

3 Reasons We Need Digital Asset Market Structure Legislation

By **Gabe Rosenberg, Zachary Zweihorn and Billy Hicks** (March 5, 2026)

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By all accounts, digital asset market structure legislation faces a difficult future in Congress, and the prospect of passing legislation this year is uncertain. In response to that reality, policymakers and market participants should recall the reason why well-crafted market structure legislation is necessary.

The conventional wisdom, with which we agree, is that statutes are more durable and less subject to change than agency action. Regulatory positions can be changed — sometimes quite easily — when a different administration comes into power, while statutes tend to be less subject to shifting political winds. Indeed, in the absence of federal legislation, federal agencies have been able to move quickly under the Trump administration to adopt a number of cryptocurrency-friendly stances.[1]

For proponents of digital asset markets in the U.S., that raises the question: If agencies can regulate the digital asset market through staff statements and, at some point, rules and exemptive relief, why should we care if those solutions are less durable than legislation? Why is durability the key?

We provide three answers to that question.

Incentivize U.S. Innovation

For many years, U.S. digital asset companies built their businesses through innovative grit and resilience in the face of regulatory headwinds, rather than as a result of a nurturing policy environment. These companies are constantly developing new products and developing financial market innovations.

As these companies consider what to invest their time and money in, however, they have a basic return on investment calculation to make. A fickle regulatory environment makes it uncertain whether these companies should hire employees and spend potentially millions of dollars developing a product that a future regulator could declare illegal a few years later. They can rely on staff guidance or rules for today, but they cannot engage in long-term strategic planning and development without a clear sense of what tomorrow will look like.

The more durable a regulatory framework companies have to work with, the less likely their business will need to be shut down or significantly altered for regulatory reasons, and thus the higher their expected return on their investment becomes.

Digital assets are here to stay, and some amount of innovation will occur even absent legislation. But the more innovative the potential product, the more important durability is.



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Current securities and commodities markets, and the laws and rules that govern them, were not developed with digital assets in mind, so innovation will often strain the application of existing law. As new products move further away from traditional finance, the difficulty of fitting them into the rules created for traditional finance, and thus the uncertainty and risk innovators face, increases. Durability is therefore particularly important for the most innovative products related to digital assets, as those products and services would be at the greatest risk from changes in regulatory approach.

To take a clear example, consider decentralized finance products. DeFi is an intriguing area for market exploration, but its lack of traditional intermediation makes it incompatible with current statutes. Such a fundamentally different and innovative market solution requires clear legislation before it can be integrated into the broader financial ecosystem.

Increase U.S. Attractiveness

To thrive, the U.S. digital asset market needs access to the products and infrastructure built outside the U.S. Unlike the traditional financial system, the digital asset ecosystem has been online and global since its inception, which — together with an unwelcoming U.S. regulatory environment — led to its current infrastructure being dispersed across the globe.

For example, non-U.S. companies with a global footprint provide access to global liquidity and trading infrastructure for U.S. digital asset market participants. This is critical for the stability of U.S. digital asset markets because it enhances market depth, reduces volatility and provides U.S. participants with diversified opportunities for investment and access to innovations that may have originated offshore.

The durability of the U.S. digital asset market structure affects the willingness of these non-U.S. digital asset companies to offer their services in the U.S.

Entering the U.S. market can be very expensive. Companies need to comply with new licensing and tax regimes, set up new entities, and hire new staff and integrate the U.S. operations into their global structure in a way that adds value. Those are high up-front costs that a non-U.S. company will not accept if it expects a regulatory pendulum. A company assessing whether to take on these costs will need them to make sense in the long run; a short window of regulatory favor that closes could result in a significant loss.

U.S. capital markets are as attractive globally as they are, in part, because their basic framework is predictable and has proven to be durable for many years. To meet the administration's goal of the U.S. similarly being the "crypto capital of the world," we need a durable framework for these markets.[2]

Encouraging Agency Decision-Making

Enacting structural changes via statute also has the effect of fostering further agency action, particularly in the most controversial and gray areas.

Statutes provide Congress' instructions to the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission as to how they should regulate the federal securities and commodities markets. A clear statutory road map provides clear direction to the commissions. It also decreases the likelihood of legal challenges. Armed with these protections, the commissions can be more open to rules and guidance that promote innovation, even if they are controversial.

The potential for litigation against the agencies, and resulting risk of regulatory inertia, has become even more acute in the past two years, following recent U.S. Supreme Court cases, such as 2024's *Loper Bright Enterprises v. Raimondo*, that have weakened the extent to which administrative agencies are entitled to deference without clear statutory direction.[3]

Given the limited resources these agencies have, any resources committed to litigation are resources unavailable for productive meetings with market participants, writing tailored rules and promoting market innovation. We should be encouraging, not discouraging, clear regulatory action and decision-making.

Conclusion

Durability is not just a buzzword. Market structure legislation, appropriately fashioned for novel digital asset technology, is the key to unlocking the full potential of the U.S. digital asset ecosystem.

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[1] The SEC, in particular, has used staff guidance and no-action letters extensively to clarify the application of the securities laws to crypto markets — in some cases, taking the opposite position on the same issue as the prior administration. E.g., compare Division of Corporation Finance, *Statement on Certain Protocol Staking Activities*, (May 29, 2025) (announcing its view that certain staking activities are not securities transactions) to *Securities and Exchange Commission v. Consensus Software Inc.*, 1:24-cv-04578, (E.D.N.Y.) (alleging that operating a staking service constituted the unregistered offer and sale of securities).

[2] President's Working Group, *Strengthening American Leadership in Digital Financial Technology* (Jul. 30, 2025).

[3] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).