

Hon. J. Christopher Giancarlo
787 Seventh Avenue
New York, NY 10019-6099

September 15, 2022

The Honorable Debbie Stabenow, Chairwoman
The Honorable John Boozman, Ranking Member
U.S. Senate Committee on Agriculture, Nutrition & Forestry
Washington, DC 20515

Re: Senate Bill 4760 The Digital Commodities Consumer Protection Act of 2022

Dear Senators,

I write in support of your consideration of the Digital Commodities Consumer Protection Act of 2022.

As Congress contemplates an appropriate legal and regulatory framework for digital assets it is unsurprising that attention is directed to the Commodity Futures Trading Commission (CFTC). As you well know, the CFTC has been at the forefront of US financial market innovation since the agency's inception. In fact, the CFTC was reformulated over forty years ago into an independent body specifically to safeguard a breakthrough in financial innovation – financial futures – that enabled the global economy to hedge the risk of moving interest and exchange rates ensuring the US Dollar's primacy as the world's reserve currency.¹ During the past decades, the CFTC has deftly overseen more new financial product innovation than almost any other market regulator.² And yet, amidst such innovation, CFTC regulated markets have safely mitigated financial risk in an orderly manner without faltering or failing even during the great financial crisis.

The CFTC engaged early with digital assets, finding in 2015 that Bitcoin was properly defined as a commodity under its authority. Two years later, the CFTC greenlighted the self-certification of bitcoin futures initiating the world's first significant, fully regulated market for digital assets. Since then, other commodity-based, digital asset products including ether futures have come under CFTC oversight. Today, derivatives on digital asset commodities (the largest digital asset category by volume) trade in orderly and transparent markets under close CFTC

¹ Leo Melamed, *Man of the Futures: The Story of Leo Malamed & the Birth of Modern Finance* (Harriman House 2021).

² See generally, Written Testimony of Chairman J. Christopher Giancarlo before the Senate Banking Committee, Washington, D.C., (February 6, 2018) at: [https://www.banking.senate.gov/imo/media/doc/Giancarlo%20Testimony%2022-6-18b.pdf](https://www.banking.senate.gov/imo/media/doc/Giancarlo%20Testimony%202022-6-18b.pdf).

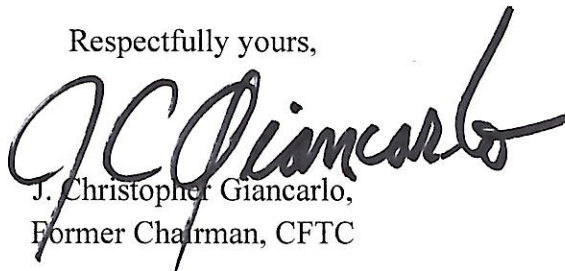
supervision, fostering Dollar-based pricing, with healthy liquidity and high levels of open interest despite volatile current economic conditions.³ These markets provide the CFTC with regulatory visibility supporting robust enforcement that is second to no other market regulator in prosecuting perpetrators of digital asset fraud, abuse and market manipulation. Yet, perhaps most importantly, the CFTC's early and unhesitant engagement with digital assets has *reduced* regulatory risk and uncertainty for responsible financial market innovation paving the way for an important new ecosystem of retail and institutional digital asset investment generating economic activity here in the United States.

The Digital Commodities Consumer Protection Act of 2022 (the "Act") addresses the important public interest in closing a gap in CFTC oversight. As you know, spot markets facilitate immediate physical delivery of tradable goods in contrast to markets for futures, forwards and options deliverable in the future. In spot markets, the CFTC has only limited authority over trading of digital asset commodities. As a result, there are no platform registration, operator supervision or standard investor protection measures in the spot markets that are common in US derivatives markets to police against fraud, manipulation and abuse. CFTC Chairman Rostin Behnam reported to your committee earlier this year that there are elements of the digital commodity cash markets suitable for direct CFTC oversight that are distinguishable from traditional cash commodity markets. I agree with Chairman Behnam and I support the provisions in the Act that extend the CFTC's oversight to cover spot digital commodity markets.

The world is once again experiencing a fundamental new innovation in finance. Thoughtful, clear-eyed and unbiased American leadership is needed. American consumers and financial innovators alike deserve the benefit of the CFTC's seven years of market supervision, expert analysis and product engagement in digital asset markets. It is time to close the regulatory gap over spot digital commodities with the oversight of the world's most experienced and farsighted crypto regulator: the Commodity Futures Exchange Commission.

I urge Congress to draw upon the CFTC's expertise and competence to meet the challenge of digital asset innovation and face the digital future of finance it portends.

Respectfully yours,



J. Christopher Giancarlo,
Former Chairman, CFTC

³ CME Bitcoin Liquidity Report, September 2, 2022, at: https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf