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Proposed Legislation to Regulate Digital Commodity



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On August 3, Senate Agriculture Committee Chairwoman Debbie Stabenow, a Democrat from Michigan, and John Boozman, the top Republican on the committee, introduced a bipartisan [bill](#) aimed at regulating digital assets.

They join several other senators and representatives who have introduced a multitude of bills to regulate markets in digital assets in the past two years. However, Stabenow-Boozman's Digital Commodities Consumer Protection Act of 2022 ("DCCPA") is narrower than some of the proposals (such as the [proposal](#) from Senators Lummis and Gillibrand in June or the House [proposal](#)) and is more focused on the regulatory gaps that are most evident in crypto spot markets where Bitcoin, Ethereum and other cryptocurrencies and digital assets trade.

Specifically, similarly to other recently proposed bills, the DCCPA amends the Commodity Exchange Act of 1936 ("CEA") to grant to the Commodity Futures Trading Commission ("CFTC") exclusive jurisdiction over digital commodity markets (except for when digital commodities are used to purchase goods or services). To date, the CEA only gives the CFTC limited authority to prosecute fraud and manipulation in spot markets, which means that the CFTC cannot currently dictate how, where, by whom and under what conditions spot transactions in digital commodities take place. The CFTC, however, has exclusive jurisdiction over derivatives – which is only a small portion of digital commodity markets.

For the first time, DCCPA provides a clear definition of "digital commodity" and includes this new category in the broader definition of "commodity" as well as derivatives involving these commodities in the category of "commodity interests." The bill also requires that entities that facilitate trading in digital commodities register with the CFTC as platforms, brokers, dealers and custodians and provides rules on how these markets should be governed. Unlike the Lummis-Gillibrand bill, DCCPA does not address in detail instruments that would otherwise qualify as securities and would be regulated by the Securities and Exchange Commission or as banking products and would be regulated by state or federal bank regulators.

CFTC Chairman Ross Behnam made a [statement](#) welcoming introduction of this bill. It is worth noting that Behnam, before being appointed to the CFTC, was on Senator Stabenow's staff and, from the design of this bill, it is clear that the CFTC provided technical assistance.
