regarding contract design, settlement, margining, and market surveillance, among other matters.[84]

However, the period was also marked by increased interest from retail investors in crypto assets and a significant focus from both the Commission and other federal regulators on fraud in crypto asset markets.[85] These circumstances led the Commission staff to issue an advisory with respect to crypto asset derivative product listings that emphasized the uncharted territory in which the Commission found itself.[86] Around this same time, the Commission, under the leadership of Chairman Giancarlo, first proposed interpretive guidance concerning crypto assets, which addressed questions around the Commission's jurisdiction under section 2(c)(2)(D).[87] In 2018, the Commission

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[83] CFTC, *CFTC Launches LabCFTC as Major Fintech Initiative*, Release No. 7558-17 (May 17, 2017), available at https://www.cftc.gov/PressRoom/PressReleases/7558-17. Several months later, LabCFTC published its inaugural explanatory volume on crypto assets, and, the following year, a follow-on primer on smart contracts; *see A CFTC Primer on Virtual Currencies*, *supra* note 35; LabCFTC, *A Primer on Smart Contracts* (Nov. 27, 2018), available at https://www.cftc.gov/sites/default/files/2018-11/LabCFTC_PrimerSmartContracts112718.pdf.

[84] *See CFTC Statement on Self-Certification of Bitcoin Products*, *supra* note 60.

[85] CFTC and SEC, *Joint Statement from CFTC and SEC Enforcement Directors Regarding Virtual Currency Enforcement Actions* (Jan. 19, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mcdonaldstatement011918*; *see also* Jay Clayton & J. Christopher Giancarlo, *Regulators Are Looking at Cryptocurrency*, Wall St. J. (Jan. 24, 2018), available at https://www.wsj.com/articles/regulators-are-looking-at-cryptocurrency-1516836363.

[86] CFTC, *Advisory with Respect to Virtual Currency Derivative Product Listings,* CFTC Staff Advisory No. 18-14 (May 21, 2018) (later withdrawn), available at https://www.cftc.gov/PressRoom/PressReleases/9059-25.

[87] *See Retail Commodity Transactions Involving Virtual Currency*, 82 FR 60335 (Dec. 20, 2017). Three years later in 2020, the Commission issued final interpretive guidance on the same subject. *See Retail*

attempted to stem a growing tide of fraud and illicit activity in the crypto asset markets when it charged 1pool Ltd. for violating section 2(c)(2)(D) and failing to implement adequate anti-money laundering procedures, among other matters.[88]

Speaking in 2019, former Chairman Heath Tarbert said, "[w]e've been very clear on bitcoin: bitcoin is a commodity. We haven't said anything about ether—until now. It is my view as [C]hairman of the CFTC that ether is a commodity."[89] This statement followed a request for input to better inform the Commission's understanding of the Ethereum network.[90] However, despite this declaration and the Commission's persistent information gathering efforts, Chairman Giancarlo's prediction from 2016 that "[r]ules regarding [blockchain technologies] are currently unwritten and likely years away" proved prescient.[91] By the time that President Joseph R. Biden took office in 2021, the Commission's educational efforts had not led to the promulgation of fit-for-purpose rules.

Commodity Transactions Involving Certain Digital Assets, 85 FR 37734 (June 24, 2020) ("2020 Actual Delivery Guidance"). However, the Commission later withdrew the 2020 Actual Delivery Guidance (i) in order to reevaluate its relevance in light of the rapid technological evolution of crypto assets and blockchain technologies; and (ii) in response to the findings and recommendations for the CFTC contained in the President's Working Group's Report; *see Withdrawal of Interpretive Guidance: Retail Commodity Transactions Involving Certain Digital Assets*, 90 FR 58149 (Dec. 16, 2025); President's Working Group's Report at 141. At the time of the withdrawal, then-Acting Chairman Pham described the 2020 Actual Delivery Guidance as "outdated and overly complex guidance that penalizes the crypto industry and stifles innovation." CFTC, *Acting Chairman Pham Announces Withdrawal of Outdated Digital Assets Guidance*, Release No. 9152-25 (Dec. 11, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9152-25.

[88] CFTC, *CFTC Charges Trading Platform with Illegal Transactions Margined in Bitcoin, Failing to Implement Procedures to Prevent Money-Laundering, and Failing to Register with the CFTC*, Release No. 7809-18 (Sept. 27, 2018), available at https://www.cftc.gov/PressRoom/PressReleases/7809-18.

[89] CFTC, *Chairman Tarbert Comments on Cryptocurrency Regulation at Yahoo! Finance All Markets Summit* (Oct. 10, 2019), available at https://www.cftc.gov/PressRoom/PressReleases/8051-19.

[90] *See generally Request for Input on Crypto-Asset Mechanics and Markets*, *supra* note 82.

[91] CFTC, *Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before the Cato Institute, Cryptocurrency: The Policy Challenges of a Decentralized Revolution* (Apr. 12, 2016), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-14.

2. Regulation by Enforcement (2021-2024)

The lack of a clear regulatory framework enabled the Commission under the Biden administration to enforce its interpretation of the Federal commodity laws without constraint.[92] In 2021, the Commission imposed a $1.25 million penalty on Payward Ventures, Inc. ("Kraken") for unlawful activities conducted in connection with off-exchange CTXs.[93] Former Commissioner Dawn D. Stump identified the issues with the Commission's approach in a concurring statement: "Congress added [s]ection 2(c)(2)(D) to the CEA to make clear that these retail commodity transactions must be traded on a DCM pursuant to [s]ection 4(a) "as if" they are futures contracts. But it did not comprehensively address how these transactions are to be regulated – and, in the decade since the Dodd-Frank Act was enacted, nor has the Commission."[94] The former Commissioner proceeded to call the application of the Act under those circumstances "uncharted territory" and further noted that "it is incumbent upon the Commission to explain in a transparent manner the relevant legal requirements."[95]

The Commission did not heed Commissioner Stump at that time. Rather, the Commission continued to pursue enforcement actions against market participants for alleged violations of the Act rather than "explain[ing] in a transparent manner" how section 2(c)(2)(D) applies to transactions in crypto assets or developing a fit-for-purpose regulatory framework.[96] In September 2022, the Commission charged the Ooki

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[92] *See generally* Stump Payward Statement, *supra* note 19.

[93] *In re Payward Ventures, Inc.* (d/b/a Kraken), CFTC No. 21-20 (Sept. 28, 2021).

[94] *See* Stump Payward Statement*, supra* note 19.

[95] *Id*.

[96] *Id.*

decentralized autonomous organization ("DAO") in its first action against a DAO on a novel theory that characterized the holders of Ooki crypto assets who voted on governance proposals concerning the operation of the Ooki DAO business as liable members of an unincorporated association.[97] The subsequent default judgment entered by a federal court was widely criticized as epitomizing the pitfalls of regulation by enforcement.[98] Indeed, critics have noted that the precedent-setting decision resulted from an "un-litigated settlement order[]"[99] based on "no public notice or input whatsoever,"[100] and that the default judgment failed to "provide notice to the public about the way in which the Commission [was] thinking about"[101] the complicated issues under the Act presented by crypto assets and blockchain technologies.

In this regard, then-Director of Enforcement, Ian McGinley, stated in 2023 that although the issues presented by crypto assets and blockchain technologies "may be novel, complex, and evolving, [] the Division of Enforcement will continue to [] aggressively pursue" its interpretation of unlawful activities under the Act in crypto

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[97] *In re bZeroX, LLC,* CFTC No. 22-31, 2022 WL 4597664 (Sept. 22, 2022) (administrative case imposing $250,000 penalty); *CFTC v. Ooki DAO*, No. 22-cv-05416, 2023 WL 5321527 (N.D. Cal. June 8, 2023) (entering default judgment).

[98] *See, e.g.*, Reply Brief of Amicus Curiae DeFi Education Fund Regarding Plaintiff's Motion for Alternative Service, *CFTC v. Ooki DAO*, No. 3:22-cv-05416 (N.D. Cal. Nov. 21, 2022)*; see also* Commissioner Summer K. Mersinger, *Dissenting Statement Regarding Enforcement Actions Against: 1) bZeroX, LLC, Tom Bean, and Kyle Kistner; and 2) Ooki DAO* (Sept. 22, 2022), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement092222 ("Mersinger Ooki Statement") (criticizing the enforcement action as constituting "blatant 'regulation by enforcement' by setting policy based on new definitions and standards never before articulated by the Commission or its staff, nor put out for public comment.").

[99] Letter from Daniel Lasko, on behalf of dYdX, to Christopher Kirkpatrick, Sec'y, CFTC (Sept. 24, 2025) ("dYdX Letter").

[100] *See* Mersinger Ooki Statement, *supra* note 98.

[101] *Id*.

assets through enforcement actions.[102] Shortly thereafter, in September 2023, the Commission brought enforcement actions against the developers of three decentralized finance ("DeFi") protocols[103] and then, in September 2024, against Universal Navigation Inc. ("Uniswap"),[104] alleging in each case violations of section 2(c)(2)(D) and other provisions of the Act. These actions were similarly criticized by members of the Commission at that time[105] and market participants more generally.[106] In fact, then-Commissioner Kristin N. Johnson echoed former Commissioner Stump's concerns and specifically noted how the absence of Commission regulations setting forth the manner in which CTXs may be conducted lawfully had left off-exchange retail customers vulnerable to the same fraudulent practices that led to Congress channeling 2(c)(2)(D) transactions onto and through Commission-registered entities.[107]

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[102] CFTC, *CFTC Issues Orders Against Operators of Three DeFi Protocols for Offering Illegal Digital Asset Derivatives Trading*, Release No. 8774-23 (Sept. 7, 2023), available at https://www.cftc.gov/PressRoom/PressReleases/8774-23.

[103] *Id*.

[104] CFTC, *CFTC Issues Order Against Uniswap Labs for Offering Illegal Digital Asset Derivatives Trading*, Release No. 8961-24 (Sept. 4, 2024), available at https://www.cftc.gov/PressRoom/PressReleases/8961-24.

[105] Commissioner Summer K. Mersinger, *Dissenting Statement Regarding Settlement with Uniswap Labs* (Sept. 4, 2024), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement090424 ("Mersinger Uniswap Statement") ("Notice-and-comment rulemaking would provide the DeFi community, consumer advocates, industry representatives, and the American public with the opportunity to engage with the Commission and utilize their expertise and experience to suggest how DeFi could properly be regulated while remaining true to our obligations under the CEA. Regulation through enforcement is at best a band-aid.").

[106] *See generally* Chris Brummer, Yesha Yadav, and David Zaring, *Regulation by Enforcement*, 96 S. Cal. L. Rev. 1297 (2024).

[107] *See* Commissioner Kristin N. Johnson, *Statement Regarding CFTC Resolving Charges Against Three Decentralized Finance Companies: The Need for Oversight* (Sept. 7, 2023), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement090723b ("As I have stated many times, the absence of regulation directly addressing supervision of the growing [crypto] asset marketplace leaves vulnerable retail customers exposed and lacking long-established customer protections available in other asset classes. [. . .] In a largely unregulated market like [crypto] assets, information asymmetries may not only be more pronounced, but coupled with near opacity in certain business models, there may be a shroud obscuring information regarding the design and deployment of critical operational infrastructure,

3. President Trump's Working Group on Digital Asset Markets (2025)

In early 2025, the Commission's approach to crypto assets began to shift. On January 23, 2025, President Trump issued an executive order titled "Strengthening American Leadership in Digital Financial Technology"[108] that established the President's Working Group. In July 2025, Congress then passed the GENIUS Act to regulate payment stablecoins.[109] Shortly thereafter, the President's Working Group responded to the directives in E.O. No. 14178[110] by recommending the Commission and the SEC (the "Commissions") to "use their existing authorities to immediately enable the trading of digital assets at the federal level."[111] Specifically, the President's Working Group's Report directed the Commissions to, among other matters, (i) establish a legal taxonomy for crypto assets that clarifies the application of the Federal securities laws to crypto

necessary risk management and corporate governance protocols (including policies governing conflicts of interest such as conflicts involving affiliated entities), sufficient liquidity reserves (effective recovery and resilience plans), dedicated commitment to the segregation of customer funds and separation of customer property, cyber risk resilience, or general system safeguards. In the dark, it may be difficult for customers to appreciate real risks and for regulators to use traditional surveillance tools to prevent fraud and market manipulation.").

[108] E.O. No. 14178, *Strengthening American Leadership in Digital Financial Technology*, 90 FR 8647 (Jan. 31, 2025).

[109] *See* GENIUS Act, *supra* note 1.

[110] E.O. No. 14178, *supra* note 108, at section 4(c)(i).

[111] President's Working Group's Report at 6; *see also* E.O. No. 14178, *supra* note 108, at section 4(c)(i).

assets;[112] and (ii) enable the trading of crypto assets in secondary markets,[113] including by facilitating the listing of CTXs using the Commission's existing statutory authority.[114] These directives echoed persistent calls from market participants to do the same.[115]

The Commission and the SEC swiftly operationalized the President's Working Group's directives. Throughout 2025, the SEC's Crypto Task Force,[116] under the leadership of Commissioner Hester M. Peirce, supported the SEC's efforts to respond to the President's Working Group's directives, including by soliciting input from the public[117] and coordinating with the SEC's Division of Corporation Finance to issue a series of staff statements providing the Division's views regarding the application of the

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[112] President's Working Group's Report at 48. The definition of "security" in both the Securities Act and the Exchange Act enumerates several instrument types, including "investment contract." *See* 15 U.S.C. 77b(a)(1); 15 U.S.C. 78c(a)(10). The definitions are "virtually identical" in the Securities Act and Exchange Act and are treated by the courts as identical in "decisions dealing with the scope of the term." *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686 n.1 (1985). The SEC and federal courts have historically applied the "*Howey* test" to determine if a crypto asset or transaction therein constitutes an investment contract and therefore a security. *See SEC v. W.J. Howey Co*., 328 U.S. 293 (1946) ("*Howey*"). The *Howey* test defines an investment contract as a contract, transaction, or scheme involving (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits derived from the efforts of others. *Id*.; *see also Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, SEC Release No. 34-81207 (July 25, 2017); *Gladius Network LLC*, Release No. 33-10608 (Feb. 20, 2019); *Paragon Coin, Inc*., SEC Release No. 33 10574 (Nov. 16, 2018); *In re Munchee, Inc*., SEC Release No. 33-10445 (Dec. 11, 2017); SEC, Division of Corporation Finance no-action letter to IMVU, Inc. (Nov. 19, 2020).

[113] President's Working Group's Report at 51.

[114] *Id.* at 52.

[115] *See, e.g.*, dYdX Letter, *supra* note 99; Coinbase, Petition for Rulemaking – Digital Asset Securities Regulation (July 21, 2022), available at https://www.sec.gov/rules/petitions/2022/petn4-789.pdf; Letter from Robinhood Markets, Inc. (Mar. 13, 2025), available at https://www.sec.gov/files/ctf-input-robinhood-2025-03-13.pdf; Letter from Andreessen Horowitz (Mar. 13, 2025), available at https://dwt2zme5yrom6.cloudfront.net/uploads/2025/03/a16z-Crypto-SEC-RFI-Questions-1-through-6-March-13-2025.pdf.

[116] *See* SEC, Crypto Task Force, available at https://www.sec.gov/about/crypto-task-force.

[117] *See, e.g.*, SEC, Crypto Task Force Roundtables, available at https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables; *see also* https://www.sec.gov/about/crypto-task-force/crypto-task-force-meetings; https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input.

Federal securities laws to various crypto asset-related matters.[118]

The CFTC likewise announced a "Crypto Sprint" to implement the President's Working Group's recommendations,[119] and, directly relevant to this Notice, requested public input on how DCMs could list and trade CTXs.[120] The Commission received 11 comments that offered varied perspectives on the Commission's legal authority,[121] contemplated regulatory frameworks,[122] and operational considerations,[123] among other matters. On December 4, 2025, the Commission announced that CTXs would trade for the first time on a U.S. regulated exchange.[124] However, it did not promulgate a fit-for-purpose regulatory framework at that time.

4. Regulatory Clarity for Crypto Asset Markets (2026)

After being sworn in as the 16th Chairman of the CFTC on December 22, 2025, Chairman Selig set forth the priorities of the Commission with respect to crypto assets in

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[118] *See*, *e.g.*, SEC, Division of Corporation Finance, Staff Statement on Meme Coins (Feb. 27, 2025), available at https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme coins; *see also* SEC, Division of Corporation Finance, Statement on Certain Proof of-Work Mining Activities (Mar. 20, 2025), available at https://www.sec.gov/newsroom/speeches statements/statement-certain-proof-work-mining-activities-032025. The SEC staff statements are not a rule, regulation, guidance, or statement of the SEC, and the SEC has neither approved nor disapproved their content. SEC staff statements have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[119] CFTC, *Acting Chairman Pham Announces CFTC Crypto Sprint*, Release No. 9104-25 (Aug. 1, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9104-25.

[120] CFTC, *Acting Chairman Pham Launches Listed Spot Crypto Trading Initiative,* Release No. 9105-25 (Aug. 4, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9105-25.

[121] *See, e.g.,* Letter from Allison Lurton, General Counsel, Chief Legal Officer, on behalf of Futures Industry Association, to Christopher Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025), at 3.

[122] *See, e.g.,* Letter from Thomas Johnson, Chief Compliance Officer, on behalf of tastyfx LLC, to Commissioners of the CFTC (Aug. 19, 2025), at 1.

[123] *See, e.g.*, Letter from Linda Lacewell, Global Chief Legal Officer, on behalf of OKX US, to Christopher Kirkpatrick, Sec'y, CFTC (Aug. 18, 2025), at 4–5 ("OKX Letter").

[124] CFTC, *Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges*, Release No. 9145-25 (Dec. 4, 2025), available at https://www.cftc.gov/PressRoom/PressReleases/9145-25.

his first public remarks on January 29, 2026. He declared the end of regulation by enforcement and indicated the Commission would explore rulemaking initiatives with respect to CTXs.[125] On that same day, Chairman Selig and SEC Chairman Atkins announced that "Project Crypto" would proceed as a joint effort between the Commissions to harmonize federal oversight of crypto asset markets.[126]

Shortly thereafter, on March 11, 2026, the Commissions entered into a memorandum of understanding ("MOU")[127] to establish a structured framework for sustained interagency cooperation. In announcing the MOU, SEC Chairman Atkins observed that "[f]or decades, regulatory turf wars, duplicative agency registrations, and different sets of regulations between the SEC and CFTC have stifled innovation and pushed market participants to other jurisdictions," and that the MOU "will serve as a roadmap for a new era of harmonization between the agencies."[128]

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[125] Chairman Michael S. Selig, *The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance* (Jan. 29, 2026), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1 ("Chairman Selig Project Crypto Remarks"), providing that that "thanks to the leadership of President Trump, [] regulation by enforcement is dead."

[126] *Id.* ("Today, we are building on that foundation. Rather than running a parallel initiative with the SEC, I am pleased to announce that the CFTC is partnering with the SEC on Project Crypto—bringing coordination, coherence, and a unified approach to the federal oversight of crypto asset markets. Project Crypto recognizes that crypto markets span across our agencies' respective regulatory boundaries.").

[127] CFTC, SEC, *CFTC and SEC Announce Historic Memorandum of Understanding Between Agencies*, Release No. 9192-26 (Mar. 11, 2026) ("MOU Announcement"), available at https://www.cftc.gov/PressRoom/PressReleases/9192-26.

[128] *Id*. *See* Section II.C, *infra*, for a further discussion of how the Commission's regulatory approach to crypto assets has driven innovation away from federally regulated venues. Other federal regulators have highlighted the harmful effects of friction between the Commissions. *See, e.g.*, Department of the Treasury, *Blueprint for a Modernized Financial Regulatory Structure*, at 11 (Mar. 31, 2008), available at https://home.treasury.gov/system/files/136/archive-documents/Blueprint.pdf ("Product and market participant convergence, market linkages, and globalization have rendered regulatory bifurcation of the futures and securities markets untenable, potentially harmful, and inefficient. To address this issue, the CFTC and the SEC should be merged to provide unified oversight and regulation of the futures and securities industries.").

The MOU represented a critical step in addressing how the novel technological properties of crypto assets and blockchain technologies had exacerbated the effects of the Commissions' fragmented and inconsistent federal oversight of the U.S. capital markets. For over a decade, market participants, regulators,[129] and federal courts[130] grappled with the fluid status of crypto assets and secondary transactions therein under the Federal securities laws[131] as a threshold issue to unleashing the "enormous commercial promise"[132] of crypto assets and blockchain technologies. In short, "[t]he status of crypto assets under the securities laws is fundamental to resolving many other questions,"[133] including which of the Commission's or SEC's regulatory framework applies.[134] Market

[129] *See* SEC Chairman Paul S. Atkins, *The SEC's Approach to Digital Assets: Inside "Project Crypto"* (Nov. 12, 2025), available at https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto ("Commissioner Peirce has rightly observed that while a project's [crypto asset] launch might initially involve an investment contract, those promises may not remain forever. Networks mature. Code is shipped. Control disperses. The issuer's role diminishes or disappears.").

[130] *See, e.g., SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp 3d 170, 197 (S.D.N.Y. July 31, 2023) ("It may also be mentioned that the Court declines to draw a distinction between these [crypto assets] based on their manner of sale, such that [crypto assets] sold directly to institutional investors are considered securities and those sold through secondary market transactions to retail investors are not. In doing so, the Court *rejects the approach recently adopted by another judge of this District in a similar case*, *SEC v. Ripple Labs, Inc*. 2023 WL 4507900 (S.D.N.Y. July 13, 2023)") (emphasis added); *SEC v. Coinbase*, *Inc.*, 726 F. Supp. 3d 260, 293 (S.D.N.Y. Mar. 27, 2024) (similarly rejecting the *Ripple* court's reasoning and instead adopting reasoning akin to the *Terraform* court).

[131] *See supra* note 112, setting forth the definition of "security" under the Federal securities laws.

[132] Chairman J. Christopher Giancarlo, *Remarks at the 4th Annual DC Blockchain Summit* (Mar. 6, 2019), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo66 ("Giancarlo Blockchain Summit Remarks").

[133] SEC Commissioner Hester M. Peirce, *The Journey Begins* (Feb. 4, 2025), available at https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425.

[134] President's Working Group's Report at 45 ("U.S. regulatory agencies have attempted to classify [crypto] assets under existing frameworks. For example, the CFTC recognized that bitcoin and ether are commodities, while the SEC has treated other [crypto] assets as securities based on their structures, methods of distribution, and uses. Yet, without a clear and comprehensive classification system, market participants have had to navigate a patchwork of interpretations and guidance—a proverbial minefield for honest actors trying to lead the industry forward.").

participants have observed that the uncertainty concerning whether a crypto asset is a security or not can restrict trading in secondary markets, and that without broad distribution, ownership, and trading thereof, a crypto asset may be unable to achieve the networks effects necessary for it to function as designed.[135] Accordingly, during the course of litigation with the SEC, one market participant aptly described the scope of the SEC's authority to regulate secondary transactions in crypto assets as a "cloud that currently hangs over the [crypto asset] market."[136]

On March 17, 2026, under the leadership of Chairman Selig and SEC Chairman Atkins, the Commissions took decisive action to resolve these questions by issuing the Joint Crypto Asset Taxonomy, which clarified how the SEC would apply the Federal securities laws to the different categories of crypto assets and transactions therein, with

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[135] The Board Of The International Organization Of Securities Commissions, *IOSCO Decentralized Finance Report*, at 30, 32 (Mar. 1, 2022), available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD699.pdf (describing how in order to accrue the network effects that are "crucial" to most protocols, a project's pathway to decentralization may include a distribution of crypto assets to "early adopters (sometimes accomplished through "airdrops"), protocol users and liquidity providers, engineers that evolve and improve the code, purchasers of the [crypto asset] in the secondary market, and third-party service providers (e.g., auditing firms) that are paid in [crypto assets] for their services"); *see also* Section II.C.2, *infra*, for a further discussion regarding how restricted or limited secondary markets in crypto assets can hinder or prevent decentralized market forces from facilitating network effects that otherwise could harness productive behavior for the benefit of a blockchain system; Andreessen Horowitz, *Comments on the SEC Crypto Task Force's Questions Concerning the Security Status of Crypto Assets* (Mar. 13, 2025), available at https://dwt2zme5yrom6.cloudfront.net/uploads/2025/03/a16z-Crypto-SEC-RFI-Questions-1-through-6-March-13-2025.pdf ("a16z Letter") ("[d]istribution of [crypto assets] can facilitate decentralization by enabling the system to function autonomously (eliminating operational control) as well as by eliminating voting control and reducing economic control of the system"); Stephen Wink & Shaun Musuka, *Crypto—The Pursuit of Sufficient Decentralization*, Bloomberg L. (Aug. 21, 2019), available at https://news.bloomberglaw.com/securities-law/insight-crypto-the-pursuit-of-sufficient-decentralization ("[i]t is difficult to imagine a scenario in which such [crypto asset] networks could achieve the critical mass of network participants necessary if such network participants were restricted [by the Federal securities laws] from exchanging their [crypto assets] in some way with other participants for other [crypto assets] as a means to continually broaden the universe of [crypto asset] holders.").

[136] Petition for Permission to Appeal Pursuant to 28 U.S.C. 1292(b), *SEC v. Coinbase, Inc.,* No. 25-145, at 1 (2d Cir. Jan. 17, 2025) ("There is no more pressing issue in securities law today than the scope of the [SEC's] authority to regulate secondary trades of digital assets").

the Commission providing guidance that it will administer the Act consistent with the interpretation.[137] Specifically, the Joint Crypto Asset Taxonomy classified crypto assets into five categories based on their characteristics, uses, and functions, providing that digital securities[138] are securities, stablecoins[139] may or may not be securities depending on their characteristics, and digital commodities,[140] digital collectibles,[141] and digital tools[142] are not themselves securities.[143] The Joint Crypto Asset Taxonomy further

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[137] CFTC, *CFTC Joins SEC to Clarify the Application of Federal Securities Laws to Crypto Assets*, Release No. 9198-26 (Mar. 17, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9198-26; *see also* Joint Crypto Asset Taxonomy, *supra* note 1.

[138] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13720, providing that a digital security (commonly known as a "tokenized" security) is a financial instrument enumerated in the definition "security" that is formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks. *See also supra* note 71, describing the jurisdictional boundaries between the CFTC and SEC with respect to transactions or derivatives referencing, involving, or relating to a security.

[139] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13720, providing that a stablecoin is a crypto asset that is designed to maintain a stable value relative to a reference asset like the U.S. dollar. *See also supra* note 1 (describing how the GENIUS Act creates a comprehensive regulatory framework for a specific type of stablecoin called a "payment stablecoin").

[140] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13718, providing that a digital commodity is a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional, as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others. In the Joint Crypto Asset Taxonomy, the Commissions provided their views as to examples of digital commodities, which include, among others, Bitcoin (BTC); Ether (ETH); Solana (SOL); Stellar (XLM); Tezos (XTZ); and XRP (XRP).

[141] *See id.*, at 13718, providing that a digital collectible is a crypto asset that is designed to be collected and/or used and may represent or convey rights to artwork, music, videos, trading cards, in-game items, or digital representations or references to internet memes, characters, current events, or trends, among other things. A digital collectible does not have intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor.

[142] *See id.*, *supra* note 1, at 13719, providing that a digital tool is a crypto asset that performs a practical function, such as a membership, ticket, credential, title instrument, or identity badge. Digital tools are commonly issued for use in connection with crypto systems and are designed to perform practical functions within such systems. Digital tools often are non-transferrable or "soul-bound," and their value is derived from their practical functionality.

[143] This Notice also refers to each of digital commodities, digital collectibles, and digital tools as "non-security crypto assets."

addressed how non-security crypto assets may become subject to an investment contract[144] and how they may cease to be subject to an investment contract.[145]

Around that same time, the Commission launched an Innovation Task Force ("ITF"), led by Michael J. Passalacqua, to deliver regulatory clarity and foster market integrity and responsible technological progress across the new frontier of finance, including with respect to crypto assets and blockchain technologies.[146] Over the following months, the ITF, together with Commission staff, delivered on the ITF's purposes and objectives and the priorities Chairman Selig had set forth for the Commission.[147] As part of executing those priorities set forth by Chairman Selig, the Commission's staff clarified the application of its regulations concerning introducing brokers to crypto asset software developers,[148] issued guidance concerning CFTC-

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[144] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13721. The Joint Crypto Asset Taxonomy provided the Commissions' views that a non-security crypto asset becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits. Under such circumstances, secondary market offers and sales of such a non-security crypto asset would constitute securities transactions that must be registered under the Securities Act or conducted pursuant to an available exemption from registration. The associated investment contract will continue to be transferred to subsequent purchasers of the non-security crypto asset in secondary market transactions until the non-security crypto asset separates from the issuer's representations or promises.

[145] *See* Joint Crypto Asset Taxonomy, *supra* note 1, at 13722–3. The Joint Crypto Asset Taxonomy set forth the Commissions' view that a non-security crypto asset would no longer be subject to an investment contract when: (1) the issuer has fulfilled its representations or promises to engage in essential managerial efforts, or (2) the purchaser would not reasonably expect the issuer to be able to fulfill or to continue to engage in the essential managerial efforts it represented or promised it would undertake.

[146] CFTC, *Chairman Selig Announces Formation of New Innovation Task Force*, Release No. 9201-26 (Mar. 24, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9201-26 ("Innovation Task Force Release").

[147] *See* Chairman Selig Project Crypto Remarks, *supra* note 125.

[148] CFTC, *CFTC Staff Issues No-Action Position to Self-Custodial Crypto Asset Wallet Software Provider*, Release No. 9197-26 (Mar. 17, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9197-26 (providing that the Commission's Market Participants Division would not recommend that the Commission take an enforcement action against the developer of self-custodial crypto asset wallet software or its relevant personnel for failure to register as an IB or an associated person ("AP") of an IB in relation to the developer's proposed provision and marketing of software to facilitate trading by its users with registered

registered entity activities relating to crypto assets and blockchain technologies,[149] and issued an advisory on 24/7 trading, including in crypto asset markets.[150] During this time period, the Commission also approved a product submission for a "true" bitcoin perpetual contract on a CFTC-registered DCM.[151]

On August 20, 2026, Chairman Selig hosted the inaugural meeting of the CFTC's Innovation Advisory Committee ("IAC"). At the inaugural IAC meeting, American innovators, entrepreneurs, academics, and builders at the center of both the new frontier of finance and traditional U.S. financial markets provided advice to the Commission regarding complex issues pertaining to the future of U.S. financial markets.[152] The discussion at the inaugural meeting reflected some of the same priorities of the

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FCMs, IBs, and DCMs).

[149] CFTC, *CFTC Staff Issues FAQs Concerning Registrant and Registered Entity Activities Relating to Crypto Assets and Blockchain Technologies*, Release No. 9200-26 (Mar. 20, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9200-26.

[150] CFTC, *CFTC Staff Issues Advisory on 24/7 Trading, Clearing, and Settlement*, Release No. 9239-26 (May 29, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9239-26.

[151] CFTC, *CFTC Approves BTCPERP Contract Submitted by KalshiEX, LLC*, Release No. 9240-26 (May 29, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9240-26.

[152] *See, e.g.*, Vladimir Tenev, Chief Executive Officer, Robinhood Markets, Inc., *Statement at the Inaugural CFTC Innovation Advisory Committee Meeting*, at 00:32:38 (Aug. 20, 2026), https://www.youtube.com/watch?v=9rTCARzj98I ("It's been a challenge navigating the patchwork of state-by-state regulations because [] not all of our products are available to all of our customers. [] So I think just a federal framework, aside from providing a certainty and durability and not, you know, having our customers worry about rules changing every four or eight years or whether an asset they're going to hold is going to have to be delisted one way or another, preventing their access to it, which I think just puts a cloud of uncertainty over everything, will directly make it so that we don't have to deal with multi-state access issues where some of our products are available in certain states. And I think that the customer, unfortunately, ends up suffering here, you know, more than the broker or the crypto firm in most cases"); *see also* Vicky Ge Huang, *DRW's Don Wilson Encourages CFTC to Approve Perpetual Futures*, Wall St. J. (Aug. 20, 2026), available at https://www.wsj.com/livecoverage/stock-market-today-dow-sp-500-nasdaq-08-20-2026/card/drw-s-don-wilson-encourages-cftc-to-approve-perpetual-futures-WBLJH1WD8D8M0rufCWC9; Caitlin Ostroff & Vicky Ge Huang, *CFTC Committee Discussion on Prediction Markets Gets Heated,* Wall St. J. (Aug. 20, 2026), available at https://www.wsj.com/livecoverage/stock-market-today-dow-sp-500-nasdaq-08-20-2026/card/cftc-committee-discussion-on-prediction-markets-gets-heated-yQwCEYhWu7zrrUU7vg67.

President's Working Group's Report, including how to enable the trading of crypto assets, and CTXs, under a federal regulatory regime.

In relation to enabling the trading of crypto assets, on August 18, 2026, the SEC proposed new rules that would create a clear and fit-for-purpose regulatory framework for certain investment contracts involving crypto assets.[153] The proposed Regulation Crypto Assets included a conditional safe harbor that would codify the circumstances set forth in the Joint Crypto Asset Taxonomy pursuant to which a non-security crypto asset may cease to be subject to an investment contract, and therefore freely tradable in secondary markets outside the purview of the SEC and the Federal securities laws.[154]

This Notice thus seeks to advance the recommendations included in the President's Working Group's Report for the Commission to explore how to enable secondary market trading in crypto assets, including CTXs, and to provide a complementary federal regulatory framework for crypto assets subject to the safe harbor proposed in Regulation Crypto Assets and thus freely tradable in secondary markets.[155]

II. The History, Application, and Scope of Section 2(c)(2)(D)

A. Sections 2(c)(2)(D)(i)-(ii) and Their Anti-Evasion Origins[156]

For decades, the Commission maintained that certain retail commodity

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[153] SEC, *Regulation Crypto Assets*, 91 FR 54510 (proposed Aug. 21, 2026) ("Regulation Crypto Assets").

[154] *Id.* at 54553. The proposed Regulation Crypto Assets further contemplates codifying two exemptions from the registration requirements of the Securities Act that would facilitate capital formation and innovation within the crypto asset markets. *Id.* at 54529–53.

[155] President's Working Group's Report at 51.

[156] *See* proposed Regulation CTX in Section III, *infra*, which explicitly identifies certain circumstances that the Commission preliminarily understands would result in transactions in crypto assets being subject to section 2(c)(2)(D).

transactions offered with leverage were futures contracts subject to the Act.[157] The Seventh Circuit called that view into question when it held in *CFTC v. Zelener* that the Commission's jurisdiction did not extend to retail foreign-currency contracts that rolled over indefinitely, rarely settled by delivery, and were formalistically documented as cash market transactions.[158] The court's holding "created the distinct possibility that, through clever draftsmanship, completely unregulated firms and individuals could sell retail customers []contracts that looked like futures, acted like futures, and were sold like futures and could do so outside the [Commission's] jurisdiction."[159]

In 2010, Congress addressed concerns about this perceived loophole by extending comprehensive Commission jurisdiction to all retail commodity transactions under the circumstances described in section 2(c)(2)(D)(i).[160] The enacting legislative record is explicit about the anti-evasion impetus for granting the Commission additional statutory authority.[161] The floor manager for Title VII of the Dodd-Frank Act characterized section 2(c)(2)(D) as a "*Zelener* fraud fix" that addressed "instances of fraudsters using [*Zelener*-style rolling spot contracts] to evade the CFTC's jurisdiction over futures contracts."[162] Another Congressman similarly stated the governing principle directly: "[i]f in substance

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[157] The Ninth Circuit endorsed that approach in *CFTC v. Co Petro Marketing Group, Inc*., 680 F.2d 573, 576 (9th Cir. 1982) (holding that leveraged retail commodity contracts "sold merely for speculative purposes and which are not predicated upon the expectation that delivery of the actual commodity by the seller to the original contracting buyer will occur in the future" must be traded "through a member of a board of trade which has been designated by the [Commission] as a contract market.").

[158] *CFTC v. Zelener*, 373 F.3d at 868-69 (7th Cir. 2004).

[159] *Zelener* Hearing, *supra* note 53, at 10 (statement of Daniel Roth, President and Chief Executive Officer of the National Futures Association).

[160] *See* section 742 of the Dodd-Frank Act; *see also* CEA 2(c)(2)(D), 7 U.S.C. 2(c)(2)(D).

[161] 156 Cong. Rec. S5924 (daily ed. July 15, 2010) (statement of Sen. Lincoln, explaining the rationale for the legislation during floor debate on the Dodd-Frank Act); *see also* Dodd-Frank Act, section 742(a), 124 Stat. 1376, 1732–33 (2010).

[162] *Id.*

it is a futures contract, it is going to be regulated. It doesn't matter how clever your draftsmanship is."[163] Congress underscored its intention to equip the Commission with expansive jurisdiction to protect retail market participants by explicitly delegating the Commission discretionary authority[164] to further define each term in section 2(c)(2)(D).[165] In short, with respect to retail commodity contracts that function like futures contracts but, prior to section 2(c)(2)(D)'s enactment, fell outside of the Commission's jurisdiction as a result of the *Zelener* holding, the Commission noted in 2016 that "in enacting the statute Congress expressed its intent that [s]ection 2(c)(2)(D) should be applicable to a broad range of agreements, contracts, and transactions."[166]

This broad jurisdiction extends to various transaction structures with the economic substance of an open futures contract, which therefore implicate the risks to retail customers that are addressed by section 2(c)(2)(D). In extending the Commission's jurisdiction, Congress explicitly specified that the mere offer of a transaction on a leveraged, margined, or financed basis to a retail customer, even if the offer of leverage,

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[163] *Zelener* Hearing, *supra* note 53, at 22 (statement of Rep. Marshall, Member, H. Comm. on Agriculture). Section 2(c)(2)(D)'s legislative history thereby frames the subparagraph's additional grant of statutory authority as an extension of the Commission's settled regulatory function to a new avenue of evasion, echoing the Congressional concerns that led to the passage of the Act in 1974. *See, e.g.*, H.R. Rep. No. 93-975, at 44 (1974) (enacting Member of the CEA noting there had been 5.7 million unregulated commodity derivative contracts traded in the prior fiscal year, including new contract types that could not be regulated under the then current federal law).

[164] *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 371 (2024) ("when the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the [Administrative Procedure Act] is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits. The court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in 'reasoned decisionmaking' [] within those boundaries.").

[165] 15 U.S.C. 8321(a), providing that the "Commission may adopt a rule to define [] (1) the term 'commercial risk'; and (2) any other term included in an amendment to the [CEA] made by [the Dodd-Frank Act]."

[166] *See Bitfinex, supra* note 80*,* at 5.

margin, or financing is declined,[167] subjects the resulting fully paid and open 2(c)(2)(D) transaction to the Commission's jurisdiction, unless a statutory exception applies (a "fully paid, open 2(c)(2)(D) transaction").[168]

Consistent with Congress's intent to prevent the evasion of the Commission's jurisdiction over futures contacts (or agreements, contracts, and transactions that are, in substance, futures contracts), but not to "interfere with the legitimate spot market,"[169] section 2(c)(2)(D)(ii) excepts certain classes of contracts of sale that demonstrate typical cash market activity rather than mimicking the economic substance of an open futures contract, including a contract of sale that "results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved" (the "actual delivery exception").[170] However, the exceptions enumerated in section 2(c)(2)(D)(ii) prove the breadth of Commission jurisdiction insofar as they represent the sole off-ramps from the on-exchange requirement. In other words, unless actual delivery occurs or another statutory exception applies, the execution of a fully

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[167] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i) (including within the scope of section 2(c)(2)(D) any transaction that is "offered (even if not entered into), on a leveraged or margined basis…"). Courts have interpreted the provision in the same manner. See, e.g., *CFTC v. Laino Group Limited d/b/a PaxForex*, 2021 WL 4059385 (S.D.T. June 30, 2021) ("Accordingly, Defendant *by offering to enter into, or entering into* transactions in gold, silver, bitcoin, ether, and litecoin with non-ECP U.S. customers on a leveraged or margined basis engaged in retail commodity transactions subject to 7 U.S.C. § 2(c)(2)(D)(i)") (emphasis added).

[168] CEA 2(c)(2)(D)(i)–(ii), 7 U.S.C. 2(c)(2)(D)(i)–(ii). This Notice further discusses fully paid, open (2)(c)(2)(D) transactions in Section III.C, *infra*.

[169] *Zelener* Hearing, *supra* note 53, at 9 (statement of Daniel Roth, President of the National Futures Association).

[170] CEA 2(c)(2)(D)(ii)(III)(aa), 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa) (providing that "[t]his subparagraph shall not apply to [] (III) a contract of sale that—(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved[.]").

paid, open 2(c)(2)(D) transaction following a retail customer's rejection of an offer of leverage, margin, or financing does not alone result in the Commission's jurisdiction falling away. Instead, the fully paid, open 2(c)(2)(D) transaction remains subject to the Act, including the on-exchange requirement, unless or until a statutory exception applies. Congress mandated this result when it provided that section 2(c)(2)(D) will apply to the transactions described in section 2(c)(2)(D)(i), "except as provided in clause (ii) [of section 2(c)(2)(D)]."[171] As discussed further in Section III.C, *infra*, this statutory construction reflects that a fully paid, open 2(c)(2)(D) transaction continues to exhibit the characteristics of an open futures contract until "actual delivery" occurs (assuming no other statutory exceptions apply).[172]

The controlling actual delivery exception case law dates back to 2019, when the Ninth Circuit in *CFTC v. Monex Credit Co.*[173] held that the actual delivery exception required giving "real and immediate possession [of the underlying commodity] to the buyer or buyer's agent."[174] The court found that the plain meaning of the statutory text

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[171] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

[172] The Commission notes that "a contract of sale that creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer" is similarly excepted from the Commission's jurisdiction, regardless of whether it satisfies the statutory criteria contained in CEA 2(c)(2)(D)(i). CEA 2(c)(2)(D)(ii)(III)(bb), 7 U.S.C. 2(c)(2)(D)(ii)(III)(bb). The presence of the "enforceable obligation" described therein mirrors the act of "actual delivery" in that each distinguishes genuine cash market transactions from those that function as open futures contracts by merely serving as a vehicle for price exposure.

[173] *CFTC v. Monex Credit Co.,* 931 F.3d 966, 974 (9th Cir. 2019) ("*Monex*"). In addition to case law pertaining to the actual delivery exception and the withdrawn 2020 Actual Delivery Guidance, discussed *supra* note 87, the Commission issued in 2011 a proposed interpretation of the term "actual delivery" in the context of section 2(c)(2)(D) on an asset-class-agnostic basis, accompanied by a request for comment. *Retail Commodity Transactions Under Commodity Exchange Act*, 76 FR 77670 (Dec. 14, 2011). After reviewing public comments, the Commission issued a final interpretation in 2013. *Retail Commodity Transactions Under Commodity Exchange Act*, 78 FR 52426 (Aug. 23, 2013).

[174] *Monex* 931 F.3d at 974; *see also CFTC v. Hunter Wise Commodities*, *LLC*, 749 F.3d 967, 979 (11th Cir.

required more than a constructive delivery such as where the commodities remain "in the broker's chosen depository, never exchange hands, and are subject to the broker's exclusive control."[175] Those circumstances demonstrated the entire *Monex* transaction was "merely a book-entry" that only resulted in a "sham delivery,"[176] and not actual delivery.

B. The Comprehensive Regulatory Framework Mandated by Section 2(c)(2)(D)(iii)[177]

Section 2(c)(2)(D) grants the Commission broad authority to regulate 2(c)(2)(D) transactions. The Act provides that, unless an exception applies (including the actual delivery exception, of which the Commission provides its preliminary interpretation in Sections III.B and C, *infra*), any agreement, contract, or transaction in any commodity that is (i) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity ("retail") and (ii) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, constitutes a 2(c)(2)(D) transaction.[178]

Specifically, section 2(c)(2)(D)(iii) provides that 2(c)(2)(D) transactions are

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2014) ("'[a]ctual' is that which 'exist[s] in fact' and is 'real,' rather than constructive.") (quoting *Black's Law Dictionary* 494 (9th ed. 2009)).

[175] *Monex* 931 F.3d at 975.

[176] *Id.*

[177] *See* proposed Regulation CAM in Section V, *infra*, which contemplates the implementation of a fit-for-purpose regulatory framework that addresses the on-exchange requirement in the context of the commercial realities of, and risks posed by, CTXs.

[178] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

subject to sections 4(a),[179] 4(b),[180] and 4b[181] of the Act as if they were futures contracts. Section 4(a) implements the on-exchange requirement described above,[182] and thereby subjects 2(c)(2)(D) transactions to the same "comprehensive regulatory structure"[183] applicable to futures contracts by requiring the listing DCM to continuously comply with a comprehensive set of regulations[184] that reaches virtually every aspect of trading in 2(c)(2)(D) transactions, including with respect to listing standards,[185] prevention of market disruptions,[186] exercises of emergency authority,[187] publication of information,[188] execution of transactions,[189] the financial integrity of transactions,[190] protection against abusive practices,[191] conflicts of interests,[192] and recordkeeping practices,[193] among other areas.

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[179] CEA 4(a), 7 U.S.C. 6(a) (prohibiting the off-exchange trading of futures transactions unless the transaction is conducted on or subject to the rules of a DCM, subject to certain exceptions).

[180] CEA 4(b), 7 U.S.C. 6(b) (permitting foreign boards of trade registered with the Commission with the ability to provide direct access to U.S. persons).

[181] CEA 4b, 7 U.S.C. 6b (prohibiting fraudulent conduct in connection with any contract of sale of any commodity in interstate commerce, among other things).

[182] CEA 4(a), 7 U.S.C. 6(a).

[183] *Curran*, 456 U.S., at 356 (1982). Commenters concur. For example, one commenter, Bitnomial Exchange, LLC ("Bitnomial"), explained that the provision "requires that any leveraged retail commodity transaction involving actual delivery after 28 days be regulated as a futures contract and occur on a DCM." Letter from James Walsh, Chief Regulatory Officer, on behalf of Bitnomial Exchange, LLC, to Commissioners of the CFTC (Aug. 19, 2025) at 1 ("Bitnomial Letter").

[184] *See* CEA 5(d), 7 U.S.C. 7(d); *see also* 17 CFR part 38.

[185] CEA 5(d)(3), 7 U.S.C. 7(d)(3).

[186] CEA 5(d)(4), 7 U.S.C. 7(d)(4).

[187] CEA 5(d)(6), 7 U.S.C. 7(d)(6).

[188] CEA 5(d)(7), (8), 7 U.S.C. 7(d)(7), (8).

[189] CEA 5(d)(9), 7 U.S.C. 7(d)(9).

[190] CEA 5(d)(11), 7 U.S.C. 7(d)(11).

[191] CEA 5(d)(12), 7 U.S.C. 7(d)(12).

[192] CEA 5(d)(16), 7 U.S.C. 7(d)(16).

[193] CEA 5(d)(18), 7 U.S.C. 7(d)(18).

The Act also provides for the comprehensive regulation of intermediaries other than the exchange that lists a 2(c)(2)(D) transaction. A person that solicits or accepts orders for a 2(c)(2)(D) transaction and holds related customer assets under the circumstances described in section 1a(28)(A)[194] of the Act constitutes an FCM subject to the Act's customer protection requirements, including disclosures,[195] capital requirements,[196] and customer property segregation,[197] among other areas. The Act further comprehensively regulates the clearance and settlement of 2(c)(2)(D) transactions by a DCO.[198]

The Commission preliminarily believes that in subjecting 2(c)(2)(D) transactions, and thus CTXs, to such comprehensive regulation, Congress made clear that varying state laws did not apply to the operation of trading facilities that offer CTXs.[199] As noted, CTXs are subject to the on-exchange requirement and, in turn, must be treated "as if"

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[194] CEA 1a(28)(A), 7 U.S.C. 1a(28)(A) (providing that the term "futures commission merchant" means an individual, association, partnership, corporation, or trust (i) that—(I) is—(aa) engaged in soliciting or in accepting orders for— [. . .] (DD) any agreement, contract, or transaction described in [. . .] section 2(c)(2)(D)(i) of this title; and (II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom[.]").

[195] 17 CFR 1.55.

[196] CEA 4f(b), 7 U.S.C. 6f(b).

[197] CEA 4d(a)(2), 7 U.S.C. 6d(a)(2).

[198] A registered DCO is subject to 18 core principles set out in section 5b(c)(2) of the Act. *See* Johnson et al., *supra* note 2, §6.06. ("The core principles cover areas ranging from clearing member eligibility standards, risk management, default procedures, treatment of funds, rule enforcement, and legal risk. A DCO must comply with the DCO core principles and the requirements of any rule the CFTC may impose pursuant to its general rulemaking authority [. . .] The Commission's primary rules governing DCOs are set in [17 CFR 39].").

[199] *See* Johnson et al., , *supra* note 2, §4.05 ("Where the CEA is found by a court to preempt state law, it is predicated on the doctrine of conflict preemption, under a case-by-case analysis. Courts have found that a state law conflicts with and is thus preempted by the CEA '[w]hen application of state law would directly affect trading on or operation of a futures market, it would stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," and is hence preempted.'") (quoting *American Agric. Movement*, 977 F.2d at 1156.

they were futures contracts. Indeed, "[a]s Congress recognized in enacting the [Commodity Futures Trading Commission Act of 1974], a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to [market participants]."[200] Concurrent regulation by the states of "the actual operation" of such contract markets would lead to "total chaos."[201] In fact, the members of section 2(c)(2)(D)'s enacting Congress echoed those concerns of appropriately addressing the "public interest of regulation of market forces and market practices"[202] by questioning the adequacy of varying state laws as a bona fide "substitute for the Federal scheme" of the Act.[203] Accordingly, state money transmission laws generally defer to federal market regulatory structures[204] and the Federal MSB regulatory framework similarly does not apply to "a person registered with, and functionally

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[200] *American Agric. Movement*, 977 F.2d at 1156. In contrast to the operation of a DCM, the Commission recognizes that "there is no need for uniformity when it comes to the rules that govern" certain other aspects of the commodity derivatives markets, including, for example, the "principal-agent relationships between brokers and investors. [. . .] [T]he possibility that different states would impose dissimilar fiduciary duties upon brokers might affect those private relationships, but would not appreciably hamper the efficient operation" of the markets and transactions subject to Commission jurisdiction. *Id.*

[201] *Id.;* Commodity Futures Trading Act of 1974: Hearings Before the S. Comm. on Agric. & Forestry on S. 2485, S. 2578, S. 2837, H.R. 13113, 93d Cong., 2d Sess. 685 (1974) (statement of Sen. Clark).

[202] H.R. Rep. No. 93-975, at 28 (1974).

[203] *Zelener* Hearing, *supra* note 53, at 25 (statement of Rep. Marshall); *cf. Zelener* Hearing, *supra* note 53, at 11 (statement of Philip A. Feigin, on behalf of Monex Deposit Company). One witness arguing on behalf of the Monex Deposit Company that state-by-state regulation of leveraged commodity transactions represented a better way to protect retail consumers than the contemplated federal regime. In 2019, the Monex Deposit Company was a codefendant in *Monex*, a Commission action prosecuting the fraudulent deception of retail customers in offering leveraged commodity transactions while evading the on-exchange requirement of section 2(c)(2)(D). *See generally Monex,* 931 F.3d.

[204] *See, e.g.*, Money Transmission Modernization Act ("MTMA"), *supra* note 31, § 3.01(i), (j) (providing that the MTMA does not apply to a board of trade designated as a contract market under the Act or "a registered [FCM] under the [F]ederal commodities laws to the extent of its operation as such a merchant"). 31 states have enacted the MTMA in whole or in part. Conference of State Bank Supervisors, *CSBS Money Transmission Modernization Act (MTMA)* (Feb. 26, 2026), available at https://www.csbs.org/csbs-money-transmission-modernization-act-mtma.

regulated or examined by, the [CFTC]."[205]

C. The Failure of the Commission's Historical Approach to 2(c)(2)(D) Transactions

1. Regulation by Enforcement Drove CTXs Outside of the Commission's Federal Regulatory Framework

As discussed above, Congress required the application of a comprehensive federal regulatory regime to 2(c)(2)(D) transactions by channeling dealings in them onto[206] and through[207] Commission-registered entities. Section 2(c)(2)(D) thereby authorizes the Commission to supervise and regulate firms pursuant to the "the full array of regulatory requirements applicable to on-exchange futures under the [Act],"[208] separate and apart from the Commission's post-hoc enforcement authority.[209] However, the Commission's historical approach to CTXs has frustrated Congress' intent to bring these transactions onto Commission-registered exchanges and under the Commission's supervision.[210] Regulation by enforcement has inadequately addressed the fundamental commercial and operational differences between CTXs and other commodity derivatives contracts and

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[205] *See Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual* Currencies, *supra* note 24.

[206] *See* CEA 2(c)(2)(D)(iii), 7 U.S.C. 2(c)(2)(D)(iii); CEA 4(a), 7 U.S.C. 6(a).

[207] *See* CEA 1a(28)(A), 7 U.S.C. 1a(28)(A).

[208] See *supra* note 57 (statement of Sen. Lincoln, explaining the rationale for the legislation during floor debate on the Dodd-Frank Act).

[209] *See* Johnson et al., *supra* note 2, §4.02 ("The Commission's principal regulatory tool is the promulgation of regulations governing the conduct of those over whom it has jurisdiction. Although enforcement actions [] contribute to the development of standards for derivatives and related activity, the most pervasive manifestation of the Commission's influence is the exercise of its general and specialized rulemaking powers under the Act. From its inception in 1975, the CFTC has had broad rulemaking authority. Pursuant to that authority, it has adopted a variety of rules to implement the provisions of the CEA applicable to the futures industry and markets.").

[210] *See, e.g.,* Mersinger Ooki Statement, *supra* note 98.

thereby failed to provide market participants a durable and fit-for-purpose pathway to list CTXs in compliance with the on-exchange requirement.[211]

On November 11, 2022, an $8 billion dollar fraud perpetrated by FTX Trading Ltd. d/b/a FTX.com ("FTX Trading") and affiliates thereof[212] reverberated through the global crypto asset markets, including those markets overseen by the Commission. The circumstances that led to and enabled the FTX scheme demonstrate how the Commission's regulation by enforcement posture has failed to effectuate the purposes and objectives of the Act and section 2(c)(2)(D), including protecting market participants from fraudulent or other abusive sales practices and misuses of customer assets.[213]

While the scale of FTX's and Samuel Bankman-Fried's fraud was unforeseeable, Congress and regulators alike predicted that market abuses would result from inapposite regulatory requirements hindering, or in some cases, precluding, market participants from offering CTXs on DCMs. The legislative history of section 2(c)(2)(D) highlights that the on-exchange requirement was designed to prophylactically "prevent fraud, not just

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[211] *See* Coinbase Letter, *supra* note 19, at 2 (stating that "crypto asset markets have several key differences from futures markets"); *see also* Letter from Kraken to Christopher J. Kirkpatrick, Sec'y, CFTC, at 3 (Aug. 18, 2025) ("[A]s the Commission considers the applicability of its existing authority and potential rulemakings and guidance to industry, Kraken encourages the staff to work with industry stakeholders.").

[212] Samuel Bankman-Fried co-founded Alameda Research LLC ("Alameda"), a crypto asset trading and investment firm, in 2017. In May 2019, he and others launched FTX Trading and various subsidiaries, affiliates, and related entities, collectively doing business as "FTX.com" or simply "FTX," a centralized digital asset exchange. *See Declaration of John J. Ray III In Support of Chapter 11 Petitions and First Day Pleadings,* Case No. 22-11068 (JTD) (Bankr. D. Del Nov. 17, 2022). Bankman-Fried also operated LedgerX LLC (d/b/a FTX US Derivatives) ("LedgerX") to offer futures, options, and swaps contracts pursuant to its registration with the CFTC as a DCM and DCO. *See* Chairman Rostin Behnam, *Testimony Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry: Why Congress Needs to Act: Lessons Learned from the FTX Collapse* (Dec. 1, 2022), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam29 ("Behnam 2022 FTX Senate Testimony"). This Notice collectively refers to Alameda, FTX Trading, FTX.com, FTX US, and each of their affiliates, as "FTX".

[213] CEA 3(a), 7 U.S.C. 5(a); *see also supra* notes 17, 45, 51 (examples of breakdowns in customer protection in crypto asset markets).

prosecute it,"[214] because off-exchange abusive practices would migrate from one area under the enforcement focus of regulatory authorities to the next less scrutinized area.[215] That is, a regulation by enforcement posture cannot effectively combat abusive off-exchange market practices at scale.[216]

Those very concerns played out in the FTX scheme, with the defendants able to take advantage of the Commission's inability to police on an ad-hoc basis every corner of a market with monthly trading volumes exceeding trillions of dollars.[217] Notably, however, the customers of an FTX entity that was subject to the Commission's comprehensive supervision and regulation emerged from FTX's collapse largely unscathed,[218] demonstrating the effectiveness of the prophylactic nature of the on-exchange requirement. As former Chairman Behnam noted in Congressional testimony following the collapse of FTX's scheme, "to understand why comprehensive regulation of trading platforms is critically important to protect the largely retail customer base of

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[214] *Zelener* Hearing, *supra* note 53, at 9, 18 (statements of Rep. Leonard L. Boswell, Chairman, and Daniel Roth, President of the National Futures Association).

[215] *See, e.g.*, *Zelener* Hearing, *supra* note 53, at 18 (statement of Daniel Roth, President of the National Futures Association, providing that "[w]e have seen the migration of abusive practices away from the foreign currency trade to the unregulated, right now it is precious metals, tomorrow it might be something else. But we have seen these [websites], 30 of them, that have this unregulated; futures market even though they call it something else. So the point that I made earlier was that anti-fraud authority is not enough. The whole point of the [Act] is that retail customers need regulatory protection when they are trading futures contracts, and that goes beyond anti-fraud authority. We are trying to prevent the fraud, not just prosecute it.").

[216] *See supra* note 107 (former Commissioner Johnson describing how the Commission's approach has left vulnerable retail customers exposed and lacking long-established customer protections available in other asset classes).

[217] *See* Chairman Rostin Behnam, *Testimony Before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry* (Feb. 9, 2022), available at https://www.agriculture.senate.gov/imo/media/doc/Testimony_Behnam_020920225.pdf ("According to public data, every month in 2021 except one saw over $1 trillion in monthly trading volume in the digital asset cash market, with a high of $2.23 trillion in trading volume in May 2021.").

[218] Behnam 2022 FTX Senate Testimony, *supra* note 212.

these speculative [crypto asset] markets, one need look no further than where the CFTC's regime intersected with FTX."[219] He further noted that in contrast with the "[m]any public reports [that] indicate that segregation and customer security failures at the bankrupt FTX entities resulted in huge amounts of FTX customer funds being misappropriated[,]" the customer property held by CFTC-registered FTX entities "remained exactly where it should be, segregated and secure. This is regulation working."[220]

In 2024, Chairman Behnam again testified in front of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry.[221] In the intervening two year period, the Commission had continued to use the full scope of its enforcement authority to pursue customer abuses in the crypto asset markets.[222] The Commission preliminarily agrees with Chairman Behnam's assessment at that time that the regulation by enforcement approach is "unsustainable[,]" and reiterates his concerns that "rampant fraud and

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[219] *Id*.

[220] *Id.*

[221] *See* Chairman Rostin Behnam, *Testimony Before the Subcommittee on Financial Services and General Government, Committee on Appropriations, U.S. Senate* (June 13, 2024), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam47 ("Behnam 2024 Appropriations Testimony").

[222] *See generally* Section I.B.2, *supra* (providing a history of the Commission's enforcement actions in the crypto asset markets during this period); *see also* CFTC, *CFTC Charges Binance and Its Founder, Changpeng Zhao, with Willful Evasion of Federal Law and Operating an Illegal Digital Asset Derivatives Exchange*, Release No. 8680-23 (Mar. 27, 2023), available at https://www.cftc.gov/PressRoom/PressReleases/8680-23 (Former CFTC's Enforcement Division Principal Deputy Director and Chief Counsel providing that the enforcement action "reflects that the CFTC and its Enforcement Division will pursue those [crypto] asset platforms and individuals who flout and actively attempt to circumvent CFTC regulatory requirements[;]" CFTC, *CFTC Charges Alexander Mashinsky and Celsius Network, LLC with Fraud and Material Misrepresentations in Massive Commodity Pool Scheme Involving Digital Asset Commodities*, Release No. 8749-23 (July 13, 2023), available at https://www.cftc.gov/PressRoom/PressReleases/8749-23 (Commission enforcement action alleging that defendants falsely touted high profits and security to induce customers to deposit their digital asset commodities on the platform).

manipulation in the crypto [asset] market" will likely continue to hurt American customers absent a change in course by the Commission.[223] Thus, the proposed rules in this Notice intend to address such fraud and manipulation through a comprehensive regulatory scheme that properly effectuates the on-exchange requirement with respect to CTXs.

2. Legacy Regulatory Frameworks Have Impeded Innovation

The effects of a fragmented regulatory framework for crypto asset exchanges extend beyond a failure to protect retail customers from market abuses. The Commission's approach, and the resulting lack of liquid, fair, and financially secure trading facilities in crypto assets,[224] has also frustrated broader promises of permissionless[225] innovation. Soon after the introduction of the Bitcoin network in 2008,[226] market participants and regulators alike began to contemplate innovative applications of crypto assets and blockchain technologies. In short, "the excitement

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[223] *See* Behnam 2024 Appropriations Testimony, *supra* note 221; *see also* Mersinger Uniswap Statement, *supra* note 105 ("Additionally, if we continue with this enforcement-first approach, one or several DeFi protocols we target may choose to litigate rather than settle out of court. Facing litigation in these cases will not only come at the cost of expending substantial government (and private sector) resources, but also risks a morass of court cases yielding mixed results and conflicting conclusions.").

[224] *See* CEA 3(a), 7 U.S.C. 5(a) (finding that the management and assumption of price risks, discovery of prices, and disseminating pricing information through trading in liquid, fair and financially secure trading facilities as affected with a national public interest).

[225] *See, e.g.*, Peter Van Valkenburgh, *Testimony to the Committee on Energy and Commerce, U.S. House of Representatives* (June 6, 2017) ("The most exciting aspect of open blockchain networks is that they are entirely open for experimentation. They are permissionless. There is no patent or copyright to license, no university or corporation from which to seek a job, no exclusive membership fee to pay. Anyone with a computer and an Internet connection can develop and share her own currency, her own financial contracts and strategies, her own vision of the future."); Rebecca Lewis, John McPartland, and Rajeev Ranjan, Fed. Res. Bank of Chicago, *Blockchain and Financial Market Innovation* (June 2017) ("The chief advantage of a permissionless network is that it does not require a central authority to confirm or deny specific transactions; individuals who do not trust one another or any single central authority can transact on the permissionless network, trusting the consensus mechanism, which we discuss below, to ensure the ledger's accuracy.").

[226] *See* Nakamoto, *supra* note 35.

surrounding the infinite possibilities created by these technologies is palpable."[227] However, as Chairman Selig remarked, "fragmented oversight imposes real economic costs—raising barriers to entry, reducing competition, increasing compliance expenses, and encouraging regulatory arbitrage rather than productive investment."[228] The Commission preliminarily believes that the economic costs imposed by its historical approach to crypto asset regulation has jeopardized the contemplated promises of crypto assets and blockchain technologies, and with them, the United States's position as the "crypto capital" of the world.[229]

With respect to U.S. financial market infrastructure, former Chairman Giancarlo forecasted in 2019 that the unique technological characteristics of crypto assets and blockchain technologies were "likely to have a broad and lasting impact in payments, banking, securities settlement, title recording, cyber security and trade reporting and analysis."[230] He discussed the difference that a "real-time distributed ledger" may have made in the U.S. regulatory response to the 2008 financial crisis, noting that "[a]t a minimum, it would certainly have allowed for far prompter, better-informed, and more calibrated regulatory intervention instead of the disorganized response that unfortunately ensued."[231] While those broad and lasting impacts have been materially impeded by an outdated regulatory framework designed for legacy financial technologies, the Commission preliminarily believes that the fit-for-purpose regulatory framework

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[227] Chairman Michael S. Selig, CFTC, *America's Financial Markets are Ready for a Golden Age* (Jan. 20, 2026), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/seligstatement012026.

[228] Chairman Selig Project Crypto Remarks, *supra* note 125.

[229] Donald J. Trump, *Keynote Address at the Bitcoin 2024 Conference*, Nashville, Tenn. (July 27, 2024).

[230] Giancarlo Blockchain Summit Remarks, *supra* note 132.

[231] *Id*.

proposed under Regulation CAM in Section V, *infra*,[232] would help fulfill "the original promise of blockchain technologies: more open, transparent, and efficient market infrastructure."[233]

Beyond U.S. financial market infrastructure, technologists predicted that distributed control over networks and platforms enabled by crypto assets and blockchain technologies would lead to a more efficient, inclusive, and innovative internet economy.[234] The Commission preliminarily believes that the effects of its historical approach have similarly stifled that vision of a more open internet. For example, a crypto asset may confer certain rights and entitlements that enable network effects to facilitate the programmatic and permissionless operation of a related blockchain system.[235] Those network effects may derive from incentive structures codified in the source code underlying a blockchain system that harnesses market forces into productive activity.[236] However, harnessing market forces requires efficient markets in the first instance. That

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[232] The proposed Regulation CAM is discussed in Section V, *infra*, and contemplates the implementation of a fit-for-purpose regulatory framework that addresses the on-exchange requirement in the context of the commercial realities of, and risks posed by, CTXs.

[233] Chairman Selig Project Crypto Remarks, *supra* note 125 (discussing how onchain tools could be used to facilitate the programmatic monitoring of risks in real time and thereby "fulfill the original promise of blockchain technologies: a more open, transparent, and efficient market infrastructure.").

[234] *See* Chris Dixon, *I wrote a book: Read Write Own* (June 22, 2023), available at https://cdixon.org/2023/06/22/read-write-own/ (stating that "blockchains and the software movement around them [. . .] provide the only plausible path to sustaining the original vision of the internet as an open platform that incentivizes creativity and entrepreneurship."); *see also* Miles Jennings, *Decentralization is why we fight for crypto* (Dec. 17, 2024), available at https://a16zcrypto.com/posts/article/decentralization-fight-for-crypto/.

[235] *See* Miles Jennings, *Defining decentralization: It comes down to control*, a16z crypto (Feb. 13, 2025), https://a16zcrypto.com/posts/article/defining-decentralization-control/ ("This amelioration of trust dependencies with respect to a blockchain network and its crypto asset [] is made possible by the fact that such systems are capable of decentralization—operation absent human intervention and control.").

[236] *See* Aztec Foundation, *Token Regulatory Characterisation Report* (Nov. 13, 2025), available at https://aztec.network/token-regulatory-report (describing how the AZTEC crypto asset ("AZTEC") is a "necessary component" of the programmatic and permissionless operation of the blockchain system to which AZTEC relates because of the right AZTEC confers on its holders to "fully control the governance and operation" of that blockchain system.).

is, the predicted flywheel dynamic generally requires price discovery that is derived from liquid, fair, and financially secure trading facilities, which facilities have been hampered by a lack of clear rules of the road.[237]

Despite those regulatory headwinds, developers of crypto asset projects that have withstood the hostile regulatory environment in the U.S. have leveraged the unique technological properties of crypto assets and blockchain technologies to build novel networks that, for example, empower consumers to lower their electricity-related costs,[238] incentivize the construction of clean energy infrastructure,[239] enhance the financial resilience of vulnerable populations,[240] and allow persons who are connected only through the governance rights of a crypto asset to deploy shared resources to make

[237] CEA 3(a), 7 U.S.C. 5(a).

[238] *See* SEC, *Fuse Crypto Limited, No-Action Letter* (Nov. 24, 2025), available at https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/fuse-crypto-limited-112425 ("Fuse is a vertically integrated energy technology group focused on accelerating the decentralization of electricity grids, optimizing energy delivery, and empowering consumers to lower their electricity related costs. Through its operations in the United States[], Fuse endeavors to deliver tools that enable households and businesses to actively participate in the energy system—improving grid resilience, reducing congestion, and unlocking new forms of distributed value for consumers[].").

[239] *See* Union Square Ventures, *Our Investment in Glow Protocol: DePIN at the Edge of Energy Markets* (Oct. 31, 2024), available at https://blog.usv.com/our-investment-in-glow-protocol-depin-at-the-edge-of-energy-markets ("Glow's approach is radically different from existing subsidy systems for green energy, drawing inspiration from Bitcoin's open and highly competitive incentive model.").

[240] *See* Circle, *A new paradigm for blockchain & international aid*, available at https://www.circle.com/circle-impact ("Rumee Singh founded Rahat in 2020 to address the financial inclusion gap in her native Nepal and to channel humanitarian aid to people around the world. Rahat uses blockchain technology with smart contracts for fast, accurate aid payouts directly to beneficiaries' phones. Their use of parametric data automatically triggers early warning messages and targeted disbursements *before* disasters strike, even in low-tech environments.").

donations for charitable causes,[241] purchase historical artifacts,[242] and build communities around jointly-owned infrastructure.[243] The Commission preliminarily believes that a fit-for-purpose regulatory framework for CTXs would facilitate the next generation of similar American innovations and ensure those innovations "take root on American soil, under American law, and in service of American investors, customers, and businesses."[244]

3. The Commission's Statutory Authority to Implement Regulation CTX and Regulation CAM

In summary, the Commission preliminarily believes that achieving the liquid, fair, and financially secure trading facilities in CTXs that the Act's purposes and objectives contemplate may require a tailored regulatory approach.[245] The Commission has longstanding experience in facilitating the development of robust markets in novel commodities, having done so consistently over the decades since the Act's passage.[246] It

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[241] *See* Center for a Digital Future, *Nouns DAO: Problem Addressed and Project Description* (Apr. 2024), available at https://www.centerforadigitalfuture.org/blog/60kqfdgb4f8kljqy1j4ujvaqr1bx5y-364pg-bskhw-4zy2x ("Nouns DAO members who hold Nouns NFTs create and vote on proposals which guide the direction of the organization and allocate the funds in the [DAO] treasury. Funded initiatives include charitable donations to organizations like Coral Restoration Foundation, Freedom of the Press Foundation, and the Rainforest Foundation.").

[242] *See* ConstitutionDAO, *A Historic Attempt to Buy the U.S. Constitution Together*, available at https://constitutiondao.org/ ("ConstitutionDAO was a groundbreaking decentralized initiative that united thousands of [crypto asset] enthusiasts to bid on an original copy of the U.S. Constitution. Powered by community collaboration and blockchain transparency, it showcased the potential of decentralized governance and collective action in the Web3 era.").

[243] *See* LinksDAO, *Building the Golf Club for the Modern Era*, available at https://www.linksdao.io/ ("We are a global community of passionate golfers reimagining what it means to be a golf club. LinksDAO owns two golf courses on two continents that are being transformed into world-class venues.").

[244] *See* Chairman Selig Project Crypto Remarks, *supra* note 125.

[245] CEA 3(a)-(b), 7 U.S.C. 5(a)-(b).

[246] Indeed, Chairman Selig recently acknowledged this dynamic when he noted that "[a]ccess to computing power is at the center of the growing artificial intelligence economy and critical to America winning the AI race. The CFTC will continue to act to ensure access to this critical commodity by improving the financial

has done so, in part, through the extensive authority granted by Congress to address the risks posed by, and commercial realities of, transactions in emergent asset classes.[247] Specifically, (i) section 4(c) allows the Commission to promote responsible economic or financial innovation and fair competition by exempting by rule any class of transactions subject to section 4(a) from any requirement of the Act, subject to certain limitations;[248] (ii) Congress granted the Commission explicit rulemaking authority to define any term in section 2(c)(2)(D);[249] and (iii) the Commission has general rulemaking authority to promulgate such rules and regulations reasonably necessary to effectuate any of the provisions of the Act, including the core principles applicable to DCMs contained in section 5(d) ("DCM Core Principles").[250]

The Commission preliminarily believes that it can further the Act's purposes and objectives by using such statutory authorities to address through rulemaking the risks posed by, and commercial realities of, CTXs. As discussed above, Commissioners and market participants alike have called for the Commission to do so specifically in the

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market for compute." CFTC, *CFTC Requests Comment on the Listing of Compute Derivatives Contracts*, Release No. 9286-26 (Aug. 19, 2026), available at https://www.cftc.gov/PressRoom/PressReleases/9286-26; *see also Proposal To Exempt Certain Transactions Involving Not-for-Profit Electric Utilities*, 77 FR 164 (Aug. 23, 2012) (the Commission proposing bespoke regulatory treatment of certain derivatives referencing electric energy based on the unique physical properties of the underlying commodity); Giancarlo Blockchain Summit Remarks, *supra* note 132 (Chairman Giancarlo describing how "[w]ith respect to the bitcoin products, because they were novel and based on a unique crypto-asset, the exchanges did engage in substantial prior discussions with CFTC staff before launch; this allowed for incorporation of risk mitigating elements, including around higher margin requirements and contract sizes.").

[247] *See, e.g.*, House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (Congress noting that the Commission's exemptive authority under the section 4(c) of the Act is intended "to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.").

[248] *See* CEA 4(c)(1), 7 U.S.C. 6(c)(1).

[249] *See* 15 U.S.C. 8321(a).

[250] *See* CEA 5(d)(5), 7 U.S.C. 7(d)(5).

context of section 2(c)(2)(D), which this Notice intends to address.[251] The Commission has reviewed those calls to inform this Notice and have found they fall into four overlapping categories.

First, the Commission's existing rules are not fit-for-purpose with respect to the novel properties of crypto assets and blockchain technologies, and accordingly do not provide a fit-for-purpose path to offer CTXs in compliance with the on-exchange requirement.[252] When Congress rendered 2(c)(2)(D) transactions subject to section 4(a) "as if" they were futures contracts, it affected those transactions with the same national interest that has justified uniform federal regulation since *Board of Trade of Chicago v. Olsen*.[253] While the on-exchange requirement places such CTXs in the unique "context of market regulation that [gives rise to the need] for uniform legal rules,"[254] the Commission has failed to provide those rules for such transactions.

Second, enforcement actions further failed to even provide "transparency with respect to who [the Commission] will hold accountable and for what,"[255] which has stifled the ability of market participants to avoid running afoul of the on-exchange

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[251] *See, e.g.*, Section I.B.2, *supra*; Commissioner Summer K. Mersinger, *Dissenting Statement Regarding Enforcement Actions Against: 1) Opyn, Inc.; 2) Deridex, Inc.; and 3) ZeroEx, Inc*. (Sept. 7, 2023), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement090723.

[252] *See* Mersinger Ooki Statement, *supra* note 98 (describing how the Commission has failed its statutory mandate to promote the responsible innovation and fair competition made possible by a "world of [crypto] assets, blockchain technology, and decentralized autonomous organizations (DAOs)—technology that did not exist when the [Act] was enacted in 1974, and that has just started to develop since Congress last amended the statute as part of the Dodd-Frank Act in 2010.").

[253] *Board of Trade of Chicago v. Olsen* 262 US, at 41 (1923) ("The Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such.").

[254] *American Agric. Movement*, 977 F.2d at 1156 ("Only in the context of market regulation does the need arise for uniform legal rules. As Congress recognized in enacting the 1974 Act, a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to investors[.]").

[255] Mersinger Ooki Statement, *supra* note 98.

requirement in the first instance and thereby forced them offshore in the face of Commission enforcement actions.

Third, while the use of flexible and efficient regulatory tools such as the Commission's enforcement authority may have been in attempted furtherance of the mandate from Congress to protect market participants from fraud, abusive sales practices, and other violations of the Act,[256] regulating trillions of dollars in crypto asset transactions requires an approach that scales with transaction volume.[257] Regulation by enforcement has misallocated Commission resources that would be better spent on building a fit-for-purpose regulatory regime.

Fourth, unlike a slew of enforcement actions, a notice-and-comment rulemaking process would allow the Commission to benefit from "information, views, and public input from interested parties."[258] The Commission would be better served if it were to "communicate to, and engage with, the public in a transparent manner and seek out the input of those with expertise to share."[259]

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[256] *SEC v. Chenery Corp*., 332 U.S. 194, 202-03 (1947) ("In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. [. . .] In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective.").

[257] *See* Behnam 2024 Appropriations Testimony, *supra* note 221 ("Nowhere have we been more active than in the [crypto asset] space. […] With many agency resources which are not considered in our budget appropriation being allocated to an unregulated market, I fear the current trajectory is unsustainable. Namely, we will continue to see rampant fraud and manipulation in the [crypto asset] market that will hurt American customers, and possibly infect the traditional financial markets."); *see also* Mersinger Uniswap Statement, *supra* note 105 ("Additionally, if we continue with this enforcement-first approach, one or several DeFi protocols we target may choose to litigate rather than settle out of court. Facing litigation in these cases will not only come at the cost of expending substantial government (and private sector) resources, but also risks a morass of court cases yielding mixed results and conflicting conclusions.").

[258] Mersinger Ooki Statement, *supra* note 98.

[259] *Id.*

4. Unleashing Innovation for the New Frontier of Finance[260]

The Commission is therefore undertaking a reevaluation of its regulatory framework pursuant to these calls, consistent with its understanding of congressional intent and its statutory authority to make and promulgate rules that are reasonably necessary to effectuate any provisions or to accomplish any purposes of the Act, including the on-exchange requirement, among other matters, with respect to CTXs. Thus, the Commission preliminarily believes that its statutory mandates require it to consider:

1. clarifying how market participants may elect to conduct business in crypto asset markets under a uniform set of regulations that provides a national regime for CTXs, while preserving access to "other markets[;]"[261]
2. providing market participants with crypto asset-specific contextual information regarding certain requirements and practices that are commonly accepted in the industry and have been found, based on the Commission's experience in overseeing aspects of crypto asset markets since 2014, to represent the best-practice means of complying with the regulatory requirements that attach to CTXs; and
3. codifying through rulemaking a subcategory of DCM registration that is purpose-built for CTXs.[262]

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[260] Chairman Selig Project Crypto Remarks, *supra* note 125.

[261] *Id; see also* CEA 5(b), 7 U.S.C. 5(b) (stating that the purposes of the CEA include the promotion of fair competition among boards of trade, *other markets* and market participants) (emphasis added).

[262] *See, e.g.,* Mersinger Ooki Statement, *supra* note 98.

III. Regulation CTX: The Commission's Preliminary Interpretation of Certain Terms in Section 2(c)(2)(D)

A. Covered Offers under Section 2(c)(2)(D)(i)

As discussed above, the offer of a transaction on a leveraged, margined, or financed basis, "even if not entered into" on one of those bases, subjects a transaction to section 2(c)(2)(D).[263] Despite calls from market participants to do so and Congress's delegation of the authority to further define the terms in section 2(c)(2)(D), including the term "offer,"[264] the Commission has not clarified the circumstances pursuant to which such an offer renders an agreement, contract, or transaction subject to section 2(c)(2)(D) (a "covered offer"). The Commission preliminarily believes it would be prudent to clarify those circumstances in the context of crypto assets and blockchain technologies through rulemaking and sets forth its preliminary understanding below.

Section 2(c)(2)(D)(i) provides that "[e]xcept as provided in clause (ii)," (which statutory exceptions are preliminarily interpretated by the Commission in Sections III.B and C, *infra*), "this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is [. . .] entered into, or offered (even if not entered into)" on the leveraged, margined or financed bases described in section 2(c)(2)(D)(i). The plain meaning of this statutory construction extends the subparagraph to agreements, contracts, and transactions where a covered offer is declined and the agreement, contract, or

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[263] *See* CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i) ("Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is [. . .] entered into, *or offered (even if not entered into)*, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.").

[264] *See* 15 U.S.C. 8321(a), providing that the "Commission may adopt a rule to define [] (1) the term 'commercial risk'; and (2) any other term included in an amendment to the [CEA] made by [the Dodd-Frank Act]."

transaction is subsequently executed on a fully paid basis, provided all other statutory criteria are met (or in other words, the transaction constitutes a fully paid, open 2(c)(2)(D) transaction). Accordingly, the Commission preliminarily believes that a covered offer attaches to all agreements, contracts, or transactions to which it is applicable. That is, all agreements, contracts, or transactions pursuant to which a retail customer may accept a covered offer to transact on a leveraged, margined, or financed basis, regardless of whether any individual transaction is entered into on one of those bases.

The Commission further preliminarily believes that a covered offer may be established by the provision of documentation that sets forth the terms pursuant to which a customer may execute a CTX. An offeror or counterparty to a CTX could provide such a covered offer, for example, in standard customer documentation such as customer onboarding documents (including those required by law or regulation), exchange terms and conditions, or credit and margin documentation. While a covered offer may be made with respect to a specific transaction or transactions, the Commission preliminarily believes that section 2(c)(2)(D) contemplates that a covered offer could also be made with respect to all transactions available on an exchange, all transactions available through a customer account, all transactions in a product class, or another class of transactions.

Under certain circumstances, section 2(c)(2)(D)(i) provides that a "person acting in concert with the offeror or counterparty or on a similar basis" may extend a covered offer of financing.[265] The Commission preliminarily understands that the term "acting in

[265] CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i).

concert or a similar basis" may capture financing arrangements facilitated, arranged, or otherwise endorsed by the offeror or counterparty, including where the financing arrangement or terms thereof are set or influenced by the offeror or counterparty, introduced by the offeror or counterparty through marketing or advertising, subject to revenue-sharing agreements with the offeror or counterparty, accessed through a financing platform operated by the offeror or counterparty, or otherwise involve the material assistance of the offeror or counterparty.

B. Scope and Meaning of "Actual Delivery"

As described above, a contract of sale resulting in "actual delivery"[266] is one way that an agreement, contract, or transaction that otherwise would be captured by section 2(c)(2)(D)(i) may be excepted from the Commission's jurisdiction. The current law on the actual delivery exception is primarily derived from court cases interpreting the term.[267] The Commission preliminarily believes it could be prudent to provide further clarity, through rulemaking, on the meaning of actual delivery in the context of 2(c)(2)(D) transactions in crypto assets and blockchain technologies.

For example, the Commission takes note of the holding in *Monex* that actual delivery requires the transfer of some meaningful degree of possession or control.[268] The Commission further notes that the unique characteristics of crypto assets and blockchain technologies may be relevant to an analysis of whether that possession or control standard has been met. In this regard, the Commission preliminarily believes that

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[266] CEA 2(c)(2)(D)(ii)(III)(aa), 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

[267] *See* Section II.B, *supra*; s*ee also Monex*, 931 F.3d 966.

[268] *See Monex* 931 F.3d*,* at 974.

possession and control of a crypto asset may require possession of the credentials (*e.g.*, private key(s)) to the digital wallet address or account associated with such crypto asset.[269] Further, a demonstration of the possession and control required to satisfy the actual delivery standard may depend on the *specific* characteristics of the crypto asset at issue. For example, where a crypto asset conveys certain governance rights or the right to participate in a blockchain system's operation that provides network rewards for doing so (*i.e.*, to participate in staking),[270] possession and control thereof may require unfettered access to those rights or entitlements. As illustrative examples, actual delivery may require the capacity to participate in governance directly and on a disintermediated basis; or, in the case of staking, the capacity to do so without being subject to fees charged by an intermediary.

Further, the Commission preliminarily believes that the text of the actual delivery exception demonstrates Congress' intent for the act of, and means to achieve, actual delivery itself to be subject to the Commission's jurisdiction. Whereas section 2(c)(2)(D)(ii)(III)(bb) considers the contractual terms of contracts of sale by examining if they "create[] an enforceable obligation[,]"[271] the actual delivery exception applies based

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[269] *See, e.g.*, *SEC v. Coinbase*, 726 F. Supp. 3d 260, 271 (S.D.N.Y. Mar. 27, 2024) (explaining that "[c]ritically important to a [crypto asset] owner's exercise of control over her [crypto assets] are the 'public key' and 'private key' associated with a crypto asset, which keys permit the user to effectuate transactions on the associated blockchain. Owners typically store these keys on a piece of hardware or software known as a 'crypto wallet.' The wallets, in turn, use both a public key and a private key. The public key is colloquially known as the user's blockchain 'address' and can be freely shared with others. The private key is analogous to a password and confers the ability to transfer a [crypto asset].").

[270] *See generally* POSA Liquid Staking Paper, *supra* note 67; *see also* U.S. Securities and Exchange Commission, *Statement on Certain Protocol Staking Activities* (May 29, 2025), available at https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.

[271] CEA 2(c)(2)(D)(ii)(III)(bb), 7 U.S.C. 2(c)(2)(D)(ii)(III)(bb).

on if the contract of sale "results in actual delivery."[272] That is, Congress granted the Commission the authority to regulate the mechanics, or "result[,]" of actual delivery. Moreover, because a constructive delivery does not satisfy the actual delivery exception, section 2(c)(2)(D) tasks the Commission with regulating the act of giving real and immediate possession to the buyer or the buyer's agent. In the case of a CTX, this act involves the transfer of crypto assets from the crypto asset exchange to the digital wallet address or account associated with such crypto asset.

C. Actual Delivery of Fully Paid, Open CTXs

As discussed above, the Commission preliminarily believes that a fully paid, open 2(c)(2)(D) transaction remains subject to the Act unless an exception in section 2(c)(2)(D)(ii) applies.[273] Accordingly, the Commission preliminarily believes that a fully paid, open CTX is subject to the Act as described in section 2(c)(2)(D)(iii) and the comprehensive regulatory framework applicable to futures contracts during the period such fully paid, open CTX is only recorded on an internal book-entry of the exchange, prior to actual delivery.[274] The statutory construction of section 2(c)(2)(D) mandates this

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[272] CEA 2(c)(2)(D)(ii)(III)(aa), 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

[273] *See* CEA 2(c)(2)(D)(i), 7 U.S.C. 2(c)(2)(D)(i) ("*Except as provided in clause (ii)*, this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is ...") (emphasis added).

[274] This Notice provides the Commission's preliminary interpretation of the term "actual delivery" solely as it is used in CEA 2(c)(2)(D) and in the context of CTXs. It does not address, and the Commission does not express any view regarding, (i) the means by which delivery may be effected within the context of the Federal securities laws, including with respect to book-entry arrangements involving securities held through SEC-registered intermediaries such as broker-dealers and clearing agencies, or (ii) the meaning of the term "delivery" as it is used within the Federal securities laws, including with respect to the "clearing agency" definition set forth in 15 U.S.C. § 78c(a)(23) (providing that the term "clearing agency" means "any person who [] (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical *delivery* of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical *delivery* of securities certificates[.]") (emphasis added).

result by providing that the subparagraph applies to the agreements, contracts, and transactions described in section 2(c)(2)(D)(i), "*[e]xcept as provided in clause (ii)*" of section 2(c)(2)(D).[275]

The *Monex* court summarized the point succinctly: the "Dodd-Frank [Act] expanded the CEA to close the so-called *Zelener* loophole [. . .] because these transactions mimic conventional futures trades long regulated by the CFTC. On the other hand, sales where customers obtain meaningful control or possession of commodities, *i.e.*, when actual delivery occurs, do *not* mimic futures trading and are therefore exempt from registration and related CEA requirements."[276] Said another way, the actual delivery exception identifies those transactions that cease to exhibit the characteristics of the rolling spot contracts at issue in *Zelener*.[277] Because of the statutory construction of section 2(c)(2)(D)(i) and the fact that the proceeds of the fully paid, open CTX are constructively, but not actually, delivered through an internal book-entry, and thus would continue to exhibit the characteristics of the rolling spot contracts at issue in *Zelener*, the Commission preliminarily believes that Congress intended the retail purchaser of that fully paid, open CTX to continue benefitting from the full array of regulatory requirements applicable to on-exchange futures, unless actual delivery (or another exception) occurs.[278]

The Commission seeks comment on this preliminary interpretation.[279]

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[275] CEA 2(c)(2)(D)(i)-(ii), 7 U.S.C. 2(c)(2)(D)(i)-(ii).

[276] *Monex*, at 14 (emphasis added).

[277] *See Zelener*, 373 F.3d at 868-69.

[278] *Id*.

[279] The Commission notes that following the actual delivery of a crypto asset purchased pursuant to a CTX,

IV. Questions and Request for Comment on Regulation CTX

A. General Request for Comment

The Commission sets forth specific questions regarding the proposed Regulation CTX below, and encourages responses from all interested parties, including state-regulated crypto asset exchanges, DCMs, FCMs, DCOs, financial institutions, technology firms, trade associations, retail and institutional investors, and other market participants with experience in or knowledge of crypto asset markets. The Commission also solicits any relevant comments not specifically responsive to the questions herein. Comments received in response to this Notice will inform the Commission's consideration of whether and how to proceed with rulemaking concerning 2(c)(2)(D) transactions and CTXs specifically.

B. Scope and Meaning of "Offer" within Section 2(c)(2)(D)(i)

i. The Commission solicits comment on all aspects of its preliminary interpretation set forth in Section III.A, *supra*, of the term "offer" in section 2(c)(2)(D)(i). Would the Commission's preliminary interpretation of "offer" provide market participants who elect to offer or otherwise conduct business in CTXs the opportunity to do so in a manner subject to Commission regulation?

ii. Would the Commission's preliminary interpretation of "offer" provide a commercially viable avenue for an exchange to elect to not offer CTXs and thereby continue to operate under the state-level regulatory framework described in Section I.A, *supra*?

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the transaction is excepted from section 2(c)(2)(D)(i), and the Commission no longer has jurisdiction with respect to such asset, aside from its anti-fraud and anti-manipulation authority.

iii. What novel mechanisms of offering leverage, margin, or financing that may exist in crypto asset markets should the Commission consider with respect to this Notice?[280] For example, could a covered offer include the facilitation of access to onchain "vaults" via the same exchange interface in which retail customers may purchase crypto assets?

C. Scope and Meaning of "Actual Delivery"

i. The Commission solicits comment on all aspects of its preliminary interpretation set forth in Sections III.B and C, *supra*, of the term "actual delivery" as used in section 2(c)(2)(D)(ii).

ii. The Commission preliminarily understands that many onchain trading protocols may settle transactions in a manner that results in actual delivery. In other words, the Commission preliminarily understands transactions executed via onchain trading protocols typically result in a purchaser obtaining possession and control of the purchased crypto asset in a manner that satisfies the Commission's preliminary interpretation of "actual delivery" set forth in Sections III.B and C, *supra*.[281] The Commission solicits comment on this preliminary understanding. The Commission also notes that the controlling case law distinguishes between

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[280] *See* SEC Commissioner Hester M. Peirce, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* (July 22, 2026), available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-crypto-vaults-lending-strategies-072226. Vaults facilitate asset deployment by using smart contracts to allocate user assets to various yield-generating activities, including staking and lending. Vaults have attracted recent attention as a tool for facilitating disintermediated credit and leverage arrangements.

[281] The Commission notes its preliminary understanding that crypto assets purchased through onchain trading protocols are typically delivered directly to the purchaser's digital wallet, as opposed to an account or custodial relationship with an intermediary via an internal book-entry. *See* U.S. Department of the Treasury, *Illicit Finance Risk Assessment of Decentralized Finance* at 6, n.15, 28 (Apr. 2023), available at https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf.

the existence of a lien or security interest and meaningful possession and control, such that actual delivery may occur where a lien or security interest remains outstanding.[282] The Commission also solicits comment on this distinction.

iii. The Commission solicits comment on any unique technological or other properties of crypto assets or blockchain technologies that the Commission should consider with respect to its interpretation of "actual delivery" in the context of CTXs. As discussed in Section III.C, *supra*, such properties may include the conferral of certain governance rights or an entitlement to participate in staking.[283]

V. Regulation CAM: A Purpose-Built Regulatory Framework for CTXs

A. Overview of Proposed Regulation CAM

As discussed generally throughout this Notice and in greater detail in Section II.C, *supra*, the Commission preliminarily believes that a purpose-built regulatory framework for exchanges and other Commission registered intermediaries that deal in CTXs would effectuate the objectives of the Act, comport with the statutory construction and purposes of section 2(c)(2)(D), and unleash innovation in the new frontier of finance. The Commission accordingly sets forth in this Section V certain preliminary understandings

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[282] *Monex*, at 15 ("even if the commodity serves as collateral, there is no reason why the buyer cannot control it [pursuant to actual delivery thereof]. In many financing contexts, some degree of buyer possession or control is commonplace."). For example, the Commission preliminarily understands that certain onchain transactions may result in actual delivery despite a lien or security interest in the purchased assets remaining outstanding, such as where the rules of an onchain protocol provide for the free use in commerce of a crypto asset purchased on a margined basis, subject to the purchased crypto asset, or collateral securing it, being liquidated and/or destroyed (*i.e.*, "burned") if the margin collateral securing the purchase falls below a certain threshold.

[283] *See generally* POSA Liquid Staking Paper, *supra* note 67; *see also* U.S. Securities and Exchange Commission, *Statement on Certain Protocol Staking Activities* (May 29, 2025), available at https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.

concerning the proposed Regulation CAM, which includes details concerning a preliminary regulatory framework (Section V herein, the "CAM Proposal") tailored to the commercial realities of, and risks posed by, exchanges that deal in CTXs. The Commission preliminarily believes that such exchanges could satisfy their statutory obligations under the Act and obtain designation as a Commission-registered crypto asset market (a "CAM"), solely with respect to dealings in CTXs, by complying with the regulatory obligations contemplated by the CAM Proposal, *infra*.

The CAM Proposal proceeds by first providing in Section V.A.1, *infra*, an overview of the different manners in which an exchange offering CTXs could structure its corporate family with respect to Commission-registered intermediaries that are required under the CAM Proposal. In Section V.A.2, *infra*, the Commission provides its preliminary understanding of a typical CTX structure and lifecycle, which informed the CAM Proposal.

In Section V.B, *infra*, the Commission provides its preliminary understanding of how the regulatory regime applicable to traditional DCMs could be modified to accommodate the commercial realities of, and risks posed by, CTXs. Sections V.C and V.D, *infra*, provide an overview of the manners in which leverage, margin, or financing may be permissibly extended to retail customers under a margin regime that accommodates the structure of, and risks posed by, CTXs. Sections V.E and V.F, *infra*, set forth a contemplated FCM regime and contemplated DCO regime, respectively, that detail the requirements applicable to such intermediaries under the CAM Proposal.

Section V.G, *infra*, sets forth the Commission's preliminary thoughts on how the proposed Regulation CAM would address issues that may arise in connection with the

integrated structures that are previewed directly below in Section V.A.1, *infra*. The CAM Proposal concludes with a discussion on exemptions from registration as a CAM in Section V.H, *infra*.

Throughout the CAM Proposal, the Commission solicits comment on specific questions and also invites any other relevant input from market participants on issues related to the CAM Proposal that are not specifically addressed herein.

1. CAM Corporate Structures

As an initial matter, the Commission sets forth below its preliminary understanding of the different ways that a designated board of trade offering or otherwise dealing in CTXs could structure its corporate family. Unlike the intermediary structures typical of the firms that are subject to the futures regulatory regime under the Act and the Commission's regulations promulgated thereunder, the Commission preliminarily understands that firms dealing in crypto asset transactions typically employ integrated infrastructures to facilitate the listing, trading, settlement, and custody of crypto assets and transactions therein. Market participants have noted, and the Commission preliminarily believes, that retail customers would benefit if crypto asset trading facilities were allowed under the CAM Proposal to continue operating under certain integrated models around which crypto asset markets have historically formed.[284] The Commission also preliminarily believes that integrated models may, under certain circumstances, deliver superior outcomes for retail customers, regulators, and the national public interest in the transactions subject to the Act by fostering greater transparency, enhancing capital

[284] Coinbase Letter, *supra* note 19, at 2.

efficiency, reducing fees, and facilitating market resiliency.[285] The potential issues surrounding the contemplated regulatory approach to such integrated structures are discussed further in Sections V.G. *infra*. As set forth in **Appendix A**, the CAM Proposal accordingly contemplates the ability of a CAM to also register as an FCM and/or DCO, or permitting the affiliation between a CAM and an FCM and/or DCO. .

As discussed in greater detail in Sections V.A.1.b and V.E, *infra*, the CAM Proposal preliminarily contemplates the substantial modification of the regulatory obligations applicable to FCMs dealing in CTXs in a similar manner to those modifications applicable to the Commission's DCM regulatory regime. The Commission is exploring whether those modifications would be best suited to a subcategory of FCM registration and solicits comment on all related issues. Likewise, the Commission is also considering how to best implement the substantial modifications to the Commission's DCO regulatory framework that are discussed in greater in detail Sections V.A.1.c and V.F, *infra*.

a. The CAM Entity and the CAM Core Principles

The CAM Proposal contemplates a tailored subcategory of DCM designation for trading facilities that only list CTXs. Section 5 of the Act governs the designation and operation of boards of trade as contract markets, including CAMs under the proposed

[285] See, e.g., *Conflicts and Affiliations*, 91 FR 50926, 50927 (Aug. 6, 2026) ("Conflicts and Affiliations NPRM"), providing that the "Commission preliminarily believes that [an affiliated] market structure [in which a DCM and DCO share common ownership] may provide benefits to the derivatives markets and market participants. In this regard, the Commission believes that facilitating market structure innovation and competition, subject to appropriate safeguards, advances the Commission's mission of promoting the integrity, resilience, and vibrancy of the U.S. derivatives markets." The Conflicts and Affiliations NPRM also discusses conflicts of interests that may arise in connection with integrated structures, as well as the contemplated establishment of additional regulatory obligations that are intended to mitigate related risks. *See generally* Conflicts and Affiliations NPRM.

Regulation CAM.[286] Under the CAM Proposal, an exchange that only offers CTXs could elect to obtain and maintain designation as a subcategory of Commission-registered DCM by complying with a tailored set of regulations (the "CAM Core Principles") that implement the statutory DCM Core Principles contained in section 5.[287] The CAM Proposal would thus operationalize the on-exchange requirement by providing that the offer, entry, execution, confirmation of execution, conduct of any business for the purpose of soliciting any order, and other dealings[288] in CTXs may be conducted on or subject to the rules of a CAM that, at designation, and continuously thereafter, complies with the statutory DCM Core Principles and the CAM Core Principles that the Commission would, under the proposed Regulation CAM, promulgate thereunder.

The Commission preliminarily believes that other market participants may wish to include CTXs in a broader range of Commission-regulated commodity derivatives pursuant to their current registration as a DCM. Accordingly, and as previewed in Section V.A.1, *supra*, the CAM Proposal is therefore intended, to the extent consistent with the Federal commodity laws, to allow trading facilities to choose to either register as a CAM or DCM.[289]

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[286] *See generally* CEA 5(d), 7 U.S.C. 7(d). There are 23 statutory Core Principles for DCMs.

[287] The CAM Core Principles are discussed further in Section V.B, *infra*.

[288] CEA 4(a), 7 U.S.C. 6(a).

[289] The Commission preliminarily believes that such market participants, who may have invested significantly to comply with the current regulatory structure, should have the opportunity to do so without undue costs from additional compliance obligations stemming from the CAM Proposal.

b. FCM Intermediation and Permitted Depositories: the FCM CTX Regime

The Act attaches status as an FCM, and the comprehensive FCM regulatory regime, to persons intermediating CTXs in the same manner and under the same circumstances as a person that intermediates futures contracts.[290] The regulatory protections under the FCM regulatory regime are fundamental to the Act's customer protection framework,[291] and, accordingly, the proposed Regulation CAM contemplates the required FCM intermediation of all CTXs. Proposed Regulation CAM further contemplates (i) the modification of certain of the regulatory requirements of the FCM regime to align with the commercial realities of, and risks posed by, an FCM's regulated activities in CTXs (the "FCM CTX regime") and (ii) the permitted dual registration of a CAM as an FCM and/or the integration of a CAM with an affiliated FCM entity ("CAM-FCM integration").

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[290] *See* CEA 1a(28)(A), 7 U.S.C. 1a(28)(A), *supra* note 194 (providing that the term "futures commission merchant" means an individual, association, partnership, corporation, or trust (i) that—(I) is—(aa) engaged in soliciting or in accepting orders for— [. . .] (DD) any agreement, contract, or transaction described in [. . .] section 2(c)(2)(D)(i) of this title; and (II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom[.]").

[291] *See, e.g.*, *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 77 FR 67866 (Nov. 14, 2012) ("The protection of customers—and the safeguarding of money, securities or other property deposited by customers with an FCM—is a fundamental component of the Commission's disclosure and financial responsibility framework."). Requiring FCM intermediation of CTXs also ensures that customer-facing activity on a CAM would be subject to the Bank Secrecy Act's ("BSA") applicable anti-money laundering, customer identification, and suspicious activity reporting requirements, among other related legal and regulatory obligations that the BSA and Commission regulations impose on FCMs. *See, e.g.,* 17 CFR 42.2. These legal and regulatory obligations support the detection and prevention of money laundering and other illicit financial activity, facilitate regulatory oversight of such FCMs' compliance controls, and require the provision of relevant information to law enforcement authorities. *See Protection of Clearing Member Funds Held by Derivatives Clearing Organizations*, 89 FR 286, 304-306; Commissioner Christy Goldsmith Romero, *Dissenting Statement on Rushed Rulemaking Related to FTX's Direct-to-Retail Market Structure* (Dec. 18, 2023), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement121823c.

The Commission provides additional relevant information and requests input on each of the FCM CTX regime and CAM-FCM integration *infra* in Sections V.E and V.G.1, respectively.

c. Clearing and Settling: the DCO CTX regime.

DCM Core Principle 11 and the Commission's regulations require the clearance and settlement of transactions executed on a DCM through a DCO. Market participants have noted the structural differences between a traditional futures contract and a typical CTX,[292] the latter of which may be comprised of both a transaction resembling a cash-market purchase of a crypto asset (the "spot CTX leg") and a separate agreement pursuant to which such retail customer obtains financing. The CAM Proposal accordingly contemplates (i) the modification of the Commission's DCO regulatory regime to align with a typical CTX structure and the risks posed by the clearance and settlement thereof (the "DCO CTX regime") and (ii) the permitted dual registration of a CAM as a DCO and/or the integration of a CAM with an affiliated DCO entity ("CAM-DCO integration").

The Commission provides additional relevant information and requests input on each of the DCO CTX regime and CAM-DCO integration *infra* in Sections V.F and V.G.2, respectively.

d. Eligible Leverage Providers

The CAM Proposal contemplates the offer of leverage, margin, or financing to retail customers in connection with CTXs to be permissibly available solely pursuant to arrangements ("leverage arrangements") administered by an FCM or a qualified banking

[292] Coinbase Letter, *supra* note 19, at 2.

institution[293] which is sponsored by an FCM (a "sponsored leverage provider" or "sponsored qualified banking institution," and collectively with any FCM, "eligible leverage providers"). The CAM Core Principles would require the enumeration of each leverage arrangement in the CAM's rulebook.[294] In order to allow a leverage arrangement administered by a qualified banking institution to be enumerated in the CAM's rulebook, and thus made available to customers of a CAM, the sponsoring FCM would be required to obtain a written representation from the sponsored qualified banking institution that it will comply with the regulations applicable to FCMs related to the administration of leverage arrangements.[295]

Pursuant to the general terms and conditions of a leverage arrangement, retail customers could obtain financing ("financing") from the eligible leverage provider that administers the applicable leverage arrangement. The Commission preliminarily understands that such financing would be extended pursuant to bilateral financing agreements with individualized terms. Such financing would be extended for the purpose of purchasing a crypto asset listed on the CAM (the resulting position consisting of the purchased crypto asset, any margin collateral, and outstanding financing, a "leveraged position"). The Commission provides additional relevant information and requests input with respect to the regulatory requirements applicable to (i) eligible leverage providers in

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[293] As used herein, the Commission preliminarily understands the term "qualified banking institution" to mean a depository institution, as defined in 12 U.S.C. 1813(b).

[294] In order to make a leverage arrangement available to retail customers of a CAM, an FCM would be required to comply with regulations promulgated in conjunction with the CAM Proposal and pertaining to customer protection issues specifically applicable to the administration of a leverage arrangement and any extension of financing made thereunder, including around customer disclosures, initial margin and maintenance margin, and liquidation procedures.

[295] *Id.*

Section V.D, *infra*; and (ii) leverage arrangements, leveraged positions, and the regulation thereof under a contemplated fit-for-purpose margin regime in Section V.E, *infra.*

2. Overview of CTX Transaction Structures in the Proposed Regulation CAM

The CAM Proposal is designed to be sufficiently flexible to accommodate varied CTX transaction structures. However, a core motivation for the CAM Proposal is to address certain differences between a typical CTX and a typical futures contract. Market participants have noted that these differences pose significant challenges to compliance with certain regulatory requirements, and that these differences have frustrated the on-exchange requirement's purpose of channeling CTXs onto and through Commission registered entities.[296] The Commission's understanding of a typical CTX structure is set forth below and the Commission solicits comment on all aspects of it, including any alternative CTX structures that the Commission should consider in connection with any rulemaking.

Under the CAM Proposal, a CAM would list crypto assets on its trading facilities.[297] In order for a CTX on a listed crypto asset to be subject to comprehensive federal regulation by the Commission, a covered offer must be made to the retail customer that executes the CTX. One manner in which such a covered offer may be made

[296] *See* Coinbase Letter *supra* note 19 (stating that "crypto asset markets have several key differences from futures markets"); *see also* Letter from Kraken to Christopher J. Kirkpatrick, Sec'y, CFTC, at 3 (Aug. 18, 2025) ("as the Commission considers the applicability of its existing authority and potential rulemakings and guidance to industry, Kraken encourages the staff to work with industry stakeholders to study the unique technical aspects of operating a spot digital asset exchange.").

[297] Unlike a typical futures contract listed on a DCM, the asset listed for trading on a CAM is a commodity itself (*i.e.*, a crypto asset) rather than a contract that settles by reference to that commodity.

is pursuant to the enumeration of a leverage arrangement that provides the manners in which the retail customer may enter a bilateral financing agreement with an eligible leverage provider.[298] A retail customer could either (i) elect to execute a fully paid, open CTX after declining to obtain financing pursuant to a leverage arrangement or (ii) elect to execute a CTX with a portion of the purchase price extended under a financing agreement pursuant to a leverage arrangement. The Commission preliminarily understands that the execution of a typical CTX would result in the retail customer receiving the title to the purchased crypto asset through a book-entry on the CAM's internal records. Alternatively, a retail customer could elect to take actual delivery of the purchased crypto asset under the circumstances described in Sections III.B and C, *supra*.

As described above, if a retail customer elects to execute a CTX on a leveraged basis, they would do so by obtaining financing pursuant to bilateral financing agreement with an eligible leverage provider that administers a leverage arrangement. The financing would be used to purchase a crypto asset in the spot CTX leg. The intermediating FCM would custody the purchased crypto asset in accordance with the requirements of the Act and the Commission's regulations thereunder.[299] In connection with the resulting leveraged position, the applicable leverage provider may obtain a security interest in either the customer's account containing the CTX proceeds (*i.e.*, the purchased crypto assets)[300] or other collateral. The leveraged position would be subject to liquidation if the

[298] See *supra* Sections IV.B and IV.C for further discussion of the actual delivery exception.

[299] This Notice provides additional information and specific requests for comment pertaining to an FCM's custody of customer funds in Section V.E, *infra*, including with respect to the type of account in which such assets are held (*e.g.*, a Section 4d-compliant segregated account or a delivery account).

[300] The Commission notes that the applicable leverage provider (*i.e.,* the customer's creditor) cannot, under the current FCM regulatory framework promulgated under the Act, have a security interest in the assets in an FCM's segregated account.

retail customer's margin falls below a threshold provided in the leverage arrangement, as modified by the terms and conditions of the applicable bilateral financing agreement and subject to the CAM margin regime that is described in Section V.E, *infra*.[301]

B. CAM Core Principles

In order to obtain and maintain designation as a contract market with the CFTC, a DCM must comply with statutory DCM Core Principles that are set forth in the CEA,[302] as well as applicable CFTC rules and regulations promulgated thereunder.[303] The CAM Proposal is designed to accommodate the differences between the commercial realities of, and risks posed by, CTXs and standard futures contracts. In furtherance of that objective, the CAM Proposal contemplates modifications to the Commission's regulatory framework promulgated under the statutory DCM Core Principles, while ensuring that the protections and public trust afforded by the DCM Core Principles continue to be met.[304]

The Commission sets forth below its preliminary understanding of how certain regulatory obligations under the DCM Core Principles might be modified and solicits comment generally, as well as on the specific questions below.

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[301] For example, a sponsored qualified banking institution may have the power to direct the FCM (on behalf of the customer) to liquidate the leveraged position under such circumstances.

[302] *See generally* CEA 5(d), 7 U.S.C. 7(d). There are 23 statutory Core Principles for DCMs.

[303] CEA 5(d)(1)(A), 7 U.S.C. 7(d)(1)(A); 17 CFR part 38.

[304] *See, e.g., Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest*, *supra* note 46, 75 FR at 63736 ("[T]herefore, although each DCM[] is a commercial enterprise, the fact that each entity has self-regulatory obligations means that each entity is not simply a corporation, but a corporation charged with the public trust.").

1. Listing Standards, Susceptibility to Manipulation, and Prevention of Market Disruptions

DCM Core Principle 3 prohibits a DCM from listing contracts that are readily susceptible to manipulation.[305] A DCM may elect to list a new derivative contract for trading either by "self-certifying" to the Commission that the contract complies with the CEA and Commission regulations promulgated thereunder,[306] or by seeking Commission approval to list the contract.[307] In either case, the DCM must submit the contract's terms and conditions, and other prescribed information relating to the contract, to the Commission prior to listing.[308] With respect to DCM Core Principle 3, the Commission has adopted guidance in appendix C to part 38 (the "Appendix C Guidance")[309] that outlines certain relevant considerations for a DCM both when designing a derivative contract and providing supporting documentation and data in connection with the submission of the listing to the Commission.[310] If the CAM Proposal were adopted, the Commission preliminarily believes that it would be prudent to provide similar guidance for CAMs.

i. The Commission seeks comment on certain factors that it preliminarily understands may inform whether a crypto asset underlying a CTX is readily

[305] CEA 5(d)(3), 7 U.S.C. 7(d)(3); *see also* 17 CFR 38.200 through 38.201.

[306] CEA 5c(c)(1), 7 U.S.C. 7a–2(c)(1); *see also* 17 CFR 40.2.

[307] CEA 5c(c)(4) through (5), 7 U.S.C. 7a– 2(c)(4) through (5); *see also* 17 CFR 40.3.

[308] *See generally* 17 CFR 40.2 and 40.3. Amendments to contract terms and conditions also must be submitted to the Commission in accordance with procedures set forth at CEA 5c(c), 7 U.S.C. 7a–2(c), and part 40 of the Commission's regulations.

[309] *Id*.

[310] *See Core Principles and Other Requirements for Designated Contract Markets*, 77 FR 36612 at 36632 (June 19, 2012).

susceptible to manipulation: (i) whether there is an adequate economically available supply or the current circulating supply of the crypto asset that is not subject to restrictions on transfer, as well as other liquidity dynamics; (ii) details regarding economic, operational, and governance control of the blockchain system(s) to which the crypto asset relates; (iii) the nature of the source code of the blockchain system(s) to which the crypto asset relates, including whether the source code is open source and publicly available; and (iv) the reliability, resilience, and security of the blockchain system(s) to which the crypto asset relates.[311] In addition to these factors, the Commission seeks public input regarding other factors that the Commission should consider.

ii. The Commission preliminarily believes that compliance with Core Principle 3 may require a CAM to make certain disclosures ("crypto asset disclosures") demonstrating that a listed crypto asset is not susceptible to manipulation. These crypto asset disclosures would not be intended to serve the purpose of issuer-style disclosures that allow investors to assess the merit of a CTX or the underlying crypto asset.[312] The required contents of the crypto asset disclosures would instead reflect the novel characteristics of crypto assets that could lead to manipulation risks, particularly those that may not be present where a derivative contract has a more traditional commodity underlier. The Commission seeks comment on all aspects of the contemplated crypto asset disclosures.

iii. The Commission seeks comment on whether the existing part 40 process, used

[311] *See, e.g.*, a16z Letter, *supra* note 135.

[312] *Cf. Regulation Crypto Assets*, *supra* note 153.

for, among other things, the listing of traditional and crypto asset futures products, is sufficient for listing CTXs, or whether a modified listing mechanism is necessary or preferable. What modifications, if any, would be required?[313]

iv. Core Principle 4 prescribes certain measures a DCM must take to prevent manipulation and price distortions of listed contracts, including the real-time monitoring of trading and the ability to comprehensively and accurately reconstruct trading.[314] In this regard, the Commission seeks comment on how it should consider whether and to what extent a CAM has the capacity to surveil the trading, both in the CTX market and the underlying spot markets. For example, to what extent should a CAM integrate pricing and trading information from other trading facilities, including those that may be located in other jurisdictions, and which blockchain technologies or tools (*e.g.*, pricing oracles) should be permitted to be utilized in such integration?[315]

v. The Commission solicits comment regarding how the CAM Proposal should account for market disruptions that are idiosyncratic to crypto asset markets. For example, should the CAM Core Principles specifically address congestion or downtime of a blockchain system to which a listed crypto asset relates, blockchain system events such as forks and other blockchain system reorganizations, or pricing oracle failures?

vi. The Commission has adopted, in appendix B to part 38,[316] guidance and

[313] a16z Letter, supra note 135, at 6, 7.

[314] CEA 5(d)(4), 7 U.S.C. 7(d)(4).

[315] OKX Letter, *supra* note 1233, at 4.

[316] 17 CFR part 38, appendix B (the "Appendix B Guidance").

acceptable practices for DCMs to consider with respect to certain of the Core Principles[317] (the "Appendix B Guidance"). The Appendix B Guidance provides that in order to prevent manipulation, price distortion, and disruptions, a DCM should conduct market surveillance and monitor trading activity. The Commission notes that surveillance and trade monitoring for CTXs may incorporate innovative methods and technologies, including blockchain technologies. The Commission solicits comment on how the CAM Proposal should consider market surveillance and trade monitoring in CTX markets.

2. Position Limits and Accountability Levels

DCM Core Principle 5 requires the establishment of position limits and accountability levels tailored to the characteristics of the particular asset at issue.[318] The Commission seeks comment on appropriate position limits and accountability levels for CTXs. Should the Commission set position limits for any particular crypto assets, or classes thereof, as it has for certain agricultural, metals, and energy contracts? If not, should the CAM Proposal provide guidance for how CAMs should set position limits and accountability levels? If so, how, if at all, should that guidance differ from how DCMs set limits and levels for traditional asset classes today?

[317] *See* 17 CFR part 38, appendix B. Guidance set forth in the Appendix B Guidance states that a DCM may use the Appendix C Guidance as guidance in meeting DCM Core Principle 3 for both new product listings and existing listed contracts.

[318] CEA 5(d)(5), 7 U.S.C. 7(d)(5).

3. Trade Information Reporting and Recordkeeping

DCM Core Principles 8, 10, and 18 require DCMs to capture, verify, retain,[319] and publish[320] information related to trading activity and the DCM's business operations.[321] For example, DCM Core Principle 8 requires that DCMs make available to the public accurate information on settlement prices, volume, and opening and closing ranges for actively traded contracts,[322] and DCM Core Principle 10 requires that DCMs maintain rules and procedures regarding the recording and safe storage of all identifying trade information in a manner that enables the prevention of customer and market abuses.[323]

i. The Commission seeks comment on how blockchain technologies may provide innovative avenues for CAMs to comply with DCM Core Principles 8, 10, and 18.[324] For example, certain markets in crypto asset may be inherently more transparent than traditional derivatives markets because of the public and transparent nature of public blockchains systems, which may make available trade information and data. Under what circumstances could such data be sufficient to monitor trading in crypto asset markets?

ii. What challenges, if any, do the requirements of DCM Core Principles 8, 10, and 18 present with respect to markets in CTXs that may not be present in the

[319] CEA 5(d)(10), 7 U.S.C. 7(d)(10).

[320] CEA 5(d)(8), 7 U.S.C. 7(d)(8).

[321] CEA 5(d)(18), 7 U.S.C. 7(d)(18).

[322] CEA 5(d)(8), 7 U.S.C. 7(d)(8).

[323] CEA 5(d)(10), 7 U.S.C. 7(d)(10).

[324] For example, onchain records of settlement of transactions may be immutably stored on the relevant public blockchain in a manner that protects against alteration or loss, and such records may be retained indefinitely by the nature of blockchain technology. Those records may also be publicly available in a manner that would obviate the need for a CAM to otherwise publish such information.

traditional derivatives markets? What modifications, if any, to the current regulatory framework could address these challenges?

iii. The Commission seeks comment on whether, if a CAM incorporates public blockchain data, that CAM also should have policies and procedures for financial reporting, valuation, and reconciliation of internal ledgers to public blockchain systems as a condition for compliance with DCM Core Principles 8, 10, and 18. How should such reconciliation obligations be structured to address the recordkeeping and reporting challenges that may be idiosyncratic to crypto asset markets?[325]

iv. How should the Commission consider the 24/7 nature of certain crypto asset markets in relation to Core Principle obligations?

4. Trade Execution

Core Principle 9 requires a DCM to provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process in the centralized market of the board of trade.[326]

i. How, if at all, do the typical execution methods in crypto asset markets differ from markets in traditional assets? Which of those execution methods, if any, are incompatible with the DCM regulatory framework which requires an order book? Are there any clarifications or guidance regarding Core Principle 9 that the Commission should consider in the context of CTXs and crypto asset markets?

[325] OKX Letter, *supra* note 1233, at 5.

[326] CEA 5(d)(9), 7 U.S.C. 7(d)(9).

ii. Core Principle 9 allows for certain transactions to occur subject to the rules of a DCM rather than being executed on the DCM's centralized market (*e.g.*, transfer trades, exchange for related positions, block trades).[327] Are there comparable execution methods in crypto asset markets? Are any regulatory changes necessary?

iii. Should the Commission confirm that a CAM (or DCM) may use a blockchain system as its matching and execution layer or otherwise incorporate blockchain technologies for such purposes? If so, what compliance procedures should a CAM have in place? Please describe the measures a CAM or DCM would need to take to ensure compliance if it were to use a blockchain system as its matching and execution layer or otherwise incorporate blockchain technologies for such purposes.

5. Operational Risk and System Safeguards

Core Principle 20 requires a DCM to maintain a program of risk analysis and oversight to identify and minimize operational risk, establish and maintain emergency procedures and other backup resources, and periodically test the sufficiency of those backup resources.[328] The Commission's regulations generally contemplate traditional financial and technological infrastructure rather than onchain infrastructure, including public and private blockchains that are often associated with crypto asset markets. Different operational risks—and, therefore, required systems safeguards—may arise in this regard. For example, open source software underlying many blockchain systems may

[327] *Id.*

[328] CEA 5(d)(20), 7 U.S.C. 7(d)(20).

have greater cybersecurity vulnerabilities as compared to the typically closed-source software more commonly utilized in traditional financial infrastructure.

The Commission seeks comment on the following questions, in addition to any other comments concerning operational risks or related systems safeguards that may be relevant to the proposed Regulation CAM.

i. What operational risks and related systems safeguards requirements should the CAM Proposal consider that may be idiosyncratic to crypto asset markets and the use of innovative technologies, such as blockchain technologies?

ii. What specific operational, technical, and institutional capabilities should a CAM be required to demonstrate to address any idiosyncratic operational processes and risks typical of markets in of crypto assets?[329]

iii. How should the Commission consider innovative applications of blockchain technologies, including smart contracts or similar programmatic systems, in assessing appropriate operational risk mitigation and management?

iv. How should a CAM account for governance, maintenance, and other operational risks with respect to the blockchain systems over which the CAM may have no or limited control? What contingency and business-continuity measures should the Commission require?

v. Market participants have observed that the operational resilience of a blockchain system may scale with the number, independence and diversity of the

[329] *See, e.g.*, OKX Letter, *supra* note 1233, at 4–5.

validators,[330] and participants in the network.[331] Should the Commission consider validator/operator count, independence, and geographic and client diversity as relevant inputs into a CAM's operational risk assessment?

vi. Should the Commission treat a CAM's operation of its own node or validation infrastructure as a mitigant of third-party operational risk? Are there circumstances in which the Commission should encourage or expect self-operation of critical infrastructure rather than reliance (even if partial) on third parties?

vii. If a CAM incorporates smart contract or similar programmatic systems that execute workflows without human intervention or discretion, how should the Commission evaluate the adequacy of a CAM's controls over such systems? Should the Commission require pre-deployment testing, formal verification, audit, or fail-safe mechanisms?

viii. Security of certain blockchain systems infrastructure may be achieved through a combination of cryptography and economic incentives. How should the Commission assess a CAM's reliance on cryptographic and economic incentive

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[330] The term "validator" means a person who operates a node on a blockchain system and in the course of doing so is selected according to the programmatic rules of the blockchain system to validate new blocks of data to, and update the state of, the blockchain system. In exchange for providing validation services, validators earn "rewards" of two types: (1) newly minted (or created) crypto assets that are programmatically distributed to the validator by the blockchain system in accordance with its underlying software protocol; and (2) a percentage of the transaction fees, paid in crypto assets, by parties who are seeking to add their transactions to the blockchain system. *See generally* SEC, *Statement on Certain Protocol Staking Activities*, *supra* note 270.

[331] Rebecca Rettig, Omid Malekan & Michael Mosier, *The Compatibility of Permissionless Networks and Financial Integrity: A Practical Guide for Financial Institutions* (Aug. 24, 2026), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7343938.

mechanisms, rather than, for example, contractual recourse, to ensure the integrity of functions the CAM performs?

ix. How should the Commission address the absence of any service-level agreement, guaranteed throughput, or negotiated pricing where a CAM relies on blockchain technologies or infrastructure it does not control? What disclosures, capacity planning, or contingency measures should a CAM maintain to address throughput constraints, fee volatility, and the inability to negotiate or guarantee network blockchain system performance?

6. Proof of Reserves

The Commission notes the current typical practice of crypto asset exchanges in maintaining customer property in omnibus accounts held for their customers' benefit.

i. The Commission solicits comment on all aspects of the risks arising from the typical commercial custodial practices by crypto asset exchanges.

ii. The Commission notes that certain market participants have implemented safeguards for segregated customer property whereby the custodian obtains an audit from a third-party auditing firm that attests that the crypto asset intermediary's assets in reserves are sufficient to cover all liabilities to its customers (colloquially referred to as "proof of reserves"). The Commission solicits comment as to any proof of reserve practices that it should consider in conjunction with the CAM Proposal, including any practices that involve innovative applications of blockchain technologies.

C. Leverage Arrangements and Leveraged Positions under the CAM Proposal

The CAM Proposal contemplates allowing retail customers to obtain financing extended by an eligible leverage provider in connection with CTXs pursuant to leverage arrangements enumerated, for example, in a CAM's rulebook. In this regard, DCM Core Principle 7 requires a DCM to provide accurate information regarding the terms and conditions of the DCM, as well as the rules, regulations, and mechanisms for executing transactions on or through the DCM's trading facilities.[332] A CAM's rulebook would describe the general terms and conditions on which an eligible leverage provider may extend financing, including, for example, purchase price, margin requirements, collateral, fees and financing charges, liquidation procedures, and customer disclosures. The leverage arrangement would also set forth the criteria the eligible leverage provider uses to determine individualized terms and conditions of any bilateral financing agreements extended pursuant to the leverage arrangement.

i. Should persons other than an FCM or a sponsored qualified banking institution be permitted to qualify as an eligible leverage provider? What qualifications should the Commission consider in this regard?

ii. The CAM Proposal contemplates that an FCM sponsor a qualified banking institution to offer leverage arrangements to the FCM's retail customers. As discussed above, the FCM would be required to obtain a written representation

[332] *See* CEA 5(d)(7), 7 U.S.C. 7(d)(7) (providing in part that a board of trade shall make available to market authorities, market participants, and the public accurate information concerning the terms and conditions of the contracts of the contract market; and the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market). Other relevant Commission regulations include, for example, self-certification of rule amendments under 17 CFR 40.6 or Commission approval pursuant to 17 CFR 40.5.

from the qualified banking institution that it will comply with certain regulations that would be applicable to FCMs related to the administration of leverage arrangements and offers or extension of bilateral financing made to retail customers pursuant to the terms and conditions of such leverage arrangements. The Commission seeks comment on this proposed requirement, as well any other input on the relationship between an FCM and a qualified banking institution that offers leverage arrangements.

iii. What other financing arrangements structures other than those described *supra* should the Commission consider in relation to the CAM Proposal, if any?

iv. DCM Core Principle 2 requires a DCM to establish rules to prohibit abusive trade practices.[333] What practices or terms and conditions should be considered abusive in relation to the offer of financing pursuant to a leverage arrangement?

D. The CAM Margin Regime

The Commission is considering how to approach margin requirements under the CAM Proposal. For example, the Commission could extend the existing regime, under which the DCO generally is responsible for, among other things, setting initial and maintenance margin requirements, determining the types of assets eligible to be used as margin collateral ("eligible margin collateral") and setting rules concerning the risk management of leveraged positions. Alternatively, the Commission could take a more prescriptive approach in setting requirements for margin and eligible margin collateral.

i. Would it be appropriate or advisable for the Commission to take a more prescriptive approach to margin requirements for CTXs? If so, what should those

[333] CEA 5(d)(2), 7 U.S.C. 7(d)(2); *see also* 17 CFR 38.152.

requirements be? What would the process be for the Commission to revise margin requirements, particularly in times of market volatility or stress? For example, would it be advisable for the Commission to delegate authority to NFA (as it does in the RFED space regarding margin levels) or to DCR?

ii. Market participants have noted that the differences between CTXs and futures contracts may render the traditional futures margin regime inapposite to commercial realities of, and risks posed by CTXs.[334] The Commission solicits comment on all aspects of the contemplated CAM margin regime, including alternative market and regulatory structures.

iii. The Commission seeks comment on the extent to which it should draw upon lessons learned from its supervision of crypto asset futures, including cash-settled, physically-settled, and perpetual products, in setting principles-based standards for margin requirements and clearing and operational parameters for CTXs under the CAM margin regime. Which aspects of the current margin regime might be appropriately applied to CTXs?

iv. What role should the Commission or any self-regulatory organizations have in establishing principles-based standards for determining the eligibility of specific crypto assets for use as margin collateral? Should individual eligible leverage providers or self-regulatory organizations be authorized to set their own eligibility criteria?

v. Should certain crypto assets or classes thereof be restricted from use as margin collateral? What criteria should the Commission consider in this regard? For

[334] *See* Coinbase Letter, *supra* note 19, at 5.

example, should the Commission require that a crypto asset have a minimum level of capitalization and daily trading volume to demonstrate liquidity and stable pricing to absorb a sale in stressed markets?

vi. The Commission recognizes that blockchain technologies, including smart contracts, could enable innovative market functions such as continuous margining, auto-liquidation, and other programmatic risk management practices. The Commission requests comment on the benefits and risks of market participant use of such technologies, and regulatory structures that can provide confidence that the implementation of the technologies will effectively manage risks related to leveraged positions, consistent with DCM and DCO Core Principles.

vii. What other operational, credit, market, or other risk mitigants regarding leveraged positions extended under leverage arrangements and the contemplated CAM margin regime should the Commission consider with respect to the CAM Proposal?

viii. Should the Commission permit rehypothecation of customer crypto assets in margined transactions? If so, how can rehypothecation be limited to ensure effective protection of customer assets? Would such rehypothecation potentially result in an FCM failing to hold sufficient funds in segregation to meet its obligations to all customers? How can an FCM address this under-segregation? Does the Commission's part 190 regulations and the U.S. Bankruptcy Code present issues with respect to the rehypothecation of customer assets by an FCM?

ix. How should the Commission consider the custody and property segregation requirements for fully paid, open CTXs? For example, does the Commission's

part 190 and the U.S. Bankruptcy Code present issues in the event of an FCM's insolvency if customer fully paid, open CTX positions are not held in customer segregated accounts under Commission regulations?

x. DCM Core Principle 6 requires a DCM to have rules that provide for the exercise of emergency authority, including to liquidate or transfer open positions, suspend or curtail trading, and require market participants to meet special margin requirements. For example, in the traditional futures markets, porting is a common practice. How would this apply for leveraged spot positions? Would there be any constraints that are related to the nature of the transaction? The Commission solicits comment on whether traditional DCM emergency powers and DCO liquidation authorities are adequate to administer the liquidation of leveraged positions contemplated under the CAM margin regime, or whether the contemplated CAM margin regime requires a different approach.[335]

E. FCM and IB Intermediation of CTX Orders

The CAM Proposal contemplates intermediation of CTXs by an FCM under the FCM CTX regime.

i. Under the FCM CTX regime, an FCM would be required to furnish to its retail customers certain disclosures regarding the risks of CTXs generally, as well as disclosures pertaining to each specific crypto asset that is the subject of a solicited transaction.[336] The Commission preliminarily believes that such disclosures would describe (i) the blockchain technologies underlying the crypto asset; (ii) the

[335] Bitnomial Letter, *supra* note 183, at Part II.

[336] *See* Section V.B.1, *supra*.

functionality and utility of the crypto asset; (iii) the governance and control of the crypto asset; (iv) the trading volume and volatility of the crypto asset; and (v) any material incentives or conflicts of interest that the FCM may have, among other matters. The Commission solicits comment on the form and substance of such disclosures.

ii. Under what circumstances, if any, should retail customers be able to trade CTXs on a CAM on a non-intermediated basis?

The Act and Commission regulations thereunder stipulate that an FCM must separately account for all futures customer funds[337] and segregate such funds as belonging to its customers.[338] The FCM must also perform due diligence on any locations where futures customer funds may be held. As discussed above, the Commission preliminarily understands that the typical market practice of crypto asset trading facilities may involve the exchange recording a retail customer's ownership interest in purchased crypto assets only through a book-entry on its internal ledgers. That exchange may in turn employ a custodian (which may be an affiliated entity) to custody the crypto assets.

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[337] 17 CFR 1.30 (providing that "futures customer funds" means all money, securities, and property received by a futures commission merchant or by a derivatives clearing organization from, for, or on behalf of, futures customers: (1) To margin, guarantee, or secure contracts for future delivery on or subject to the rules of a contract market or derivatives clearing organization, as the case may be, and all money accruing to such futures customers as the result of such contracts; and (2) In connection with a commodity option transaction on or subject to the rules of a contract market, or derivatives clearing organization, as the case may be: (i) To be used as a premium for the purchase of a commodity option transaction for a futures customer; (ii) As a premium payable to a futures customer; (iii) To guarantee or secure performance of a commodity option by a futures customer; or (iv) Representing accruals (including, for purchasers of a commodity option for which the full premium has been paid, the market value of such commodity option) to a futures customer. (3) Notwithstanding paragraphs (1) and (2) of this definition, the term futures customer funds shall exclude money, securities or property held to margin, guarantee or secure security futures products held in a securities account, and all money accruing as the result of such security futures products.).

[338] 17 CFR 1.20.

i. What relief, if any, would be necessary from current regulatory obligations for FCMs under the CAM Proposal? The Commission specifically seeks comment on the existing FCM obligation to segregate customer funds and comply with the customer protection requirements under section 4d of the CEA, and whether modifications would be required to address the commercial realities of, and risks posed by, CTXs and/or the related custody of crypto assets.[339] What revisions, if any, to the Commission's part 190 rules would be required to address such commercial realities?

ii. The Commission preliminarily understands that if the proceeds of a CTX (e.g., the underlying crypto asset bought pursuant to the CTX, or the funds used to sell a crypto asset pursuant to a CTX) are held in a segregated account that complies with the requirements of Section 4d of the Act that may be used to "purchase, margin, guarantee, secure or settle the trades, contracts or commodity options" of a retail customer, that account (and the funds held therein) is subject to the Commission's exclusive jurisdiction under section 2(a)(1)(A) of the Act.[340] The Commission seeks comment on this preliminary understanding.

iii. Should the Commission clarify how an FCM may use blockchain technologies to accept customer orders and funds and otherwise carry out its business? What innovative mechanisms for the acceptance of customer funds and order handling

[339] Bitnomial Letter, *supra* note 183, at Part II. "FCMs must segregate customer funds and comply with strict customer protection requirements under section 4d of the CEA."

[340] *See* CEA 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A) (providing that the "Commission shall have exclusive jurisdiction [. . .] with respect to accounts [. . .] involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 7 of this title.").

should the Commission consider in this context? What regulatory obligations of an FCM would pose issues with respect to the incorporation of blockchain technologies for use in these market functions?

iv. How should the Commission consider an FCM's obligations under Commission Regulations 1.20 (futures customer funds to be segregated and separately accounted for) and 1.49 (denomination of customer funds and location of depositories) in the context of the CAM Proposal, including specifically an FCM's obligation to hold customer funds at a permitted depository?

v. What conditions, if any, should apply with respect to the use of a custodian by an exchange to custody assets? How should those conditions differ, if at all, from those that apply to custodians in the traditional futures market?

vi. The Commission solicits comment on the appropriate role of introducing brokers ("IBs") in CTXs and whether any modifications to IB regulations are necessary in the context of CTXs.[341]

vii. In addition to the Act and the Commission's regulations promulgated thereunder, FCMs are required to be members of a futures association registered under section 17 of the CEA. Currently, the only such futures association is the National Futures Association ("NFA"). The Commission solicits comment on whether NFA's FCM framework is compatible with the CAM Proposal and what changes, if any, would be necessary to make it compatible.

[341] Bitnomial Letter, *supra* note 183, at Part III ("IBs complement this structure by soliciting customer orders and coordinating with FCMs to ensure proper execution of delivery instructions and compliance with regulatory requirements.").

viii. Commission regulations impose a comprehensive risk management framework on FCMs.[342] The Commission solicits comment regarding whether this risk management framework is compatible with the CAM Proposal and any specific regulatory obligations it should consider amending.

ix. The Commission notes that, once registered, an FCM may engage in all lawful activity of an FCM. Should the Commission consider a limited-purpose FCM registration category for an FCM that desires to only intermediate CTXs? What additional risks, if any, are present where an FCM that intermediates CTXs also intermediates traditional futures transactions?

x. How should the Commission consider the disparate regulatory obligations under the contemplated FCM CTX regime in conjunction with an FCM's regulatory obligations under the current framework applicable to futures contracts? The Commission requests that commenters specifically identify such obligations and suggest how the Commission should approach them.

xi. Commission rules impose net capital requirements on FCMs.[343] How would the net capital rules be implicated by the CAM Proposal? Should the Commission consider any changes to the net capital regime? For example, would the Commission's RFED capital regime present a viable alternative? The Commission requests comment on all aspects of the FCM capital regime in the context of the CAM Proposal and requests that commenters specifically identify

[342] 17 CFR 1.73.

[343] 17 CFR 1.17.

any aspects of the FCM capital regulations that may prove problematic and propose alternatives.

F. Clearing and Settling CTXs

Core Principle 11 requires a DCM to ensure the financial integrity of transactions in part through the clearing and settlement of transactions by a DCO.[344]

The Commission seeks comment on whether the regulatory framework applicable to DCOs is fit-for-purpose in light of the characteristics of, and risks posed by, CTXs. Which regulations may need to be amended, and how, in order to properly tailor that framework? Are there statutory or regulatory provisions for which exemption may be necessary? If so, are there conditions that should be applied to achieve the regulatory goals those provisions are designed to achieve? The Commission seeks comment on all aspects of the appropriate regulatory frameworks for both the clearing and settlement of CTXs, including with respect to the questions set forth below. The Commission requests that commenters identify specific regulatory requirements in this regard, as well as proposed alternatives.

1. Clearing and Settling the Spot CTX Leg

The Commission understands that the spot CTX leg may, under certain circumstances, settle on the internal books and records of a CAM in a manner that may substantially mitigate the counterparty performance risks or credit risks present in a traditional futures contract or that arise from delayed settlement. The Commission is interested in exploring whether, and if so how, any residual counterparty performance risk, credit risk, or legal risk associated with the spot CTX leg can most appropriately be

[344] CEA 5(d)(11), 7 U.S.C. 7(d)(11).

addressed. Can such risks be appropriately addressed without a traditional clearing and settlement process, and instead by the regulatory frameworks applicable to other registered entities? The Commission solicits comment on the following topics.

i. The Commission preliminarily understands that market participants in spot crypto asset markets have sought to implement or have explored alternative clearing and settlement processes to facilitate capital efficiency or similar considerations. Please describe any clearing and settlement processes that the Commission should consider in relation to the spot CTX leg and the associated appropriate regulatory obligations for registered intermediaries. How can these arrangements meet regulatory goals under the CEA, including effective customer protection and risk management?

ii. How should the Commission consider the ways in which a DCO (which may be a dual-registered CAM or an affiliate entity of a CAM) may use blockchain technologies for any market functions related to clearing and settling the spot CTX leg under the CAM Proposal? Are there regulatory obligations that would need to be modified in light of the uses of blockchain technologies?

2. Clearing and Settling Leveraged Positions; Insolvency

i. The Commission seeks comment on whether a CAM could adequately ensure the financial integrity of leveraged positions under DCM Core Principle 11 by requiring a DCO (which may be a dual-registered CAM or an affiliate entity of a CAM) to substitute its credit for those of the counterparties to leveraged positions in a limited capacity. Specifically, could a limited guaranty address residual clearing and settlement risks, including the default of its members under certain

circumstances? Would a limited guaranty adequately address the risks posed by leveraged positions on crypto assets contemplated by the CAM Proposal?

ii. If a limited guaranty were required, how would it interact with Core Principle B(ii)(I) of the CEA[345] and Regulation 39.11(a), which requires a DCO to have financial, operational, and managerial resources adequate to meet its financial obligations to its clearing members, notwithstanding a default by "the clearing member creating the largest financial exposure for the [DCO] in extreme but plausible market conditions[?]"[346]

iii. The Commission solicits input regarding whether there are circumstances pursuant to which mutualization of losses related to leveraged positions may be appropriate under the CAM Proposal.

iv. In what ways may a DCO arrange or provide, on a multilateral basis, for the settlement or netting of obligations resulting from agreements, contracts, or transactions executed by participants in a CAM? Would that be separate from settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity?

v. The Commission's part 190 rules and subchapter IV of chapter 7 of the Bankruptcy Code provide a framework for the treatment of customer property following a "commodity broker"[347] insolvency.

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[345] CEA 5b(c)(2)(B)(ii)(I), 7 U.S.C. 7a-1(c)(2)(B)(ii)(I).

[346] *See* 17 CFR 39.11(a).

[347] *See* 11 U.S.C. 101(6), providing that a "commodity broker" is defined to include an FCM.

a. To the extent that CTXs intermediated by an FCM are cleared by a DCO, they would fall within the definition of "commodity contracts" under the Bankruptcy Code.[348] If not cleared by a DCO,[349] by what analysis could CTXs intermediated by an FCM be considered to be a type of "commodity contract" that is "similar to" a contract, option, agreement, or transaction referred to in 11 U.S.C. 761(4),[350] such that crypto assets held by the FCM are treated as "customer property" under part 190?

b. In the alternative, should the Commission consider whether an arrangement built on the foundation of the bankruptcy protections provided under UCC Article 8 may be an adequate substitute for the bankruptcy protections provided under subchapter IV and part 190? If so, how might such an arrangement be designed?

vi. Should registered entities that intermediate CTXs be required to disclose to customers how an insolvency of the platform or intermediary would affect the treatment of their assets? How would these disclosures differ, if at all, from disclosures made by registered entities under existing regulations?

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[348] *See* 11 U.S.C. 761(4)(F)(ii) (defining "commodity contract" to include "with respect to [an FCM] [. . .] any [. . .] contract, [. . .] or transaction [. . .] that is cleared by a" DCO).

[349] Subject to certain exceptions, the Act defines a derivatives clearing organization as a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction— "(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties; (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants." *See* CEA 1a(15), 7 U.S.C. 1a(15).

[350] *See* 11 U.S.C. 761(4)(F)(i)

G. Multiple Commission Registrations under the CAM Proposal

i. Would relief be necessary to address potential duplicative requirements, including with respect to reporting and capital requirements? If so, please explain how the Commission should consider and address such duplicative requirements? For instance, should the Commission impose FCM capital and financial reporting obligations regulations on a CAM, or should the Commission consider alternative approaches to capital and financial reporting requirements, as noted *supra*?

ii. Does the CAM Proposal raise novel conflicts of interest concerns? If so, how should the Commission consider requirements to mitigate and resolve such conflicts?

iii. Currently, many of the registered FCMs are dually-registered with the SEC as brokers or dealers. Does the CAM Proposal raise issues for dually-registered FCMs/broker-dealers to comply with regulations of the CFTC and SEC? Please explain such issues and suggest how the Commission should address them.

1. CAM-FCM Integration

In addition to the traditional functions of an FCM, an affiliate FCM under the CAM Proposal may undertake activities related to (i) the provision of leverage arrangements to retail customers, including underwriting or extending individualized loans; (ii) sponsoring other eligible leverage providers; (iii) liquidating leveraged positions; and (iv) making disclosures to its customers regarding crypto assets and the risks of transacting in them, including on a leveraged basis.

i. Are there any unique conflicts of interest that may arise from these activities that the Commission should address with new regulations?

ii. The Commission seeks comment on whether the Commission needs to address Regulation 1.30 regarding FCM loans. The Commission notes that this regulation is in place to ensure that the loan does not place other customers of the FCM at risk if the customer/borrower does not repay a loan and the security is not sufficient to cover the loan balance. If the Commission needs to address Regulation 1.30, how should it do so? In this regard, the Commission seeks comment on whether the CAM Proposal implicates the Regulation 1.56 prohibition on guarantees against loss.

2. CAM-DCO Integration

The contemplated activities of a DCO under the CAM Proposal substantially differ from those undertaken in the traditional futures context. The CAM Proposal contemplates a DCO measuring, monitoring, and supervising the risks arising from bilateral loans with individualized terms, as described in Section V.E, *supra*. Relatedly, a DCO may also be responsible for setting maintenance margin requirements for classes of crypto assets that affect trading activity therein, which may be the primary source of revenue for its affiliated CAM and/or FCM. Conversely, a DCO sets parameters that could affect the liquidation or losses of unaffiliated market participants. Further, an affiliated FCM may bear the aforementioned risks as the eligible leverage provider in a leverage arrangement. The Commission seeks comments on any unique conflicts of interests that may arise from these activities, to the extent applicable.

H. CAM Designation, Exemptions from Registration, and Permissible Subject Crypto Assets

A fundamental objective of the CAM Proposal is to effectuate the on-exchange requirement by channeling CTXs onto and through Commission registered intermediaries. However, while the Act contemplates broad Commission jurisdiction over CTXs, including fully paid, open CTXs, Congress did not grant the Commission the statutory authority to regulate genuine cash-market retail commodity transactions. The Commission accordingly solicits comment below on these dynamics and certain tensions between them.

i. Would the CAM Proposal provide market participants the opportunity to comply with the on-exchange requirement under a comprehensive federal regulatory framework and a "uniform set of legal rules"?[351] What regulatory requirements of other jurisdictions could frustrate Congress' intent to bring 2(c)(2)(D) transactions under a comprehensive regulatory framework that is insulated from varying and potentially contradictory legal standards of other jurisdictions?

ii. The Commission accordingly solicits comment as to how it could facilitate responsible innovation and fair competition among DCMs and CAMs by accommodating DCMs' inclusion of CTXs on their trading facilities. Would such DCMs benefit from targeted relief or other Commission action, such as allowing

[351] *See American Agric. Movement*, 977 F.2d, at 1156 ("Only in the context of market regulation does the need arise for uniform legal rules. As Congress recognized in enacting the 1974 [CEA], a contract market could not operate efficiently, and perhaps not at all, if varying and potentially contradictory legal standards governed its duties to investors (or farmers).").

the selective incorporation of components of the CAM Proposal into the DCM regulatory structure as it relates to CTXs?

iii. The CAM Proposal is not intended to "interfere with the legitimate spot market,"[352] and the Commission preliminarily believes that certain market participants may wish to elect to continue operating under the state-by-state regulatory regime described in Section I.A, *supra*. Does the CAM Proposal provide a commercially viable avenue for a crypto asset exchange to elect to continue operating under the state spot market regime?

iv. The Commission preliminarily understands that a typical onchain application[353] may settle transactions executed thereon in a manner that results in the satisfaction of the Commission's preliminary interpretation of the actual delivery exception, as described in the Sections III.B and C, *supra*; that is, such CTXs result in the retail purchaser obtaining possession and control of the crypto assets [and unfettered access thereto pursuant to actual delivery of the purchased crypto assets]. The Commission notes that the controlling case law distinguishes between the existence of a lien or security interest and meaningful possession and control, such that actual delivery may not occur where a lien or security interest remains outstanding.[354] The Commission solicits comment on these preliminary

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[352] *Zelener* Hearing, *supra* note 53, at 9 (statement of Daniel Roth, President of the National Futures Association).

[353] *See* Buterin, *supra* note 36 (describing smart contracts and onchain applications enabled by Turing-complete programming languages).

[354] *Monex*, at 15 ("Monex argues that in the context of a provision regulating leveraged commodity sales, it would make little sense for 'actual delivery' to turn on possession or control, because such a reading would clash with 'margin, which means '[c]ash or collateral required to be paid to a securities broker by an investor to protect the broker against losses from securities bought on credit.' Black's Law Dictionary (9th ed. 2009). Because the very meaning of the word 'margin' requires that the buyer deposit *collateral* with

understandings or any other issues related to the offer of CTXs through onchain applications.

v. The Commission preliminarily believes that an exemption from CAM registration would be appropriate for trading facilities that offer less than *de minimis* amounts of trading volume in CTXs and/or a notional amount of leveraged positions. The Commission solicits comment on this contemplated exemption and an appropriate *de minimis* threshold.

vi. The Commission notes that the Act typically prohibits Commission-registered entities from listing derivative contracts referencing securities, as defined in the Federal securities laws.[355] The Commission solicits comment on the securities-law implications that arise where a crypto asset underlying a CTX is asserted to be, or to be part of, an investment contract or another enumerated instrument in 15 U.S.C. 77b(a)(1) and 15 U.S.C. 78c(a)(10).

vii. The Commission similarly notes the fungible nature of commodities typically referenced by commodity derivatives subject to the Act's jurisdiction.[356] (In addition to enumerated commodities, the Act specifies that "all services, rights, and interests [. . .] in which contracts for future delivery are presently or in the future dealt in" constitute commodities that may be subject to the Commission's

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the seller, actual delivery must mean something other than transferring possession or control to the buyer. Otherwise, Monex argues, margin would mean nothing. Yet, even if the commodity serves as collateral, there is no reason why the buyer cannot control it. In many financing contexts, some degree of buyer possession or control is commonplace. While permitting customers to obtain significant control over or possession of metals might be practically difficult here, that fact does not displace the statute's plain meaning.").

[355] See *supra* note 124 and *supra* Section I.B.4 (describing historical and statutory frictions between the Commission and the SEC).

[356] CEA 1a(9), 7 U.S.C. 1a(9).

jurisdiction.) How should the Commission consider non-fungible tokens (or, "NFTs") with respect to its jurisdiction under the Act?

VI. Executive Order 12866

The Office of Management and Budget ("OMB") has determined that this action is a significant regulatory action as defined under section 3(f) of Executive Order 12866 and therefore this action has been reviewed by OMB, consistent with Executive Order 14215.

Issued in Washington, DC, on October __, 2026, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

As approved by the Commission
(subject to pre-publication technical corrections)

Appendix A

Commission-Registered Entity Structures under the CAM Proposal As discussed further in the CAM Proposal, the Commission preliminarily believes that CTXs must be intermediated by an FCM and cleared and settled by a DCO, in the manner and under the circumstances described in the CAM Proposal. While not required and a standalone CAM entity is allowable under the CAM Proposal, this table sets forth how a CAM entity could register as either or both of an FCM and DCO.					
Multiple Registrations under the CAM Proposal	*CAM Registration*[357]	*FCM Registration*	*DCO Registration*	*Traditional DCM Registration*	*Notes on Contemplated CAM Corporate Family Structure*
Fully Integrated CAM	**X**	**X**	**X**		The CAM entity registers as each of an FCM and DCO.
CAM-DCO Dual Registration	**X**		**X**		The CAM entity dually registers as a DCO ("CAM-DCO"). The CAM-DCO may also be affiliated with an FCM, as discussed in Sections V.C.1 and V.G.2, *supra.*
CAM-FCM Dual Registration	**X**	**X**			The CAM entity dually registers as an FCM ("CAM-FCM"). The CAM-FCM may also be affiliated with a DCO. The CAM-FCM may also be affiliated with a DCO, as discussed in Sections V.C.2 and V.G.1, *supra*.
Traditional DCM				**X**	The Commission preliminarily believes that under the CAM Proposal, a DCM could offer CTXs under its current registration. This exemption is discussed further in Section V.H, *supra*.
Onchain					The Commission sets forth its preliminary understanding as to why a CTX executed via an onchain protocol typically results in actual delivery, as discussed further in Section V.H, *supra*.

[357] As discussed in Section V.A, *supra*, designation as a CAM results from registering as a subcategory of DCM and continued compliance with a tailored set of the regulations promulgated under the statutory DCM Core Principles.