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Market Structure Legislation: Provisions Strengthening Law Enforcement

Senate Banking Committee's Clarity Act significantly bolsters and modernizes law enforcement's authority and capacity to target bad actors in the digital asset space – establishing clear obligations for digital asset companies, coordinated information-sharing mechanisms, and proactive protections that close regulatory gaps.

Enhanced BSA and AML Obligations for Intermediaries

- Section 201 clarifies that digital asset intermediaries must comply with Bank Secrecy Act and OFAC sanctions requirements.
- Section 202 requires Treasury to establish examination standards to assess financial institutions involved in digital asset sectors for AML/CFT compliance.
- Section 307(b) designates digital assets as monetary instruments under the BSA, ensuring financial institutions' BSA reporting includes digital asset transactions and strengthening law enforcement's ability to investigate, trace, and seize illicit digital asset flows.
- Section 307(d) authorizes Treasury to issue illicit finance guidance for financial institutions that engage with self-hosted wallets.

Information Sharing and Interagency Collaboration

- Section 203 creates a formal information-sharing channel between industry and law enforcement, improving the timeliness and quality of intelligence sharing on evolving digital asset fraud and money laundering schemes.
- Section 204 establishes a public-private working group to provide regular policy recommendations for strengthening tools to combat illicit finance, narcotics trafficking, and terrorist financing.
- Section 507 creates an interagency task force dedicated to combatting digital asset illicit activity across foreign jurisdictions, including by identifying high-risk jurisdictions and promoting U.S. AML/CFT standards globally.

Combatting Digital Asset Kiosk Fraud

- Section 205 squarely addresses digital asset kiosk-related fraud, including by requiring kiosk operators to register with Treasury, refund victims, impose transaction limits and holding periods on new customers, designate a compliance officer, and use blockchain analytics to detect and prevent fraud.

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Illicit Finance and Sanctions Requirements for Controlling Operators

- Section 301 directs SEC and Treasury to issue rules requiring persons controlling and operating a non-decentralized finance trading protocol to register with the SEC and comply with both securities intermediary registration requirements and BSA/AML/sanctions obligations.
- Section 302 requires Treasury to clarify sanctions obligations for U.S. owners and operators of distributed ledger application layers (‘front-ends’).

Special Measure for Money Laundering Concerns

- Section 303 authorizes Treasury to broadly prohibit or restrict certain fund transfers by U.S. financial institutions that involve foreign digital asset companies, jurisdictions, or transactions identified as posing significant money laundering concerns.

Temporary Holds on Suspicious Transactions

- Section 305 clarifies that digital asset service providers and stablecoin issuers may place a temporary hold on digital asset transactions they suspect involve illicit activity or at law enforcement’s request, without facing civil liability.

Cybersecurity Standards for DeFi

- Section 306 directs NIST to establish cybersecurity standards for DeFi developers based on expert input and creates a voluntary process for NIST to evaluate whether DeFi protocols comply with established standards.

Risk Management Obligations for Intermediaries

- Section 308 requires digital asset intermediaries conducting trading activity through DeFi protocols to implement risk management standards to address any AML, sanctions, fraud, market manipulation, and cybersecurity risks, subject to SEC and CFTC oversight.

Combating Fraud

- Section 801 directs the SEC and CFTC to require digital asset intermediaries to provide clear educational materials to the public regarding common risks and guidance on how to recognize fraudulent schemes and report suspected fraud.

Additional FinCEN Appropriations

- Section 903 provides FinCEN with an additional $150 million to implement AML/CFT regulations and increase its capacity to analyze and share financial intelligence in support of law enforcement investigations.