

## **Senate Banking Committee Digital Asset Market Structure Request for Information**

*Chairman Tim Scott, Senator Cynthia Lummis, Senator Bill Hagerty, and Senator Bernie Moreno*

U.S. Senate Banking Committee Chairman Tim Scott (R-SC) and his colleagues, Senators Cynthia Lummis (R-WY), Bill Hagerty (R-TN), and Bernie Moreno (R-OH) today released a discussion draft of digital asset market structure legislation covering issues under the Banking Committee's jurisdiction. This discussion draft builds on the strong foundation for digital asset legislation established by the *CLARITY Act*. This draft is aimed at strengthening concepts established in the *CLARITY Act* and expanding on those ideas to further encourage innovation and regulatory clarity for digital assets.

Along with this discussion draft, Chairman Scott and his colleagues announced that they are soliciting feedback and legislative solutions on the discussion draft and market structure legislation writ large (the "Request for Information" or "RFI"). Responses to the RFI will help inform market structure legislation and ensure that the legislation effectively builds on the solid base established by the *CLARITY Act* to encourage innovation in the United States without risking financial stability or harming consumers.

Chairman Scott and his colleagues request responses to the RFI, including feedback on the discussion draft, by **August 5, 2025**.

**RFI responses should be specific, including, where appropriate, legislative text with accompanying explanation and justification, and address the following topics:**

### *Regulatory Clarity and Tailoring*

1. The proposed legislation aims to provide clarity on how to allocate jurisdiction over digital assets between the CFTC and the SEC. Does the legislation strike the right balance?
  - a. Should legislation rely on the concept of ancillary assets? If so, is the definition in proposed Section 4B(a) of the Securities Act appropriate? Does it exclude the right categories of assets?
  - b. Should legislation rely on existing concepts, such as from *SEC v. W.J. Howey Co.* (*Howey*), when defining which digital assets are securities?
  - c. Should legislation mandate, as under proposed discussion draft Section 105, that the SEC undertake a rulemaking to clarify the definition of "investment contract" as articulated in *Howey*? If so, how?
  - d. Should Congress revisit other terms within the existing definition of security, such as note, to accommodate digital assets and to prevent a later SEC from inappropriately construing these terms?

- e. Should legislation provide for a specific token taxonomy based on the underlying characteristics of an asset? If so, what approach? How could such a taxonomy remain merit and technology neutral?
  - f. Should legislation clarify the status of certain technology functions that are inherent to the operation of a distributed ledger network? This could include technology functions such as running consensus algorithms, executing smart contracts, or engaging in activities like staking and mining.
  - g. Should existing tokens be grandfathered into a new token classification framework created by Congress? If so, how?
  - h. How should Congress address alleged violations of sections 5 or 12 of the Securities Act of 1933 arising from offers or sales of digital assets that occurred before the effective date of this Act? Should relief be provided through a conditional safe harbor or retroactive exemption, and if so, what compliance or disqualification criteria, if any, should apply?
2. The proposed legislation modernizes securities regulations for digital asset activities (*i.e.*, proposed Section 109 of the discussion draft) while preserving the SEC's exemptive authority (*i.e.*, proposed Section 106 of the discussion draft). Should the legislation provide more specific relief in any particular area, such as Regulation Crowdfunding, Regulation A, Regulation D, Rule 144, or frameworks for simple agreements for future tokens (SAFTs), or any other topic referenced in proposed discussion draft Section 109(a)(1) through (a)(5)?
  3. Should legislation consider a mechanism that allows market participants to seek a final determination from the SEC regarding whether a digital asset is a security? If so, how?
  4. Should legislation allow market participants the freedom to choose between being subject to SEC jurisdiction or CFTC jurisdiction? If so, how?

### *Investor Protection*

5. What type of information should issuers be required to disclose in connection with digital asset offerings?
  - a. To what extent is the information specified in proposed Section 4B of the Securities Act overinclusive or underinclusive of what information should be disclosed?
  - b. What type of ongoing information, such as that under proposed Section 4B, should legislation mandate?
  - c. How often should ongoing disclosure be required? For example, proposed Section 4B would require semi-annual disclosures.
  - d. When should ongoing disclosure obligations discontinue? For example, proposed Section 4B of the Securities Act sets forth a mechanism by which disclosure obligations could cease. Does that subsection set forth the appropriate test, or should another test or mechanism be considered?
  - e. How should the information required be tailored to the size and type of the issuer or offering?
  - f. Should legislation require a new form for digital asset offerings? If not, what updates should be made to existing forms that are used in connection with traditional securities offerings?
6. Proposed Section 4B(h) of the Securities Act would provide the SEC with authority to establish "limitations on the disposition of certain ancillary assets . . ." What, if any, restrictions on the disposition of ancillary assets by related persons or in affiliate transactions should Congress consider? To what extent are conflicts disclosures sufficient?

- a. Are the factors in proposed Section 103 for determining whether an ancillary asset “is not under common control by related persons” appropriate? If not, how should they be modified?
7. How should legislation clarify the role of the Securities Investor Protection Corporation (SIPC) in insolvency proceedings involving broker-dealers that custody both traditional securities and digital assets on behalf of customers?
  - a. Should SIPC protection apply to digital assets held by broker-dealers? If so, how should it distinguish between digital asset securities and digital asset commodities?
  - b. Should payment stablecoins receive treatment as a cash equivalent for SIPC purposes?
8. How should Congress amend the Bankruptcy Code to address the failure of digital asset intermediaries, and how should such amendments differ based on entity type?
  - a. Should legislation add a new “digital asset broker” subchapter (similar to the Code’s subchapter on commodity brokers)?
  - b. For broker-dealers, should the Code harmonize with the Securities Investor Protection Act to ensure digital asset commodities held in custody are excluded from the bankruptcy estate?
9. How else should legislation address investor protection in insolvency proceedings?
10. Should legislation require digital asset custodians to publish monthly proof of reserves?

### *Trading Venues and Market Infrastructure*

11. How should legislation address centralized intermediaries involved in the trading of digital assets?
  - a. Should intermediaries be permitted to facilitate the trading of digital asset securities alongside digital asset commodities? If so, what changes, if any, should Congress consider to accomplish that goal?
  - b. Should intermediaries be permitted to facilitate the trading of digital assets alongside traditional securities or commodities? If so, what changes, if any, should Congress consider to accomplish that goal?
  - c. Should legislation create a new pathway to register intermediaries involved in the trading of digital assets? If so, how?
  - d. What other activities involving digital assets, including digital asset securities and commodities, should intermediaries like broker-dealers, exchanges and alternative trading systems be permitted to engage in? What changes, if any, are required to accommodate those activities?
12. How should legislation address the role of broker-dealers in the context of digital assets and distributed ledger technology, including any complexities these innovations may pose?
13. How should legislation address the benefits and risks of vertical integration in digital asset markets?
14. How should legislation address market structure issues, including whether safeguards such as Regulation NMS, Regulation SCI, the Market Access Rule, or Rule 15c2-11 should apply to centralized digital asset intermediaries to enhance investor protection and market integrity?

## *Custody*

15. What challenges do market participants face relating to the custody of digital assets, and how could legislation address those challenges?
  - a. Should Congress treat the custody of digital assets that are securities differently than digital assets that are not securities? If so, how?
  - b. Should Congress treat the custody of digital assets differently than the custody of traditional assets like stocks, bonds, mutual funds, currencies, commodities, and cash? If so, how?
  - c. What legislative changes, if any, are necessary to address the cold or hot storage of digital assets held in custody on behalf of a client?
  - d. What types of entities should be permitted to custody digital assets on behalf of clients?
  - e. What qualifications, regulatory standards, or oversight of custody should be required?
  - f. What reasonable exceptions to prohibitions on commingling are appropriate?
  - g. What, if any, changes should Congress consider to preserve the right to self-custody digital assets?

## *Illicit Finance*

16. What laws, requirements, and practices relating to illicit finance and anti-money laundering do digital asset market participants already follow?
  - a. To what extent are distributed ledger technology and digital assets useful in promoting compliance with anti-money laundering and sanctions laws?
  - b. What existing supervisory frameworks at the international, federal or state levels address the potential illicit finance risks of digital assets?
17. How should legislation address illicit finance and anti-money laundering issues as they relate to digital assets?
  - a. What additional authorities, if any, should Congress provide the Financial Crimes Enforcement Network (FinCEN) and Office of Foreign Assets Control (OFAC) to effectively prevent illicit activities relating to digital assets without restricting responsible innovation?
  - b. Do digital asset mixers and tumblers warrant special legislative, regulatory or supervisory attention? What are potential ways to combat illicit activities using these technologies while safeguarding privacy rights and free speech?
  - c. Which digital asset market participants should be considered financial institutions pursuant to the Bank Secrecy Act?
  - d. To what extent should the President's authority under International Emergency Economic Powers Act apply to digital assets?
  - e. How could legislation promote the use of digital assets and distributed ledger technology to improve regulatory compliance, either within the digital asset ecosystem or more broadly, including by facilitating compliance with the Bank Secrecy Act and Know Your Customer requirements?
  - f. What challenges currently exist in identifying, tracking, and addressing instances of pig butchering?
  - g. What can the U.S. government do with its existing tools and authorities to more aggressively combat pig butchering?

- h. What new tools and authorities would help the U.S. government combat pig butchering?

### *Banking*

18. Title III of the discussion draft currently contemplates amending the federal banking statutes to explicitly authorize banks to engage in digital asset-related activities such as custody, payments, and lending. Is this clarity necessary and, if so, should any additional activities be included in the definition of permissible banking activities? Is any additional clarity needed that is not in Title III?
19. Must state-chartered depository institutions, which are regulated in a substantially similar manner to insured depository institutions, obtain state-by-state licenses if their activities are limited to payments and custody, and they are prohibited from lending or other credit intermediary activities?
20. What, if any, legislative action should be taken to enable traditional financial institutions, such as community banks, to compete in an era of financial technology without harming the safety and soundness of such institutions? Are there certain supervision reforms that need to be made by the federal financial regulators to encourage innovation at traditional financial institutions?
21. Should financial institutions be permitted to rehypothecate digital assets? If so, what changes should be made and what restrictions should be put in place?

### *Innovation*

22. How should legislation address digital assets that are issued outside of the United States but traded and purchased by United States consumers?
23. In a [speech](#) on May 12, 2025, SEC Chairman Paul Atkins mentioned the concept of a “super app” that “offers trading in securities and non-securities and other financial services all under a single roof.” Is this a sound public policy concept? If so, what, if any, changes should Congress consider to encourage such interoperability amongst different financial services?
24. What, if any, legal or regulatory barriers to the tokenization of securities or investment funds, including money market funds, exist today?
- a. If barriers exist, what changes or clarifications should Congress consider to reduce such barriers?
  - b. What, if any, changes should Congress consider to facilitate retail access to tokenized money market funds?
25. How should legislation address interest or yield-bearing digital assets, including stablecoins?
- a. Should interest or yield-bearing stablecoins be regulated like money market funds? If so, what, if any, changes should Congress consider to facilitate adoption of such products?
  - b. Should legislation limit or prohibit the ability of digital asset intermediaries to offer rewards on digital assets, including stablecoins? If so, how?
26. What action should market structure legislation take with respect to decentralized finance?
- a. How should an exemption for decentralized finance be structured?
  - b. What changes, if any, should Congress make to prior legislative attempts to structure an exemption for decentralized finance?



27. What, if any, action should market structure legislation take with respect to non-fungible tokens?
28. What, if any, action should market structure legislation take with respect to the tokenization of real-world assets?
29. What, if any, action should market structure legislation take with respect to decentralized physical infrastructure networks?
30. Should Congress mandate that the SEC consider whether an action would promote “innovation” when conducting rulemakings, as under Section 107 of the discussion draft?
31. Should Congress create an office at the SEC to be responsible for promoting innovation or designate an existing office as encompassing such duties?
  - a. Should Congress direct the SEC to dedicate staff or designate an office specifically tasked with guiding innovators across the agency, including by providing timely regulatory answers and assisting with exemptive or no-action relief requests?
32. Should legislation encourage interoperability or the development of interoperability across different layer-1 blockchain networks? If so, how?
33. Would a sandbox for distributed ledger technology or other digital assets, including as under proposed Section 401 and Section 404, be useful?
  - a. If so, how should such a sandbox(s) be structured?
  - b. Should Congress structure a sandbox to address challenges firms face when engaging in activities in multiple countries or jurisdictions?
  - c. Should Congress structure a sandbox to address issues relating to tokenizing securities?
  - d. Should Congress create an interstate innovation sandbox that would enable innovative firms to engage in interstate activities without additional licensing or registration?
  - e. Should such sandboxes be run jointly with the CFTC or other financial regulatory agencies?
34. What, if anything, should Congress consider to encourage better cooperation between the SEC and CFTC regarding digital asset regulation? Should Congress consider a self-regulatory organization, or something similar, with participation by the SEC and CFTC?

### *Preemption*

35. Should federal legislation preempt certain state laws, and if so, how?