Senate Banking Committee
Digital Asset Market Structure Request for Information

Chairman Tim Scott, Senator Cynthia Lummis, Senator Bill Hagerty, and Senator Bernie Moreno

U.S. Senate Banking Committee Chairman Tim Scott (R-SC) and his colleagues, Senators Cynthia Lummis (R-WY), Bill Hagerty (R-TN), and Bernie Moreno (R-OH) today released a discussion draft of digital asset market structure legislation covering issues under the Banking Committee's jurisdiction. This discussion draft builds on the strong foundation for digital asset legislation established by the *CLARITY Act.* This draft is aimed at strengthening concepts established in the *CLARITY Act* and expanding on those ideas to further encourage innovation and regulatory clarity for digital assets.

Along with this discussion draft, Chairman Scott and his colleagues announced that they are soliciting feedback and legislative solutions on the discussion draft and market structure legislation writ large (the "Request for Information" or "RFI"). Responses to the RFI will help inform market structure legislation and ensure that the legislation effectively builds on the solid base established by the *CLARITY Act* to encourage innovation in the United States without risking financial stability or harming consumers.

Chairman Scott and his colleagues request responses to the RFI, including feedback on the discussion draft, by **August 5, 2025**.

RFI responses should be specific, including, where appropriate, legislative text with accompanying explanation and justification, and address the following topics:

Regulatory Clarity and Tailoring

1. The proposed legislation aims to provide clarity on how to allocate jurisdiction over digital assets between the CFTC and the SEC. Does the legislation strike the right balance?
   a. Should legislation rely on the concept of ancillary assets? If so, is the definition in proposed Section 4B(a) of the Securities Act appropriate? Does it exclude the right categories of assets?

      The concept of ancillary assets can be made to work, provided that adequate exclusions are made for digital assets that aren't commodities, securities, stable coins, insurance or loans. i.e. "Utility Tokens"

      The definition in the securities act is appropriate if additional supplementary definitions are made of items to be excluded. i.e. "Utility Tokens"

      As written, the legislation does not exclude the right categories of assets. (Please reference Meadowlark Manufacturing LLC addendum "B" held by Senator Daines office.)

   b. Should legislation rely on existing concepts, such as from SEC v. W.J. Howey Co. (Howey), when defining which digital assets are securities?

      Legislation of digital assets should not rely on SEC v W.J. Howey Co. (Howey) for classification, due to their significantly different behavior from conventional financial instruments. Specifically, digital assets can have hybrid characteristics that cannot adequately be defined or regulated as analogous to conventional asset classes but merely with digital execution.

The Howey test relies on four key parts.

#1. The investment of money.

#2. Into a common enterprise

#3. With the expectation of profit

#4. Solely from the effort of others.

Digital assets generally cannot pass parts #1, #2, and #4. There is a way forward on #3, if congress is willing to place the emphasis differently. Due to how block chain and distributed ledgers work, it is not possible to know the customer and their intentions during many, if not most, transactions. Number three of the Howey test burdens digital asset originators with knowing the unknowable. It is impossible to decipher whether the purchaser has a profit seeking motive, or a reasonable expectation of profit, as the technology does not allow this. The securities acts of 1933 and 1934 were intended by congress to protect the public from being defrauded. We argue, to achieve this goal the emphasis should be placed on those "who" can do harm, not on those being harmed. Furthermore, "how" this harm is done should be given particular attention. This harm is done through deception of the victim to the true risks associated with the asset or financial instrument. This deception is created by how the originator promotes their asset or financial instrument. Therefore, congress should emphasize the directly promoted intent of the originator. The originator cannot control if a purchaser chooses to use their digital asset for something other than what it was intended. i.e. A speculative investment in a stable coin, despite the foolishness of doing so. However, the originator can control how they advertise their digital asset to the public, which engenders certain expectations and motives within the public. Furthermore, emphasis on "directly promoted" intent places scrutiny on public facing statements from the originator and allows the regulatory agencies to use their resources more effectively and decisively. i.e. An issuer claiming their token is as safe as a stable coin, but as profitable as a meme coin, would be subject to unregistered security classification by the SEC due to misleading statements.

Regarding "Utility Tokens" we have proposed:

Sec 2,
(6) UTILITY TOKEN – *The term "Utility Token" -*

(A.) means a digital asset used within a system directly promoted by such digital asset's originator, as a means of accessing, funding or redeeming, products, services, points, loyalty rewards, or discounts.

c. Should legislation mandate, as under proposed discussion draft Section 105, that the SEC undertake a rulemaking to clarify the definition of "investment contract" as articulated in Howey? If so, how?

d. Should Congress revisit other terms within the existing definition of security, such as note, to accommodate digital assets and to prevent a later SEC from inappropriately construing these terms?

Congress should revisit other terms, such as note, to protect digital assets from SEC construing terms.

Similar to concerns referenced previously under section b., digital assets can have hybrid characteristics and traditional definitions do not adequately classify them.

The Reves Test regarding the term "note" looks at four parts:

#1. The motivations of the reasonable seller and buyer

#2. The plan of distribution of the instrument

#3. The reasonable expectations of the investing public

#4. Whether any risk-reducing considerations, such as the existence of another regulatory scheme, significantly reduce the risk of the instrument.

None of these four classifications can be applied to digital assets. Due to the blockchain and distributed ledger technology it is not possible for a seller to know the motivations (#1) and, expectations (#3) of the public. The plan of distribution (#2), cannot guarantee that only accredited investors make purchases, as the technology does not allow this information to be foreknown. Digital assets do not have a clearly defined regulatory scheme (#4), thus opening them to regulatory purview of every Federal Agency that desires to insert itself.

To gain protection, all legislation regarding any type of digital asset has required terminology stating that it is not to be considered a security. Our own recommendations for utility tokens is no different.

(B.) Treatment of Utility Tokens and Transactions.—

(1) "IN GENERAL.—Notwithstanding any other provision of law, a utility token shall not be considered, including but not limited to, a security, an ancillary asset, a commodity, a stable coin, insurance, deposit, debt, derivative, spot contract or fund, and transactions in a utility token shall not be considered transactions in these financial instruments.

e. Should legislation provide for a specific token taxonomy based on the underlying characteristics of an asset? If so, what approach? How could such a taxonomy remain merit and technology neutral?

We do not advocate for token taxonomy to be legislated for "Utility Tokens". Utility tokens are diverse in application, with some vendors preferring to use them as stand ins for gift cards, others use them as coupons, and some use them for charitable causes. This diverse nature means that they need a great degree of flexibility, and legislated taxonomy may overly confine them to excessively narrow use cases. Additionally, as the digital asset space develops it will prove beneficial to have left enough room for accommodating added features.

f. Should legislation clarify the status of certain technology functions that are inherent to the operation of a distributed ledger network? This could include technology functions such as running consensus algorithms, executing smart contracts, or engaging in activities like staking and mining.

g. Should existing tokens be grandfathered into a new token classification framework created by Congress? If so, how?

h. How should Congress address alleged violations of sections 5 or 12 of the Securities Act of 1933 arising from offers or sales of digital assets that occurred before the effective date of this Act? Should relief be provided through a conditional safe harbor or retroactive exemption, and if so, what compliance or disqualification criteria, if any, should apply?

2. The proposed legislation modernizes securities regulations for digital asset activities (i.e., proposed Section 109 of the discussion draft) while preserving the SEC's exemptive authority (i.e., proposed Section 106 of the discussion draft). Should the legislation provide more specific relief in any particular area, such as Regulation Crowdfunding, Regulation A, Regulation D, Rule 144, or frameworks for simple agreements for future tokens (SAFTs), or any other topic referenced in proposed discussion draft Section 109(a)(1) through (a)(5)?

We believe that the legislation should provide more specific relief for Crowdfunding, as Crowdfunding does not inherently create speculative intent on the part of the donor. We restate our solution here, while highlighting the pertinent language.

Sec 2,

(6) UTILITY TOKEN – *The term "Utility Token" -*

(A.) means a digital asset used within a system directly promoted by such digital asset's originator, as a means of accessing, funding or redeeming, products, services, points, loyalty rewards, or discounts.

The word "funding" is inclusive of "charitable giving", "donations based and rewards based crowd funding", "recharging of gift cards", etc…

Equity based crowdfunding requires directly promoting to purchasers that they will receive ownership in the company or an equity stake. Such, *directly promoted*, intentions are no longer within the scope of *a means of accessing, funding or redeeming, products, services, points, loyalty rewards, or discounts*. This opens the originator to The SEC classifying them as an unregistered security.

Debt based crowdfunding would be allowed under the utility token designation, but if the originator doesn't make a good faith effort to uphold their promises to pay back the debt, they will be subject to enforcement from the Consumer Financial Protection Bureau as per Sec. 2, (6), (B), (3) of our proposed legislation.

3. Should legislation consider a mechanism that allows market participants to seek a final determination from the SEC regarding whether a digital asset is a security? If so, how?
4. Should legislation allow market participants the freedom to choose between being subject to SEC jurisdiction or CFTC jurisdiction? If so, how?

Investor Protection

5. What type of information should issuers be required to disclose in connection with digital asset offerings?
   a. To what extent is the information specified in proposed Section 4B of the Securities Act overinclusive or underinclusive of what information should be disclosed?
   b. What type of ongoing information, such as that under proposed Section 4B, should legislation mandate?

We do not believe that the standard reporting requirements for a security, ancillary asset, commodity, stable coin, insurance, deposit, derivative, spot contract or fund, should apply to "Utility Tokens". Our argument is that Utility tokens gain their utility from being traded on the exchanges, which provide options to consumers for recharging their points, dispensing with carrying multiple gift cards that expire, or keeping track of coupons. Blockchain and distributed ledger technology make these features more secure and increase online transactions by reducing friction. They are truly digital assets. They are not a security, ancillary asset, commodity, stable coin, insurance, deposit, debt, derivative, spot contract, or fund. Therefore, they do not necessitate the reporting requirements contemplated for those assets. Instead they are a similar to prepaid access or crowdfunding sites who have different but established requirements. Our proposal, Sec. 2, (6), (2), (B), (2), (B), would require all utility token originators, who are not already a financial institution, to register as a money service business. This also will put in place safeguards against money laundering. Furthermore, Sec. 2, (6), (B), (3) of our proposal outlines the authority of Consumer Financial Protection Bureau in regards to fraud.

c. How often should ongoing disclosure be required? For example, proposed Section 4B would require semi-annual disclosures.

d. When should ongoing disclosure obligations discontinue? For example, proposed Section 4B of the Securities Act sets forth a mechanism by which disclosure obligations could cease. Does that subsection set forth the appropriate test, or should another test or mechanism be considered?

e. How should the information required be tailored to the size and type of the issuer or offering?

f. Should legislation require a new form for digital asset offerings? If not, what updates should be made to existing forms that are used in connection with traditional securities offerings?

6. Proposed Section 4B(h) of the Securities Act would provide the SEC with authority to establish "limitations on the disposition of certain ancillary assets . . ." What, if any, restrictions on the disposition of ancillary assets by related persons or in affiliate transactions should Congress consider? To what extent are conflicts disclosures sufficient?

   a. Are the factors in proposed Section 103 for determining whether an ancillary asset "is not under common control by related persons" appropriate? If not, how should they be modified?

7. How should legislation clarify the role of the Securities Investor Protection Corporation (SIPC) in insolvency proceedings involving broker-dealers that custody both traditional securities and digital assets on behalf of customers?

   a. Should SIPC protection apply to digital assets held by broker-dealers? If so, how should it distinguish between digital asset securities and digital asset commodities?

   b. Should payment stablecoins receive treatment as a cash equivalent for SIPC purposes?

8. How should Congress amend the Bankruptcy Code to address the failure of digital asset intermediaries, and how should such amendments differ based on entity type?

   a. Should legislation add a new "digital asset broker" subchapter (similar to the Code's subchapter on commodity brokers)?

   b. For broker-dealers, should the Code harmonize with the Securities Investor Protection Act to ensure digital asset commodities held in custody are excluded from the bankruptcy estate?

9. How else should legislation address investor protection in insolvency proceedings?

10. Should legislation require digital asset custodians to publish monthly proof of reserves?

Trading Venues and Market Infrastructure

11. How should legislation address centralized intermediaries involved in the trading of digital assets?

    a. Should intermediaries be permitted to facilitate the trading of digital asset securities alongside digital asset commodities? If so, what changes, if any, should Congress consider to accomplish that goal?

    b. Should intermediaries be permitted to facilitate the trading of digital assets alongside traditional securities or commodities? If so, what changes, if any, should Congress consider to accomplish that goal?

    We believe that there must be some exclusionary mechanism to prevent non-accredited investors from purchasing traditional securities and commodities on centralized digital asset exchanges. However, if centralized digital asset exchanges do not wish to bother with such a mechanism they should be allowed to continue trading solely in digital assets. We do not believe that any trading of traditional securities and commodities should take place on decentralized exchanges as those trading in such assets will be able to sidestep the Bank Secrecy Act and the anti-money laundering and counter financing of terrorism provisions. Trading of Utility tokens on either type of digital asset exchange is not problematic as the originators will be required to register as a Money Service

Business with FinCen. Also, The Southern District of New York Federal Court has already ruled in SEC vs Ripple labs that trading on the exchanges does not make a digital asset a security.

c. Should legislation create a new pathway to register intermediaries involved in the trading of digital assets? If so, how?

d. What other activities involving digital assets, including digital asset securities and commodities, should intermediaries like broker-dealers, exchanges and alternative trading systems be permitted to engage in? What changes, if any, are required to accommodate those activities?

12. How should legislation address the role of broker-dealers in the context of digital assets and distributed ledger technology, including any complexities these innovations may pose?

13. How should legislation address the benefits and risks of vertical integration in digital asset markets?

14. How should legislation address market structure issues, including whether safeguards such as Regulation NMS, Regulation SCI, the Market Access Rule, or Rule 15c2-11 should apply to centralized digital asset intermediaries to enhance investor protection and market integrity?

Custody

15. What challenges do market participants face relating to the custody of digital assets, and how could legislation address those challenges?

a. Should Congress treat the custody of digital assets that are securities differently than digital assets that are not securities? If so, how?

b. Should Congress treat the custody of digital assets differently than the custody of traditional assets like stocks, bonds, mutual funds, currencies, commodities, and cash? If so, how?

c. What legislative changes, if any, are necessary to address the cold or hot storage of digital assets held in custody on behalf of a client?

d. What types of entities should be permitted to custody digital assets on behalf of clients?

e. What qualifications, regulatory standards, or oversight of custody should be required?

f. What reasonable exceptions to prohibitions on commingling are appropriate?

g. What, if any, changes should Congress consider to preserve the right to self-custody digital assets?

Illicit Finance

16. What laws, requirements, and practices relating to illicit finance and anti-money laundering do digital asset market participants already follow?

Currently all centralized digital asset exchanges and money service businesses made available to the U.S. market are required to perform Anti-Money Laundering and Know Your Customer Checks. However, decentralized digital asset exchanges do not have these requirements.

a. To what extent are distributed ledger technology and digital assets useful in promoting compliance with anti-money laundering and sanctions laws?

b. What existing supervisory frameworks at the international, federal or state levels address the potential illicit finance risks of digital assets?

17. How should legislation address illicit finance and anti-money laundering issues as they relate to digital assets?

a. What additional authorities, if any, should Congress provide the Financial Crimes Enforcement Network (FinCEN) and Office of Foreign Assets Control (OFAC) to effectively prevent illicit activities relating to digital assets without restricting responsible innovation?

We envision that once Congress has passed digital asset requirements, stable coins, ancillary assets and utility tokens will cover most digital asset types. Our legislation requires utility token originators to register as money service businesses with FinCEN. If originators want their token traded on decentralized digital asset exchanges they will need to find ways to perform know your customer checks, and fulfill the requirements of the Bank Secrecy Act. Every entrance to the centralized and decentralized exchanges should perform this gate-keeping function, and this works against those seeking to exploit the system. Also, international exchanges that seek access to the U.S. market should be required to meet these requirements. Please reference the following suggested legislation. Sec. 2., (6), B, (2), (B) in regards to utility tokens registering as MSB's with FinCEN.

b. Do digital asset mixers and tumblers warrant special legislative, regulatory or supervisory attention? What are potential ways to combat illicit activities using these technologies while safeguarding privacy rights and free speech?

c. Which digital asset market participants should be considered financial institutions pursuant to the Bank Secrecy Act?

d. To what extent should the President's authority under International Emergency Economic Powers Act apply to digital assets?

e. How could legislation promote the use of digital assets and distributed ledger technology to improve regulatory compliance, either within the digital asset ecosystem or more broadly, including by facilitating compliance with the Bank Secrecy Act and Know Your Customer requirements?

f. What challenges currently exist in identifying, tracking, and addressing instances of pig butchering?

g. What can the U.S. government do with its existing tools and authorities to more aggressively combat pig butchering?

h. What new tools and authorities would help the U.S. government combat pig butchering?

Banking

18. Title III of the discussion draft currently contemplates amending the federal banking statutes to explicitly authorize banks to engage in digital asset-related activities such as custody, payments, and lending. Is this clarity necessary and, if so, should any additional activities be included in the definition of permissible banking activities? Is any additional clarity needed that is not in Title III?

19. Must state-chartered depository institutions, which are regulated in a substantially similar manner to insured depository institutions, obtain state-by-state licenses if their activities are limited to payments and custody, and they are prohibited from lending or other credit intermediary activities?

20. What, if any, legislative action should be taken to enable traditional financial institutions, such as community banks, to compete in an era of financial technology without harming the safety and soundness of such institutions? Are there certain supervision reforms that need to be made by the federal financial regulators to encourage innovation at traditional financial institutions?

Provision should be made to allow community banks to act as the payment gateways to the digital asset marketplace. Specifically, there are those with religious objections to bio metric identification and also implantable near field transponders. Banks are able to perform in person KYC checks during account formation. This obviates the need for bio metric identification and is superior at verify liveness/wellness of the account holder. It would be ideal for banks to be able to perform ACH transfers from their account holders toward the purchase of digital assets. We particularly believe that this should be reserved for utility tokens. Accordingly, we offer the following changes in Sec. 2, (6), (2), (A)

(A) Notwithstanding any other provision of law, no Biometric verification, Implantable Near Field Transponders, or similar are required of utility token purchasers, when transactions are originated from U.S. registered financial institutions, where in person verification of the account holder takes place.

21. Should financial institutions be permitted to rehypothecate digital assets? If so, what changes should be made and what restrictions should be put in place?

Innovation

22. How should legislation address digital assets that are issued outside of the United States but traded and purchased by United States consumers?
23. In a speech on May 12, 2025, SEC Chairman Paul Atkins mentioned the concept of a "super app" that "offers trading in securities and non-securities and other financial services all under a single roof." Is this a sound public policy concept? If so, what, if any, changes should Congress consider to encourage such interoperability amongst different financial services?
24. What, if any, legal or regulatory barriers to the tokenization of securities or investment funds, including money market funds, exist today?
    a. If barriers exist, what changes or clarifications should Congress consider to reduce such barriers?
    b. What, if any, changes should Congress consider to facilitate retail access to tokenized money market funds?
25. How should legislation address interest or yield-bearing digital assets, including stablecoins?
    a. Should interest or yield-bearing stablecoins be regulated like money market funds? If so, what, if any, changes should Congress consider to facilitate adoption of such products?

We would like to allow early adopters of our utility token to be able to stake their tokens on decentralized exchanges and earn interest, as way to provide liquidity as we build our network. It would be harmful to our business if utility tokens were allowed to exist in name, but not in practice. Being that utility tokens are digital assets, we find no fault with the wording of …..

Sec. 301. Permissibility of Digital Asset Activities

We may not engage in every activity listed under section 301, but the ones pertinent to our operation are listed therein. We are satisfied as written, provided that we will truly be included.

    b. Should legislation limit or prohibit the ability of digital asset intermediaries to offer rewards on digital assets, including stablecoins? If so, how?
26. What action should market structure legislation take with respect to decentralized finance?
    a. How should an exemption for decentralized finance be structured?
    b. What changes, if any, should Congress make to prior legislative attempts to structure an exemption for decentralized finance?
27. What, if any, action should market structure legislation take with respect to non-fungible tokens?
28. What, if any, action should market structure legislation take with respect to the tokenization of real-world assets?

29. What, if any, action should market structure legislation take with respect to decentralized physical infrastructure networks?

30. Should Congress mandate that the SEC consider whether an action would promote "innovation" when conducting rulemakings, as under Section 107 of the discussion draft?

    Most likely yes, as they have been legally obligated to view their purview as large as possible and interpret the securities laws as narrowly as possible.

31. Should Congress create an office at the SEC to be responsible for promoting innovation or designate an existing office as encompassing such duties? No, because government intrusion into this space will distort the market.

    a. Should Congress direct the SEC to dedicate staff or designate an office specifically tasked with guiding innovators across the agency, including by providing timely regulatory answers and assisting with exemptive or no-action relief requests?

32. Should legislation encourage interoperability or the development of interoperability across different layer-1 blockchain networks? If so, how?

33. Would a sandbox for distributed ledger technology or other digital assets, including as under proposed Section 401and Section 404, be useful? No, because it will be vulnerable to manipulation/lobbying and likely to exclude smaller less well connected businesses from entry. Also, it will not accept or foster any innovation that the enforcement agencies cannot claim as having originated with them.

    a. If so, how should such a sandbox(s) be structured?

    b. Should Congress structure a sandbox to address challenges firms face when engaging in activities in multiple countries or jurisdictions?

    c. Should Congress structure a sandbox to address issues relating to tokenizing securities?

    d. Should Congress create an interstate innovation sandbox that would enable innovative firms to engage in interstate activities without additional licensing or registration?

    e. Should such sandboxes be run jointly with the CFTC or other financial regulatory agencies?

34. What, if anything, should Congress consider to encourage better cooperation between the SEC and CFTC regarding digital asset regulation? Should Congress consider a self-regulatory organization, or something similar, with participation by the SEC and CFTC?

Preemption

35. Should federal legislation preempt certain state laws, and if so, how?

    Federal legislation should preempt certain state laws regarding treatment of utility tokens and what they are or are not. Federal legislation should preempt state laws regarding treatment of biometrics and implantable near field transponders. Federal legislation should preempt state laws regarding treatment of utility token transaction size. Please see the following proposed legislation. Sec. 2, (6), (B)

    (B.) Treatment of Utility Tokens and Transactions.—

    (1) "IN GENERAL.—Notwithstanding any other provision of law, a utility token shall not be considered, including but not limited to, a security, an ancillary asset, a commodity, a stable coin, insurance, deposit, debt, derivative, spot contract or fund, and transactions in a utility token shall not be considered transactions in these financial instruments.

    (2) Anti-money laundering and Counter Financing of Terrorism —

(A) Notwithstanding any other provision of law, no Biometric verification, Implantable Near Field Transponders, or similar are required of utility token purchasers, when transactions are originated from U.S. registered financial institutions, where in person verification of the account holder takes place.

(B) Notwithstanding any other provision of law, all utility token originators, not registered as a financial institution, must register as a money service business.

(C) Notwithstanding any other provision of law, no size limits shall apply to non-cash utility token transactions.