VitalLaw Legislation and Rules News, STRATEGIC PERSPECTIVES—What you need to know about the Senate Ag committee's latest crypto market structure bill, (Nov 12, 2025)

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The discussion draft leaves several big questions to be decided at a later date after further negotiations among lawmakers.

The Senate Agriculture Committee is preparing to move forward on a crypto market structure bill that, in its present form, would leave several key issues, such as decentralized finance, non-controlling blockchain developers, and the details of how anti-money laundering laws would apply to crypto, up to further debate and/or action by other Senate committees. However, the as yet untitled discussion draft, put forward by Chairman John Boozman (R-Ark) and Sen. Cory Booker (D-NJ), Ranking Member of the Subcommittee on Commodities, Derivatives, Risk Management, and Trade, would address the CFTC's spot market authorities, address registration of key market players, impose consumer protections, and mandate certain custody arrangements at some types of firms.

"The CFTC is the right agency to regulate spot digital commodity trading, and it is essential to establish clear rules for the emerging crypto market while also protecting consumers," said Boozman via press release. "This discussion draft advances those goals and lays an important marker as we work toward final policy language."

Booker emphasized the bipartisan nature of the discussion draft while also focusing a brief statement on consumer protection. Said Booker: "More Americans are engaging with novel financial markets and payment systems than ever before, and Congress must take steps to strengthen and expand regulatory frameworks to protect consumers from predatory practices, keep our markets safe, and prevent bad actors from exploiting regulatory gaps."

CFTC's spot market powers. The substantive provision for CFTC oversight of spot markets has its logical, although not its numerical section number, beginning with a sense of Congress buried deep within the bill that would provide that lawmakers understand the bill to grant the CFTC power to regulate only digital commodities on any spot market. The statement is significant because prior legislation to fund these activities by the CFTC failed over concerns that the proposed statutory text might have left the CFTC wiggle room to regulate other types of commodities and derivatives products. The sense of Congress statement would attempt to preclude that interpretation of the bill.

The bill would grant the CFTC exclusive jurisdiction over transactions involving contracts in digital commodities in interstate commerce, including those traded in a digital commodity cash or spot market that are offered or traded under the rules of an entity that is or is required to be registered with the CFTC.

Special provisions within the bill would apply to the CFTC's proposed minimal authorities regarding payment stable coins (See also The Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, Pub. L. No. 119-27).

Digital commodity defined. "Digital commodity" would be defined to mean "any fungible digital asset that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger."

The term also includes "any fungible digital asset that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary and is recorded on a cryptographically secured public distributed ledger, of which the primary branding, narrative, or price discovery is substantially derived from a meme, joke, trend, or the name or likeness of a public figure (with or without license)."

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Assets excluded from the definition include securities (there would be no presumption that a digital asset is a security), securities derivatives, permitted payment stable coins, banking deposits, certain commodities and commodity derivatives, pooled investment vehicles, and collectibles and other non-commodity assets. However, assets would not be excluded merely because they have voting or economic rights or because their values rise or fall due to blockchain use.

CFTC funding. The bill would provide the CFTC with authority to impose and collect fees to support the agency's registration and oversight of digital commodity exchanges and digital commodity brokers and dealers. Fees also would support the CFTC's education and outreach to customers of these firms.

The fee imposed on a registered entity would be based on an entity's volume of digital commodity business and its category of registration with the CFTC. However, the CFTC would lack the authority to require firms to directly collect from customers a per-transaction fee for each digital commodity transaction. Fee rates would have to be published at regular times, and the fee rates imposed would not be subject to judicial review.

The CFTC also would receive an appropriation of $150 million to stand up the regulatory infrastructure to oversee digital commodity markets. The appropriation could be used until the agency is able to begin collecting fees.

The CFTC chair would have authority to hire experts on digital commodities on an expedited basis. Appointments to the proposed new jobs would be considered competitive service jobs and could not be converted into excepted services jobs.

Retail advocate. The bill would establish the Office of the Spot or Cash Market Digital Commodity Retail Advocate. The advocate would help customers in these markets with significant problems and recommend regulatory changes to aid retail investors in digital commodity markets.

Market demographics report. The CFTC would have to submit to the relevant congressional committees a report on the demographics of digital commodity markets, including data on the "racial, ethnic, and gender demographics of customers." The report also would have to include policy recommendations related to historically underserved communities. In complying with the reporting mandate, the CFTC would be directed to consult "a broad range of stakeholders, including market participants, customers, and consumer advocates."

Registration requirements. Generally, a firm must register with the CFTC as a digital commodity exchange if it offers or seeks to offer a cash or spot market in one or more digital commodities. The CFTC would have discretion to design an application for registration that likely would mandate disclosures about firm governance, resources, systems safeguards, surveillance, and conflicts of interest. Registration would be required even if the digital commodity exchange is registered with a state regulator or with a different federal regulator. A digital commodity exchange also would have to become a member of a registered futures association.

A registration exemption would exist for trading facilities that only serve customers within a single state. In the case of firms still required to register with the CFTC, the agency would have discretion to exempt firms from duplicative, conflicting, or unduly burdensome provisions of the bill and from similarly burdensome agency rules.

Brokers and dealers who act as digital commodity brokers or dealers also would have to register with the CFTC. However, statutory exemptions would be available for de minimis activities and for digital commodity brokers and dealers who serve only a single state. Likewise, a person associated with a digital commodity broker or dealer must be registered with the CFTC. It would be similarly unlawful for a digital commodity broker or dealer to allow a person to remain associated with the firm if the firm knew or should have known that the person was not registered, the registration had expired, the registration had been suspended (assuming the suspension remained in effect), or the registration had been revoked.

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With respect to commodity pool operators (CPOs) and commodity trading advisors (CTAs), the bill would direct the CFTC to adopt rules to provide appropriate exemptions for these firms from duplicative, conflicting, or unduly burdensome requirements, or to promote responsible innovation. Any exemptions would have to satisfy a statutory test focused on whether the exemption(s) foster the development of fair and orderly cash or spot digital commodity markets, are necessary or appropriate in the public interest, and are consistent with the protection of customers.

Open questions. The discussion draft appears to contain a lot of tentative language. In a few instances, the draft expressly states that lawmakers are continuing to discuss the content, if any, of provisions that may be included in the proposed bill. Specifically, a section intended to address decentralized finance (DeFi) states that the committee is "[s]eeking further feedback." A planned provision on anti-money laundering states that the provision is "to be supplied."

In the case of noncontrolling blockchain developers, which the draft defines as persons who "in the regular course of operations, do[] not have the legal right or the unilateral and independent ability to control, initiate upon demand, or effectuate transactions involving digital assets that users are entitled to without the approval, consent, or direction of any third party," they are not to be treated as money transmitters or as engaged in money transmitting. The exemption from these laws would apply to the extent the person:

- creates or publishes software to facilitate maintenance services provided to a blockchain or blockchain service;
- provides hardware or software to facilitate a customer's own custody or safekeeping of the customer's digital assets; or
- provides infrastructure support to maintain a blockchain service.

The provision is similar to other failed legislative efforts in the tax context that sought to exempt individuals and firms that only provide back-office services to blockchain firms from certain tax reporting requirements. The discussion draft on the CFTC's digital commodity powers includes a minority view statement asserting that this topic belongs to the Senate Banking Committee and is outside the jurisdiction of the Senate Agriculture Committee.

Looking ahead. Congress is currently seeking to formalize an end to the federal government shutdown. Once the continuing resolution that will fund the government until the end of January 2026 has been signed into law, lawmakers will turn their attention to completing the remaining unfinished appropriations bills so they can fully fund the bulk of the federal government through the end of FY26. That leaves little time to spare for a major market structure bill that appears to have many open questions. However, even if lawmakers end 2025 without passing a crypto market structure bill, it is likely that efforts to clarify regulation of this market will continue into 2026.

MainStory: Securities

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