



*Via electronic submission*

August 18, 2025

Christopher J. Kirkpatrick  
Secretary, Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**RE: Listed Spot Crypto Trading Initiative (August 4, 2025)**

Dear Mr. Kirkpatrick:

The Futures Industry Association (“FIA”)<sup>1</sup> appreciates the opportunity to provide input to the Commodity Futures Trading Commission (“Commission” or “CFTC”) on the Listed Spot Crypto Trading Initiative announced by CFTC Acting Chairman Pham on August 4, 2025.<sup>2</sup> The announcement invites stakeholders to work with the Commission “on providing regulatory clarity on how to list spot crypto asset contracts on” CFTC-regulated designated contract markets (“DCMs”) using the Commission’s “existing authority” under the Commodity Exchange Act (“CEA” or “Act”). FIA strongly supports the ongoing federal efforts to craft a clear, comprehensive regulatory regime that will foster vibrant digital asset markets. FIA believes that the Commission should have regulatory authority over spot digital commodities, and that legislative action consistent with the CLARITY Act, H.R. 3633, is the best means of achieving this important outcome for market participants and the public at large.

FIA understands the goal of the initiative is for the Commission to fashion a framework for DCMs to offer *regulated* markets for spot crypto asset contracts under the current text of the CEA. While we agree that regulating spot crypto asset markets is overdue and that the Commission is well-positioned to do so, it is important to recognize the limitations on the Commission’s authority under the CEA to regulate spot trading of any commodities, whether on or off exchange.<sup>3</sup> Under the current CEA framework, DCMs may already list spot commodity transactions for trading outside of the CEA and CFTC oversight, so long as the transactions do not implicate the special provisions of CEA section 2(c)(2)(D) described below governing

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<sup>1</sup> FIA is the leading trade organization for the futures, options and cleared derivatives markets globally. FIA’s membership includes clearing firms, exchanges, clearinghouses, principal traders, asset managers, execution firms, commodity brokers, end users and those legal, technology and other professionals who serve this community. FIA’s mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and promote high standards of professional conduct.

<sup>2</sup> Acting Chairman Pham Launches Listed Spot Trading Initiative; Stakeholders Invited to Provide input by August 18, Release No. 9105-25, available at <https://www.cftc.gov/PressRoom/PressReleases/9105-25>.

<sup>3</sup> FIA’s comments are limited to spot crypto assets (and commodities generally) that are neither securities nor payment stablecoins within the meaning of the [Guiding and Establishing National Innovation for U.S. Stablecoins Act](#) (GENIUS Act).

leveraged, margined or financed retail commodity transactions (or section 2(c)(2)(C) in the case of foreign currencies). There is in fact precedent for DCMs to offer spot markets for commodities outside of their regulated CFTC markets.<sup>4</sup>

The CEA does not grant the Commission authority to adopt rules to regulate spot transactions for commodities,<sup>5</sup> with the limited exception of retail spot commodity transactions within the scope of section 2(c)(2)(D) of the Act.<sup>6</sup> The Commission and courts have long interpreted the CEA's comprehensive provisions regulating futures markets as inapplicable to transactions in spot contracts for the sale of a commodity, *i.e.*, in contracts calling for delivery within two days or such other short time consistent with cash market practices for the commodity.<sup>7</sup> Notably, following the 2010 amendments to the CEA imposing a comprehensive regime for regulating institutional swaps markets, the Commission reiterated that spot contracts are generally outside the CFTC's regulatory perimeter.<sup>8</sup>

To the extent the Commission has existing authority to regulate spot trading of crypto assets or other commodities, it is found in CEA section 2(c)(2)(D). This provision applies to a person that enters into or offers to enter into (even if not entered into) "any agreement, contract or transaction in any commodity" with a retail participant, *i.e.*, a person that is not an eligible contract participant ("ECP") as defined in the Act,<sup>9</sup> "on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis." If the offer or sale of a commodity is so covered and does not satisfy certain enumerated exceptions (discussed further below), the transaction is treated "as if" it is a futures contract, and thus is subject to the CEA framework regulating futures trading, including section 4(a) of the Act, which requires futures transactions to occur on or subject to the rules of a DCM (or a foreign board of trade).

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<sup>4</sup> See *e.g.*, the Chapter 12 Rules of the Chicago Mercantile Exchange governing CME Spot Market Trading and Chapter 12 Rules of the Commodity Exchange Inc governing Spot Aluminum Transactions and former offering of spot markets for Bitcoin and other cryptocurrencies on ErisX.

<sup>5</sup> The Commission has general authority to promulgate rules under section 8a(5) "to effectuate any of the provisions or to accomplish any of the purposes of this Act." As a predicate, the activity must be subject to regulation under the Act. FIA notes that the Act gives the CFTC anti-fraud and anti-manipulation *enforcement* authority over contracts for the sale of commodities in interstate commerce. See CEA sections 6(c)(3) and (4).

<sup>6</sup> FIA notes that transactions in foreign currencies are outside the scope of section 2(c)(2)(D). The Commission has separate authority under CEA section 2(c)(2)(C) to regulate leveraged trading of foreign currencies with retail (non-ECP) market participants. Those provisions are specific to fiat currencies and thus inapplicable to crypto assets and do not provide a basis for the Commission to assert rulemaking authority over spot trading of crypto assets.

<sup>7</sup> See *e.g.*, CFTC Staff Letter 98-73 (Oct. 8, 1998). The CFTC defines "spot" in the glossary on its website as a "[m]arket of immediate delivery of and payment for the product."

<sup>8</sup> *Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping*, 77 Fed. Reg. 48208 at 48256 (Aug. 13, 2012) ("The CEA generally does not confer regulatory jurisdiction on the CFTC with respect to spot transactions.").

<sup>9</sup> The provision also applies to transactions where the purchaser or offeree is not an "eligible commercial entity" which as defined in CEA section 1a(17) generally has a narrower scope than the ECP definition and does not include individuals.

Section 2(c)(2)(D)(ii) provides several exceptions from treating retail margined, leveraged or financed commodity transactions as if they are futures. One exception covers transactions where the buyer receives “actual delivery” of the commodity within 28 days.<sup>10</sup> This exception has received the most attention from the Commission. As the Commission knows, in 2020 it adopted an interpretation on what constitutes “actual delivery” in relation to the sale of digital assets that are virtual currencies.<sup>11</sup> Under this interpretation, to meet the actual delivery requirement, the purchaser must have “possession and control” and the ability to use the virtual currency freely no later than the end of the 28-day actual delivery period.

FIA understands that these limitations may hinder purchases of crypto assets that are virtual currencies in spot transactions where the purchaser borrows the funds from the offeror, the counterparty or a person acting in concert with the offeror or counterparty to pay for the purchase.<sup>12</sup> When the purchaser pledges the virtual currency it acquires as collateral for the loan, the virtual currency may be “locked up” such that the purchaser does not have full possession and control and free use of the asset during the period it is pledged. If the lien extends beyond the 28-day actual delivery period, the transaction likely will not qualify for the exception and will have to be treated as if it is a futures contract, meaning the transaction would have to occur on or subject to the rules of a DCM to comply with the CEA.

FIA appreciates there may be marketplace demand to purchase crypto assets that are virtual currencies in spot transactions under financing arrangements that fall outside the actual delivery exception. The CEA seems clear that such transactions may occur on DCMs as regulated markets under the existing CEA framework governing futures trading, without the need for the Commission to exercise its exemptive authority to achieve that outcome. If the Commission determines rulemaking may be appropriate to facilitate the development of regulated DCM markets for spot trading of financed crypto asset purchases as if they are futures contracts, FIA looks forward to the opportunity to review and comment on any such future rulemaking.

The CEA, in its current form, does not authorize the Commission to regulate trading of spot crypto asset contracts or other spot contracts for commodities beyond its authority over leveraged, margined, or financed transactions with retail persons (non-ECPs) covered by section 2(c)(2)(D). This limitation on the Commission’s authority is why FIA supports Congress’ efforts to adopt legislation that would establish a clear framework in the CEA for the Commission to comprehensively regulate and oversee spot trading of digital commodities.

FIA provides these comments with the hope of supporting digital assets markets in reaching their full potential in the United States and thanks the CFTC for the opportunity to comment in

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<sup>10</sup> CEA section 2(c)(2)(D)(ii)(III)(A). Other exceptions include, *e.g.*, transactions in securities [CEA section 2(c)(2)(D)(ii)(II)] and agreements, contracts or transactions that “create[] an enforceable obligation to delivery between a buyer and a seller that have the ability to delivery and accept delivery, respectively, in connection with the line of business of the seller and buyer” [CEA section 2(c)(2)(D)(ii)(III)(B)].

<sup>11</sup> *Retail Commodity Transactions Involving Certain Digital Assets*, 85 Fed. Reg. 37734 (June 24, 2020). The Commission also issued an actual delivery interpretation in 2013 that applied more generally to commodities. *Retail Commodity Transactions Under Commodity Exchange Act*, 78 Fed. Reg. 52426 (Aug. 23, 2013).

<sup>12</sup> FIA appreciates that the CFTC’s actual delivery interpretation may also hinder custodial arrangements contemplated for holding virtual currencies purchased under spot contracts on a leveraged, margined or financed basis.

Mr. Kirkpatrick  
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response to the Initiative. Should you have any questions about our comment, please do not hesitate to contact me at [alurton@fia.org](mailto:alurton@fia.org).

Sincerely Yours,

A handwritten signature in cursive script, reading "Allison Lurton".

Allison Lurton  
General Counsel, Chief Legal Officer