Crypto Update

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The CLARITY Act Progresses in the House: Key Takeaways

Introduction

This note analyzes the key takeaways of the current version of the Digital Asset Market Clarity Act of 2025 (the "CLARITY Act" or "Act") under consideration in Congress.

On June 10, 2025, the House Committee on Agriculture ("House Ag") and the House Committee on Financial Services ("HCFS") each approved a nearly 250-page bill, H.R. 3633 (the "Bill"), proposing the CLARITY Act.[1] There are some limited but important differences in the versions of the Bill as approved by the two Committees. The two versions are expected to be merged before moving to the House floor for debate. Separately, the Senate Committee on Banking, Housing, and Urban Affairs is holding a hearing on June 24, 2025 to explore potential bipartisan legislative frameworks for digital asset market structure.

Organized into five titles, both versions of the CLARITY Act would create a detailed regulatory framework for activity involving certain digital assets, covering market structure, offers and sales of certain digital assets, and oversight roles by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). If passed in substantially the form approved in the Committees, the CLARITY Act would represent a watershed moment for the regulation of digital asset activity in the United States—with reverberations that would be felt globally.

To be sure, passage of the CLARITY Act into law is not guaranteed (among other things, it is unclear whether, when or how the Senate will weigh in), and a digital asset market structure bill that ultimately arrives on the President's desk for signature could look different in a variety of important ways.

As we continue to monitor progression of the CLARITY Act, this alert summarizes its key provisions, as voted on in the HCFS, and describes how the digital asset ecosystem might take shape for various market participants if the CLARITY Act becomes law. We have noted below some key differences with the House Ag version. Stay tuned for a forthcoming Alert that will provide a "deep dive" look at the mechanics underlying the Act and some areas that could still benefit from refinement.

[1] *Available here.*

Key Takeaways

If adopted, the CLARITY Act would profoundly alter the digital asset landscape in the United States—an area of our financial markets largely not covered by direct purpose-built regulation at this time. Among the key changes would be:

New Concepts:

- The Act would create a three-part taxonomy: some digital assets that are "intrinsically linked" to, and whose value is derived or reasonably expected to be derived from, a blockchain system would be considered "digital commodities"; other digital assets would fall into the developing definition of "permitted payment stablecoin". In the HCFS version, all remaining digital assets not within either of these two categories would fall outside of the proposed regulatory framework (as noted below, the House Ag version diverges significantly on this point).
- Definitions would be added to the Securities Act of 1933, as amended (the "Securities Act"), defining the technological terms "blockchain" and "blockchain application" (which are collectively referred to in the Act as "blockchain systems").
- Most major participants in the digital commodity ecosystem would be regulated under federal law for the first time. This would include "digital commodity exchanges" ("DCEs"); "digital commodity brokers"; "digital commodity dealers"; and "digital commodity custodians".
- An important new construct of "digital commodity issuer" would also be introduced, which would result in significant responsibilities for the entity (or, possibly, entities) considered to fall within that definition for a given digital commodity.
- Express permission is provided to national banks to use digital assets (which would include tokenized securities) and blockchain systems to perform, provide, or deliver any activity, function, product, or service that the national bank is otherwise authorized by law to perform, provide, or deliver.
- Considerable joint rulemaking by the SEC and the CFTC elaborating on these and many other new definitions will be required, generally within 180 days from the enactment of the CLARITY Act.

New Exemption:

- To facilitate fundraising for new blockchain systems, a new exemption from the Securities Act's registration requirements would be added for investment contract transactions by a digital commodity issuer involving units of the related digital commodity. These securities could be offered to the general public when an offering statement with certain prescribed information about the digital commodity, the related blockchain system, and the entity considered the digital commodity issuer has been filed with the SEC.
- Significant limitations on certain types of dispositions of digital commodities would be imposed on persons considered to be "digital commodity related persons" or "digital commodity affiliated persons" with respect to any digital commodity issuer of a given digital commodity.
- A key focus of the CLARITY Act involves the concept of the "maturity" of a blockchain system—a proxy for the blockchain system's "decentralization". Maturity for a given blockchain system is defined as occurring when the system, together with its related digital commodity, is not controlled by any person or group of persons under common control. A more developed set of criteria are also provided and the obligations on digital commodity issuers (and the limitations of sales of digital commodities by any digital commodity related persons or digital commodity affiliated persons related to the relevant digital commodity issuer) are determined in large part by whether the associated blockchain system has been "certified" as being mature.

Clarification:

- The Securities Act would be amended to clarify that digital assets that fall within the digital commodity rubric (or are otherwise considered permitted payment stablecoins) are not themselves securities. In addition, the term "investment contract" as used in the federal securities laws, would be clarified to exclude most digital commodities if sold pursuant to an investment contract transaction (such as a fundraising transaction exempt from registration under proposed exemption referred to above).
- However, whether a given sale of (non-security) digital commodities constitutes an investment contract transaction (and thus within the jurisdiction of the SEC) is still left to an application of the well-known *Howey* test.

Summary of Insider Sale Limitations:

As noted above, a key innovation of the CLARITY Act involves restricting sales of digital commodities held by insiders as a means of incentivizing them to help blockchain systems achieve maturity. The following two charts summarize the complex provisions relating to these restrictions.

	Digital Commodities Acquired Post Enactment of the CLARITY Act*	
	Before Certified Mature[2]	Certified Mature[3]

Related Person	• Reports required under 4B(b)(3)[4] or comparable
	• Minimum of 12 month hold period
	• Aggregate amounts:
	  ○ In any 12 month period, sales capped at between 5% and 20% of the total units acquired directly from the issuer;
	  ○ Total sales capped at between 30% and 50% of the total units acquired directly from the issuer
		No restrictions

Affiliated Person	Same as above	• Information required under 4B(b)(5)(C)[5] or comparable
		• Minimum hold period of:
		  ○ 12 months, or
		  ○ 3 months following certification date
		• Aggregate amount in any 12 month period is capped at between 5% and 10% of total outstanding amount of digital commodity

* Relates only to units of a digital commodity acquired directly from its issuer (or an agent or underwriter thereof) pursuant to an investment contract in reliance on 4(a)(8) or another exemption under the Securities Act.

[2] See Section 204 of the Act, adding new Sec. 4C(c)(1) of the Securities Act.

[3] See Section 204 of the Act, adding new Sec. 4C(c)(2) of the Securities Act.

[4] Section 4B(b)(3) of the Securities Act requires the issuer of a digital commodity related to a blockchain system that is not yet certified as mature to file semiannual reports and current reports reflecting relevant material changes.

[5] Section 4B(b)(5)(C) of the Securities Act requires the issuer of a digital commodity related to a blockchain system that has been certified as mature, but where such issuer is providing ongoing material efforts, to disclose (i) its participation in a decentralized governance system of the blockchain system, (ii) its participation in alterations or proposed alterations to the functionality of the blockchain system, (iii) use of funds raised in reliance on the exemption in 4(a)(8) or any rulemaking pursuant to the CLARITY Act, (iv) the units of the digital commodity, or rights thereto, owned or controlled by the issuer, and (v) affiliations material to the efforts of the issuer.

Digital Commodities Acquired Prior to Enactment of the CLARITY Act*	
Sales by digital commodity related persons or digital commodity affiliated person permissible[6]	• No ongoing material efforts by issuer related to blockchain system, and • Blockchain System Certified Mature
	• Ongoing material efforts by issuer related to blockchain system, • Blockchain system certified mature, and • Disclosures required under 202(c)(2)(B)[7] have been made
	• Ongoing material efforts by issuer related to blockchain system, • Blockchain System not certified mature, and • Disclosures required under 202(c)(2)(B) have been made

Post-Adoption: A Whole New World?

So what would a world in which the CLARITY Act has become law look like? Below, we consider how that landscape might impact five key groups of stakeholders: (1) developers of new blockchain systems that may be considered "issuers" of digital commodities; (2) existing foundations, development companies and other digital asset ecosystem participants; (3) operators of digital commodity exchanges; (4) market makers and liquidity providers; and (5) end users and traders.

Developers of New Blockchain-based Networks and Applications

Perhaps the most immediate beneficiaries of the CLARITY Act would be developers and early-stage sponsors of new crypto networks and applications. Under current law, there continues to be uncertainty as to when a given digital asset is properly considered a security and when an offer or sale of a digital asset would constitute some type of securities transaction, requiring registration with the SEC or an exemption from registration. The CLARITY Act would provide some long-awaited answers.

The CLARITY Act would achieve this by codifying a pathway for certain digital assets deemed "digital commodities" (or rights to these assets when created) to be sold directly to the general public in the United States in fundraising transactions of up to $75 million per year pursuant to an exemption from SEC registration under new Section 4(a)(8) to be added to the Securities Act. Once sold, the digital commodities would not be considered securities and would immediately be free to trade, either on federally regulated digital commodity exchanges, on offshore centralized exchanges, or through decentralized finance trading protocols.

To benefit from the new exemption, the digital commodity would need to relate to a blockchain system that was already certified as "mature" or the entity deemed the "digital commodity issuer" of the digital commodity (so long as it was established in the U.S.) would need to intend for the blockchain system related to the new digital commodity to become "mature" within four years from the later of the first fundraising sale and effectiveness of the CLARITY Act. The issuer would also be required to file an offering statement with the SEC that would be subject to the strict anti-fraud requirements of Section 17 of the Securities Act. However, digital commodities acquired from the deemed issuer by certain "insiders" would be restricted as to resale.

[6] See Section 204 of the Act, adding new Sec. 4C(f) of the Securities Act.

[7] Section 202(c)(2)(B) requires the SEC to issuer rules requiring issuers that offered or sold digital commodities in investment contract transactions in reliance on an exemption from registration under the Securities Act to make certain disclosures comparable to those described in section 4B of the Securities Act that would be newly added by the CLARITY Act.

This framework could create a renaissance of innovation in the United States as developers take advantage of the new offering exemption to attract capital to new blockchain projects, especially in categories like decentralized physical infrastructure networks (known as "DePINs"), various DeFi "primitives" (*i.e.*, the interoperable applications used for exchanging, swapping, lending, and bridging various digital assets), and new "layer 1" blockchain networks, although the resale limitations on early funders may cause some to consider when and how to invest in new projects.

However, given the relatively narrow definition of "digital commodity" in the HCFS version of the Act, developers of many other blockchain projects, such as "layer 2" scaling solutions, creators of meme coins and NFTs, and interoperability solution providers that create "wrapped" tokens, among others, would not meet the definition and would be ineligible for the offering exemption.[8]

Participants in Existing Blockchain System Ecosystems

The CLARITY Act would provide mixed outcomes for participants in existing blockchain system ecosystems, such as development companies, foundations, founders, senior team members, ecosystem partners at integrated projects, and others who may have received more than a minimal amount of tokens from the entity deemed to be the system's "digital commodity issuer". On the one hand, in many cases uncertainty about the regulatory status of the tokens held by these entities would be resolved (so long as the tokens would be treated as digital commodities, they would not be "securities"). This could mean that there would be greater interest in engaging with the related blockchain system by those worried about the impact of the potential treatment of the token as a security. In addition, the green light given to national banks to utilize digital assets and blockchain systems could substantially increase the user base for these technologies.

However, many of the entities and individuals engaging directly with companies in blockchain ecosystems may find themselves catagorized as "digital commodity affiliated persons" or "digital commodity related persons" and thus be subject to significant limits on their ability to dispose of the tokens they hold once the law becomes effective. One counter-intuitive outcome is that ecosystem participants holding significant amounts of otherwise unlocked tokens may be inclined to dispose of their tokens *prior to* the effectiveness of the Act, thus creating downward pressure on the price of the related tokens. Although existing blockchain systems will in theory be able to certify as to their "mature" status, thus reducing the impact of these restrictive provisions, ecosystem participants may prefer to liquidate their positions early, rather than waiting to see how the certification process will play out with respect to any particular project.

For mature blockchain systems, the CLARITY Act places further restrictions on persons deemed to be "blockchain control persons". With respect to a mature blockchain system, this means any person or group of persons under common control who have the unilateral authority, directly or indirectly, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity; or who have the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of the blockchain system by means of a related digital commodity, nodes or validators, a decentralized governance system, or otherwise, in a blockchain system which can be altered by a voting system. How this concept will be implemented in a technology based on the use of pseudonymous addresses remains unclear .

In terms of reporting, for existing blockchain systems, it also may not be self-evident which ecosystem member would appropriately be classified as the "digital commodity issuer" of the related digital commodity. This confusion could

[8] Note that the version of the CLARITY Act approved in House Ag would substantially widen the scope of what is available to be dealt in by DCEs and other regulated digital commodity intermediaries by allowing certain digital assets, such as meme coins (categorized as "tradeable assets") to be treated as digital commodities so long as they are not in an excluded category (such as securities or commodity interests) or are used to commit fraud or for market manipulation. This significant difference between the two version of the Bill will need to be resolved prior to a vote on the House floor, likely through the House Rules Committee.

overall discourage participation in the ecosystem. Likewise, many such ecosystems may be comprised of non-U.S. persons who may be unaware of, or uninterested in complying with, new U.S. regulations, creating compliance challenges for U.S.-based participants.

Finally, the requirements for disclosures by large holders of digital commodities may raise concerns on the part of larger participants in the related blockchain system's ecosystem of accumulating too large a percentage of the related token.

Operators of Digital Commodity Exchanges

The CLARITY Act introduces a tailored registration regime for "digital commodity exchanges" (DCEs), which would be regulated by the CFTC and distinct from traditional futures exchanges or securities alternative trading systems. Critically, the Act would preempt state money transmission regulation, providing a much more straightforward compliance path for operators of these exchanges. This is perhaps the most significant institutional development under the Act, as it formally introduces a regulated spot market infrastructure specifically for crypto commodities under federal law.

For the major centralized crypto exchanges, the DCE registration would entail obligations similar to those imposed on national securities exchanges or swap execution facilities—*e.g.*, market integrity rules, customer asset safeguards, anti-manipulation monitoring, and periodic reporting.

Importantly, the DCE regime would enable legally compliant listing of tokens that qualify as digital commodities, creating a federally regulated onshore alternative to offshore venues and potentially unlocking greater institutional participation in crypto markets. Digital commodity exchanges would need to develop listing standards consistent with the Act's criteria, and may need to bifurcate their operations into CFTC-regulated and SEC-regulated arms, depending on the assets listed.

This dual structure introduces additional complexity, but also regulatory legitimacy, enabling U.S.-based exchanges to compete with overseas platforms and engage with banks, custodians, and asset managers more credibly.

It will remain to be seen whether non-U.S. exchanges will seek to enter the U.S. market, whether through acquisitions or new licenses and if non-U.S. exchanges are subject to additional scrutiny in order to operate in the U.S. It will also be interesting to monitor the extent to which traditional financial market participants seek to operate a digital commodity exchange.

Digital Commodity Market Makers and Liquidity Providers

Market makers in the crypto asset space—especially algorithmic traders and high-frequency firms—have historically faced regulatory uncertainty around whether providing liquidity in crypto markets could subject them to broker-dealer registration or allegations of securities dealing. Under the CLARITY Act, liquidity provision for digital commodities would fall under CFTC oversight, with tailored exemptions for market participants not engaged in manipulative practices or advisory roles.

The Act clarifies that digital commodity dealers must register if they engage in market making as a business, but exempts ordinary traders, many contributors to liquidity pools on decentralized exchanges, and proprietary firms from unnecessary registration. This clarity may incentivize the return of U.S.-based trading firms that exited the market due to SEC scrutiny under the prior administration.

In the DeFi context, the Act leaves open the possibility that certain liquidity providers, especially those engaged in protocol-governed automated market makers (AMMs), may still need to evaluate whether their activities constitute "control" of the commodity ecosystem. But overall, the Act legitimizes digital asset liquidity provision, aligning the

treatment of digital commodities with activity in other regulated commodity interest markets like those for metals, agricultural commodities or energy assets.

Users and Traders of Digital Commodities

For retail and institutional users of crypto assets, the CLARITY Act promises greater legal certainty for their activities and access to unequivocally compliant U.S.-based venues. Under current law, many users remain concerned that they are trading in tokens that could be viewed as unregistered securities, exposing platforms and users alike to regulatory risk.

By definitively classifying certain tokens as digital commodities based on functional and structural criteria, the Act would allow broader trading access without implicating securities laws. Retail users could interact with a wide variety of tokens on CFTC-regulated exchanges without fear of entering into a legal gray zone. Institutional investors, who have been reticent to trade non-BTC/ETH assets due to SEC ambiguity, would benefit from new clarity in risk assessments and internal compliance procedures.

However, traders may see heightened surveillance and enforcement of market integrity rules under CFTC oversight, including whistleblower programs and data-sharing protocols. Wash trading, insider front-running, and manipulative tactics are likely to face greater scrutiny, especially as the CFTC expands its digital enforcement capacity.

Moreover, the Act's classification framework will result in some digital assets falling out of the definition of "digital commodity", limiting their availability to retail users on registered DCEs. Absent an expansion of the concept of digital commodity as is present in the version of the CLARITY Act approved in House Ag,[9] this bifurcation could not only shrink access to many "long-tail" tokens but also meme coins, "wrapped" tokens, tokens associated with "layer 2" networks, and others.

Conclusion

The CLARITY Act takes a critical step forward in developing a comprehensive U.S. framework for digital asset regulation. Although more work is sure to come before market structure legislation is finalized, the pathway forward is now illuminated and the prospect of making the United States the "crypto capital of the world" is now in sight.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Lewis Rinaudo Cohen (partner) at 202.862.8912 or lrcohen@cahill.com; Samson Enzer (partner) at 212.701.3125 or senzer@cahill.com; Gregory Strong (partner) at 302.884.0001 or gstrong@cahill.com; Sarah Chen (partner) at 212.701.3759 or swchen@cahill.com; or email publicationscommittee@cahill.com.

[9] *See* note 2 above.