Securities Regulation Daily Wrap Up, BLOCKCHAIN—Crypto market structure bill moves to Senate with bipartisan push from House, (Jul 18, 2025)

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The House passed the CLARITY Act, the SEC-CFTC regulatory companion bill to the GENIUS Act, which has now become law.

The House has passed the Digital Asset Market Clarity (CLARITY) Act of 2025 (H.R. 3633), the companion legislation to the recently enacted Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act (S. 1582), which established a legal market for stablecoins but lacks the broader market structure changes many lawmakers believe are needed to enable the full panoply of digital asset innovations and usage. A bipartisan House majority voted 294-134 to advance the CLARITY Act to the Senate where it may face a somewhat more skeptical audience.

House Financial Services Committee Chair French Hill (R-Ark), the CLARITY Act's primary champion, hailed its passage as a key development for blockchain and crypto markets in the U.S. "Today, the House passed landmark legislation that establishes clear rules of the road by creating a functional regulatory framework for digital assets," said Hill. "This is the pivotal moment for American innovation and a critical step forward in protecting consumers and investors alike."

Hill's counterpart, Ranking Member Maxine Waters (D-Calif), who broke with many of her colleagues who crossed over to support the bill, spoke in opposition on the House floor and dubbed it the "Calamity Act" while also accusing President Trump of turning from crypto skeptic to crypto supporter in order to personally profit from the creation of his own crypto business and the issuance of his own meme coin. Said Waters: "[T]he '*CALAMITY Act*' does not address illicit finance, and other crimes commonly seen in the crypto space. It does not provide nearly enough direction to agencies, which would be required to match the level of financial crimes and noncompliance seen in the industry. Nor does it provide sufficient funds for Federal agencies to examine and enforce these laws."

Registration of entities. The CLARITY Act's overarching goal is to allow firms in the digital asset space to raise funds under the SEC's capital formation rules while giving CFTC oversight over many of the firms that will facilitate the trading of digital assets.

The CLARITY Act, for example, would provide for provisional and long-term registration of certain blockchain entities with the CFTC. Provisional registration with the CFTC would be open to digital commodity exchanges, digital commodity brokers, and digital commodity dealers within a stated period of enactment. These entities would have to make required disclosures to the CFTC about their management and digital commodity operations, as well as disclosures to their customers. Provisional registration would cease to be available for a stated period after the CFTC finalizes its formal registration rules and the CFTC would be directed to provide for expedited registration of persons who have provisional status.

With respect to long-term registrations, the CLARITY Act would require a trading facility that offers a cash or spot market for even one digital commodity to register with the CFTC. Registration of exchanges, however, would be subject to exceptions for de minimis amounts of trading activity and for a trading facility that serves only a single market (e.g., a single U.S. state, territory, or possession). Registration requirements also would apply to digital commodity brokers and dealers, associated persons, and commodity pool operators and commodity trading advisors. (The CFTC would have to use its exemptive authority to clear away duplicative rules for CPOs and CTAs).

The CLARITY Act also would provide that the SEC cannot bar an alternative trading system (ATS) from certain

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exempted operations merely because the ATS allows trading in digital commodities, permitted payment stablecoins, and securities. Similarly, an ATS that primarily facilitates trading of digital commodities or permitted payment stablecoins would not be deemed to be a "facility" of an exchange. Exchange Act Section 3(a)(2) defines "facility" to mean the "premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange"..."and any right of the exchange to the use of any property or service."

The bill also would preempt state Blue Sky registration requirements. States, however, could still exercise generally applicable antifraud authorities.

Investment contracts. One of the areas of contention in numerous court cases thus far involving digital assets has been the scope of the Supreme Court's *Howey* standard for determining if something is an investment contract. Some have argued that federal regulators sometimes failed to distinguish an investment contract from the thing that underlies the investment contract.

The CLARITY Act would amend the Securities Act to exclude "investment contract asset" from the definition of "investment contract." As a result, "investment contract asset" would mean a digital commodity recorded on a blockchain that can be exclusively possessed and transferred (person to person) without an intermediary and which is sold pursuant to an investment contract. Specifically, the digital commodities sold under an investment contract would not themselves be investment contracts. The bill would make conforming amendments to other federal securities laws.

The CLARITY Act also would exempt certain transactions from the registration requirement of the federal securities laws. Specifically, a transaction in a digital commodity would be exempt if the digital commodity has been certified to be part of a mature blockchain system (the SEC could rebut or review a certification), the issuer does not raise more than $75 million in a twelve-month period, no buyer is allowed to acquire more than 10 percent of the outstanding units, and the issuer is a U.S. issuer. Moreover, the issuer must not be a development stage company, investment company fractional oil and gas interest issuer, nor may the issuer be a bad actor.

The CLARITY Act would impose certain pre- and post-maturity disclosure requirements on issuers of digital commodities. Much of the details about semi-annual and current reporting would be left to the SEC to determine via rulemaking. However, Securities Act Section 17's antifraud provisions would apply to offering statements required by SEC rules.

Under the CLARITY Act, secondary transactions would largely be outside of the federal securities laws. Here, the offer or sale of a digital commodity that originally was an investment contract by a person who is not the issuer of the digital commodity would not be considered to be an offer or sale of an investment contract that originally involved the issuer, and agent/underwriter, and the buyer. Likewise, an end user distribution would not constitute an offer or sale of a security.

Other provisions, joint rules, and studies. The SEC and the CFTC would be tasked under the CLARITY Act with completing numerous joint rulemakings. For example, the agencies would have to agree on rules clarifying numerous proposed statutory definitions, the treatment of mixed digital asset transactions, delisting, and portfolio margining.

Under another provision, the SEC, CFTC, Treasury, and federal banking regulators would retain their enforcement authorities regarding custody. However, the provision would ensure the legality of self-custody by U.S. individuals who use a wallet to facilitate their own lawful custody of digital assets and who engage in transactions with others for their own lawful purposes. The other persons they transact with, however, could not be financial institutions and the transactions themselves cannot be subject to U.S. sanctions regimes.

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The CLARITY Act would amend the SEC's statutory list of considerations when it engages in rulemaking to include "innovation." The amendment would add to the SEC's exiting mandate to consider: (1) "whether an action is necessary or appropriate in the public interest"; (2) "the protection of investors"; and (3) "whether the action will promote efficiency, competition, and capital formation."

The bill would create a Strategic Hub for Innovation and Financial Technology (FinHub) committee at the SEC, while the bill would codify the CFTC's similar LabCFTC.

Among the several studies that would be mandated by the bill, the SEC and CFTC would be tasked with jointly examining the state of decentralized finance (DeFi). The bill would exclude some DeFi activities from regulation, including compiling network transactions, providing computational work, providing a user-interface that enables users to read and access data about a blockchain system, distributing a decentralized finance messaging system or operating or participating in a liquidity pool for specified purposes, and distributing software that allows users to personally safeguard or custody their own digital assets or related private keys.

Bipartisan support, yet critics abound. House Agriculture Committee Ranking Member Angie Craig (D-Minn), who spoke by press release after the CLARITY Act was passed, is perhaps typical of many Democrats who supported the CLARITY Act and see the bill as imperfect but necessary to facilitate the lawful trading of digital assets.

"The CLARITY Act takes a step in the right direction by allowing the CFTC and SEC to mitigate undue financial risk and protect everyday Americans participating in digital asset markets," said Craig. "This bill is not perfect. There is more work to be done to prevent those in power, including the president's family business, from the inherent conflicts of interests of participating in the digital asset and other markets while president."

Senator Tim Scott (R-SC), Chair of the Senate Banking Committee, issued a statement in which he said "[w]ith his [President Trump's] signature on the GENIUS Act, we've made history and have delivered important regulatory clarity for the stablecoin industry." But Scott, with a nod to upcoming Senate debate on the CLARITY Act added: "Let's be clear—our work here is not finished—and I look forward to taking the same energy and approach to deliver digital asset market structure legislation to President Trump's desk."

In a statement addressing both the GENIUS Act and the CLARITY Act, Acting CFTC Chair Caroline D. Pham described this week's actions by the House and the president as the start of a "golden age of digital asset innovation." She added that "[t]he House also took an important step forward in advancing the *CLARITY Act*, a long-awaited framework for the regulation of digital asset markets."

Even the North American Securities Administrators Association (NASAA) took a somewhat conciliatory approach to the CLARITY Act. "[W]hile we urge a NO vote today, we remain committed to and are grateful for the ongoing, productive discussions regarding NASAA's requests for textual improvements," said NASAA in a letter sent to House Speaker Mike Johnson (R-La) and Democratic Leader Hakeem Jeffries (D-NY).

But Amanda Fischer, Policy Director and COO at Better Markets, was less generous in a press release in which she suggested that the GENIUS Act may contribute to a future financial crisis and could leave investors largely unprotected from any abuses by the crypto industry.

With respect to the CLARITY Act, Fischer questioned the wisdom of altering a system of securities regulation that has held for nearly a century. "The CLARITY Act takes a hatchet to 90 years of protections born out of the Great Depression, encouraging investors to plow their savings into memes and scams instead of investments into real businesses that grow the economy," said Fischer. "Members of the Senate should ask themselves these key questions [link omitted] about what type of financial system they want to enable before considering the CLARITY Act."

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