

MEADOWLARK MANUFACTURING, LLC

ADDENDUM “B”

Proposed Legislation:

As written, The Market Structure Bill would prevent a subset of digital assets mentioned in Addendum “A”, filed with Senator Daines office, the “Utility Token”, from being able to function properly. It also would prevent issuers from engaging in the very activities necessary to protect consumers. Please note the following proposed additions to the Market Structure Bill, listed in blue.

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.

(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.

(3) Regulatory Oversight — Consumer Financial Protection Bureau regulation of utility tokens, and utility token originators, is limited to two scenarios

(A) Originators making statements of promise, assurance, or guarantee, and not acting in good faith to fulfill those statements.

(B) Originators devaluing tokens to intentionally defraud purchasers.

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(7) UTILITY TOKEN ORIGINATOR –

“(A) IN GENERAL.—the term ‘utility token originator’ means, with respect to a utility token, a person that (whether directly or through 1 or more subsidiary or controlled entities)—

“(i) initially offers, sells, or distributes the utility token; or

“(ii) during the 12-month period beginning on the date on which the utility token is initially offered, sold, or distributed, controls or causes the offer, sale, or distribution of that utility token.

“(B) JOINT AND SEVERAL CONSIDERATION.—For the purposes of this paragraph, if the person that initially offered, sold, or distributed a utility token (or otherwise controlled the initial offer, sale, or distribution of the utility token) did not receive the largest amount of the utility token distributed in the 12-month period following the commencement of that offer, sale, or distribution, then the entity that received the largest amount of those utility tokens in that period shall be jointly and severally considered to be a utility token originator with respect to that utility token (with the person that controlled such offer, sale, or distribution).

Resolution of Conflict:

“Utility tokens” can be effectively regulated, provided four conditions are met:

#1. The effort to determine utility token classification shifts the focus to the issuer and away from the purchaser.

#2. Utility token classification is determined by the *directly promoted intent* of the issuer.

#3. Utility token classification shows no preference for decentralized vs centralized governance structure. (GSA, Governance Structure Agnostic)

#4. Utility tokens are viewed as rewards based crowdfunding, and/or Convertible Virtual Currency, and with regulatory purview limited to the Consumer Financial Protection Bureau and FinCen, respectively.

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Support for Method of Resolution

The issuer of utility tokens is the one who can harm the purchaser and therefore scrutiny is best placed on those capable of doing harm. Typically this harm comes from an issuer building an “*expectation of profit*” within the purchaser. This building of expectation is accomplished by the issuer directly promoting their token as speculative in nature. Indirect promotion is too vague, and can be attributed to almost any document a company produces. Direct promotion is the point of influence within the control of the issuer. This is where scrutiny should be placed. This is where it becomes readily apparent whether an issuer is attempting to build within the purchaser a “*reasonable expectation of profit*” or whether an issuer is offering something else. The discrepancy between an issuer calling their token a “Utility Token” and promoting their token as a “Security”, “Ancillary Asset” or some other financial instrument is where the lie can be found. By focusing on “*directly promoted intent*” it no longer becomes possible for a scammer to hide, by simply labeling their token a “Utility Token”. This should be the equivalent of the “Howey Test,” but specifically for “Utility Token” classification. Support for this interpretation has already been made in Addendum “A”, Problems in the Marketplace, as filed with Senator Daines’ Office. It must be stated that purchaser intent can irrationally diverge from *directly promoted intent* of utility token issuers. This should not prejudice regulatory agencies against the issuer for something beyond their control. This language can be found in our proposed Sec. 2., (6), (A)

Having covered who does harm, and how they do it, it is necessary to deal with the third point: governance structure. Let it be stated that blockchain technology has no inherent requirement to possess a decentralized governance structure. Never has this been the case, as the two are not intrinsically linked. Blockchain technology typically uses a decentralized ledger system, but in no way does this demand the issuer not exert centralized governance. Addendum “C”, Unintended Applications, #8, filed with Senator Daines’ Office, expresses many of the benefits experienced when utility token issuers centrally control their token. This central control is also known as central governance. Utility tokens should not be ruled a “Security”, “Digital Commodity”, “Ancillary Asset” or “Stable Coin”, due to having central governance. Saying that utility tokens are not allowed to have central governance is effectively the same as saying, “Utility tokens are legally allowed to exist, but any efforts to make them functionally workable is illegal.” Without central control, consumers will suffer financial loss from token volatility, and the issuer will struggle to know and manage their redemption liability. The old standards of interpretation, meant for consumer protection, actively harm the consumer when applied to digital assets, namely, the protection of the consumer/purchaser from financial loss. If such protection is the goal, then utility tokens need to be allowed central governance. In order to allow central governance, utility tokens need to have explicit language excluding them from certain asset classes. This is referenced in our proposed Sec. 2., (6), (B), (1), — definition.

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One of our concerns has been whether additional language is needed to address "Utility Token" primary and secondary transactions. Such language has appeared in this bill for "ancillary assets", as a means of directing the regulatory agencies in their treatment of those assets at all stages of usage, i.e., an "Ancillary Asset" should not be treated as a non-security during initial purchase, but then lose that status when sold a second time. By making explicit statements about what a "Utility Token" should not be considered, language regarding primary and secondary transactions on the exchanges becomes unnecessary. Also, this should obviate the need for adding language to this bill to amend Securities Act 1933, Securities and Exchange Act 1934, Investment Company Act of 1940, Investment Advisors Act 1940, Securities Investor Protection Act 1970, or any other Act. Such language is included in Sec. 2, (B), (1)

Existing regulation for both open- and closed-loop prepaid access is promulgated from The Financial Crimes Enforcement Network (FinCen). Within our definition Sec. 2. (6), (A), we use the broader term "access" to cover both open- and closed-loop possibilities. FinCen requires “Administrators” of Convertible Virtual Currency to register as a Money Service Businesses (MSB). Therefore, utility token issuers will need to register as MSB’s, and fall under the purview of FinCen. FinCen has already made publicly available the pertinent guidance and final rules documents at the following link:

<https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>

Utility token issuers registering as MSB’s are required to meet Anti-Money Laundering (AML) requirements and perform Know Your Customer (KYC) checks. Regarding KYC checks, it is envisioned that utility token issuers would be benefited if they could rely on local banks for some services. There are many U.S. citizens who have religious objections to biometric verification. A solution can be found in local banks. Local banks develop personal relationships with customers and perform in-person KYC checks, upon account formation. These checks have proven superior when it comes to liveliness/wellness verification. Our proposed changes to the Market Structures Bill Section 2. (6.), (B), (2.), (A) would at least meet the bare minimum requirement, to prevent these customers being completely excluded from digital assets.

Differentiating a true utility token, from one that merely claims to be, can be accomplished by verifying that the promoted goods or services are available, for which the token can be “used”, within the time frame that is promised. Hence, the language in Sec. 2., (6), (A). Not having goods or services, for which the token can be used, within the time frame directly promoted, would open the originator to review by the Consumer Financial Protection Bureau for failing to deliver products or services. This is spoken to in Sec. 2, (6), (B), (3).