



January 26, 2026

The Honorable John Boozman (R-AR)  
Chairman  
U.S. Senate Committee on Agriculture,  
Nutrition, and Forestry  
Washington, DC 20515

The Honorable Amy Klobuchar (D-MN)  
Ranking Member  
U.S. Senate Committee on Agriculture,  
Nutrition, and Forestry  
Washington, DC 20515

RE: NASAA Expresses Concerns Regarding the Digital Commodity Intermediaries Act

Dear Chairman Boozman and Ranking Member Klobuchar:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>1</sup> I write to express our concerns regarding the Digital Commodity Intermediaries Act (the “DCIA”). NASAA supports responsible innovation and appreciates the efforts over several years of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry (“Senate Ag”) to work with us to preserve state anti-fraud authorities in a new market structure for digital commodities. However, we are unable to support the DCIA in its current form. As drafted, certain provisions would, or may, restrict existing state securities and commodities authorities to combat investor harm arising from fraud and abuse in transactions that would be covered under the legislation.

NASAA respectfully urges Congress to make three (3) targeted changes to the DCIA:

- (1) clarify that states retain authority to investigate and bring administrative, civil, and criminal anti-fraud enforcement actions;
- (2) clarify that states retain authority to combat dishonest or unethical conduct; and
- (3) address fundamental inconsistencies in the bill’s digital asset definitions that risk undermining investment contract law.

## **I. Preserving State Anti-Fraud Authority Is Essential to Investor Protection**

State securities and commodities regulators play a critical role in detecting and stopping misconduct, particularly retail-facing schemes that operate outside regulated markets. Congress has repeatedly affirmed that state anti-fraud authority should be preserved, and NASAA urges that the DCIA clearly effectuate that intent.

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<sup>1</sup> NASAA’s membership includes state securities and commodities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam, as well as regulators from Canada and México.

### **A. Clarify Section 201(c) to Preserve State Enforcement Authority**

NASAA urges the Senate Ag to amend Section 201(c) of the DCIA to make explicit that state and local agencies retain authority to investigate and bring enforcement actions involving fraud, deceit, or unfair, dishonest, unethical, or deceptive acts or practices.

As drafted, Section 201 grants the Commodity Futures Trading Commission (“CFTC”) exclusive jurisdiction over a broad range of digital commodity transactions, subject to limited carve-outs. Although the provision references Sections 6d and 12(e) of the Commodity Exchange Act of 1936 (“CEA”)<sup>2</sup> and rightfully excludes investment contracts, securities transactions, and mixed digital asset transactions, some might argue that the absence of a clear preservation statement creates ambiguity. Moreover, Section 201 fails to acknowledge that network tokens are treated as “covered securities” under the draft Digital Asset Market Clarity Act dated January 12, 2026 (“CLARITY Act”),<sup>3</sup> which means that the CFTC will share jurisdiction over at least some digital commodity transactions with state and federal securities regulators. Without clarification, state and federal securities anti-fraud authorities may be needlessly challenged—particularly where registered market participants are involved—contrary to longstanding state-federal enforcement principles.

### **B. Add a Clear Anti-Fraud Rule of Construction or Savings Clause**

NASAA further urges Senate Ag to include in Title I of the DCIA a clear and robust anti-fraud rule of construction or savings clause. NASAA recommends the following language:

“Sec. 111. Rule of Construction.—Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit or limit any State from pursuing anti-fraud actions under the Commodity Exchange Act or under State commodities laws.”

Such language would be consistent with existing provisions of the CEA and with repeated statements by lawmakers expressing an intent to preserve state enforcement authority.

### **C. Clarify Sections 204 and 205 and Related Business Conduct Standards**

NASAA urges Congress to clarify and expand the preservation language in Sections 204 and 205<sup>4</sup> and to make conforming changes to the business conduct standards provisions<sup>5</sup>. As drafted, these sections could be read to exclude “dishonest or unethical business practices” from

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<sup>2</sup> CEA Section 6d presently gives the states the ability to enforce civil and criminal statutes of general applicability (e.g., wire fraud and common law fraud). CEA Section 12(e) presently gives the states jurisdiction over persons not registered with the CFTC and unregistered persons required to be registered with the CFTC.

<sup>3</sup> See U.S. Senate Committee on Banking, Housing, and Urban Affairs (“Senate Banking Committee”), [Chairman Scott Releases Bipartisan Negotiated Market Structure Bill Text](#) (Jan. 12, 2026).

<sup>4</sup> NASAA urges Congress to clarify and expand the language in proposed CEA subsection 5i(k)(2) under DCIA Section 204, and proposed CEA subsection 4u(l)(2) under DCIA Section 205 (both entitled “Preservation of Authority”) to include the phrase “dishonest or unethical.”

<sup>5</sup> NASAA urges Congress to clarify and expand the language in proposed CEA subsection 4u(h)(1) under DCIA Section 205 (entitled “Business Conduct Standards”) to include the phrase “dishonest or unethical.”

applicable standards, undermining long-standing state enforcement authority. Further, it should be made evident that states can continue to bring administrative, civil, and criminal actions.

## **II. Historical Experience Demonstrates the Importance of State Authority in Commodities Markets**

Congress’s approach to digital commodities should be informed by prior experience. In the late 1970s, federal preemption of state authority over commodities markets contributed to widespread fraud, prompting Congress to reverse course in the early 1980s.

In 1974, President Gerald Ford signed the Commodity Futures Trading Commission Act, which established the CFTC and implemented the first comprehensive federal regulatory framework for exchange-traded commodity futures. The legislation also broadly preempted state authority and left much off-exchange activity largely unregulated. Illegitimate commodities markets quickly expanded, with boiler rooms selling speculative contracts tied to assets that often did not exist.

By the late 1970s, Congress and the U.S. Government Accountability Office (“GAO”) concluded that amendments were necessary to restore state enforcement authority.<sup>6</sup> President Jimmy Carter signed the Futures Trading Act of 1978, authorizing states to bring civil actions for violations of the CEA and CFTC rules. Nevertheless, fraud persisted. A notable example was the International Gold Bullion Exchange, which collected more than \$140 million from over 425,000 investors before authorities discovered that purported gold holdings consisted of painted wood.<sup>7</sup>

Congress again acted in 1982, when President Ronald Reagan signed the Futures Trading Act of 1982 (“1982 Act”). This legislation included the “Open Season” provision—CEA Section 12(e)—which expressly preserved state authority to enforce applicable laws against unregistered persons and unlawful off-exchange transactions.

Following enactment of the 1982 Act, NASAA worked closely with the CFTC and the National Futures Association to develop the NASAA Model State Commodity Code (“Model Code”). Today, nearly half of NASAA’s U.S. members have enacted laws inspired by the Model Code, which complements the CEA by excluding transactions exclusively regulated by the CFTC, prohibiting unlawful off-exchange activity, and regulating other commodity transactions unless expressly permitted or conducted by licensed or supervised entities.<sup>8</sup>

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<sup>6</sup> See GAO, [Regulation of the Commodity Futures Markets – What Needs to be Done](#), (May 17, 1978).

<sup>7</sup> See GovInfo, [Hearing to Review the Implications of the CFTC v. Zelener Case](#), (Jun. 4, 2009).

<sup>8</sup> For examples of state commodities actions, see *In re Bitnatx* (California, Oct. 6, 2020); *In re Unknown Parties in Ownership and/or Control of Digital Wallets* (New York, Jan. 9, 2025); *In re Gemini Trust Co., et al.* (New York, Oct. 19, 2023); *In re Coin Cafe, Inc.* (New York, May 18, 2023); and *In re Alex Mashinsky* (New York, Jan. 5, 2023). See NASAA, [Congress Must Preserve State Anti-Fraud Enforcement Authority in Digital Assets Market Structure Legislation](#) (Sep. 5, 2025), at Appendix B.

### **III. Asset Definition Inconsistencies Risk Undermining Investment Contract Law and Anti-Fraud Enforcement**

NASAA is also concerned that the DCIA has borrowed fundamentally inconsistent digital asset definitions from the CLARITY Act. NASAA's concerns along these lines are explained in greater detail in NASAA's letter dated January 13, 2026, to the Senate Banking Committee.<sup>9</sup> A chief concern is that the definitions confusingly state that network tokens are non-securities under federal securities laws that are subject to the CFTC's exclusive jurisdiction on one hand, while stating on the other hand that these very same network tokens are "covered securities" subject to state and federal securities regulation.

This framework risks creating unworkable scenarios for regulators, the courts, and regulated persons who are seeking clarity, not confusion. As emphasized in NASAA's advocacy, the cleanest way for Congress to import the model from the National Securities Markets Improvement Act of 1996 into federal market structure legislation is to treat digital assets and related transactions—no matter what label is used to define them—as federally covered securities under Section 18 of the Securities Act of 1933 and then enact a complementary savings clause for those new covered securities that explicitly preserves state anti-fraud authorities.

NASAA has received repeated legislative assurances that state securities and commodities anti-fraud authorities will be preserved. We respectfully request that the definitions be revised to eliminate any confusion on that point.<sup>10</sup>

In closing, NASAA stands ready to work with Congress to ensure that any legislation strikes a balanced, clear, and effective approach to digital asset regulation that protects investors, preserves state authority to address misconduct, and promotes responsible innovation. Should you or your colleagues have any questions, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at [khutchens@nasaa.org](mailto:khutchens@nasaa.org).

Sincerely,



Marni Rock Gibson  
NASAA President

CC: Members of the U.S. Senate

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<sup>9</sup> See NASAA, [NASAA Expresses Concerns Regarding the Digital Asset Market Clarity Act](#) (Jan. 13, 2026).

<sup>10</sup> See, e.g., Joint Senate Release, [A Framework for Market Structure Legislation](#) (accessed Jan. 25, 2026). ("Legislation should provide clarity to digital asset developers, investors, and platforms while ensuring efficient, transparent markets. It should: [...] Preserve state antifraud, consumer, and securities law...")