

CHANGE IS CALLING: A CONTEMPORARY COMMISSION TO CONFRONT CRYPTIC CRYPTO CONDITIONS

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I. INTRODUCTION

The rapid rise of digital assets in the market, yet lack of clear regulatory authority overseeing their growing presence, has outpaced traditional governing structures, posing considerable risks to market participants and prompting an urgent need for a solution in the form of a new and specialized agency solely responsible for this dynamic sector. There is confusion concerning how digital assets are classified and who has jurisdiction over the market.² Currently, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) hold jurisdiction over the trading of financial instruments and assets.³

Deeming a digital asset a commodity versus recognizing it as an investment is a pivotal distinction in regulatory framework, legal treatment, and financial reporting impacts.⁴ The SEC regulates securities, whereas the CFTC regulates the trading of derivatives on commodities.⁵ If classified as an investment or security, a digital asset will be regulated by the SEC, whose Office of Strategic Hub for Innovation and Financial Technology (FinHub) claimed jurisdiction over crypto assets.⁶ This classification has issuance, trading, and investor protection implications.⁷ However, if recognized as a commodity, a digital asset will fall under the jurisdiction of the CFTC.⁸ It will then be subject to commodity regulations, which can affect how the asset is

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² Jennifer J. Schulp, *Dazed and Confused: Breaking Down the SEC's Politicized Approach to Digital Assets*, CATO INSTITUTE (Sept. 17, 2024), <https://www.cato.org/testimony/dazed-confused-breaking-down-secs-politicized-approach-digital-assets> (“Even if there were no jurisdictional questions and it were clear that an issuer of a digital asset was subject to the SEC’s jurisdiction by virtue of issuing a security, the SEC’s registration rules would still be a poor fit for digital assets.”).

³ Dan M. Berkovitz & Mriganka Pattnaik, *Measuring the Regulatory Gaps for Digital Assets and the Use of Technology to Bridge the Gap*, MERKLE SCIENCE (Nov. 7, 2023), <https://www.merklescience.com/blog/measuring-the-regulatory-gaps-for-digital-assets-and-the-use-of-technology-to-bridge-the-gap>.

⁴ Jason G. Allen, et al., *Legal and Regulatory Considerations for Digital Assets*, CAMBRIDGE CENTRE FOR ALTERNATIVE FINANCE (2020), <https://www.jbs.cam.ac.uk/wp-content/uploads/2020/10/2020-ccaf-legal-regulatory-considerations-report.pdf>.

⁵ Berkovitz & Pattnaik, *supra* note 3.

⁶ U.S. Securities and Exchange Commission, *Crypto Assets* (Feb. 7, 2025), <https://www.sec.gov/securities-topics/crypto-assets#:~:text=The%20SEC%20is%20dedicated%20to,financial%20technology%2C%20including%20crypto%20asets>.

⁷ U.S. Chamber of Commerce, *Digital Assets: A Framework for Regulation To Maintain the United States' Status As An Innovation Leader*, (Jan. 27, 2021), CENTER FOR CAPITAL MARKETS COMPETITIVENESS, https://www.uschamber.com/assets/documents/ccmc_digitalassets2021_v3.pdf.

⁸ Cheryl L. Isaac, et al., *CFTC AND SEC PERSPECTIVES ON CRYPTOCURRENCY AND DIGITAL ASSETS – VOLUME I: A JURISDICTIONAL OVERVIEW*, K&L GATES HUB (May 6, 2022),

traded, stored, and taxed. Despite its importance, there remains immense confusion surrounding digital asset classification.⁹

On January 21, 2025, SEC Acting Chairman Mark T. Uyeda established a new crypto task force (Crypto Task Force) to create a comprehensive regulatory framework for crypto assets.¹⁰ This marks a shift from the SEC's previous enforcement-driven approach, which often led to legal confusion.¹¹ The Crypto Task Force was designed to draw clear regulatory lines, provide paths to registration, craft disclosure frameworks, and deploy enforcement resources judiciously.¹² As the SEC develops this new framework, crypto-related cases have encountered delayed litigation, a warning sign that crypto enforcement is effectively taking a backseat.¹³ While this approach may encourage innovation, failing to establish proper guardrails for digital assets could potentially lead to more issues in the future.¹⁴

The classification of digital assets has far-reaching consequences for market participants (business, investors, and regulators), and can notably affect compliance requirements, market access, and legal liabilities.¹⁵ Establishing a clear taxonomy and regulatory framework for digital assets is crucial for the continued development and acceptance of this emerging asset class. A new agency that instills "regulation by collaboration" in the crypto market will eliminate the legal and jurisdictional confusion caused by the current "regulation by enforcement" approach. By creating a collaborative independent agency, the United States will be able to provide licensing standards, enforce stability measures, protect consumers, and prevent illicit activities in the crypto landscape. This new agency will become the gold standard worldwide for the digital asset market by ensuring innovation can in fact thrive in a regulated environment.

II. STAYING CURRENT WITH CRYPTO: COLLABORATION OVER ENFORCEMENT

Contrary to the SEC's approach of creating an in-house task force to address crypto matters, a more effective solution to closing the regulatory gap surrounding digital assets is to establish a completely new agency dedicated to overseeing the entire digital market. There is much confusion surrounding how digital assets are classified. Current agencies, such as the SEC, CFTC, and the Financial Crimes Enforcement Network (FinCEN), have overlapping authority, thus creating regulatory gaps. The unclear distinction between the SEC and CFTC leads to jurisdictional disputes, and FinCEN does not contribute to market regulation, but rather focuses on financial crimes. Further, decentralized finance (DeFi) platforms are largely unregulated with

<https://www.klgates.com/CFTC-and-SEC-Perspectives-on-Cryptocurrency-and-Digital-Assets-Volume-I-A-Jurisdictional-Overview-5-6-2022>.

⁹ SEC v. W. J. Howey Co., 328 U.S. 293 (1946) (The Court established the Howey Test, a legal framework used to determine whether a transaction qualifies as an investment contract and, therefore, a security under federal securities laws.).

¹⁰ Sec. & Exch. Comm'n, Press Release No. 2025-30, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force* (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.

¹¹ *Id.*

¹² *Id.*

¹³ Ben Miller, *SEC Crypto Cases on Hold While Task Force Eyes Broad Overhaul*, BLOOMBERG LAW (Feb. 20, 2025), <https://news.bloomberglaw.com/securities-law/sec-crypto-cases-on-hold-while-task-force-eyes-broad-overhaul>.

¹⁴ *Id.*

¹⁵ Allen, *supra* note 4.

no clear oversight framework. A collaborative agency will consolidate oversight and jurisdiction, leading to comprehensible rules in an innovation-friendly environment.

The proposed Federal Digital Asset Commission (FDAC; New Commission) aims to address current regulatory gaps and provide effective oversight of crypto markets, operations, and businesses. With congressional approval, FDAC will end the fight over which federal agency has jurisdiction over digital and crypto assets. The New Commission will be established as an independent agency, designed to provide clear guidelines and administration specifically tailored to the unique characteristics of digital assets.¹⁶ As such, FDAC will have autonomy from the President’s direct control.

Similar to the SEC, this new regulatory agency will also consist of six divisions, only they will exclusively center around digital market concerns: (1) Enforcement and Compliance; (2) Licensing and Market Regulation; (3) Cybersecurity and Financial Stability; (4) Risk Analysis and Innovation; (5) Consumer Protection and Education; (6) and National and International Coordination. Subject to the Senate’s confirmation, the President will appoint seven members to head the bipartisan New Commission—one Chair and six Commissioners. The Chair will operate as the face of FDAC, overseeing all operations and final decisions. The six Commissioners will work together to lead the new agency, with each Commissioner taking ownership of one of the six divisions, functioning as the point person (“Point Commissioner”) of a specific division. These seven members may only get removed for cause and must serve fixed terms, which will be staggered so members’ terms do not all end at once.

To get FDAC off the ground, the inaugural members, once elected, will have the option of serving terms between 1-4 years. The first FDAC Chair, however, must commit to serving a 4-year term. Once it is certain a complete turnover of the board is impossible given each member’s respective staggered term assignments, future Chairs and Commissioners must all serve 4-year terms, with each term ending on September 30 to mark the end of that fiscal year. To the extent any role is not filled before a term ends, the impacted member may continue to serve up to 12 months as the agency searches for a qualified successor.

III. UNITED BY DIVISIONS: SPLITTING UP TO CO-EXIST AS ONE

A. Division of Enforcement and Compliance

The Division of Enforcement and Compliance will operate as the backbone of FDAC’s regulatory efforts, its mission to cultivate digital asset markets that operate within the bounds of the law. FDAC will oversee all centralized exchanges and crypto-asset service providers (CASPs), but it will not impose full regulatory oversight on DeFi platforms at this stage.¹⁷

¹⁶ Leah Dempsey, et al., *House Passes Landmark Crypto Bill*, BROWNSTEIN CLIENT ALERT (May 30, 2024), <https://www.bhfs.com/insights/alerts-articles/2024/house-passes-landmark-crypto-bill> (“Digital asset market participants have long held that the unique characteristics of most digital assets make existing federal rules incompatible with how these tokens are distributed and traded, resulting in a great deal of regulatory uncertainty.”).

¹⁷ See *infra* Section III(D)(iii): *DeFi-ing Boundaries: DeFi Innovation Hub*.

i. Enforcing the Rules: Where Enforcement Meets Innovation

FDAC will be granted broad regulatory and enforcement powers under congressional authorization. It will have the power to create legally binding rules for exchanges, stablecoin issuers, and all other CASPs. Further, FDAC will have the authority to investigate violations, issue subpoenas, prosecute firms and individuals, impose civil penalties, enact trading suspensions, and invoke sanctions. The New Commission will be able to freeze assets linked to criminal activities, in addition to having emergency enforcement powers to stabilize markets to prevent a severe market crash.

ii. Compliance Alliance: Staying Current through Compliance

Enforcement is ineffective without proper compliance. In 2013, FinCEN released a report clarifying that a virtual currency provider is considered a money services business (MSB), and that it differentiated between exchangers, administrators, and users.¹⁸ In 2019, FinCEN published a guidance report explaining how virtual currencies are subject to FinCEN regulations regardless of its status as a physical or digital token.¹⁹ The report covered various virtual currency business models and addressed whether they are MSBs or not.²⁰ FDAC will mimic FinCEN's guidance regarding the Bank Secrecy Act, AML program, recordkeeping, monitoring, and reporting requirements, including SAR and CTR filing. FDAC will coordinate with the SEC and CFTC to develop a cohesive strategy that implements new models while respecting current regulations.

B. Division of Licensing and Market Regulation

The Division of Licensing and Market Regulation will be tasked with establishing and maintaining the structural integrity of the digital asset market. It will establish and oversee a comprehensive licensing system for CASPs and other market participants. Additionally, this division will monitor trading activities, implement preventative measures against market manipulation, and ensure fair and transparent markets for digital assets.

i. Licensed to Conduct Business: Licensing in a Crypto Capacity

Implementing a registration and licensing framework for CASPs is key. All crypto businesses operating in the U.S. will need to obtain a FDAC license to conduct business. The license will depend on the type of participant. Pre-application requirements include legality to operate in the U.S., background checks, cybersecurity protections, operational transparency, and proof of financial reserves. Through an online portal, the submission of an application must include company information, ownership and executive details, business model information,

¹⁸ News Release, Financial Crimes Enforcement Network, *FinCEN Issues Guidance on Virtual Currencies and Regulatory Responsibilities* (March 18, 2013), <https://www.fincen.gov/news/news-releases/fincen-issues-guidance-virtual-currencies-and-regulatory-responsibilities#:~:text=The%20guidance%20is%20in%20response,strategic%20use%20of%20financial%20authorities>.

¹⁹ Interpretive Guidance, Financial Crimes Enforcement Network, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

²⁰ *Id.*

security measure compliance, consumer protection plans, and financial stability reports. FDAC will comprehensively review each application and release decisions within 90 to 180 days. Once approved, companies must meet ongoing requirements, such as proof of reserves and audits.

They will then be categorized into three tiers: (1) Systemically Important Exchanges (e.g., large platforms with significant trading volume); (2) Standard Exchanges (e.g., mid-sized trading platforms; and (3) Emerging Marketplaces (e.g., newly established platforms with limited operations). Each tier will require a different application fee, as well as an annual renewal fee. The tiered approach ensures larger exchanges will contribute proportionally to regulatory oversight, while emerging platforms will not be burdened by excessive innovation-stifling fees. A CASP's tier is determined by trading volume, market share, user base, asset custody, and financial reserves. The FDAC Chair will determine the appropriate licensing fees based on the current landscape and fee structure of other agencies. Additionally, while current oversight requires obtaining a license for cryptocurrency exchange in the U.S. on a state-by-state basis (like New York's mandate to possess a BitLicense), FDAC will promote consistency in regulation by enforcing a universal licensing directive.²¹ This will foster a fair financial market system that operates with transparency, neutrality, and efficiency.

ii. Classified Information: A Clear Framework to Support Market Regulation

FDAC will establish a digital asset classification framework. Clearer classification guidelines will prevent prolonged disputes, such as XRP's battle with the SEC over what meets the legal definition of a security.²² The Howey Test has caused uncertainty in its application because cryptocurrencies and digital tokens often have characteristics that blur the lines between traditional asset classes, resulting in confusion that impacts market regulation.

The FDAC Digital Asset Classification Test (DACT) will function as a modernized version of the Howey Test, tailored specifically for digital assets. Under DACT, a crypto asset will be classified according to four core factors: (1) the level of decentralization; (2) the asset's primary use case, (3) the reasonable level of expectation of profit; and (4) the degree of reliance on a central entity for value generation or maintenance.

If an asset is fully decentralized, used primarily as a store of value or medium of exchange, and not dependent on a central organization, it will be classified as a Commodity Token. If an asset is offered with investment expectations, relies on a central team for development, and entitles holders to profit-sharing or ownership rights, it will be considered a Security Token. Lastly, if an asset is used to access specific blockchain functions or services without promising returns or profit expectations, it will be deemed a Utility Token.

²¹ Department of Financial Services, *Virtual Currency Business Licensing* (last visited March 19, 2025), https://www.dfs.ny.gov/virtual_currency_businesses (In June 2015, New York introduced the "BitLicense" regulation to oversee virtual currencies. Since then, numerous licenses have been issued to ensure safe access to the market while maintaining New York's leadership in financial innovation.).

²² Jonathan Stempel & Niket Nashant, *Ripple Labs says US SEC ends appeal over crypto oversight*, REUTERS (Mar. 19, 2025), <https://www.reuters.com/legal/ripple-ceo-says-us-sec-will-drop-appeal-against-crypto-firm-2025-03-19/>.

DACT will replace the outdated binary of the original Howey Test. Its nuanced, asset-specific approach will offer greater clarity for regulators, investors, and market participants while also providing more transparency between other agency regulation requirements. New tokens will need to register with FDAC before being listed on U.S. exchanges. Initial Coin Offerings (ICO) must provide white papers with a business model, investor risk disclosures, and team identity verification.

If FDAC had existed earlier, Ethereum's ICO in 2014 would have been required to provide a more structured disclosure before public sale. Even though it was one of the earliest and most successful sales, the lack of financial disclosure, transparency and investor protection involved in the process could have easily resulted in a different outcome given the fluctuating state of crypto market regulations that were being followed. Further, CASPs must use automated surveillance systems to comply with real-time transaction monitoring. To prevent market manipulation, FDAC will require exchanges to report suspicious volume spikes in an effort to prevent wash trading. FDAC will implement AI monitoring to flag fake orders to prevent spoofing.

C. Division of Cybersecurity and Financial Stability

The Division of Cybersecurity and Financial Stability will be responsible for ensuring the security, resilience, and technological integrity of the digital asset landscape. This division will focus on cyber threats, blockchain security standards, and fraud prevention. It will develop and enforce security standards for blockchain networks and digital assets firms by conducting security audits, certifying secure blockchain protocols, and implementing a real-time transaction monitoring system.

This division will also assess the impact of digital assets on broader financial systems, safeguarding them from potential systemic risks by developing and implementing relevant policies. It will conduct ongoing evaluations of potential threats and vulnerabilities that are pervasive in the digital asset space, informing policy decisions and regulatory actions.

i. Cybersecurity in the Securities World

To protect licensed CASPs against hacks and other cyber threats, this division will require periodic security certification audits to maintain licensing, mandatory penetration testing, multi-factor authentication, and secure storage of private keys through hardware security modules. It will also regulate smart contracts by requiring security audits before deployment, utilizing AI scanning tools to detect weaknesses, and maintaining secure coding frameworks to minimize risks.

ii. Finding Firm Footing: Financial Stability

Stablecoins will be mandated to have 100% asset-backed reserves ensuring stability in crypto markets. FDAC will require other centralized exchanges to maintain liquidity reserves equivalent to a set percentage of total assets. All other CASPs will need to maintain a minimum liquidity to ensure solvency. The New Commission will conduct quarterly audits and systemic

risk reviews addressing financial stability, as well as periodical studies on the market, to assess trends and risks associated with global trading practices.

Additionally, CASPs must publish quarterly financial reports detailing trading volumes, reserve holdings, and customer asset segregation policies. This ensures customer funds will remain protected without fear of their investments being used for business expenses or the comingling of funds. FTX's collapse in 2022 highlighted the risks of poor asset segregation and the consequences of not having liquid or reserved assets.²² Once confidence collapses, the entire financial structure collapses, leading to panic and triggering insolvency. FDAC aims to prevent this by prioritizing a need for financial stability.

iii. Funding is Fundamental: Budgeting for a Better Market

The budget to run FDAC will come through direct federal appropriations. The seed funding will be similar to the FTC's budget for FY24, which is around \$500 million.²³ The budget will grow depending on the agency's needs for resources, including qualified personnel, technology investments, and enforcement tools. In FY24, the SEC received around \$2 billion in funding.²⁴ Since FDAC mirrors many aspects of the SEC, it is likely more funding will need to be secured. FDAC's goal will be to transition into a self-sustaining operation through regulatory fees, penalties, and transaction-based funding models. FDAC-registered firms will be required to pay annual regulatory fees to operate in the U.S. As of today, the global crypto currency market cap is \$2.89 trillion.²⁵ A small transaction fee ranging from 0.0002-0.0005% will generate significant revenue without discouraging innovation. The project model follows: Year 1-4 with 75% funded by Congress and 25% from industry fees; Year 5-8 with 50% by Congress and 50% from industry fees and enforcement; and Year 9+ fully funded through industry fees, penalties, and transaction revenues.

D. Division of Risk Analysis and Innovation

The Division of Risk Analysis and Innovation will be responsible for assessing the impact of digital assets on broader financial systems, safeguarding them from potential systemic risks by developing and implementing relevant policies. It will conduct ongoing evaluations of potential threats and vulnerabilities that are pervasive in the digital asset space, informing policy decisions and regulatory actions. Innovation sponsors growth, and admitted CASPs will have an opportunity to receive temporary exemptions to test services in a controlled environment and report findings to assess current policies.

i. Risk Analysis to Prevent Risky Business

²³ Hannah Lang & Doina Chiacu, *Poor management, inexperienced leaders led to FTX collapse, new CEO says*, REUTERS (Dec. 13, 2022), <https://www.reuters.com/legal/poor-management-inexperienced-leaders-led-ftx-collapse-new-ceo-tells-lawmakers-2022-12-13/>.

²⁴ Press Release, U.S. Securities and Exchange Commission, *SEC Announces Enforcement Results for Fiscal Year 2024* (Nov 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

²⁵ Forbes, *Cryptocurrency Prices Today By Market Cap* (last visited March 19, 2025), <https://www.forbes.com/digital-assets/crypto-prices/?sh=63c6f4b22478>.

FDAC will establish a transparent FDAC-backed rating system for cryptocurrencies based on security, compliance, and investment risks. The system will take into account volatility, liquidity, and financial health. If a CASP fails their reserve or liquidity audit, FDAC can issue trading suspensions. It will also monitor how hedge funds and banks interact with crypto to gauge investor risks. Moreover, FDAC will scan exchanges to foresee when depositors lose confidence in an effort to prevent a collapse.

ii. Playing in the (Digital Securities) Sandbox: Implementing a Regulatory Sandbox Program

To foster innovation while ensuring security and compliance, FDAC will establish a regulatory sandbox program for digital securities and blockchain technologies. A Digital Securities Sandbox (DSS) is a regulatory framework that allows firms to test and develop new and innovative products and services for the issuance, trading, and settlement of digital securities in a controlled environment and without regulatory oversight.²⁶ By implementing a DSS program, where companies can test new products and services in a controlled environment, FDAC will demonstrate its prioritization of innovation as it provides safe spaces for experimentation in order to balance the cultivation of new ideas with the robust cybersecurity measures and compliance protocols.

The regulatory sandbox program will have numerous key features. From a controlled testing environment to strict security protocols and compliance with crypto frameworks, and smart contract implementation, FDAC's DSS program will provide a comprehensive platform for innovation. One major component of the DSS program will be the implementation of smart contracts, which will automate and streamline various processes within the sandbox, including automatic execution of trades, compliance checks, dividend distributions, and settlement of transactions. Leveraging smart contracts will allow FDAC to enhance efficiency, reduce human error, and provide a clear and verifiable record of all sandbox transactions and activities.

FDAC's DSS will also incorporate real-time monitoring systems to ensure the safety and integrity of activities within the sandbox, including ongoing tracking of transactions and market activities, automated risk assessment algorithms, live compliance checks against regulatory requirements, and instant alerts flagging suspicious activity. This will allow FDAC to identify and address potential risks or compliance issues to maintain security while fostering innovation.

iii. DeFi-ing Boundaries: DeFi Innovation Hub

DeFi represents a unique aspect of the market. It is rapidly evolving and experimental, and FDAC will conduct projects to test regulatory frameworks, assess risks, and coordinate with current platforms to develop best practices. FDAC's DeFi Innovation Hub (The Hub) will study market activity to identify flash loan attacks and smart contract vulnerabilities. FDAC will host

²⁶ Bank of England, *Digital Securities Sandbox (DSS)* (Dec. 23, 2024), <https://www.bankofengland.co.uk/financial-stability/digital-securities-sandbox> (“The DSS is a regulated live environment that has been created to explore how developing technologies could be used by firms to undertake the activities of notary, maintenance and settlement for financial securities either alone, or together with the operation of a trading venue.”).

symposiums with leading developers, legal scholars, and industry experts to analyze DeFi in a controlled environment. For example, FDAC can look to partner with MIT's Digital Currency Initiative to analyze governance tokens and ascertain how it affects DeFi stability. The Hub will be a long-term phased study to propose voluntary best practices, allow self-regulation, and if necessary, introduce formal regulations to balance innovation and consumer protection.

E. Division of Consumer Protection and Education

The Division of Consumer Protection and Education will address the importance of protecting consumers and promoting a proper understanding of digital assets and their impact on the markets. It will educate consumers about fair markets in the digital space through key innovative initiatives, raising awareness to promote a fair digital market system.

i. Clean as a Whistle: A New Whistleblower Program to Prevent Fraud

Whistleblowers provide a powerful weapon to federal agencies in determining violations. FDAC's whistleblower program will mirror the SEC's successful program.²⁷ As authorized by Congress, FDAC will provide monetary awards to eligible individuals who come forward with information that leads to enforcement action in which over \$1,000,000 in sanctions is ordered. The range for individual awards will vary between 20% and 30%. The high percentage reflects FDAC's determination to regulate the industry quickly. Whistleblowers identify fraud and minimize harm to investors, leading to a more secure market.

ii. Training Wheels: Sharing Knowledge for a Fairer Market

Lack of knowledge in a complex market detrimentally affects consumers. FDAC will engage with public-private partnerships and grants to spread knowledge about the digital asset space to protect consumers. By collaborating with academic institutions, blockchain research labs, think tanks, and industry experts, FDAC will work to obtain additional resources that will enhance market awareness. From inviting industry experts to conduct training that will educate the average investor, to securing additional funding that will go towards federal technology grants and resources needed to develop and release modules, webinars, and educational content, FDAC recognizes the importance of spreading knowledge to create a fair market for all.

iii. A Force to be Reckoned With: Consumer Protection Force

The Consumer Protection Force (CPF) will create an investor protection and compensation fund to help consumers recover losses attributed to exchange collapses, fraud, and scams. This fund will be financed through regulatory penalties imposed on bad faith actors. There will also be a consumer-friendly complaint system with a helpline and online portal ready to assist affected individuals with misconduct reporting.

²⁷ Jason Zuckerman & Matthew Stock, *Report Concludes SEC's Whistleblower Program is a Resounding Success and Essential to Investor Protection*, NATIONAL LAW REVIEW (Jan. 31, 2025), <https://natlawreview.com/article/report-concludes-secs-whistleblower-program-resounding-success-and-essential>.

The CPF will also take charge of the Awareness Training Initiative (ATI), which will include interactive educational content, fraud prevention modules, and investor-readiness guides tailored to different experience levels. A core part of CPF’s mission will be to stay on top of emerging trends in the digital asset space and continuously adapt their initiatives to reflect real-time shifts in consumer behavior, technology, and market risks. Real-time alerts will be published to inform consumers of phishing schemes, fake wallets, scams, pump-and-dump coins, and more. There will be a public awareness campaign, in which the CPF will promote the value in educating consumers on investment decisions by providing guides on safe trading practices and promoting other fundamental components of the Division of Consumer Protection and Education, like their training-focused events and protection-based programs.

F. Division of National and International Coordination

The Division of National and International Coordination will coordinate digital asset regulations across federal agencies and international regulators. Given the global nature of digital assets, effective regulation will require cooperation and coordination on both national and international levels. This division will be responsible for inter-agency collaboration, cross-border regulatory alignment, diplomatic engagements, and international partnerships.

i. One Nation, Under Crypto: National Efforts

A core objective to achieve a clear and fair digital asset market is to eliminate overlapping jurisdictional disputes and create a unified federal regulatory framework. This can be reached through collaboration with key national partnerships, including the SEC, CFTC, FinCEN, IRS, DOJ, FTC, OCC, and Federal Reserve. Working with the likes of the SEC and CFTC, FDAC will start a joint enforcement task force equipped to handle crypto securities fraud and derivatives market manipulation. Existing crypto enforcement teams will transition, integrate, or phase out. FDAC will require crypto exchange compliance with FinCEN and enforce penalties for crypto tax evasion schemes consistent with the IRS. FDAC will also liaise with the DOJ and FBI to target crypto fraud cases and prosecute crypto-related crimes.

ii. A World of Difference: International Partnerships for a Global Market

The digital asset market’s influence is widespread, extending beyond the U.S. to global operations. Key international partnerships will include the Financial Stability Board, International Organization of Securities Commissions (IOSCO), Financial Action Task Force, Egmont Group, and G20 Finance Ministers and Central Banks. FDAC will work closely with these organizations to spearhead a Global Crypto Risk Monitoring Task Force to share real-time transaction risk intelligence and standardize stablecoin reserve requirements across nations. FDAC will also join IOSCO, which released 18 recommendations for crypto and digital asset markets.²⁸ FDAC will adhere to recommendation 11 to share information and cooperate with regulators in member jurisdictions, enabling accountability in cross-border transactions.

²⁸ Press Release, International Organization of Securities Commissions, *IOSCO Finalizes its Policy Recommendations for Crypto and Digital Asset Markets* (Nov. 16, 2023), <https://www.iosco.org/news/pdf/IOSCONEWS712.pdf>.

IV. POTENTIAL BACKLASH AND MITIGATION STRATEGIES

The establishment of FDAC represents a major shift in the regulatory landscape for digital assets. Though this new regulatory agency aims to address critical gaps in oversight and provide much-needed clarity for the industry, it is paramount that it can also anticipate and proactively address potential resistance. Critics of FDAC may argue that creating a new agency could lead to regulatory overlap and increased bureaucracy. However, the New Commission is well-equipped to pacify any potential situations of hostility and mayhem in the digital asset markets through its clear, creative, and collaborative approach.

A. Cause for Concern: Resistance to the New and Unfamiliar

With the establishment of a new agency, it can be anticipated that the adherence to new policies by current crypto exchanges will face an adverse reaction. However, FDAC is designed to immediately regulate new players in the field. Firms may argue that the licensing fees, reserve requirements, transaction costs, and audits will increase operational costs forcing smaller startups out of the market, or even sue FDAC, citing broad regulations causing cases to be tied up in federal court. Critics may also argue that existing federal agencies already regulate the crypto industry and expanding these agencies will be cheaper and more efficient than the creation of a whole new agency. The creation of FDAC could lead to worries of regulatory duplication potentially conflicting with the mandates of existing agencies, like the SEC. There may also be concerns that establishing a new agency will add unnecessary layers of bureaucracy, potentially slowing down innovation in the fast-moving digital asset space.

There could even be resistance within the industry itself, with some cryptocurrency businesses arguing that additional regulation could stifle innovation and drive companies offshore. Further questions may arise about cost and resource allocation over the costs associated with establishing and maintaining a new regulatory body, and whether those resources could be better allocated to existing agencies. And given the global nature of digital assets, there may be concerns about FDAC's ability to effectively regulate cross-border transactions and international entities. These concerns are certainly reasonable, yet FDAC has proactively anticipated what they are in order to mitigate and address them head-on with their internal infrastructure.

B. The Solution is Simple: A New Agency's Comprehensive Answer Key

The implementation of regulations to existing firms will be retroactive with a year grace period to conform to the regulations and provide the materials mentioned above. FDAC's plan scales regulatory fees based on firm size allowing smaller startups to pay less. Licensing firms reduces fraud risks and prevents financial crises which makes the industry more appealing to investors. Current agencies have unclear and overlapping jurisdiction, and FDAC provides a single authority to eliminate that confusion. Congress's authorization provides FDAC with a clear mandate reducing legal ambiguity.

FDAC will have a clearly defined mandate, codified in the enabling legislation, focused specifically on digital assets, with explicit delineation of its jurisdiction to avoid overlap with other agencies. Further, FDAC will implement streamlined processes and industry collaboration

to create a market environment that fosters innovation, efficiency, and ongoing dialogue. FDAC will ensure that a comprehensive cost-benefit analysis is conducted to demonstrate the long-term economic benefits of centralized, specialized regulation. FDAC will further prioritize the development of robust international cooperations, including communicating information related to joint enforcement actions that will boost stability and universality in the digital asset space and address cross-border regulatory challenges. The regulatory sandbox expansion efforts will also allow for continued innovation in a supportive and sustainable environment.

By establishing this new agency with a collaborative approach that proactively and transparently tackles existing concerns and challenges that current regulation has not been able to effectively resolve, FDAC will mitigate potential backlash and position itself as the necessary addition to the regulatory landscape that the digital asset world has been waiting for.

V. CONCLUSION

The Federal Digital Asset Commission represents a forward-thinking approach to regulating the forever rapidly evolving digital asset landscape. Clarity, innovation, and consumer protection are crucial in this era of cryptocurrency that does not appear to be going anywhere anytime soon. By consolidating oversight under a specialized and collaborative agency, FDAC will achieve a better and brighter future for digital assets in a world of intricate financial markets.

In a space where innovation often moves faster than regulation can keep up with, FDAC aims to bring transparency, accountability, and forward-looking oversight to the digital asset market. By introducing a clear asset classification system, a tiered licensing structure for crypto-asset service providers, and stronger rules for market integrity, the New Commission is stepping in to provide the stable structure this space has long lacked. The emphasis on promoting innovation ensures that regulation grows alongside technological developments—not in opposition to it—allowing for real-world testing and collaboration before new rules are set in stone.

This kind of unified, focused approach cuts through the confusion created by overlapping agencies like the SEC, CFTC, and FinCEN. And as digital assets become more integrated into both global finance and everyday use, FDAC offers a way forward that recognizes both the potential and the risk. It's a practical, grounded response to a fast-changing industry—one that positions the U.S. to lead in shaping a stable, fair, and responsible digital economy.