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UNDER A PROPOSED ACT, CFTC WOULD HAVE LASER EYES TO REGULATE CRYPTO SPOT MARKETS

The DCCPA is an act designed to address the perceived regulatory gap over the spot market for digital assets. In this article, the author addresses the overarching structure and key issues in the act. If passed, he finds that it would represent the largest expansion of U.S. financial regulatory jurisdiction since the Dodd-Frank Act of 2010.

By Neal E. Kumar *

On August 3, 2022, Senators Debbie Stabenow (D-MI) and John Boozman (R-AR), with support from Senators John Thune (R-SD) and Cory Booker (D-NJ), introduced the Digital Commodities Consumer Protection Act of 2022 (“DCCPA”) designed to address the perceived federal regulatory gap over the spot market for digital assets.¹ This bipartisan legislative initiative followed the introduction of a bill on June 7, 2022, the Responsible Financial Innovation Act (“RFIA”), that Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) similarly introduced to address the regulatory status of digital assets amongst numerous other topics.² Since the introduction of these bills, the DCCPA appeared to take center stage in the legislative negotiations surrounding the regulatory treatment of digital assets. If enacted into law, the DCCPA would represent the largest expansion of U.S. financial regulatory jurisdiction since the Dodd-Frank Wall Street

Transparency and Accountability Act of 2010 (Dodd-Frank Act).³

This article provides a summary of the regulatory framework within the DCCPA, along with key issues that may be addressed as the DCCPA is marked for potential passage. Given that congressional markup of bills is a fluid process subject to considerable changes, this article tracks a version of the DCCPA made available to the public.⁴ Any final version of the DCCPA may change beyond the current draft, but this article should provide readers with the overarching structure and key issues embedded within the DCCPA.

The timing for potential passage of a version of the DCCPA is subject to many factors. In particular, the recent bankruptcy of FTX, a major digital asset exchange and related proprietary trading activity with sprawling operations across many aspects of the digital

¹ Digital Commodities Consumer Protection Act of 2022, S. 4760, 117th Cong. (2022).

² Lummis-Gillibrand Responsible Financial Innovation Act, S. 4356, 117th Cong. (2022).

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010). Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

⁴ This version was uploaded to GitHub and tweeted by @lex_node on October 19, 2022.

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