



# *FedFin Client Report*

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Thursday, December 1, 2022

## **Senate Ag Crypto Bill Faces Uphill Climb Despite CFTC Efforts**

**Client Report: CRYPTO35**

### **Executive Summary**

In the first Congressional review of crypto since the collapse of FTX, Senate Agriculture leadership largely defended the bill they produced, S.4760. However, members outside of leadership were more skeptical of CFTC regulation and more broadly of the need for crypto in any part of the financial market. Senate Banking Chairman Brown (D-OH) [reiterated](#) that he is working with Secretary Yellen to create a crypto framework that protects the traditional financial system and consumers. Sen. Gillibrand (D-NY) seems to have moved away from her unequivocal support of cryptoassets, asking numerous questions on regulatory arbitrage and foreign domiciles, while Sen. Marshall (R-KS) joined Sen. Brown in suggesting that cryptoassets pose national-security risks. Ag Committee Chair Stabenow (D-MI) countered that the bill would have prevented FTX's failure, a view Ranking Member Boozman (R-AR) largely supported even as he said additional work may be needed on matters such as inter-affiliate transaction restraints.

### **Analysis**

#### ***Opening Statements***

Chairwoman Stabenow presented the committee's bill as a necessary measure to prevent another major crypto collapse, citing its provisions on conflicts of interest, safeguards for customer funds, and governance requirements. She emphasized that the bill did not take authority away from other regulators and did not make the CFTC the primary crypto regulator. Ranking Member Boozman largely reiterated these points, also defending both the Committee's and the CFTC's jurisdiction over digital commodities.

#### ***Testimony***

Chairman Behnam stressed that the current patchwork of regulations for digital assets is an improper substitute for a comprehensive framework, warning that a failure to quickly

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establish guardrails may pose risks to the broader financial system. Thus, he reiterated his requests to allow the CFTC to write rules and actively regulate crypto spot markets. In response to FTX's collapse, he also emphasized that lawmakers and regulators should review all current proposals, including the committee's bill, to eliminate all regulatory gaps.

## Q&A

- **Committee Bill:** Chairwoman Stabenow, Ranking Member Boozman, and Sen. Booker (D-NJ) asked Chairman Behnam if the bill would have mitigated or prevented FTX's collapse; he replied that it would have prevented it by closing regulatory gaps. Sens. Grassley (R-IA) and Gillibrand – who also referred to her crypto bill with Sen. Lummis ([see FSM Report CRYPTO28](#)) – asked if any changes needed to be made to either bill after FTX's collapse. Chairman Behnam stressed that all proposals need to be given a fresh look, adding that provisions on conflicts of interest and investor disclosures need to be tightened. Sen. Hoeven (R-ND) asked the Chairman if he thought the bill should include a clearinghouse mechanism; Mr. Behnam committed to working with the Senator if he thinks it necessary. Sen. Marshall argued that, even with the bill, Congress and regulators will not have adequate protections in place in crypto markets.
- **FTX Influence on the Bill:** Sen. Bennet (D-CO) asked why FTX lobbied so aggressively for a bill that would have caused them to be out of compliance, with the Chairman stating that he does not know why.
- **LedgerX:** Chairwoman Stabenow and Sens. Grassley, Lujan (D-NM), and Hoeven asked what jurisdiction the CFTC had over FTX and why it took no preemptive action. Chairman Behnam explained that LedgerX – a U.S. based subsidiary of FTX registered with the CFTC – was the only FTX entity that the Commission regulated. Due to legal constraints, the CFTC could not investigate past LedgerX activities. In response to Sen. Grassley, Mr. Behnam added that in part due to CFTC regulations, LedgerX continues to be well-capitalized and fully operational.
- **FTX's Clearinghouse License Application:** Under questioning from Chairwoman Stabenow, Chairman Behnam stated that FTX “doggedly” pursued acquiring a disintermediated crypto derivative trading license. He stressed that the application had major implications across markets, moving him to approach it without the utmost transparency and attention to detail, adding that this kind of application will not be the last to be filed and will be a major focus of the Commission.
- **Financial Stability:** Sen. Smith (D-MN) asked the Chairman if crypto posed financial stability concerns, with the Chairman replying that he did not believe it now does.
- **Vertical Integration:** Sen. Klobuchar (D-MN) asked if FTX's vertical integration contributed to its collapse; Chairman Behnam agreed in theory with the risks of vertical integration but did not comment on its impact on FTX due to the CFTC's lack of visibility into the firm. Chairman Brown asked if Chairman Behnam believed crypto firms should

have the same limits on proprietary trading as banks. Mr. Behnam replied that having a crypto exchange act as a dealer, lender, and custodian simultaneously is unacceptable.

- **Jurisdiction:** Sens. Klobuchar, Bennet, and Braun (R-IN) asked what the jurisdictional divide between the SEC and CFTC should be, with Mr. Behnam stating that the two agencies should have the same basic responsibilities but for different asset classes, taking the opportunity to reiterate the need for the CFTC to regulate cash commodity tokens. Sen. Hoeven asked how the Commission would differentiate securities from commodities; the Chairman stated it will use existing definitions, working with the SEC to tailor them to digital assets as needed.
- **National Security Risks:** Chairman Brown and Sen. Marshall asked if the national security implications of crypto should be a higher priority; the Chairman agreed, stating that a comprehensive framework would also aid FinCEN's work. Sen. Gillibrand displayed concern over critical infrastructure, specifically the implications of a foreign entity acquiring a domestically regulated entity. Chairman Behnam stated that the CFTC does not have proper insight into foreign acquirers and pressed for the ability to demand information on the acquirer's cybersecurity safeguards, personnel, and records.
- **Foreign Jurisdictions:** Ranking Member Boozman asked if FTX's collapse demonstrated a need to bring foreign crypto firms under the U.S. regulatory umbrella. Mr. Behnam agreed, arguing that a comprehensive framework would incentivize foreign entities to migrate to the U.S. Sen. Gillibrand asked how the CFTC could more aggressively investigate foreign entities with little visibility; Mr. Behnam agreed with the scope of problem and added that an additional issue was savvy investors using VPNs to avoid national jurisdictions but gave no solutions.