The Clarity Act: A Federal Framework for Investor Protection, Innovation, and National Security

The Clarity Act ("Clarity") significantly improves the status quo by replacing existing regulatory uncertainty, fragmentation, and gaps with a uniform, fit-for-purpose federal framework that protects investors and consumers, fosters innovation, and strengthens national security.

I. Clarity Protects Investors & Consumers

Strong SEC Oversight

- Clarifies SEC regulatory oversight over digital asset securities and newly defined "ancillary assets."[1]
- Confirms tokenized securities remain securities—merely placing an asset on the blockchain does not transform its regulatory treatment.
- Prohibits insider trading and prevents rug pulls or "dumping on retail" by imposing disclosure requirements, holding periods, and volume caps on sales by insiders.
- Establishes SEC & Treasury rulemaking to ensure persons controlling financial trading protocols are not able to avoid securities law or illicit-finance obligations simply by labeling themselves "decentralized."
- Prevents attempts to circumvent securities laws or Clarity by granting the SEC explicit anti-evasion authority.

Enhanced & Tailored Disclosures

- Ancillary asset issuers must comply with robust disclosure requirements tailored to provide consumers with the information most helpful to making informed decisions about purchasing any given digital asset.
    - Disclosures cover information about the issuer, risk factors, project insiders, how the ancillary asset and related blockchain function, governance and consensus mechanisms, token supply, and much more.

Clarity Closes Regulatory Gaps

- Grants the CFTC exclusive jurisdiction over the digital commodity spot market, closing a regulatory gap identified across Democratic and Republican administrations.[2]
- Ensures dedicated CFTC funding of $30 million per year for five years and grants the CFTC expedited hiring authority to support implementation and enforcement.

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[1] An ancillary asset is a digital asset that does not convey securities-like financial rights to holders, but whose value still depends on managerial efforts.

[2] *See* Fin. Stability Oversight Council, 2022 Annual Report at 9 ("To address the gaps in the regulatory framework, the Council recommends the passage of legislation providing for rulemaking authority for federal financial regulators over the spot market for crypto-assets that are not securities[.]"). *See* President's Working Group on Digital Asset Markets Working Group Report, *Strengthening American Leadership in Digital Financial Technology* at 6 ("Congress should enact legislation that grants the Commodity Futures Trading Commission clear authority to regulate spot markets in non-security digital assets.").

Uniform Customer Protection Rules for Intermediaries

- Under Clarity, digital commodity intermediaries would be subject to strict and uniform federal registration, disclosure, financial soundness, conflicts-of-interest, custody, segregation, recordkeeping, and cybersecurity requirements.
- Clarity imposes various conflicts-of-interest safeguards. It requires a CFTC rulemaking directing intermediaries to identify, mitigate, and resolve conflicts of interest, including those related to vertical integration; bars exchanges from proprietary trading on their own platforms; and imposes a statutory duty on all digital commodity intermediaries to establish internal policies to disclose, mitigate, and/or resolve any conflicts of interest.
- Ensures strong oversight and enforcement on day one by establishing a robust provisional registration regime for exchanges, brokers, and dealers.
- Affirms and preserves States' core anti-fraud and consumer protection authority
- Establishes clear bankruptcy protections for customers of insolvent intermediaries to help ensure customers receive faster and fuller recoveries.
- Requires a joint SEC-CFTC rulemaking for digital asset intermediaries to provide clear educational materials to the public on how to recognize and report fraud.

Cracks Down On Crypto ATM Fraud

- Requires crypto kiosk operators to register with Treasury, provide victim refunds, limit new-user transactions, use blockchain analytics to detect and prevent fraud, and hold certain new customers' transactions for 72 hours so customers can cancel and receive a full refund before digital assets make it to a fraudster.

II. Clarity Promotes Innovation, Jobs, & Economic Growth

Establishing Clear Rules for Entrepreneurs and Financial Institutions

- Clarity would direct the SEC to establish "Regulation Crypto," providing crypto entrepreneurs a lawful pathway to raise funds to build innovative products and services, subject to strict eligibility requirements, comprehensive disclosures, and a $200 million cap over four years.
- Clarity protects the ability of mainstream financial institutions to engage with modern financial infrastructure by clarifying that banks may engage in digital asset activities that are otherwise lawfully permissible and do not raise safety and soundness concerns.

Clear Rules for Developers & Digital Asset Businesses

- Currently, only 19% of blockchain developers are based in the U.S., and nearly 90% of crypto trading volume occurs on offshore exchanges.
- Clarity addresses these challenges by clarifying regulatory obligations for digital asset businesses and fostering consumer confidence through clear market integrity standards, investor protections, and rules of the road.

- Clarity also ensures the future of digital finance and the internet is built in the U.S. by clarifying that simply developing and publishing blockchain-based software without taking control of users' financial assets does not trigger FinCEN registration requirements designed for money transmitter businesses, codifying longstanding FinCEN guidance while preserving existing anti-money laundering statutes.

III. Clarity Combats Illicit Finance & Strengthens National Security

Clarity represents the strongest digital asset illicit-finance bill to date, including by:

- Confirming that Bank Secrecy Act and U.S. sanctions law obligations apply to all digital commodity intermediaries.
- Requiring digital commodity intermediaries to implement risk management programs analyzing and mitigating money laundering, sanctions evasion, fraud, and manipulation risks before engaging with a DeFi trading protocol.
- Empowering State & local law enforcement to combat illicit finance fraud by:
  - Authorizing federal grants to States and localities for investigating elder financial fraud, pig butchering, and other common financial fraud involving digital assets.
  - Expanding grant funding for state and local law enforcement to investigate, prosecute, and combat illicit digital asset activity, including by acquiring blockchain analytics tools.
  - Establishing a national training program dedicated to disrupting and prosecuting crypto-related crime.
  - Creating a Digital Asset Cyber Innovation Center dedicated to disrupting state actors attempting to use digital assets for sanctions evasion and other illicit purposes.
- Designating digital assets as monetary instruments under the BSA, ensuring that financial institutions' BSA reporting covers digital asset transactions and strengthening law enforcement's ability to investigate, trace, and seize illicit digital asset flows.
- Clarifying sanctions obligations for U.S. owners and operators of distributed ledger messaging systems (e.g., front-ends).
- Strengthening Treasury's "special measure" authority by clarifying that Treasury may prohibit or place conditions on fund transfers by U.S. financial institutions involving foreign jurisdictions, institutions, or transaction types that Treasury designates as a primary money laundering concern involving digital assets.
- Authorizing an additional $150 million for FinCEN to implement AML/CFT regulations and increase its capacity to analyze and share financial intelligence in support of law enforcement investigations.
- Law enforcement advocacy groups, including the National Fraternal Order of Police, Major Cities Chiefs Association, and National Organization of Black Law Enforcement Executives, have endorsed the Clarity Act.