Written Statement of Elad Roisman

before the United States House Committee on Financial Services

hearing entitled

"American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework"

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Chairman Hill, Ranking Member Waters, and Members of the Committee, thank you for inviting me to testify today.

My name is Elad Roisman. I am a partner at the law firm of Cravath, Swaine & Moore LLP ("Cravath"). Today, I am presenting my own views and not those of my firm or any client of the firm.

Background and Perspective

My testimony and the views I will express today are informed by nearly 20 years of experience in both the public and private sectors working on securities, regulatory, and compliance matters affecting public and private companies and other securities market participants. In my practice at Cravath, among other things, I advise market participants in the traditional financial markets and in decentralized finance ("DeFi"), which includes digital asset ecosystems. Prior to joining Cravath, I had the distinct honor and privilege of serving as a Commissioner and Acting Chairman of the United States Securities and Exchange Commission (the "SEC" or "Commission"). I was appointed to the SEC after serving as Chief Counsel for the U.S. Senate Committee on Banking, Housing, and Urban Affairs and before that I served as Counsel to then-SEC Commissioner Daniel M. Gallagher, as a Chief Counsel at NYSE Euronext, and as a corporate lawyer in private practice in New York.

I commend House Committee on Financial Services Chairman Hill, House Committee on Agriculture Chairman Thompson, House Committee on Financial Services Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence Chairman Steil, and House Committee on Agriculture Subcommittee on Commodity Markets, Digital Assets, and Rural Development Chairman Johnson and Ranking Member Craig for their work on the Digital Asset Market Clarity Act of 2025 (the "CLARITY Act") to establish a regulatory framework for digital assets in the United States. I also commend House Majority Whip Emmer, Representative Davidson, Representative Davis, and Representative Torres for their work on this effort.

I want to acknowledge the work of the 118th Congress (and in particular this Committee) and this Congress and thank the current administration, and the leadership at the SEC and the Commodity Futures Trading Commission ("CFTC"), for their efforts to bring regulatory clarity to the digital asset industry. In particular, I commend the attention to this important work by SEC Chairman Atkins, SEC Commissioner Peirce, and the SEC Crypto Task Force.

My testimony is divided into three parts. First, I will briefly discuss market participants' focus on the SEC's role in regulating digital assets, the SEC's historical actions in this space, and the importance of this legislation. Second, I will highlight a few provisions of the CLARITY Act which would help define the SEC's authority and remit over digital assets. Finally, I will provide suggestions for consideration by Congress.

Current State of Play and Why Legislation is Important and Needed

Digital assets have emerged as a new and growing asset class over roughly the last 15 years—a byproduct of financial innovation and increasing retail and institutional interest. While the U.S. digital asset ecosystem and markets are still developing, interesting use cases and products have already been established. These include stablecoins, payment systems, non-fungible tokens, decentralized financial systems, and scaling solutions.

Unfortunately, both the law and federal regulators have failed to keep pace with innovation, and as a result, there is significant uncertainty regarding the status and regulation of digital assets. Of particular concern for market participants has been the scope of the SEC's remit, authority, and jurisdiction over digital assets. A frequent complaint in recent years has been that the SEC has relied on enforcement actions as a substitute for notice-and-comment rulemaking, subjecting U.S. market participants who engage in digital asset activities to significant SEC regulatory and compliance uncertainty.

Federal securities laws and SEC rules apply only in the context of securities. If an asset is a security, its offer and sale is subject to comprehensive oversight by the SEC. If an asset is not a security, then the SEC does not have jurisdiction. The primary challenge in regulating digital assets is the reality that the existing federal securities statutory and regulatory framework does not, in many cases, squarely address whether the many types of digital assets—with varying characteristics—should be covered. The security status of a particular digital asset has largely been analyzed using U.S. Supreme Court cases about ownership interests in orange groves and notes sold by a farmer cooperative.[1] But this analysis has proven complex and difficult to apply consistently. As digital assets have evolved, it has become clear that many of these assets are unlike the traditional assets for which the existing statutory and SEC regulatory frameworks were designed.

The SEC's oversight and regulation of digital asset securities is largely new. Although attempts have been made to provide regulatory clarity in this space, the SEC has relied heavily on enforcement actions, especially over the past few years. This is not to say that the SEC should not enforce its rules or that the SEC is not discharging its responsibilities when bringing cases. But for many in the digital asset industry, the SEC's focus on enforcement—without first providing clear guidance—has been viewed as regulation by enforcement. Moreover, aside from Staff Accounting Bulletin 121, which Congress voted to overturn via the Congressional Review Act (on a bipartisan basis) and the SEC staff recently rescinded, historically, clarity has been sparse regarding the status of market intermediaries and their ability to hold, transact in, and act as custodian of digital asset securities.

As then-Acting Chairman Mark Uyeda noted earlier this year, under the SEC's recent approach to digital assets, "[c]larity regarding who must register, and practical solutions for those seeking to register, have been elusive. The result has been confusion about

[1] *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946); *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990).

what is legal."[2] Some market participants have devoted significant resources to determine whether they are required to register with the SEC or subject to SEC oversight—and, if they are, how they can comply with applicable regulatory requirements—while others have incurred even greater costs to defend themselves in enforcement investigations and litigation. Given the significant SEC regulatory and compliance uncertainty facing U.S. market participants who engage in digital asset activities, many participants have decided against offering digital asset products or services in the U.S., choosing instead to innovate overseas.

SEC Chairman Atkins recently remarked that "[i]t is a new day at the SEC."[3] He promised that "[p]olicymaking will no longer result from *ad hoc* enforcement actions" and that instead "the Commission will utilize its existing rulemaking, interpretive, and exemptive authorities to set fit-for-purpose standards for market participants."[4] This is a welcome development—and I have been pleased to follow progress made by the SEC Crypto Task Force.[5] Nevertheless, the existing statutory and regulatory structures would benefit from greater clarity from Congress. This is especially true with respect to the security status of digital assets and the regulation of digital asset markets and intermediaries.

Important Areas from an SEC Perspective

In its current form, the CLARITY Act would grant the CFTC primary authority for regulating "digital commodities" (as defined in the legislation), while carving out a meaningful role for the SEC in the overall regulation of digital assets. In doing so, the CLARITY Act would delineate jurisdictional boundaries between the two agencies—and provide much-needed guidance regarding the security status of many of these assets.

Any digital asset considered a "digital commodity" or "permitted payment stablecoin" would be excluded from the definition of security under federal securities laws.[6] The term "digital commodity" would broadly encompass any digital asset intrinsically linked to a blockchain system that derives its value from the use of that blockchain system—but

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[2] Acting SEC Chairman Mark Uyeda, SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force (Jan. 21, 2025), *available at* https://www.sec.gov/newsroom/press-releases/2025-30.

[3] SEC Chairman Paul Atkins, Keynote Address at the Crypto Task Force Roundtable on Tokenization (May 12, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225.

[4] *Id.*

[5] The Crypto Task Force, which is led by SEC Commissioner Peirce, is a newly created SEC task force dedicated to developing a comprehensive and clear regulatory framework for crypto assets.

[6] "Digital Asset Market Clarity Act of 2025" § 301, 119th Cong. (unintroduced draft dated May 29, 2025) (on file with the House Committee on Financial Services), *available at* https://financialservices.house.gov/uploadedfiles/052925_clarity_act.pdf.

would not include certain securities, stablecoins, and derivatives, among other assets.[7] The term "permitted payment stablecoin" would generally apply to any fiat-pegged digital asset that is issued by a state or federally regulated entity and designed to be used as a means of payment or settlement.[8]

Importantly, this legislation would distinguish a digital commodity that is subject to an investment contract from the investment contract, clarifying that a digital asset token is not itself an investment contract security.[9] This legislation would also create an exemption from registration for certain offers and sales by digital commodity issuers of investment contracts involving units of digital commodities that relate to "mature" blockchain systems and other requirements.[10] Digital commodity issuers relying on the exemption from registration for mature blockchain systems would be required to file with the SEC certain offering statements and documents prescribed by the Commission,[11] and the SEC would have authority to promulgate rules identifying conditions by which a blockchain system would be considered mature.[12]

The legislation also provides, with certain exceptions, that the CFTC would be given jurisdiction over many digital commodity transactions—in addition to authority over transactions involving permitted payment stablecoins occurring on or with CFTC-registered entities.[13] Nevertheless, the SEC would have a limited role with respect to trading facilities and intermediaries conducting digital commodity transactions. For example, the SEC would have jurisdiction over digital commodity activities by SEC-registered broker-dealers and national securities exchanges that are exempt from registration with the CFTC.[14] In turn, the SEC would be required to revise its regulations to accommodate trading of digital commodities and permitted payment stablecoins on alternative trading systems ("ATSs"), and to permit broker-dealers and national securities exchanges to operate an ATS for trading digital commodities and permitted payment stablecoins.[15]

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[7] *Id.* § 103.

[8] *Id.* § 101.

[9] *See id.* § 201 (providing, *inter alia*, that "[t]he term 'investment contract asset' means a digital commodity—(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; and (B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract.").

[10] *Id.* § 202.

[11] *Id.*

[12] *Id.* § 205.

[13] *Id.* § 401.

[14] *Id.* § 304.

[15] *Id.* §§ 303–04.

The SEC would also continue to have jurisdiction over digital assets that are deemed securities (under the new definition) and likewise would retain anti-fraud and anti-manipulation authority over digital commodities and permitted payment stablecoins for transactions engaged in by a broker-dealer or through an ATS or on a national securities exchange.[16]

More broadly, the CLARITY Act would involve the SEC in the regulation of digital assets by requiring several joint rulemakings and memorandums of understanding between the SEC and CFTC,[17] and by commissioning several studies.[18] The SEC and CFTC would also be given flexibility to grant relief from duplicative or unduly burdensome requirements.[19]

Recommendations for Consideration by Congress

As I have expressed, a new statutory framework that accounts for digital assets would benefit the marketplace and consumers. The CLARITY Act provides a path forward for both market participants and regulators. I hope that Congress will continue to engage with key stakeholders, including interested market participants, and seek technical assistance from the current regulators on the CLARITY Act.

Because digital assets—and the digital asset industry—are regularly evolving, it is crucial that Congress provide clear direction to the relevant regulators while affording them flexibility to iterate on key principles. To this end, Congress may wish to require in the legislation that the SEC and CFTC provide periodic updates to Congress regarding outstanding issues, which would include input from the public, to assess whether additional legislation is needed.

In a similar vein, since tokenization has the potential to reshape financial markets, Congress should consider requiring in the legislation that the SEC and CFTC seek input from other governmental bodies such as the Department of Treasury and Department of Commerce, as well as the President's Working Group on Digital Asset Markets, in their joint study on tokenization set forth in the bill.

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Thank you again for the opportunity to participate today. I look forward to answering your questions.

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[16] *Id.* § 302.

[17] *Id.* §§ 105, 304.

[18] *Id.* §§ 505–08.

[19] *Id.* §§ 404, 406, 408.