

DIGITAL ASSET MARKET CLARITY ACT



June 3, 2025

Updated version of the Digital Asset Market Structure Discussion Draft

See our coverage of this bill and the provisions of the initial discussion draft [here](#).

I BACKGROUND

- The Digital Asset Market CLARITY Act of 2025 was introduced into congress on May 29 by Chairman French Hill of the House Financial Services Committee and Chairman GT Thompson of the House Committee on Agriculture.
- This is an updated version of the Digital Asset Market Structure Discussion Draft bill that was published on May 5.
- The CLARITY Act seeks to establish a regulatory framework for the trading of digital assets in the United States.
- The structure of the CLARITY Act remains substantially similar to that of the previous version, and in some respects still reflects much of the FIT21 bill released in 2024.
- This deck provides highlights on the important modifications for each title:
 - Title 1
 - Title II
 - Title III
 - Title IV and Title V

| TITLE I – Definitions, Rulemaking, and Provisional Registration



Updated Definitions

- An updated and more precise definition of **Digital Commodity** includes a digital asset that is intrinsically linked to a blockchain and derives its value from the operation or use of that blockchain.
- A digital asset is “intrinsically linked” if it is all of the following:
 - issued programmatically by the blockchain
 - required to access services
 - used for transferring value
 - used for governance or validation
 - consumed to operate or maintain the system
- The definition of digital commodity expressly excludes:
 - a security
 - a permitted payment stablecoin
 - a pooled investment, fund, or derivative
 - a commodity derivative (e.g., futures, swaps)
 - a digital good or NFT whose value comes from its unique attributes
 - a deposit or bank account

| TITLE I – Definitions, Rulemaking, and Provisional Registration



- **Blockchain and Digital Asset** were updated to include "other similar technology" to the express definitions previously provided, meaning future innovations in the technology will be covered.
- **Affiliated Person** of a digital commodity was updated to limit the threshold for being considered affiliated by employment to founders, executive directors, directors, trustees, or general partners. The acquisition threshold of 5 percent from the issuer still applies.
- **Related Person** of a digital commodity was updated to include, among other things, any person that acquires **1 percent or more** of the total outstanding units of a digital commodity from the issuer (down from previous 5 percent threshold).
- Employees are limited to "senior employees", which is defined as individuals "materially involved" in management or planning.
- **Decentralized Governance System** was updated to require "transparency" of the blockchain system. This means private blockchains may not claim decentralized status under this bill.
- Additionally, this bill adds to the definition of "decentralized governance system" legal entities that are used to institute the DeFi program, clarifying that the existence of such a legal entity (regardless of the type of organization) does not automatically create or require centralized and hierarchical management that might impede a project's ability to rely on the DeFi exemptions of this bill.
- **DeFi trading protocol** is updated to mean a blockchain system through which multiple participants can execute a financial transaction in accordance with "predetermined" requirements but shall **not include** a person or group of persons with the ability to control or manage the system.

| TITLE I – Definitions, Rulemaking, and Provisional Registration

Provisional Registration Process

- The previous **notice of intent to file process** was replaced with a **provisional registration process**.
- Digital commodity exchanges, brokers, and dealers must file a provisional registration with the CFTC within 180 days after enactment of the act. A provisional registration requires:
 - That the provisional registrant is a member of a futures association
 - The provisional registration includes a statement on the nature of the digital asset-related activities
 - Information is provided related to management, business operations, risk management, a description of the product listing process, and all other compliance policies and procedures
 - Payment of all required registration fees
- Once provisionally registered, an entity is deemed to be a registered digital commodity exchange, broker, or dealer with the CFTC – and therefore preempted from state registration requirements, where applicable - so long as they remain in compliance with the requirements of the provisional registration process.
- **A token will no longer be presumed a “security”** when it is initially issued and will not be deemed a security solely for any of the following reasons:
 - It possesses governance rights
 - Its value rises or falls with network growth or protocol performance
 - Its value is tied to user adoption
- New **self-custody** provision in Section 105 expressly protects an individual's right to maintain a wallet for self-custody and peer-to-peer digital asset transactions.

| TITLE II – Offers and Sales of Digital Commodities

Updated Primary Sales Exemptions Provisions

- A digital commodity issuer that relies on the Securities Act registration safe harbor initially proposed in the discussion draft bill must additionally disclose the maturity status, source code, mechanisms for driving value, and risk factors of the underlying blockchain.
- Additionally, this bill clarifies that a blockchain system that fails to become a “mature system” within the safe harbor window will be required to file with the CFTC - and provide customers with - disclosures that note:
 - the reasons the blockchain did not reach maturity,
 - The status of current development plans, and
 - and existing risk factors of the system

Treatment of Secondary Transaction Exemption

- Section 203 was amended to clarify that secondary market transactions in digital commodities originally issued as part of an investment contract are not to be considered part of the original investment contract.

Offers and Sales by Digital Commodity Affiliated and Related Persons

- Section 204 was amended to update the requirements for affiliated and related persons looking to offer or sell a digital commodity they acquired directly from the issuer. These new requirements include lockup periods and limitations on the percentage that can be sold annually until the blockchain is certified as mature.

I TITLE II – Offers and Sales of Digital Commodities

Mature Blockchain

- The maturity certification process to exempt primary transactions in digital assets from traditional securities registration remains substantially similar but was amended to clarify the process to require all of the following:
 - At least 12 months of public functionality
 - No unilateral control
 - Digital asset is used for its intended purpose
 - SEC may also adopt rules establishing additional conditions for determining maturity

New Post-Maturity Reporting Requirements

- Once a blockchain is certified as “mature,” an issuer will now be required to disclose to the public all of the following:
 - Any participation in a decentralized governance system of the blockchain
 - Any participation in alterations or proposed alterations to the functionality of the blockchain
 - The use or planned use of any funds raised
 - The amount of digital commodity units owned and controlled by the issuer
 - Any affiliations of such issuer material to the efforts of the issuer

| TITLE III – Registration for Intermediaries at the SEC

Securities Status

- **Digital Commodities** are expressly excluded from the definition of “securities” under federal securities laws.
- **Permitted Payment Stablecoins** are also excluded from the definition of “securities” under federal securities laws. Additionally, the Investor Protection Act is amended to exclude permitted payment stablecoins, which means these assets cannot be insured by SIPC coverage, even if held at SEC-registered broker-dealers.
- **Federal Preemption.** The definition of “covered securities” was amended to include digital commodities among the assets that are exempt from state securities laws.

Anti-Fraud Authority

- SEC maintains anti-fraud and anti-manipulation authority over transactions involving digital commodities that occur on or with an SEC-registered entity.

| TITLE IV – Registration for Intermediaries at the CFTC

Updated Listing Requirements for Digital Commodity Exchanges

- A digital commodity exchange shall not permit trading in a digital commodity unless either of the following is true:
 - Required exempt transaction reports have been filled
 - The blockchain system is certified as a mature blockchain

Updated Digital Asset Custodian Provisions

- A person is now a “qualified digital asset custodian” if both of the following are true:
 - They hold the assets on behalf of a person registered under this act or a customer of a person registered under this act
 - The person is subject to supervision and examination for custody and safekeeping of digital assets by an appropriate Federal Banking Agency, the NCUA, the CFTC, the SEC, or a relevant state regulator

Financing Agreements

- The new bill requires the CFTC to prescribe rules applicable to digital commodity brokers and dealers that set forth minimum requirements related to financing agreements for the purchase or sale of digital commodities, including all of the following:
 - Recordkeeping, reporting, business conduct, and supervision of employees
 - Margin and financing arrangements, capital requirements, and rehypothecation
 - Disclosures

TITLE IV – Registration for Intermediaries at the CFTC

TITLE V – Innovation and Technology

Exemptions for Certain Registered Entities

- Additional requirements were added for SEC-registered ATSS to engage in digital commodity services without requiring a duplicative CFTC registration:
 - SEC-registered ATS's must give CFTC notice and file annual forms showing compliance
 - The average trading volume of all digital commodities during any quarter over the past two years cannot exceed the lesser of, (i) 25 percent of the trading volume for all transaction over the same period or (ii) \$50,000,000.
- Once either of these thresholds are met, the ATS must submit a registration with the CFTC to operate as a digital commodity exchange.

New Limitations on Transactions by Control Persons

- A “blockchain control person” is now prohibited from selling digital commodities tied to a certified mature blockchain without CFTC notification and disclosures.
- “Blockchain Control Person” is defined as any person or group with either of the following:
 - Unilateral authority to modify the rules of the blockchain
 - More than 20 percent of governance or voting power over the system

Updates to the SEC

- The SEC is required to establish “FinHub,” to support emerging financial technologies.
- The SEC's mandate will now include maintaining the efficiency and innovation of markets.

PLEASE FEEL FREE TO REACH OUT WITH ANY QUESTIONS, COMPLIMENTS, OR CONCERNS.



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