Charting a Path Forward – The Senate Banking Committee Offers Principles-Based Approach to Digital Asset Market Structure

With the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the "GENIUS Act") signed into law by President Donald J. Trump on July 18, 2025,[1] the spotlight has now shifted to the broader "market structure" legislation — a national framework to govern U.S. digital asset activity beyond stablecoins. Following the release of the President's Working Group Report entitled "Strengthening American Leadership in Digital Financial Technology" on July 30. 2025,[2] which concluded that "digital assets and blockchain technologies can revolutionize … the American financial system," the challenge now lies with Congress to craft a durable regulatory regime that fuels innovation while integrating seamlessly into the traditional financial system that underpins U.S. global leadership.

Building on earlier legislative efforts,[3] the House of Representatives took a significant step forward on market structure on July 17, 2025 by passing the Digital Asset Market Clarity Act of 2025 (the "CLARITY Act").[4] Just days later, the Senate Committee on Banking, Housing and Urban Affairs ("Senate Banking") published a discussion draft of the Responsible Financial Innovation Act of 2025[5] (the "RFIA Draft") along with an associated request for information[6] (the "Senate RFI"). Although there are some important similarities between the two initiatives, the principles-based framework laid out in the RFIA Draft frequently contrasts with the more prescriptive approach taken by the House, providing market participants with

[1] The White House, Fact Sheet: President Donald J. Trump Signs GENIUS Act into Law (July 18, 2025), available at https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/.

[2] The White House, Fact Sheet: The President's Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology (July 30, 2025), available at https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf.

[3] **H.R. 4763**, 118th Cong. (2024) (as passed by House, May 22, 2024), the "Financial Innovation and Technology for the 21st Century Act," available at https://www.congress.gov/bill/118th-congress/house-bill/4763.

[4] H.R. 3633, 119th Cong. (2025) (as passed by House, July 17, 2025), available at https://www.congress.gov/bill/119th-congress/house-bill/3633/text#toc-H07BF88997659491796EA96C9779B8FC1.

[5] Senate Banking, Digital Asset Market Structure Legislation Discussion Draft (July 22, 2025), available at https://www.banking.senate.gov/imo/media/doc/senate_banking_committee_digital_asset_market_structure_legislation_discussion_draft.pdf.

[6] United States Senate Committee on Banking, Housing, and Urban Affairs, available at https://www.banking.senate.gov/imo/media/doc/market_structure_rfi.pdf.

contrasting visions of how activity involving digital assets could be integrated into our existing financial system.

This alert provides a detailed analysis of the RFIA Draft, including some of the misconceptions that have arisen about the RFIA Draft since it was released. For a deeper review of the CLARITY Act in the form in which it was passed by the House Committee on Financial Services ("House FSC"), please see our June 23, 2025 Client Alert. We also include a high-level comparison of the differences between the two proposals.

Key Takeaways From the RFIA Draft

1. **Regulatory Approach**. The RFIA Draft operates primarily within existing regulatory frameworks adopted by the Securities and Exchange Commission ("**SEC**") while providing targeted relief through exemptions and innovation programs. It takes a technology-neutral approach to defining new terms or concepts, opting to work within the current securities law framework and to use SEC rulemaking to clarify the application of the federal securities laws to activity involving digital assets. This contrasts with the CLARITY Act's more expanded scope (due in significant part to the involvement of House Ag and its jurisdiction over commodities legislation in the drafting process).[7]
2. **Technology Neutral Definition**. The RFIA Draft creates a technology-neutral category for the intangible, commercially fungible assets offered through investment contract transactions (*i.e.*, "**ancillary assets"**). These can include digital commodities, sometimes referred to as "crypto assets". The proposed definition of ancillary asset would exclude from this category assets that provide debt or equity interests, liquidation rights, dividend entitlements, or other financial interests, thus addressing misinformed suggestions that the Senate's approach would create a loophole for companies to sell shares or offer debt securities through digital tokens without SEC registration. Accordingly, under the RFIA Draft, ancillary assets would not themselves be securities, and secondary transactions in these assets would not be securities transactions.[8]
3. **Ancillary Asset Originators**. Unlike the more open-ended definition of "digital commodity issuer" in the CLARITY Act which may create uncertainty as to which legal entity is subject to regulation, the RFIA Draft's "ancillary asset originator" framework focuses on the person or entity initially offering the asset, or otherwise controlling distribution within the first 12 months. To avoid ambiguity, if the entity that initially offered the asset (or otherwise controlled the asset's distribution) did not receive the largest amount of those assets in the 12 months following the initial distribution of the asset, then the entity that did receive the largest amount becomes jointly and severally responsible for the originator's statutory obligations. Foreign ancillary asset originators meeting specific criteria are exempt from disclosure requirements, another important definitional aspect not addressed in the CLARITY Act.
4. **Disclosure Regime**. Ancillary asset originators must provide semi-annual disclosures covering corporate information, economic characteristics, distribution data, financial condition, and material proceedings. The SEC will prescribe requirements "reasonably tailored based on the size of the applicable ancillary asset originator." Disclosure obligations continue until the originator certifies that it no longer provides substantial entrepreneurial efforts or the network achieves non-control certification. However, because the barriers to creating digital assets are extremely low (by some estimates 40,000 to 50,000 new and distinct digital assets

[7] The CLARITY Act was developed jointly by House FSC (the jurisdiction of which includes matters relating to the federal securities laws) and the House Committee on Agriculture ("**House Ag**") (whose jurisdiction includes matters relating to commodity derivatives regulation).

[8] There may be technical clarifications when the RFIA Draft is formally introduced as a bill that ensure that a secondary transaction involving an ancillary asset that otherwise triggers the securities laws, such as an exchange of an ancillary asset for a share of stock in a company, are not inadvertently excluded.

are launched per day[9]), the RFIA Draft excludes digital assets if the value raised is less than $5 million in the first 12 months and the aggregate average daily trading volume is $5 million or less during the prior 12 month period.

5. **New Offering Exemption**. Section 102 of the RFIA Draft establishes the framework for an exemption from registration to be adopted through regulations promulgated by the SEC for offers and sales of ancillary assets in investment contract assets not exceeding the greater of $75 million annually or 10% of the total dollar value of those ancillary assets that are outstanding ("**Regulation DA**"). Ancillary asset originators using this exemption must file a notice of reliance with the SEC not fewer than 30 days before the first offer is made and must comply with the RFIA Draft's disclosure requirements. The exemption includes bad actor disqualifications and, where the ancillary asset offered is reliant on a digital network that is subject to common control by related persons, the ancillary asset originator is required to take reasonable steps toward a non-control certification (discussed below) within four years.

6. **Treatment of "Related Persons"**. Section 103 of the RFIA Draft defines "related persons" using three categories with respect to an ancillary asset originator:

   - Current or recent promoters, employees, and advisors;
   - Founders, executives, and equity holders; and
   - 5% or greater beneficial owners of the ancillary asset who acquired from the ancillary asset originator.

   To address concerns about a workaround from the RFIA Draft's disclosure and other requirements where the ancillary asset relates to a digital network that is under common control by related persons, these related persons would be subject to minimum holding periods under rules promulgated by the SEC. These restrictions would limit resales by related persons:

   - *Prior to certification of no common control*, after a 12-month no-sale holding period, resales would be limited to 15% of the ancillary assets acquired by the related person from the ancillary asset originator in any 90-day period, so long as required disclosures have been made by the ancillary asset originator and the seller publicly reports the sale.
   - *Following certification of no common control*, the 12-month no-sale holding period would remain but resale limits would increase to 25% in any 90 day-period so long as required disclosures have been made and, if the seller holds 5% or more of the outstanding ancillary assets, the seller publicly reports the sale.

7. **Banking Provisions**. Section 301 of the RFIA Draft provides comprehensive authorization for digital asset activities across all bank types. The provision declares 13 enumerated activities as "financial in nature" under the Bank Holding Company Act, and otherwise authorized for national banks, insured state banks and their subsidiaries, and state member banks, including custody services, staking, lending facilitation, payment activities, node operation, and market making. Section 301(g) would significantly limit additional prior notice or approval requirements beyond existing banking laws.

8. **DeFi Treatment**. The RFIA Draft adopts a more cautious view of "decentralized finance" (or "**DeFi**") when compared with the CLARITY Act, addressing the concept through targeted protections rather than

[9] *See* BDC Research, "Memecoins 2024: Market, Trends and Opportunities" (May 2024), available at https://bdc.consulting/insights/MarketResearch/memecoins#:~:text=Market%20analysis-,Memecoin%20issuance,periods%20of%20intense%20viral%20hype.

comprehensive carve-outs. Section 402 of the RFIA Draft exempts non-controlling blockchain developers from state money transmission laws when they cannot prevent transfers or access user assets. Section 403 of the RFIA Draft protects self-custody rights.

The Senate's Vision: A Deeper Understanding of the RFIA Draft

The RFIA Draft represents a notably different legislative approach when compared with the CLARITY Act. Rather than developing a complex new framework for activity involving digital assets and then grafting that into the existing federal securities and commodities laws, Senate Banking chose to work primarily within existing regulatory frameworks while providing targeted accommodations to provide for legal certainty for market participants and space for digital asset innovation. Of course, many of the CLARITY Act's most significant changes to market structure come through oversight over digital commodity activity granted to the CFTC – something outside of the remit of Senate Banking and accordingly not covered in the RFIA Draft. Nevertheless, the framework in RFIA Draft created through the more strategic amendments to existing laws plots a more evolutionary, rather than revolutionary, path toward comprehensive digital asset regulation.

The Ancillary Asset (R)evolution: Title I's Adaptive Framework

Title I forms the legislative centerpiece of the RFIA Draft, and it establishes the fundamental architecture for digital asset activity that implicates the securities laws through the proposed new Section 4B of the Securities Act of 1933, as amended (the "**Securities Act**").[10] With some similarities to the similarly numbered section to be added to the Securities Act by the CLARITY Act, the RFIA Draft's Section 4B recognizes that ancillary assets (including digital commodities) sold pursuant to investment contract transactions need not be securities themselves unless the asset provides the owner with certain rights. At the same time, by mandating that the SEC adopt Regulation DA, Senate Banking acknowledges that certain fundraising distributions of ancillary assets often involve investment contract transactions and therefore would trigger federal securities jurisdiction, requiring SEC registration or an available exemption.

<u>The Ancillary Asset Framework: Rooted in Securities Law Jurisprudence</u>

The definitional framework of Section 4B centers on the concept of "ancillary assets" – intangible, commercially-fungible assets (including digital commodities) offered through investment contracts.[11] This definition derives directly from over 70 years of judicial interpretation of the definition of an "investment contract" as set forth by the Supreme Court in *S.E.C.* v*. W.J. Howey Co*.[12] The vast majority of these cases involves the purported sale of an underlying non-financial asset which functions as the object of the scheme.[13] These cases highlight a critical distinction between the documents, marketing materials or oral statements that create the required "common enterprise" at the center of a *Howey* analysis and the "object" being sold pursuant to the purported investment scheme. Adhering to this

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[10] *See* RFIA Draft, Sec. 101 (adding Section 4B to the Securities Act).

[11] *See id.*, Sec. 101 (adding Section 4B(a)(1)(A) to the Securities Act).

[12] 328 U.S. 293 (1946) ("***Howey***"). Because Congress chose not to define the term "investment contract" in either the Securities Act or the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), it was left to the courts to define the parameters of this term.

[13] *See, e.g.*, *Kemmerer* v. *Weaver*, 445 F.2d 76 (7th Cir. 1971) (sales of beavers coupled with service agreements to house, feed, and otherwise care for the beavers were investment contracts); *Albanese* v*. Florida Nat. Bank of Orlando*, 823 F.2d 408 (11th Cir. 1987) (in a scheme to sell nonexistent ice machines, the court found that the right of the investors to enforce a preference as to the location of the ice machines leased back to the lessee was insufficient to disqualify the agreements as "securities"); and *Bailey* v. *J.W.K. Props., Inc*., 904 F.2d 918 (4th Cir. 1990) (a cattle breeding program comprised of a purchase agreement and management contract was found to be an investment contract where the investor had limited control over the program and relied on the efforts of the defendants for essential functions such as the expert selection of embryos and crossbreeding). For a more in-depth discussion of this concept, *see* Cohen, L. *et al*., "The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are Not Securities", available at https://static.cahill.com/docs/Ineluctable-Modality.pdf.

jurisprudence, the term “ancillary assets” encompasses only those non-security assets that are the object of the investment scheme that constitutes a security.

Critically, the RFIA Draft would establish “disqualifying financial rights” that prevent an asset from qualifying as an ancillary asset.[14] Assets providing debt or equity interests, liquidation rights, or interest/dividend/payment entitlements cannot be ancillary assets, since these remain traditional securities. The fourth disqualifying category grants the SEC rulemaking authority to exclude assets providing “any other express or implied financial interest,” creating flexibility to address evolving crypto-economic systems in which an ancillary asset could be deemed to represent an “implied” financial interest in a person while maintaining investor protection. This provision could capture profit-sharing arrangements, revenue participation rights, or other economic interests that functionally resemble traditional securities.

The RFIA Draft provides crucial clarification as to ancillary assets whose value derives primarily from “system-based utility on a digital network” or “broader adoption and use of such a system”.[15] Such ancillary assets would not be considered implied financial interests, although the precise parameters of the criteria applicable to such exempted ancillary assets are subject to further guidance. This safe harbor would ensure that ‘genuine’ system-based utility tokens are not inadvertently captured by the SEC’s rulemaking authority, protecting legitimate blockchain innovation while preventing circumvention through nominal utility features.

<u>Treatment of Ancillary Assets</u>

The RFIA Draft would establish the fundamental principle that ancillary assets are not securities and secondary transactions in them are not securities transactions under federal securities laws.[16] This comprehensive exclusion provides legal certainty for secondary market development while maintaining the crucial caveat that initial distributions of ancillary assets, including crypto assets, may still involve securities transactions.

The state law preemption prevents a patchwork of conflicting state regulations while preserving states’ ability to regulate ancillary assets as commodities. States cannot impose requirements on ancillary assets that differ from their commodity regulations in ways inconsistent with federal law, thereby ensuring uniform treatment while respecting federalism.

Originators may submit self-certifications that their assets lack disqualifying financial rights, with automatic effectiveness after 60 days unless the SEC rebuts based on “clear and convincing evidence” following a formal hearing and Commission vote.[17] This high evidentiary standard and procedural protection reflects the significant consequences of securities classification.

<u>Ancillary Asset Originators</u>

The “ancillary asset originator” definition employs a three-part framework designed to identify parties with actual control over ancillary asset distribution,[18] with the primary definition capturing persons initially offering or controlling the distribution of an ancillary asset sold within the first 12 months of an investment scheme. The joint liability provision ensures that if the initial distributor received less than the majority of distributed assets, the entity receiving the largest amount becomes a co-originator for disclosure purposes, preventing circumvention through intermediary

[14] *See id.*, Sec. 101 (adding Section 4B(a)(1)(B) to the Securities Act).

[15] See *id.*, Sec. 104 (financial interests of ancillary assets).

[16] *See id.*, Sec. 101 (adding Section 4B(b) to the Securities Act).

[17] *See id*., Sec. 101 (adding Section 4B(b)(2) to the Securities Act).

[18] *See id*., Sec. 101 (adding Section 4B(a)(2) to the Securities Act).

structures. An exclusion of "foreign originators" follows the concept of "foreign private issuers" that may fall outside of U.S. securities law jurisdiction (and thus should be familiar to securities law practitioners).

Transitional Provisions

Section 4B(c) addresses existing ancillary asset originators through transitional rules. Under Section 4B(c)(3)(A), ancillary asset originators (other than a foreign originator) that began operations before enactment must comply with periodic disclosure requirements within one year after the end of their fiscal year in which enactment occurs, but only if they "otherwise meet the requirements of paragraph (1)"—meaning they do not fall within the *de minimis* thresholds under Section 4B(c)(1) (*i.e.*, raised less than $5 million and have average daily trading volume below $5 million).

Airdrops and Other Gratuitous Distributions: Facilitating Network Effects

The legislation defines "gratuitous distributions" as distributions "in exchange for not more than a nominal value" made in a "broad, equitable, and non-discretionary manner."[19] These distributions would be excluded from securities law coverage, enabling airdrops and similar mechanisms that may contribute to a blockchain network's decentralization. This provision would allow projects to distribute tokens widely for network effects without triggering securities registration obligations, provided distributions are genuinely gratuitous rather than disguised sales.

The Disclosure Regime

The disclosure framework proposed by the RFIA Draft would require ancillary asset originators (other than foreign originators) that exceed the designated *de minimis* thresholds to comply with periodic disclosure requirements.[20] Where an ancillary asset originator did not raise at least $5 million through the security offering (over a 12-month period following the date of the first offer, sale, or distribution) and the related ancillary asset does not have average daily trading volumes of at least $5 million in all spot markets open to the public in the United States (which would include most permissionless decentralized exchanges) during the 12-month period immediately preceding the reporting date to the SEC, reporting is not required. This exclusion sensibly recognizes that disclosure burdens should be proportional to market impact and reporting should not be imposed unless there is a meaningful public interest. Foreign originators remain exempt from both the general rule and the transition provisions, avoiding extraterritorial overreach.

The interplay between the provisions scoping certain ancillary assets into the RFIA Draft's framework and the draft's disclosure requirements, taken together, create a coherent framework: ancillary assets avoid securities classification in secondary markets while originators provide transparency during the development phase when the entrepreneurial efforts of the originator matter most. This balance enables liquid secondary markets while maintaining investor protection during the crucial period where ancillary asset owners are relying on the efforts of the originator to drive value appreciation.

The disclosure regime mandates semi-annual reporting calibrated to impact on markets, covering corporate information, economic characteristics, distribution data, and material proceedings. These requirements continue until the digital network achieves non-control certification, creating powerful incentives for genuine decentralization. The forward-looking statement safe harbor recognizes the inherent uncertainty in emerging technology development, protecting good-faith projections about network evolution.

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[19] *See id.*, Sec. 101 (adding Section 4B(a)(4) and 4B(b)(3) to the Securities Act).

[20] *See id.*, Sec. 101 (adding Section 4B(c)(1) to the Securities Act).

Regulation DA: A Gateway to Compliant Capital Formation

Regulation DA, established under Section 102 of the RFIA Draft, provides meaningful capital formation opportunities through exemptions for not more than the greater of $75 million annually (for four years) or 10 percent of the total U.S. dollar value of the outstanding ancillary asset units.

The exemption comes with notable conditions beyond disclosure requirements. Originators cannot be development stage companies without specific business plans, investment companies (though holding ancillary assets doesn't trigger this prohibition), issuers of fractional commodity interests, or bad actors subject to SEC orders or disqualifications.[21] The RFIA Draft does not exclude non-U.S. entities from utilizing the exception (although in that case the ancillary asset originator would need to comply with the RFIA's disclosure obligations). The notice of reliance must be filed 30 days before any offers, containing the originator's name, authorized attestation of compliance, whitepaper location, and contact information.

Most significantly, if the ancillary asset relies on a digital network under common control by related persons, the originator must take "reasonable steps" to achieve non-control certification within four years of the first exempt sale.[22] The determination of "common control" follows a sophisticated framework established in Section 103(b), which directs the SEC to consider five cornerstone factors: the ability to unilaterally alter, restrict, or direct network operation or governance; the distribution of voting power among participants in the network; the presence of open-source code and permissionless access; the degree of economic or technical influence any person may exercise; and other relevant factors for assessing control and independence. The SEC may establish safe harbors showing when networks are not under common control, providing certainty for legitimate decentralized structures.

The control-certification framework creates a structured pathway toward decentralization, as projects can raise capital while subject to common control but are undertaking to eliminate that layer of control within a defined timeframe. Crucially, failure to obtain certification does not invalidate good faith reliance on the exemption, preventing retroactive securities violations, though disposition restrictions under Section 103 continue to apply throughout.[23]

The liability framework provides both protections and accountability. Disclosures are deemed "prospectuses" only for Section 12(a)(2) purposes (material misstatements/omissions) and only purchasers in Regulation DA transactions have standing to sue.[24] Documents are not registration statements, avoiding Section 11's strict liability regime. Forward-looking statements receive safe harbor protection when properly identified with cautionary language or absent actual knowledge of falsity. Furthermore, state registration requirements are preempted, ensuring uniform national treatment.

Related Persons and Disposition Restrictions

The RFIA Draft's "related person" definition encompasses three categories: current or recent (within 180 days) promoters, employees, consultants, advisors, or vendors; founders, executives, directors, and equity holders (regardless of timing); and 5% or greater beneficial owners who acquired from the originator.[25] This broad definition captures parties with meaningful involvement or economic interest in the project.

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[21] *See id.*, Sec. 102(c)(3).

[22] *See id.*, Sec. 102(c)(2)(B) (requiring reasonable steps to achieve non-control certification within four years).

[23] *See id.*, Sec. 102(c)(2)(B)(ii) (providing that failure to obtain certification does not invalidate good faith reliance on exemption)

[24] *See id.*, Sec. 102(d)(2)(B).

[25] *See id.*, Sec. 103(a) (defining "related person" to include promoters, employees, consultants, advisors, vendors, founders, executives, directors, equity holders, and 5% beneficial owners).

Disposition restrictions vary based on network certification status (with respect to common control).[26] Prior to this certification, related persons must: hold assets for 12 months, limit sales to 15% per 90-day period in any calendar year, maintain required disclosures, and report all sales within five business days. After certification has occurred, the holding period remains but the sales limit increases to 25% per 90 days in any calendar year, with only 5% or greater holders required to report. These ongoing restrictions recognize that network non-control certification addresses governance decentralization, not necessarily the cessation of all originator development efforts.

The certification process itself involves the originator submitting a written self-certification that the digital network is not under common control by related persons, using the framework established in Section 103(b) discussed above. The certification becomes effective 90 days after submission (or sooner if the SEC approves), creating a presumption of non-control status. The SEC may require third-party verification, and the interplay with the Section 4B(d)(3)(B) certification for cessation of entrepreneurial efforts remains to be clarified through rulemaking.

Additional provisions address decades of regulatory uncertainty around the scope of the term "investment contract", requiring the SEC to adopt clear criteria within two years. The rule must specify that investment contracts require: (1) an investment of money (more than *de minimis* cash or services), (2) in a business entity, (3) with express or implied promises of essential managerial efforts, (4) where investors reasonably expect profits based on the agreement and authorized statements, and (5) profits derive from post-sale entrepreneurial efforts essential to the enterprise's success. Notably, the rule would eliminate the "common enterprise" requirement introduced in *Howey*, which could dramatically simplify the legal analysis of investment contract status in the future.

The modernization directive requires comprehensive regulatory updates within 360 days, with the crucial requirement that digital asset regulations be "not more burdensome" than traditional equivalents. This prevents regulatory arbitrage while ensuring innovation is not stifled by inappropriate requirements borrowed from legacy frameworks.

Fortifying the Financial System: Title II's Security Architecture

Title II of the RFIA Draft addresses illicit finance through targeted provisions by requiring the Secretary of the Treasury, in consultation with the federal functional regulators, to establish a risk-focused examination and review process for financial institutions. Title II also creates a pilot program to enable regulated information sharing between government enforcement agencies and the private sector.[27] An additional provision requires the Secretary of the Treasury to issue guidance clarifying sanctions compliance responsibilities and the liability of an issuer of a payment stablecoin with respect to "downstream" transactions that take place after a stablecoin is first provided to a customer to an issuer.[28]

Breaking Down Barriers: Title III's Banking Liberation

Title III of the RFIA Draft enables comprehensive bank participation in digital asset markets, including coverage of financial holding companies, national banks, insured state banks and state member banks. Payment stablecoin activities authorization permits banks to issue reserve-backed stablecoins, provide custody and redemption services, and operate stablecoin payment infrastructure with adapted prudential standards.[29] Portfolio margining provisions enable cross-margining between digital assets regardless of SEC/CFTC classification, potentially reducing capital requirements by 40%.[30] Netting agreement clarifications explicitly recognize digital asset close-out netting, potentially

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[26] *See id*., Sec. 103(c) (establishing disposition restrictions for related persons).

[27] *See id*., Sec. 202 (establishing pilot information sharing program among the Department of Justice (including the Federal Bureau of Investigations and the Drug Enforcement Administration, FinCEN, and designated private sector entities).

[28] *See id*., Sec. 204 (establishing sanctions compliance framework for payment stablecoin issuers).

[29] *See id*., Sec. 301 (permitting depository institutions to conduct payment stablecoin activities).

[30] *See id*., Sec. 302 (mandating joint SEC-CFTC rules for portfolio margining of digital assets).

reducing capital requirements by 60-80% for prime brokerage services.[31] Combined, these provisions transform banks from observers to potential market leaders by removing regulatory uncertainty while maintaining safety standards.

The Innovation Imperative: Title IV's Regulatory Sandbox

Title IV of the RFIA Draft establishes the Micro-Innovation Sandbox enabling genuinely innovative firms to operate with regulatory relief for up to 36 months while serving 25,000 customers with $15 million in aggregate transactions.[32] The remaining provisions protect non-controlling developers from money transmission laws, guarantee self-custody rights, mandate international regulatory coordination, and explore automated compliance through blockchain transparency.[33]

A Comparative Summary of the Two Frameworks

The House and Senate approaches to market structure reflect divergent regulatory philosophies. The CLARITY Act adopts a relatively prescriptive approach that establishes entirely new types of regulated entities—digital commodity exchanges, digital commodity brokers, digital commodity dealers, and digital commodity custodians—each subject to detailed operational requirements and registration obligations. This approach aims for legal certainty but relies on highly complex definitions and technology-specific rules. While potentially helpful in the near term, this approach risks becoming inflexible (requiring further legislation to effect a change) and may not be well-suited to adapt to changing technology.

The RFIA Draft operates primarily within the existing federal securities law framework while providing targeted relief through exemptions and innovation programs. The RFIA Draft takes a technology-neutral approach to defined terms wherever possible, adding new provisions where needed to clarify the application of the securities laws to transactions involving digital assets. Following many years of *Howey* jurisprudence, the RFIA Draft acknowledges that ancillary assets may be offered and sold in securities transactions but provides calibrated exemptions based on transaction characteristics. As a result of this approach, the RFIA Draft may be more adaptable to future technological development and innovation.

We summarize below a high-level comparison of the different definitions and approaches adopted by each of the CLARITY Act and the RFIA Draft in various areas.

Aspect	**CLARITY Act**	**RFIA Draft**
New Definitions	**Digital Commodity**: A digital asset intrinsically linked to a blockchain system, with value derived from (or is reasonably expected to be derived from) blockchain use (for example, payment of transaction fees, consensus participation, governance).	**Ancillary Asset**: Intangible, commercially fungible assets (including digital commodities) offered, sold, or distributed in connection with the purchase and sale of a security through an investment contract; excludes assets providing debt/equity interests, liquidation rights, dividend entitlements, or other financial interests.

[31] *See id*., Sec. 303 (clarifying capital treatment for digital asset netting agreements).

[32] *See id*., Sec. 401 (establishing a Micro-Innovation Sandbox for innovative firms).

[33] *See id*., Secs. 402-405 (establishing non-controlling developer protections, self-custody rights, international cooperation mandate, and automated compliance study).

"Digital Commodity Issuer" versus "Ancillary Asset Originator"	**Digital Commodity Issuer**: Any person that issues or proposes to issue a digital commodity (or a right to a future issuance of a digital commodity).	**Ancillary Asset Originator**: Person initially offering/selling/distributing or controlling distribution of the ancillary assets within the initial 12 months; joint responsibility provisions, if needed.
Capital-raising activities	New exemption under the Securities Act (adding Sec. 4(a)(8)): $50 million annual limit, 4-year maturity intent, U.S. issuers only, cap of 10% (of total outstanding digital commodity units) per purchaser.	Regulation DA: Would create an exemption capped at the greater of $75 million annually (for up to 4 years) or 10% of the outstanding ancillary assets; notice filing 30 days before offer, available to all non-disqualified ancillary asset originators.
Disclosure Framework	Offering statement requires blockchain-specific disclosures (source code, transaction history, digital commodity economics) as well as issuer-related disclosures; post-maturity reporting on a semi-annual basis continues if material efforts ongoing.	Semi-annual periodic disclosures under new Securities Act Sec. 4B(d) tailored to originator size; *de minimis* exemptions for small originators; foreign originators exempt.
Certification Process	Issuer files "maturity" certification; 60-day SEC review (120-day extension); rebuttable presumption; administrative then judicial review.	Network "non-control" certification by ancillary asset originator (where a digital network is present); 90-day effectiveness period; five-factor common control test under Sec. 103(b); safe harbors discretionary.
Maturity / Common Control Framework	Base definition of "Mature Blockchain System": not controlled by any person or any group of persons under common control; complex additional 7-factor test, including that no person or group of persons controls 20% or more of the voting power of the blockchain system, and the digital commodity has a value that is substantially derived from the adoption / use / functioning of the blockchain system.	SEC rulemaking required; Five aspects of considerations: unilateral control, voting distribution, open-source/permissionless access, economic/technical influence, other factors to be determined by SEC.
Insider Categories	Two categories: "*Related Persons*" -- holders of 1% or more of the digital commodity acquired from the issuer; promoters, employees, advisors and similar persons in the past 6 months; and "*Affiliated Persons*" -- holders of 5% or more of the digital commodity acquired from the issuer; founders; executives, directors, trustees or general partners in the past 12 months.	Single category: *Related Persons*: (1) promoters, employees, advisors and similar persons in the past 6 months; (2) founders, executives, directors, general partners, equity holders; (3) holders of 5% or more of the ancillary assets (if acquired from the ancillary asset originator).

Restrictions on Disposition by Insiders	*Pre-maturity*: 12-month hold, annual limit of 5-20% of the digital commodity acquired from issuer, 30-50% lifetime cap of the digital commodity acquired from issuer; *Post-maturity*: None for related persons, modified for affiliated persons (minimum holding period of the earlier of 12 months or 3 months after maturity certification, annual limit of 5-10% of the digital commodity acquired from issuer).	12-month hold always required; *Pre-certification*: annual limit of 15% of ancillary assets held by the related person every 90 days; *Post-certification*: annual limit of 25% of ancillary assets held by the related person every 90 days; reporting requirements vary.
Banking/Custody	Prohibits balance sheet liability for custodied assets (overturning SEC Staff Accounting Bulletin No. 121); limits capital requirements to operational risk; accounting treatment only.	Authorization for payment stablecoin activities; portfolio margining across SEC/CFTC assets; netting agreement recognition.
Decentralized Finance (DeFi)	Explicit carve-outs for persons engaging in six categories of DeFi activities: compiling or relaying network transaction, node operation, providing user interfaces, protocol development, distributing messaging systems, developing self-custody tools.	Targeted protections: money transmission exemption for non-controlling developers; self-custody rights protection.
Application to Existing Digital Assets	Must meet digital commodity definition to be traded on digital commodity exchanges; insiders can sell tokens received before enactment if no ongoing material involvement by issuer and the blockchain is mature or disclosures are filed; systems created before enactment that already met the functional maturity requirements are deemed mature with 50% non-insider ownership; creates retroactive compliance obligations for qualifying digital assets.	Foreign originators exempt from transitional disclosures; domestic originators need to comply within 1 year or certify cessation of efforts.

Misunderstandings Concerning the RFIA Draft

As the discussion of the RFIA Draft has progressed since its release, some misunderstandings have emerged in the public dialogue which are worth addressing:

Misunderstanding #1: The RFIA will create a pathway for traditional securities to escape the SEC's authority.

As discussed above, the RFIA Draft is based directly on 70 years of *Howey* jurisprudence. expressly carves out from the term "ancillary asset" any asset that provides the owner of the asset with any of the following rights in a person: (i) a debt or equity interest in that person; (ii) liquidation rights with respect to that person; (iii) an entitlement to an interest, dividend, or other payment from that person; or (iv) any other express or implied financial interest in (including a limited partner interest or interest in intellectual property of), or provided by, that person, as provided by notice and comment rulemaking of the Commission. Any actual security, whether or not "tokenized" therefore would fall outside of the ancillary asset definition and would remain subject to the federal securities laws upon passage of the RFIA Draft.

Misunderstanding #2: The RFIA will jeopardize traditional financial institutions.

Financial institutions are subject to extensive supervision and prudential regulation. The RFIA Draft would not change that framework. What the RFIA Draft would do is to allow certain financial institutions to use a digital asset or blockchain system to perform, provide, or deliver any activity, function, product, or service that the financial holding company is otherwise authorized by law to perform, provide, or deliver. All such activity would still need to be performed within the existing regulatory framework.

Misunderstanding #3: The RFIA would deny holders and users of crypto assets the protection of SEC oversight.

Under the RFIA, all securities activity involving crypto assets would remain within the oversight of the SEC, including the SEC's broad antifraud authority under Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. Crypto assets that constitute securities are (and would remain) within the SEC's purview. Crypto assets that are not securities are not currently subject to any federal jurisdiction (other than CFTC's jurisdiction over fraud in spot markets of crypto assets that are commodities). Although the RFIA Draft does not address CFTC jurisdiction, it is expected that markets for spot exchanges of non-security crypto assets would come under the oversight of the CFTC under a companion portion of the final version of Congressional market structure legislation.

Conclusion

The House's passage of the CLARITY Act, alongside the Senate's development of the RFIA Draft, represents a watershed moment in U.S. digital asset regulation. Despite their different approaches—prescriptive certainty versus adaptive flexibility—these parallel efforts demonstrate bipartisan recognition that comprehensive legislation is both necessary and achievable.

The divergent frameworks should be viewed as complementary rather than conflicting. The CLARITY Act provides the bright-line rules that markets seek, while the RFIA Draft offers regulatory evolution within existing frameworks. Encouraging signs of potential convergence already exist, including the RFIA Draft's incorporation of "digital commodity" within the definition of "ancillary assets", and both proposals' support for banking participation and DeFi innovation.

Several implementation challenges require careful navigation. The SEC's extensive rulemaking obligations under the CLARITY Act (and the more limited rulemaking required by the RFIA Draft) demand development of nuanced frameworks for determining "maturity" or common control, disclosure requirements, and regulatory modernization within aggressive timelines.

Despite these challenges, both approaches create unprecedented opportunities for compliant digital asset development. For market participants, this legislative momentum offers an unprecedented opportunity to shape enduring regulatory frameworks. While the Senate's consideration timeline remains uncertain, this period enables thoughtful refinement of complex provisions and meaningful stakeholder engagement. The path forward likely involves elements from both approaches, creating a comprehensive framework that balances the certainty markets require with the flexibility innovation demands.

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The CahillNXT team continues to monitor developments in pending legislation and any other developments in the digital asset industry. 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 Jonathan Galea (counsel) at +44.20.7947.9315 or jgalea@cahill.com; or email publicationscommittee@cahill.com.