August 5, 2025

United States Senate Committee on Banking, Housing, & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510
Via Electronic Submission to: MarketStructure_RFI@banking.senate.gov

Re: Response to the Senate Banking Committee Digital Asset Market Structure Request for Information

Dear Chairman Tim Scott, Senator Lummis, Senator Hagerty, and Senator Moreno -

On behalf of the Wall Street Blockchain Alliance ("WSBA"), we respectfully submit this comment letter in response to the Senate Banking Committee's ("Committee") Digital Asset Market Structure Request for Information ("RFI") provided to the public on July 22, 2025, alongside the market structure discussion draft[1] retitled the "Responsible Financial Innovation Act of 2025" (the "Discussion Draft") of the Digital Asset Market Clarity Act of 2025 (the "CLARITY Act" or "CLARITY")[2].

The WSBA is an industry-leading, New York–based nonprofit trade association, whose mission is to promote the responsible adoption of blockchain technology and digital assets in compliance with applicable laws and regulations. Our diverse membership includes banks, broker-dealers, investment firms, law and accounting firms, and compliance professionals, many of whom contribute through dedicated working groups focused on advancing regulatory clarity.

While this letter reflects the input of select WSBA members in their individual capacities, it does not necessarily represent the views of their respective organizations. In the interests of time and concise contributions, we have responded to those questions most pertinent to the interests and expertise of our members, reflecting the collective insight of a broad cross-section of industry participants.

We appreciate the Committee's leadership and foresight in issuing this far-reaching RFI, as the conversation progresses from the focused work of the GENIUS Act on stablecoins to the broader market structure questions raised by the CLARITY Act and the Discussion Draft. We support the development of a balanced, forward-looking framework for digital asset markets and tokenized securities issuance, and we welcome continued collaboration as legislative efforts and subsequent rulemakings by the SEC and CFTC move forward.

[1] https://www.banking.senate.gov/imo/media/doc/senate_banking_committee_digital_asset_market_structure_legislation_discussion_draft.pdf
[2] https://www.congress.gov/bill/119th-congress/house-bill/3633/text

Finally, no response to the RFI and the Discussion Draft would be complete without acknowledging several recent and significant developments shaping the regulatory landscape. These include SEC Chairman Paul S. Atkins' speech, "American Leadership in the Digital Finance Revolution"[3]. delivered at the America First Policy Institute on July 31, 2025; the release of the Digital Assets Report by the President's Working Group on Digital Asset Markets[4], published pursuant to Executive Order No. 14178, Strengthening American Leadership in Digital Financial Technology; and the launch of a listed spot crypto trading initiative by CFTC Acting Chairman Caroline Pham, announced as part of the Commission's ongoing "Crypto Sprint".[5]

With the above context in mind, we offer the following responses to select questions posed in the RFI and the Discussion Draft, reflecting the views and expertise of WSBA members across the digital asset and financial services landscape.

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?

The WSBA commends the efforts of the Senate Banking Committee for how they allocated jurisdiction between the CFTC and SEC in their discussion draft. Establishing a clear approach to jurisdiction of digital asset offerings that are not considered securities is one of the highest priorities of any market structure reform. Using the framework of 'ancillary assets' provides clear rules of the road that innovators can follow when trying to register with the federal government.

As noted in previous comment letters, the WSBA strongly believes that the CFTC should be the primary regulator of spot crypto transactions. For digital asset securities, jurisdiction should continue to flow to the SEC. For those assets that are neither securities nor digital commodities but possess elements of an investment contract, there needs to be clear guidance from Congress as to which regulator should take the lead in regulating those digital assets. By introducing the concept of 'ancillary assets', the discussion draft strikes the appropriate 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?

[3] https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125
[4] https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf
[5] https://www.cftc.gov/PressRoom/PressReleases/9104-25

The WSBA believes that the formulation in the discussion draft focusing on the concept of ancillary assets is superior to previous legislative approaches that have attempted to provide a clear pathway for digital assets that are not securities but feature elements of an investment contract. The discussion draft does this by making clear that these ancillary assets are not securities since they do not grant the holder rights typically associated with securities.

These rights include giving the owner of a digital asset (i) a debt or equity interest, (ii) liquidation rights, (iii) an entitlement to an interest, dividend, or other payment, or (iv) any other express or implied financial interest in—such as a limited partner interest or an interest in intellectual property of—or provided by that person, as determined by notice-and-comment rulemaking of the SEC.

Congress should make clear that "other form of payment" in Section 4B(1)(B)(iii) does not include a staking reward or other type of payment that a holder would receive by utilizing the digital asset in a mature blockchain system. Yield-bearing digital assets would likely continue to be regulated as securities in this framework due to the presence of the yield payment, similar to a bond.

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

One of the most important goals of any legislative effort to establish a digital asset market structure should be to account for existing business models and avoid unnecessary disruption. Many innovators in the digital asset sector have developed their operations with the understanding that the framework established by SEC v. W.J. Howey Co., 328 U.S. 293 (1946) ("Howey"[6])—and the extensive body of case law that has developed around it—remains the prevailing legal standard. Any modification to the Howey test should therefore be undertaken with great care to avoid imposing undue burdens on current market participants.

While the Howey test has served as a longstanding foundation for evaluating investment contracts, its application to decentralized digital assets can create uncertainty for innovators and market participants. Without legislative clarification—particularly in the context of where there is no centralized authority—Howey may be interpreted in ways that inadvertently, and with unintended consequences, subject decentralized projects to securities regulation.

To preserve regulatory consistency while maintaining strong investor protections, Congress should consider clarifying how the test applies in decentralized contexts,

[6] https://supreme.justia.com/cases/federal/us/328/293/

particularly where ongoing development or governance does not resemble traditional managerial control. Such clarification would help ensure that digital assets used primarily for functional purposes are assessed appropriately under existing legal frameworks.

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?

In keeping with the comments above, the WSBA believes it would be appropriate for the SEC to clarify the definition of an investment contract in relation to a digital asset offering. What is unclear is the exact process that Congress and the SEC should take to accomplish this laudable goal. Legislation has the ability to provide the clarity that the industry desires, but short of that, an SEC rulemaking could fill the gap.

The WSBA believes that the Howey test must be clarified with regard to the approach to decentralization and how this applies to the "efforts of others" element of the Howey test. We do not take a position as to whether that is best addressed in the legislative text itself or with an agency rulemaking. A major benefit of the legislative approach is that it lessens the possibility that a future SEC, under a different administration, could withdraw or modify the rulemaking that takes place.

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?

To the fullest extent possible, Congress should clarify definitions of financial terms that directly affect the digital asset ecosystem. The WSBA does not take a position on what these specific clarifications to existing definitions should be but wants to make clear its desire to avoid disruption to existing market participants. A guiding principle of the market structure reform should be to do no harm to existing business models to the fullest extent possible. Changing longstanding definitions has the possibility of creating new and unforeseen compliance burdens for existing market participants.

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?

A specific token taxonomy based on the underlying characteristics of an asset has the potential to provide greater clarity to the digital asset industry. Yet this effort can be fraught in an area of emerging technology due to its potential to stifle innovation. Taxonomies can become stale over time, and they can constrain innovators by forcing them to fit new and innovative product designs into the structure of an existing

classification. To avoid this, Congress should structure any such taxonomy to be adaptable and regularly reviewed. The WSBA applauds Congress's efforts to develop such a taxonomy but urges a thoughtful approach based on the underlying characteristics of the asset (such as decentralization, control, and related features). By focusing on these elements of a particular digital asset, the taxonomy remains merit- and technology-neutral.

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.

The WSBA supports protections for critical technology functions that are inherent to the operation of distributed ledger networks such as staking, mining and software development. For these functions, Congress should continue to rightly focus on the element of control, exempting functions such as a staking, where the holder continues to maintain ultimate control of the digital asset. There should also be sufficient protections for miners, who play a critical role in securing a decentralized blockchain system but never obtain control over that system.

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

The overarching goal of any market structure effort should be to provide clarity to the industry and certainty for existing stakeholders and business models. Many of these organizations have engaged in years of attempting to comply with the existing rules and regulations as they existed at the time (and in many cases did not exist). There should be recognition of these efforts and a desire to bring existing tokens under the federal regulatory perimeter, once it is established.

This goal can be accomplished in many ways, and the WSBA is not committed to one particular approach to grandfathering, but it urges Congress to keep the ultimate goal in mind. There should be a path that allows all existing projects that aim to be compliant under a regulatory framework to do so with minimal disruption to the market. Clearly defining the elements of a digital asset and how these characteristics directly relate to its classification and ultimate regulatory authority will be of paramount importance in any legislative effort.

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?

The WSBA endorses the concept of a conditional safe harbor or retroactive exemption that will allow market participants to come into compliance with the market structure regulatory regime once it is adopted and implemented. Codifying existing business models, in each case, to the extent reasonable (i.e., excluding business models involving fraudulent or other criminal activity), and avoiding unnecessary disruption in the market should be the guiding principle of any approach to grandfathering and exemptive relief. Disqualification criteria should be narrowly tailored to focus on bad actors and criminals and avoid a situation where it disqualifies innovators who were earnestly trying to comply with the law as it existed at the time. The WSBA does not take a view as to the best way for innovators to demonstrate or prove having taken earnest efforts taken to comply. The WSBA also acknowledges that the very process of grandfathering and granting exemptive relief could cause disruption to certain business models and approaches predicated on prior U.S. federal regulatory approaches under earlier Presidential administrations. Nevertheless, on balance, the WSBA believes that exploring and providing exemptive relief and grandfathering is an important goal for the growth and stability of the U.S. digital asset industry generally.

4. Should legislation allow market participants the freedom to choose between being subject to SEC jurisdiction or CFTC jurisdiction? If so, how?

Innovators are typically in the best position to understand the true nature of the platforms they are building and the products they are designing. Providing these innovators with the ability to operate under a clearly defined regulatory framework that is tailored to the type of digital asset they are launching should be a key objective of market structure legislation.

The Discussion Draft, Section 4B, strikes an appropriate balance by allowing companies to self-certify with the regulator of their choice between the CFTC or the SEC. The selected regulator then has 60 days to accept or reject the certification, which would trigger a commission vote on the status of the asset.

As review criteria are developed for the self-certification process, there should be clearly defined attributes that support the selection of the respective agency. Either agency must have the ability to reject self-certifications and refer the asset to the appropriate agency. Any rejection should follow established procedures, which should include required commission votes.

5. What type of information should issuers be required to disclose in connection with digital asset offerings?

The principle guiding the type of information that issuers are required to disclose in connection with a digital asset offering should be based on the underlying nature of the instrument being offered. If the offering involves a digital asset security, the mandated disclosures should be those typically associated with securities offerings.

Under proposed Section 4B (Ancillary Assets) of the discussion draft, ancillary digital asset offerings would have their own disclosure regime that is tailored to digital assets and is intended to be less burdensome than a securities disclosure. The legislation puts proper emphasis on disclosures relating to token concentration and sales to any related person, promoter, control person, or employee of the issuer.

For the remaining tokens that qualify as stablecoins, commodities, or collectibles, disclosure regimes should follow existing precedent to the fullest extent possible. The goal should be to tailor disclosure frameworks to digital asset regimes where appropriate but avoid creating new compliance burdens for entities relying on existing regulatory frameworks. Stablecoin issuers would have to follow the path outlined in the GENIUS Act, digital commodities would face disclosure obligations similar to other commodities, and collectibles would continue to have little to no mandated disclosures associated with their issuance.

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? 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?

Proposed Section 102(b) of the draft legislation would exempt certain transactions involving "ancillary assets" from Securities Act registration requirements, provided the offer or sale remains below specific thresholds—namely, $75 million in annual gross proceeds or 10% of the total outstanding value of the ancillary assets. Section 102(c) adds a key condition: if the ancillary asset depends on a digital network that is subject to "common control" by related persons, the originator must take reasonable steps to ensure the network becomes certified as no longer under such control within four years of the initial exempt sale.

Section 103(b) directs the SEC to define what constitutes "common control by related persons," listing several non-exclusive factors. These include: (A) the ability of a person or group to unilaterally alter or direct the operation or governance of the digital network;

(B) the distribution of governance or voting power among network participants; (C) whether the network is open-source and permissionless; (D) the degree of economic or technical influence any person or group may exercise; and (E) any other factor the Commission deems relevant.

While these factors reflect a thoughtful attempt to adapt traditional control concepts to the decentralized and technical realities of blockchain networks, refinements are needed to improve clarity, objectivity, and administrative feasibility.

For Factor A—unilateral control—the rules should distinguish between "hard" control (e.g., direct access to the codebase or key management) and "soft" control (e.g., influence without formal authority). The definition should also clarify that unilateral control includes mechanisms like upgradeable smart contracts, multisig key structures, and treasury control.

For Factor B—the distribution of governance power—centralization risks often arise not from formal voting rights but from governance token concentration due to voter apathy, delegation to centralized actors, or use of proxy protocols. The SEC should consider mitigants that address these risks, such as caps on delegated voting power and quorum thresholds. Broader indicators of decentralization should also be evaluated, including the number and distribution of nodes and validators, token ownership dispersion, and reliance on centralized infrastructure providers like cloud services. In addition, methods intended to effect more distributed governance in the case of token concentration, such as founding teams potentially holding significant percentages of outstanding tokens, should be considered. These may include such significant holders intentionally "mirror voting" with the relevant governance community or abstaining from voting — in each case, either entirely or beyond a certain percentage threshold

For Factor C—open-source code and permissionless access—the SEC should clarify how "permissionless" is measured. This may include whether anyone can operate a node, whether read/write access is unrestricted, and whether governance processes are community-driven or dominated by a small group.

For Factor D—economic or technical influence—should capture both financial and infrastructure-based control. The SEC should distinguish between economic interests (such as token holdings and treasury control) and technical leverage (such as control over oracles, bridges, hosting environments, or other critical services). Control over essential infrastructure—front-end interfaces, APIs, indexers, and fiat on-/off-ramps—should also be explicitly considered.

In addition, the catch-all factor (Factor E) is appropriate for flexibility but should be limited by procedural safeguards to prevent overreach. Any additional factors invoked under this

provision should be consistent with the statute's decentralization objectives and articulated through rulemaking or published guidance to ensure transparency.

Finally, while the SEC's evaluation of decentralization should not be confined solely to the time of the offer or sale, any post-launch assessment should be limited to factors that bear directly on investor reliance and the degree of ongoing control or influence exercised by the original sponsor or project team. Continued involvement—such as publishing roadmaps, funding independent development, or making public statements—should only be relevant where such activities create a reasonable expectation among purchasers that the value of the asset depends on the managerial efforts of a central entity. This more tailored approach aligns with judicial reasoning in cases such as SEC v. Ripple Labs Inc. and SEC v. Terraform Labs Pte. Ltd., where courts recognized that ongoing managerial efforts may support a finding under the Howey framework when they serve as the basis for purchaser expectations.

Trading Venues and Market Infrastructure

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?

The SEC December 2020 guidance should be withdrawn, broker dealers should be able to engage with digital securities in the same way that they are able to with normal securities, assuming appropriate compliance and risk management practices, with possibly some additional FINRA guidance on good control locations. In addition, FINRA should withdraw all new restrictions on digital asset broker dealers issued since 2018 and should create a "Digital Asset Securities" line of business in the same way that it supports the "Private Placements of Securities."

Illicit Finance

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

WSBA supports laws designed to protect the integrity of the United States financial system and effectively deter, identify, monitor, trace and prevent the use of the U.S. system to finance activities that violate law.

All U.S. Persons, including digital asset market participants, are required to comply with U.S. economic sanction programs. The Treasury Department's Office of Foreign Assets Control ("OFAC") confirmed in 2021 that "OFAC sanctions compliance obligations apply equally to transactions involving virtual currencies and those involving traditional fiat currencies."

The United States has an activities-based BSA[7] framework that includes digital asset market participants today. Any domestic or foreign market participant that provides services or engages in activities that would bring them within the broad definition of a "Financial Institution"[8] are subject to regulatory oversight and the BSA, which requires such participants to have written BSA/AML compliance programs (internal controls, independent testing, designated BSA officer, and training), as well as a written Customer Identification Program ("CIP"), Customer Due Diligence ("CDD") program, recordkeeping and reporting requirements (which include CTRs, FBARs, SARs, and CMIRs). Since 2013, FinCEN, OFAC, the SEC and the CFTC have each issued regulatory guidance and clarified application of the existing regulatory framework to those service providers in the digital assets market and FinCEN has published definitions and issued guidance specific to "virtual currencies," "convertible virtual currencies," and mixing services, including confirmation of activities that fall within and without the definition of Money-Service Businesses ("MSBs").

The term "Financial Institutions" for purposes of the BSA now also includes "permitted payment stablecoin issuers (PPSIs)" which under the GENIUS Act of 2025 are "to be treated" as "financial institutions" for purposes of BSA/AML compliance requirements. The GENIUS Act of 2025 requires that the Treasury Department to issue implementing regulations, including with respect to the AML/CFT and sanctions requirements of PPSIs. All permitted stablecoin issuers are further required to demonstrate an ability to seize, freeze and burn payment stablecoins if legally required to do so. P.L. 119-27, Section 4 (5).

Because the United States applies an activity-based approach, whether a protocol is centralized or decentralized is not material to whether the function of the service is comparable to a "financial institution."[9] FinCen issued guidance in 2013 and 2019 that clarified applying an activities-based approach, which can result in certain P2P exchanges and decentralized applications fall within the definition of an MSB.

Internationally, the Financial Action Task Force ("FATF") is an inter-governmental body that sets global standards for AML/CFT requirements. In 2019, updated in 2021, the FATF issued "Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers." The FATF has since issued its International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation in June 2025 and emphasized the underlying tenet that countries apply risk-based approaches to ensure

[7] 12 U.S.C. §§ 1829b, 1951-1959; 18 U.S.C. §§ 1956, 1957, 1960; 31 U.S.C. §§ 5311-5314, 5316-5332; 31 C.F.R. Ch. X.

[8] "Financial Institution" as defined in the BSA includes: Bank (see 31 C.F.R. 1010.100(d)); Broker or dealer in securities (see 31 C.F.R. 1010.100(h)); Money Service Businesses (see 31 C.F.R. 1010.100(ff)); Telegraph companies; Casinos (see 31 C.F.R. 1010.100(5)(i-iii)); Card Club (see 31 C.F.R. 1010.100(6)(i-ii)); Any person subject to supervision by any state for Federal bank supervisory authority; Futures commission merchants; Introducing broker in commodities; and Mutual funds. 31 C.F.R. 1010.100.

[9] Treasury, 2023, Illicit Finance Risk Assessment of Decentralized Finance; https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf.

that "measures to prevent or mitigate money laundering and terrorist financing are proportionate to the risks identified." Additional international governance bodies include entities such as the Egmont Group of Financial Intelligence Units, Asia/Pacific Group on Money Laundering, and the Caribbean Financial Action Task Force.

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

The transparency and immutability of blockchain technologies results in a visibility into transaction history and patterns that can be, and successfully has been, leveraged by law enforcement in effective ways to combat illicit finance.[10] Blockchain technologies, which include distributed ledger technologies upon which digital assets are created and operate, have numerous advantages that can be leveraged by law enforcement and operational benefits that permit effective BSA/AML programs to be developed and designed. Blockchain-based technologies have a permanent, immutable public record that permits the traceability of all transactions. Leveraging the immutable public record of transactions, blockchain data can be used by institutions to enhance transaction monitoring, KYC requirements in both onboarding and monitoring on-chain customer transactions for fraud and risk, monitoring for illicit activity, ongoing screening against relevant lists of blocked wallet addresses (see, e.g., OFAC Virtual Currency Guidance).

The benefits of blockchain technology for compliance and oversight include the volume of information available on the public blockchain; tracing capabilities being developed through blockchain analytics and intelligence firms, which include tracing and surveillance capabilities and tools being designed for use with respect to Anonymity-Enhanced Cryptocurrencies (AECs).

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

Pursuant to the BSA and its implementing regulations, digital asset market participants today are overseen by the U.S. financial and prudential regulators—FinCEN, OCC, FDIC, Federal Reserve, which all have supervisory and enforcement authority—and the U.S. securities regulators (SEC, FINRA, CFTC). In addition, the Treasury Department, through OFAC, also oversees and has enforcement authority over OFAC sanctions requirements. The Department of

[10] "The native properties of public blockchains – data that is transparent, traceable, public, permanent, private and programmable – can enable financial integrity professionals, law enforcement, regulators, supervisors and other government agency officials to more readily identify risk and more effectively and efficiently detect and investigate financial crime." Testimony of Ari Redbord, Global Head of Policy TRM Labs, HFSC 2/15,24.

Justice (DOJ) separately has criminal enforcement authority for all violations of the BSA and economic sanctions laws that rise to the level of criminal prosecution.

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

Require and allow for cross-jurisdictional coordination. The Department of Treasury's 2025 National Money Laundering Risk Assessment identified that inconsistencies in international AML/CFT standards are the primary gap in law enforcement reach and authority., not the lack of domestic or international laws applicable to the industry.[11]

Protect Privacy. The nature of public blockchain technology and the need to protect fundamental privacy rights of individuals engaged in lawful, peer-to-peer (P2P) transactions and individual activities, such as self-custody, must be considered in determining the necessary levels of controls, reporting and records requirements required to combat illicit finance. To the extent that certain digital assets can be self-custodied or transferred without utilizing an intermediary, regulation of such individual transactions must care for the privacy considerations applicable to private, individualized, P2P transactions and the underlying DeFi protocols and technologies on which they are conducted. All transactions that occur on a public blockchain, whether intermediated or not, are transparent, immutable, permanent and traceable.

Carefully define "market participants."[12] The WSBA recommends a careful, data-informed understanding of impact before bringing broader CeFi, DeFi and other blockchain tools and service-providers beyond those acting as "financial institutions" into the regulatory perimeter.

Keep regulation proportionate with market risk. To date, digital asset markets have not been reported to be a primary vehicle for money laundering in the United States. In 2024, the Treasury Department reported that "the use of virtual assets for money laundering remains far below that of fiat currency," and focused its recommendations on improving compliance with existing frameworks, which includes the need for international coordination.[13] Chainalysis reported an overall decrease by cryptocurrency value in the use of illicit addresses from $39.6B in 2022 to $24.2B in 2023.[14] Similarly, TRM Labs

[11] U.S. Department of the Treasury, "2024 National Money Laundering Risk Assessment," (Feb. 2024), at 62.

[12] According to a report by TRM Labs, "Market Participants" as a term within the digital assets industry is broad could potentially include: (i) within Centralized Finance (CeFi): Centralized Digital Asset Exchanges, Custodians, OTC Trading Desks, Proprietary Traders, Investment Funds, Lenders, Digital Asset Issuers, Payment Processors, Crypto ATMs, Gaming and Gambling platforms that incorporate cryptography-based blockchain technology, Collectables, the Metaverse, and Mining; (ii) within Decentralized Finance (DeFi): Decentralized Exchanges, Lending Protocols, Derivatives, Asset Management Companies, Insurance and Decentralized Autonomous Organizations; and (iii) additionally, Blockchain Tools & Service Providers: Mixers and Tumblers, Cross-chain Bridges, Crypto Swaps, Key Management Service Providers. Compliance in the second age of digital assets - How crypto compliance programs are evolving, TRM

[13] 2024 National Money Laundering Risk Assessment (NMLRA) at 8; 58-65.

[14] 2024 Crypto Crime Trends: Illicit Activity Down as Scamming and Stolen Funds Fall, But Ransomware and Darknet Markets See Growth, Jan. 18, 2024, Chainalysis.

produced its 2025 Crypto Crime Report, indicating that despite a 56% increase in crypto transaction volume in 2024 (to over USD 10.6T), illicit volume appears to have dropped 24$ (to USD 45B), representing "0.4% of overall crypto volume" and indicating a "51% decrease from 2023."[15] And the reported decreases must be reviewed against the backdrop that in 2022 The Treasury Department reported that terrorist use of virtual assets had risen, but the vast majority of terrorist funds in the United States continued to move through banks and money transmitters or cash.[16]

Lastly, to date, the digital asset market has been actively regulated and subject to domestic and international oversight and enforcement actions under U.S. state and federal and international legal authorities under embedded concepts and legal definitions of criminal activities and money-laundering without the need to introduce a new or formal definition of the term "illicit finance." The goal of the CLARITY ACT is to introduce clarity to industry and the current proposed definition of "illicit finance" and "illicit use" as drafted is circular and could result in a risk of unnecessarily introducing a future lack of clarity into what is considered to be "illicit goods." (See Title II, Section 201, Discussion Draft).

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? As detailed above, FinCEN and OFAC have significant oversight and enforcement tools available today to oversee the industry.

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? Due to the unique and varied nature of mixing services that are used internationally, rule-making specific to these protocols and technologies is likely required. However, these capabilities today are already subject to the BSA, FinCEN oversight, OFAC sanctions, and can result in criminal prosecution under Title 18 of the U.S. Code if used to facilitate violations of the law.

c. Which digital asset market participants should be considered financial institutions pursuant to the Bank Secrecy Act? Those market participants that facilitate the same types of transactions and services as conducted and monitored by financial institutions today, such as centralized intermediaries and registered entities, to the extent their protocols and operations are capable of implementing the needed governance and reporting that would be required. Well-crafted exceptions may be required in those

[15] 2025 Crypto Crime Report, TRMLabs.com.
[16] 2022 National Terrorist Financing Risk Assessment, at 22.

circumstances where technologies operate autonomously and independent of the exertion of control by regulated financial institutions.

d. To what extent should the President's authority under the International Emergency Economic Powers Act apply to digital assets? At this time, the WSBA does not take a position on application of the IEEPA specific to digital asset markets and would recommend its reach apply to digital assets and related markets in a technologically-neutral way.

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? To the extent that regulations can readily permit agencies and law enforcement authorities to have access to current, aggregated data available to all market participants, such data aggregation and access would improve regulatory compliance and oversight.

f. What challenges currently exist in identifying, tracking, and addressing instances of pig butchering? The CFTC and the Treasury Department (FinCEN) have issued public educational campaigns to alert consumers and financial institutions about the growing prevalence of relationship/romance investment schemes that can involve digital assets. Existing regulations and enforcement authority have successfully been used by a variety of regulators and law enforcement agencies, along with members of the industry, to identify, track and prosecute pig-butchering cases both in the United States and abroad. Successful prosecutions in fact identify how the digital assets industry can be well-positioned to facilitate investigations and prosecutions of bad actors. See, e.g., U.S. v. 4,340,000 Tether (USDT), Case No. 1:25-CV-00386, N.D. Ohio (2025); U.S. v. Approximately 225,364,961 USDT, Case No. 25-cv-1907, D. D.C. (2025).

g. What can the U.S. government do with its existing tools and authorities to more aggressively combat pig butchering? To more effectively combat pig butchering scams using existing tools and authorities, the U.S. government should prioritize funding for both technological capabilities and investigative staffing, including at the state level where feasible. Given the global and decentralized nature of these schemes, it is also essential to ensure clear authority for cross-border cooperation, data aggregation, and timely joint investigations—both internationally and across U.S. jurisdictions.

h. What new tools and authorities would help the U.S. government combat pig butchering? See responses to (f), (g).

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?

One of the most important goals of the legislation should be to establish durable rules of the road that will outlast any single administration. The steps taken by the current OCC and other federal banking regulators have been laudable but can be reversed by subsequent administrations. Codifying these changes in law is the closest that Congress can come to making them permanent and will provide the long-term clarity that those in the banking sector need to innovate.

Legislative language should be principles-based and not overly prescriptive. It should rely on existing state and federal banking regimes, giving these regulators adequate flexibility to establish rules and regulations for banks seeking to engage in digital asset activities such as custody, payments and lending. Rather than be an exhaustive or overly prescriptive list of permitted activities, it should outline the important considerations banks and regulators must grapple with when engaging in banking activities involving digital assets. The legal permissibility of activities should be technology neutral; what financial institutions can do under existing legal frameworks they should be permitted to do utilizing blockchain technologies and distributed ledger technology.

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?

Legislation should provide a pathway for innovators solely focused on custody and payments to avoid the myriad of money-transmitter licensing ("MTL") regimes at the state level. Currently, companies may be required to obtain over 50 MTL licenses from U.S. states and territories to operate at a national scale and achieve an adequate level of regulatory compliance. This puts a tremendous burden on smaller companies and serves as a barrier to entry for many. A patchwork framework of state money transmission laws puts American companies at a disadvantage when dealing with foreign competitors that many times only need to comply with a single national standard in their country of domicile.

The national pathway that is contemplated would build on the principles of the GENIUS Act, which included an explicit role for state and federal banking regulators when it came

to overseeing issuers of dollar-denominated stablecoins. This framework provides a path for state registration under a certain threshold ($10 billion) and then requires registration with a national banking regulator such as the OCC (absent a waiver), once the company reaches a sufficient size. A similar approach for companies that are solely focused on custody and payments, or other niche components of the Industry similar to stablecoins, may be worth considering.

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?

Legislation that gives sufficient clarity would be beneficial to both small and big banks. Community banks may be some of the biggest beneficiaries of many of the reforms being contemplated, since the lack of clear rules has served as a major disincentive for these institutions to pursue investment into the design and implementation of. Community banks typically face resource constraints related to compliance and legal spending that can be disproportionate to their larger competitors. Dedicated pathways for smaller institutions to have the guidance required for in-house design and equally to be able to partner with third-party service providers to foster competition and inclusion of all institutions within the industry should be encouraged.

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?

Strict segregation of customer assets from firm capital should be a foundational principle for firms offering digital assets to retail and institutional customers. Some of the most notable failures in the industry's history (e.g. FTX) were caused by inadequate safeguarding of customer funds and improper commingling of assets. For this reason, rehypothecation of digital assets should only be allowed in very narrow and controlled circumstances with extensive safeguards in place to prevent misappropriation of customer funds.

Firms may have valid reasons to rehypothecate assets, such as yield-generation through staking. In order to safeguard this type of activity, there should be a requirement that a customer specifically contract for this type of service accompanied by adequate disclosures, so no customer unwittingly has his or her or its assets rehypothecated without having provided direct and informed consent. Another mitigant to the potential downsides of rehypothecation could be additional capital requirements for firms

engaging in rehypothecation, directly tied to the level of rehypothecation activities they are engaged in. Similar rules govern broker-dealers today who desire to rehypothecate the securities they hold on behalf of clients.

Innovation

22. How should legislation address digital assets that are issued outside of the United States but traded and purchased by United States consumers?

Legislation should provide an on-ramp for foreign digital asset providers into the United States, similar to the GENIUS Act. The GENIUS Act stipulates that the issuer has to be registered and there must be a comparable stablecoin regulatory regime in the issuer's country, alongside adequate U.S.-based reserves for U.S. customers. The same could roughly apply to digital assets as well.

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?

Chair Atkins further articulated this concept in his July 31 announcement of "Project Crypto." "A broker-dealer with an alternative trading system should be able to offer trading in non-security crypto assets alongside crypto asset securities, traditional securities, and other services, like crypto asset staking and lending, without requiring fifty-plus state licenses or multiple federal licenses." Chairman Atkins' suggestion of a "Reg Super App" appears viable. Accordingly, Congress could build into a market structure bill a regulatory mandate to build out such guidance, specifically empowering the SEC with the authority to proceed with "Reg Super App." That said, this is also an area the SEC appears to have authority in, but a grant of specific regulatory authority in this regards would not hurt.

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?

One of the biggest issues is the legitimization of moving on-chain. Tokenization is still relatively new for a lot of funds/issuers. Passing this legislation with an open ability to tokenize assets as designed by the legislation would be much more powerful as a

legitimizing force. Historically, another main barrier has been prevailing regulatory views: for instance, the Atkins SEC has positioned itself as being much more "innovation-forward" then the SEC under Gensler. Legislation codifying tokenization concepts would be powerful in heading off political headwind changes.

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? (b) Should legislation limit or prohibit the ability of digital asset intermediaries to offer rewards on digital assets, including stablecoins? If so, how?

The WSBA supports permitting yield-bearing assets, as retail investors should be able to benefit from these products similarly to high-yield savings accounts or money market funds. The key consideration is the regulatory approach. Regulation mirroring that of money market funds is appropriate. Regarding rewards, those that are distinct from interest (such as non-fungible points) should not be subject to restrictive limitations. Where rewards are fungible digital assets/cryptocurrencies, Congress may wish to consider narrowly tailored limitations to address specific risks while supporting innovation and consumer choice.

Ideally, stablecoin issuers should not be required to be the only beneficiaries of the yield generated on the reserves backing U.S. dollar-denominated stablecoins. There should be a safe and sound mechanism that would permit stablecoin holders to receive the yield generated from the reserves backing them, together with clear disclosures, if the relevant parties agree. As noted above, money market fund regulations already accomplish this in the securities context, and similar requirements to prevent maturity and liquidity mismatches should be pursued in the stablecoin context, rather than an outright ban, which could stifle technological innovation in the United States.

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?

The WSBA supports a legislative approach to decentralized finance (DeFi) that balances innovation with regulatory compliance—particularly in the areas of anti-money laundering and illicit finance discussed above. Any DeFi exemption in market structure legislation should be grounded in clear, principle-based criteria, including a test to assess when a blockchain system has reached sufficient maturity. In evaluating potential revisions to prior legislative efforts, we encourage a thoughtful reassessment of past proposals to

ensure that frameworks remain technologically neutral and aligned with evolving market structures.

27. What, if any, action should market structure legislation take with respect to non-fungible tokens?

Market Structure legislation should codify the steps the SEC has taken to classify NFTs as collectibles. Similar to other intangibles like art, NFT owners and issuers should not have to fear that a future SEC would change its guidance and attempt to classify NFTs as a security. Clear statutory text would provide the industry the clarity it needs to continue the innovation we have seen related to these digital assets. They should be defined as non-securities—as noted below, these are better designated as collectibles.

The WSBA notes, however, that the term "NFT" or "non-fungible token" potentially encompasses a large universe of assets and could include certain contracts rights that may themselves be securities and may be distinguishable from a digital collectible.

28. What, if any, action should market structure legislation take with respect to the tokenization of real-world assets?

The tokenization of real-world assets should be encouraged in the legislation, with clear guidance on when these tokenization efforts will include digital securities, ancillary assets and digital commodities. The WSBA recognizes that the tokenization of real-world assets is an exceedingly broad topic that could benefit from its own full RFI. The WSBA would encourage Congress to consider the various concepts of tokenization under development around the world, including those involving development and modernization of the "plumbing" or "rails" of the financial markets more generally (e.g., financial market infrastructure). While this topic is too broad to address fully here, the WSBA would urge Congress to anticipate the introduction and adoption of broad future tokenization and digitalization efforts and innovation, beyond what typically Is recognized as being "crypto" in nature.

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

DeFi Physical Infrastructure Networks should include criteria for when a network reaches true decentralization and provide protections for such networks in a technologically neutral manner, as long as the network is not explicitly used to facilitate money laundering or sanctions evasion as discussed above.

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?

Section 107's mandate that the SEC consider whether a rule would promote innovation is a novel concept, but it is highly prone to subjective interpretation. If the goal is to promote consistency and clear guidance, the inclusion of such a requirement could undermine those efforts. The requirement may provide grounds to reject unduly burdensome rules. However, in practice, such a mandate is may not achieve consistent outcomes.

31. Should Congress create an office at the SEC to be responsible for promoting innovation or designate an existing office as encompassing such duties?

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?

A legislative mandate for an SEC Office of Innovation could support innovators, although implementing such an office may present political challenges. Any new office should have a clear and focused mandate, rather than a vague requirement to "promote innovation," to avoid subjective interpretation. Assigning these responsibilities to an existing office, such as the Division of Corporation Finance, may provide a more practical solution

The WSBA believes that it is advisable for Congress to require the SEC to dedicate personnel or establish an office specifically tasked with guiding and assisting innovators across the agency. The WSBA believes that such a proposal would be likely to draw wide bipartisan support. Although many of these changes are already proceeding under the current SEC leadership, codifying these duties in statute would be a great help to companies seeking SEC guidance that may not have the legal resources or experience of their larger peers.

However, one potential risk to consider is a significant increase in requests for no-action relief and exemptions. The goal of legislation should not be to encourage extensive SEC staff guidance, which has the potential to introduce new complexities and inconsistencies into the regulatory environment. The desire to help innovators navigate the agency must be balanced against the need for a consistent and straightforward regulatory framework that all companies can follow.

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

Legislation is not the appropriate vehicle to mandate interoperability. Industry should take the lead in developing interoperability solutions, guided by evolving market needs.

33. Would a sandbox for distributed ledger technology or other digital assets, including as under proposed Section 401and Section 404, be useful?

This idea likely has some utility for emerging technologies not yet contemplated by the legislation. Cross-collateralization could be a good potential use case to experiment on in a regulated test environment.

a. If so, how should such a sandbox(s) be structured? We believe that it should be principles based and include safe harbors to encourage utilization of the sandbox.

b. Should Congress structure a sandbox to address challenges firms face when engaging in activities in multiple countries or jurisdictions? Focusing the sandbox on cross-border complexities of digital asset regulation could be a good primary use case for it. Would allow international collaboration in a controlled environment.

c. Should Congress structure a sandbox to address issues relating to tokenizing securities? Congress should consider that a sandbox could has the potential to delay the adoption of tokenized equities; updates to the Automated Trading Systems ("ATS") or Special Purpose Broker-Dealer ("SPBD") structure might be a quicker path to regulatory clarity.

d. Should Congress create an interstate innovation sandbox that would enable innovative firms to engage in interstate activities without additional licensing or registration? If Congress' goal is to create paths to operate across states without needing to obtain multiple licenses, this would be best addressed in market structure legislation. While a regulatory could encourage collaboration among states, clear legislative guidance would provide a more reliable solution for market participants than a temporary test environment. Nevertheless, an interstate innovation sandbox may be a helpful step to encourage responsible experimentation and streamline interstate regulatory friction or drag.

e. Should such sandboxes be run jointly with the CFTC or other financial regulatory agencies? Joint sandboxes with other regulators should be highly encouraged as a way to foster more cooperation across regulatory agencies. Many firms are and will need to be regulated by multiple federal agencies so having a forum in which to collaborate, including identifying the least burdensome (yet still effective) compliance approaches for entities that operate across asset classes, will be beneficial.

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?

Collaboration between the SEC and CFTC will be essential as the regulatory regime for digital assets is implemented. Establishing a new self-regulatory organization (SRO) focused on digital asset issuers and intermediaries would provide a practical mechanism for fostering SEC and CFTC collaboration. This SRO should include representation from the SEC and CFTC. Including both agencies in the SRO's governance would facilitate joint oversight and help bridge gaps, including because since the odds of create a new regulatory agency or a merger of the existing regulators remain extremely unlikely.

An SRO might be the closest the industry can get to true collaboration and joint rulemaking between the two regulators. Currently, the CFTC faces resource constraints and relies on the National Futures Association (NFA) for its regulatory examination staff. The lack of an experienced examination staff to supervise and oversee digital asset issuers and intermediaries will serve as an immediate barrier to the implementation of the regulatory regime. This is where a well-functioning SRO can fill that anticipated gap.

Preemption

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

The question of whether federal legislation should preempt certain state laws is a sensitive one. The WSBA does not express an overarching view concerning federal preemption generally and, instead, would urge Congress to carefully consider which specific state laws (if any) should be subject to federal preemption. If Congress includes a federal preemption clause in the legislation, it should be narrowly tailored and carefully considered.

Striking a balance that preserves states' rights, while providing the clarity the industry needs (including clear paths forward), will be of paramount importance. The states have sometimes been referred to as the living laboratories of the law, and in many cases, there is value in maintaining federal and state approaches to innovation.

Nevertheless, in some cases, federal preemption may help streamline compliance burdens, increase legal certainty and predictability and promote efficiency.

Conclusion

The WSBA appreciates the Committee's thoughtful and comprehensive effort in crafting this digital asset market structure legislation. We believe this draft legislation represents significant progress in bringing regulatory clarity to the digital asset industry while promoting innovation, consumer protection, and market integrity. We look forward to continued engagement and offer our assistance in further refining and implementing these proposals.

Respectfully submitted for and on behalf of other contributing WSBA members, as well as:

Adam Goldberg, Esq. - *in his personal capacity*
Joshua Ashley Klayman, Esq. – Member of the Board of Directors - Wall Street Blockchain Alliance – *in her personal capacity*
Ron Quaranta, Chairman and Chief Executive - Wall Street Blockchain Alliance – *in his personal capacity*
Gage Raju-Salicki, Esq. - *in his personal capacity*

www.wsba.co
info@wsba.co