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U.S. House Bill Seeks to Establish Digital Asset Regulatory Framework

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In this article, the authors examine a discussion draft of a yet-to-be-named bill released in the House of Representatives addressing market structure for digital asset activity.

On May 5, 2025, House Committee on Financial Services Chairman French Hill (AR-02), House Committee on Agriculture Chairman G.T. Thompson (PA-15), House Committee on Financial Services Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence Chair Bryan Steil (WI-01), and House Committee on Agriculture Subcommittee on Commodity Markets, Digital Assets, and Rural Development Chair Dusty Johnson (SD-AL) released a discussion draft of a yet-to-be-named bill addressing market structure for digital asset activity (the DAMS Draft). If adopted as proposed, the DAMS Draft would establish a regulatory framework for activity involving what the proposal calls "digital commodities" in the United States. Primary market activity (i.e., fund-raising through the sale of digital commodities) would be overseen by the Securities and Exchange Commission (SEC), while secondary transactions in digital commodities would be under the oversight of the Commodity Futures Trading Commission (CFTC), with a coordinated role for the SEC.[1]

If implemented as proposed, the DAMS Draft would be a dramatic departure from current market structure law, as the drafters chose to incorporate numerous technology-specific terms and concepts into the relevant statutes. While this approach has the benefit of allowing the DAMS Draft to be prescriptive about implementing their policy objectives, it also creates the potential risk of "regulatory lock-in." The digital asset sector has been characterized by rapid technological and market structure development.

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Putting in place detailed provisions provides important regulatory clarity but may inadvertently slow the pace of, or even discourage, further innovation. In some ways, this could result in unintended consequences similar to those now arising from the EU's Markets in Crypto Asset Regulation.

Because the DAMS Draft took the commendable step of releasing this proposed legislative language as a discussion draft, it will be important for interested market participants to provide constructive suggestions on the DAMS Draft as soon as possible. While there will inevitably be many responses with a variety of both high-level and in-line drafting suggestions, we believe that it is important to step back and appreciate everything it took to get to this place, compared to where the digital asset sector stood just one year ago.

It is also important to bear in mind that both the House of Representatives and the Senate have sought to work on digital asset legislation on a bipartisan basis. This is particularly relevant for the Senate, where as a practical matter, at least seven Democrat votes will be needed for the legislation to pass. As a result, we can expect further input to the DAMS Draft as this proposal moves through Congress.

Below are five key takeaways from the DAMS Draft.

Digital Commodities Are Not Securities

The DAMS Draft includes a long-sought clarification that the definition of "security" under each of the Securities Act of 1933, as amended (the Securities Act), and the Securities Exchange Act of 1934, as amended (the Exchange Act), does not include most digital assets—at least those considered to be "digital commodities."[2] To implement this, the DAMS Draft creates a new term in the Securities Act, Exchange Act and Commodity Exchange Act (the CEA): "digital commodity," broadly defined as a commodity, the value of which is derived from its relationship with the blockchain system to which it relates. The definition also clarifies that "digital commodity" would not include "permitted payment stablecoins," assets that represent, or are the functional equivalent of, various derivative instruments and other more traditional commodities, as well as other non-blockchain-based tangible or intangible goods.

Title II of the DAMS Draft seeks to further clarify this concept by introducing the term "investment contract asset"—which means

a digital commodity that is recorded on a blockchain and sold pursuant to an investment contract in either a registered offering or in reliance on an available exemption from registration.

In other words, even if a digital commodity is sold as part of a securities offering characterized as an "investment contract" (for example, to raise capital for the development of a blockchain project), the digital commodity itself will be deemed an "investment contract asset" that is separate from the "investment contract." This codifies the concept that an asset sold pursuant to an investment contract transaction is distinct from the investment contract transaction—something litigated extensively over the last several years.[3] This new proposal aligns with the "ancillary asset" approach set out in the Responsible Financial Innovation Act[4] previously introduced by Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY). However, because all "digital commodities" would be excluded from the definition of "security" (independent of the manner in which the digital commodity is sold), as noted above, this provision has raised questions about the security status of digital commodities falling outside of the "investment contract asset" definition.

New Exemption from Registration Requirements of Securities Act for Investment Contract Transactions Involving Digital Commodities

Exemption from Registration by "Digital Commodity Issuers"

Title II of the DAMS Draft adds a new Section 4(a)(8) under the Securities Act—creating a new exemption from securities registration for offers and sales of "an investment contract involving units of a digital commodity" by an entity treated as the "digital commodity issuer" (a new defined term to be added to the federal securities laws). This provision is similar to the Rule 195 "safe harbor" proposed over five years ago by SEC Commissioner Hester Peirce (the Safe Harbor Proposal),[5] which would have given blockchain developers a three-year grace period in which to sell and distribute digital assets without triggering federal securities registration requirements, provided they meet basic disclosure, code-release, and exit-report conditions. The term "digital commodity issuer" raises some important new concerns.

Unlike securities, commodities do not have an "issuer" (at least in the sense used in the federal securities laws), and digital commodities as defined in the DAMS Draft do not have any necessary legal relationship to any specific entity. Many blockchain projects employ multiple legal entities (including entities commonly referred to as a "foundation" and a "labs" entity) for valid and important reasons, and the roles of these entities may shift over time. Thus, identifying a single entity as the "digital commodity issuer" may prove challenging. Further, once that imprimatur is imposed on a given entity, it may create a meaningful risk of working against decentralization by vesting in that entity expectations of overall ongoing responsibility for the relevant blockchain system.

In order to rely on the newly proposed Section 4(a)(8) under the Securities Act, the entity considered to be the "digital commodity issuer" would need to meet the following conditions:

- The "blockchain system" to which the digital commodity relates (and the digital commodity) has been certified as a "mature blockchain system" (a process that has been greatly expanded in the DAMS Draft from the Safe Harbor Proposal and is discussed further below), or the issuer intends for the blockchain system to be a "mature blockchain system," within four years of the first sale of the digital commodity (or, if later, the date of enactment of Section 4(a)(8));
- The aggregate amount of the digital commodity sold by the digital commodity issuer in reliance on this exemption during the preceding 12-month period does not exceed $150 million;
- After the completion of the transaction, a purchaser does not own more than 10 percent of the total amount of the outstanding units of the digital commodity; and
- The digital commodity issuer meets certain criteria (including being organized in the United States).

This new exemption would allow for significant fund-raising by blockchain developers through a relatively simple and straightforward process—potentially up to $600 million over four years—prior to a blockchain system becoming "mature." This would be a real boon for those investing in the digital asset space, including venture capital firms and retail investors buying directly or through exchange traded products (ETPs), to the extent developed. In

addition, there is no requirement in the current DAMS Draft that the proceeds of a fund-raising using new Section 4(a)(8) must be deployed to develop the related blockchain system and in theory could be used for other (disclosed) purposes, including repaying early investors or backers.

New Reporting Obligations

To benefit from the offering exemption added by the DAMS Draft, the digital commodity issuer would also need to file with the SEC an "offering statement" that includes (unspecified) financial information concerning the issuer, a description of the issuer, a plan of distribution, the intended use of proceeds, and a description of the plan for the blockchain system to become a "mature blockchain system" (a welcome new variation on the more commonly used, but more confusing, term "sufficiently decentralized").

Also required in the offering statement are: the underlying source code for the blockchain system, the steps needed to verify the transaction history of the blockchain system, and the blockchain system's "economics" (which we refer to as the "observable information"). Further, the statement must include information that would presumably be known only to the digital commodity issuer, such as the blockchain system's development status and applicable "risk factors." In addition to preparing an initial offering statement, the digital commodity issuer would be required to provide semi-annual and "current" disclosures to the SEC until a registered digital commodity exchange chooses to provide the observable information about the blockchain system. Thus, it would appear that ongoing reporting could apply to the digital commodity issuer in perpetuity, if no registered exchange chooses to provide the observable information (even if a registered exchange chooses to list the relevant digital commodity for trading, there is no requirement in the DAMS Draft for it to provide the observable information). Moreover, it is unclear what consequence there would be if the blockchain system reached "maturity" and the digital commodity issuer chose to dissolve.

One of the more intriguing provisions of the DAMS Draft permits (but does not require) the SEC to issue rules extending the disclosure requirements applicable to those digital asset issuers choosing to use the new offering exemption in Section 4(a)(8) to digital commodities offered in other channels, including those digital commodities sold

in private placements to accredited investors. This would also be a radical departure from current market structure and, as proposed, may be challenging to implement in practice.

Achieving "Maturity"

The DAMS Draft hard-codes minimum standards that, if met, would appear to be deemed to satisfy the maturity standard. Among other elements, the digital commodity's market value must stem principally from on-chain functionality, a standard that may be challenging to meet (as, in many cases, where digital assets trade more aligned with broader market trends or popular sentiment, such as with a meme coin, rather than based on the specific economics of the blockchain system itself); the network must be fully operational and rules-based; and no person or group may (1) own more than 20 percent of the outstanding digital commodities, (2) own more than 20 percent of the outstanding voting power, or (3) possess unilateral authority to change consensus rules. Blockchain systems not reaching "maturity" after four years would result in unspecified consequences imposed by the SEC for the related digital asset issuer (if still in existence), as well as for certain "related persons" and "affiliated persons."

Restrictions on Sales of Digital Commodities by Related Persons and Affiliated Persons

Section 204 of the DAMS Draft adds a new Section 42 to the Exchange Act to significantly constrain how a digital commodity issuer's "related" and "affiliated" persons may dispose of their digital commodities. This group, which would include persons or entities that acquire as little as 1 percent of the units of the digital commodity from the digital commodity issuer, along with anyone considered a founder, promoter, employee, consultant, advisor, executive officer, director, equity holder or a person filling a similar role, would be considered functional "insiders" (even if the actual person or entity in question has little or no practical control over the digital commodity issuer).

Before the underlying blockchain system is certified as "mature," those persons may only "transact" in the digital commodities of the related digital commodity issuer they hold only if the digital

commodity issuer has provided all required reports to the SEC and then only after holding those assets for 12 months. In addition, any dispositions by these persons are limited to up to the lesser of 5 percent of that holder's position or 1 percent of the digital commodity's average weekly trading volume in any rolling three-month window.

Once the underlying blockchain system attains mature blockchain status, special holding rules apply to related persons. In addition, the quarterly volume limit for sales by both related and affiliated persons becomes the greater of 1 percent of total outstanding supply or 1 percent of average weekly volume. Moreover, under the current proposed language, it appears that these restrictions would apply to all digital commodities relating to the relevant blockchain system owned by a related or affiliated person (such as those assets acquired in market transactions or as "rewards" for engaging in staking or for providing other network services), not just those assets that were allocated to that person in their capacity as a founder, employee, or investor, etc.

Critically, any such sales by related or affiliated persons must be conducted through a digital commodity exchange—a surprising requirement for an ostensibly blockchain-friendly proposal that raises questions as to how these dispositions may be effected if the digital commodity is only traded on a decentralized exchange. In a particularly draconian provision, the DAMS Draft states that it would be a violation of federal law for affiliated or related persons with respect to a digital commodity to "transact" in any way in the related digital commodity other than as required by these new provisions.

As drafted, the DAMS Draft suggests that these resale restrictions in Section 42 would also apply to digital commodities that were originally sold under exemptions other than the new Section 4(a)(8)—for example, offerings conducted under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D, which remain the most commonly used exemptions for digital asset offerings and sales in the U.S. today. These restrictions may even apply to sales of digital commodities that were registered with the SEC, for example, through the use of Form S-1. This would amount to a radical departure from current market structure and is a feature of the DAMS Draft that may attract significant discussion.

Going even further, the DAMS Draft suggests that these Section 42 restrictions would retroactively apply to all digital commodities that have been sold in any manner prior to the bill being signed into

law—a remarkably sweeping imposition on current holders of digital assets discovering that they may fall within the newly created "related person" or "affiliated person" categories for certain assets they own. We would expect extensive discussion of the viability of this provision.

Secondary Transactions in Digital Commodities

Section 202 of the DAMS Draft states that secondary sales of a digital commodity will not be deemed "investment contracts" between the digital commodity issuer or an agent of the issuer and the purchaser of the asset, so long as these assets do not convey rights in a business entity (the issuer or another person). This provision appears to be intended to provide a safe harbor for persons other than the digital commodity issuer who are reselling digital commodities on the secondary market (when permitted, in the case of related and affiliated persons). So long as the digital commodity does not include rights like equity, dividends, or other claims on an issuer (which presumably would be excluded by the base definition of "digital commodity"), those resale transactions are not intended to be subject to federal securities laws.

However, the focus on ruling out investment contract transactions with the issuer (or its agent) limits the benefit of this provision, as a secondary transaction could still be considered an investment contract with another major ecosystem participant, such as a development company (usually referred to as a "labs" entity). This may be clarified in a future version of the proposal.

For all market participants, including not only sellers but also intermediaries like exchanges, custodians, brokers, or dealers, the benefits of a clear and effective exclusion of secondary transactions in digital commodities from the federal securities laws would be quite welcome and valuable. Over time, this clarity should foster deeper liquidity and greater institutional participation in activity involving digital commodities.

Digital Commodity Trading

Alternative Trading Systems

The DAMS Draft provides a pathway for existing Alternative Trading Systems (ATSs) operated by securities broker-dealers to

serve as spot market trading venues for digital commodities and permitted payment stablecoins. Such an ATS would have to file a notice registration with the CFTC, but would operate under the oversight of the SEC. The proposal provides for real-time settlement of digital commodity transactions and blockchain-native recordkeeping.

Allowing an ATS to trade "spot" digital commodities transactions would greatly expand access to these assets in the United States. In addition, it would allow for securities (including, potentially, tokenized securities), digital commodities, and permitted payment stablecoins to all trade on the same venue. While an ATS would be permitted to provide spot digital commodity markets, currently there is no provision that would allow an ATS also to provide markets for derivatives on digital commodities, such as perpetual-style futures and similar products that are very popular with crypto traders.

Finally, a prerequisite to operating an ATS is registration as a broker-dealer and obtaining membership in the Financial Industry Regulatory Authority (FINRA). The FINRA membership application process involves obtaining approval to engage in specific business activities. A broker-dealer operating an existing ATS would likely need FINRA approval to provide a venue for trading digital commodities and would need to file a continuing member application to obtain such approval.

Digital Commodities Exchanges

Digital commodity exchanges (DCEs) may also operate spot market trading venues for digital commodities. DCEs must register with the CFTC and are subject to the exclusive jurisdiction of the CFTC. In fact, any trading facility that offers or seeks to offer a trading facility for digital commodities must register.

Part of the CFTC registration process involves demonstrating compliance with a new set of core principles that applies to DCEs. There are 14 core principles for DCEs that largely mirror the core principles applicable to designated contract markets (DCMs) for transacting in certain traditional commodity derivatives, with duties that are tailored for spot markets. These principles include: listing standards, trading and trade-processing rules, market surveillance, disclosure of price and volume data, customer-asset

segregation, conflicts of interest, financial resources, system safeguards, governance fitness, antitrust, and others.

DCEs are not permitted to offer trading in commodity derivatives. This means that a DCE could not list popular digital commodity derivative products like perpetual-style futures unless they are dual-registered as a DCM.

The DAMS Draft does give the CFTC discretion to prescribe rules that exempt entities that are already registered with the CFTC from the requirement to register as a DCE if it would be duplicative, conflicting, or unduly burdensome. If the CFTC were to prescribe such rules, it would give operators of existing DCMs an important advantage as they would be able to both (1) offer spot trading in digital commodities under their existing registration, and (2) also offer derivatives on digital commodities like perpetual-style futures. Nevertheless, in light of the anticipated growth of tokenized securities, we would still expect significant interest in operating ATSs, which would allow traders to move between digital commodities, tokenized securities, and payment stablecoins.

Decentralized Finance Protocols

The DAMS Draft takes a critical step forward in also contemplating (and legitimizing) the use of "peer-to-peer" decentralized finance (DeFi) trading protocols. DeFi, while critical to the overall success of blockchain-based technologies, has been notoriously difficult to define. By taking up this challenge, even if somewhat imperfectly in the current proposal, the DAMS Draft represents an important step forward in creating a balanced regulatory environment for activity involving digital assets. Specific exclusions for decentralized finance activities (including operating a "front-end" website for a DeFi protocol, referred to the DAMS Draft as a "decentralized finance messaging system"), although these may need further expansion to ensure that they fully carve out all appropriate DeFi activity.

Key Definitions

The DAMS Draft adds many key technology-specific definitions to the Securities Act, the Exchange Act, and the CEA, as well as other federal statutes. These definitions are critical to determining

when and how various provisions of the DAMS Draft apply to actors or activities. A few key definitions include:

- Blockchain, blockchain application, and blockchain protocol—the definition for each of these terms requires source code that is publicly available. This means that permissioned chains or applications for which any component of the code is closed source will not be covered by many of the DAMS Draft provisions. It is also not clear that all "layer 2" or other scaling solutions would fall within these definitions.
- Blockchain system means any blockchain (i.e., a network such as Ethereum or Solana), together with its blockchain protocol, or any blockchain application or network of blockchain applications.
- The definition of "digital commodity" assumes that the relevant digital assets derive their value primarily from a technical connection to the underlying blockchain system. However, some digital assets, such as "meme coins," whose value turns more on a brand, image, or ideal, or those digital assets whose value depends more on external demand generated from marketing, rather than from purely on-chain mechanics, could also fall outside the definition. Non-fungible tokens (NFTs) are also excluded from the DAMS Draft, although a study by the Comptroller General of the United States on NFTs is called for.
- A "mature blockchain system" is defined as a "blockchain system, together with its related digital commodity, that is not controlled by any person or group of persons under common control." Certification of a "mature blockchain system" focuses on the absence of control—including the expectation that no single person or group of persons have control to materially alter the functionality of the blockchain system, or beneficially own more than 20 percent of the digital commodity, or hold more than 20 percent voting power relating to governance of the related blockchain system. While an absence of a single control party is clearly important from the point of view of users of a blockchain system, the definition leaves open the potential of two or more persons "not under common control" (such as two founding developers working closely together but

through separate legal entities, or two independent venture capital firms cooperating to make all key decisions on a project) effectively operating a blockchain system that would otherwise be deemed "mature." In addition, the current definitions of "decentralized finance trading protocol" and "decentralized finance messaging system" currently reference only the term "blockchain system," which is a blockchain or blockchain application that may not have reached "maturity."

However, this definition also does not look to whether the ongoing viability or economic success of a blockchain system is dependent as a practical matter on the efforts of others even following "maturity." These entities may include development companies incentivized through the holding of the relevant digital commodity (which, based on the constraints on dispositions imposed by proposed new Section 42 of the Exchange Act, may be in place for an extended period) to continue to monitor the proper functioning of, and suggest critical upgrades to, the codebase or front end of the related blockchain system as the market or regulatory environment evolves. Other dependencies may include operators of critical infrastructure (e.g., sequencers or embedded bridging solutions), something likely to be of significant importance to investors in digital commodities (including retail investors in digital commodities acquiring interests in these assets through ETPs).

Conclusion

In sum, the DAMS Draft represents perhaps the most comprehensive, legally sophisticated yet innovation-conscious framework proposed for U.S. digital asset markets, although a number of definitions, thresholds, and structures still require refinement to ensure the framework is both workable and tailored. The proposal undertakes the challenging work of attempting to delineate the regulatory perimeter between the SEC and CFTC, provides much needed clarity for developers of new digital assets seeking compliant pathways to fund-raise, establishes robust guardrails for exchanges and intermediaries, and institutes mechanisms for continued learning and flexibility in oversight—a remarkable effort developed in

a relatively short amount of time and a tribute to the tremendous hard work, effort, and creativity of all involved in bringing the DAMS Draft to the public.

Notes

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1. See Press Release, "Hill, Thompson, Steil, and Johnson Release Digital Asset Market Structure Discussion Draft" (May 5, 2025), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409719.

2. For example, the DAMS Draft would add the following at the end of the definition of the term "security" in Section 2(a)(1) of the Securities Act: "The term does not include a digital commodity or permitted payment stablecoin."

3. For a detailed discussion of the legal basis for separating the "object" of an investment scheme from the underlying investment contract transaction, see Lewis Rinaudo Cohen, Gregory Strong, Freeman Lewin & Sarah Chen, "The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are Not Securities" (Nov. 10, 2022), https://static.cahill.com/docs/Ineluctable-Modality.pdf.

4. S. 2281, 118th Cong. (2023).

5. See Hester M. Peirce, Comm'r, Sec. & Exch. Comm'n, "Running on Empty: A Proposal to Fill the Gap Between Regulation and Decentralization" (Feb. 6, 2020), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-blockress-2020-02-06 (proposing Securities Act Rule 195 safe harbor for certain sales of digital tokens).