Memorandum:

The Lummis-Gillibrand Responsible Financial Innovation Act

June 7, 2022

DLX | FS VECTOR

INTRODUCTION

On June 7, 2022, Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) announced the anticipated introduction of the bipartisan Lummis-Gillibrand Responsible Financial Innovation Act (the "RFIA"). If enacted in its current form, the RFIA will be the first comprehensive federal legislation to tackle cryptocurrency, blockchain, and digital assets across almost all aspects of the regulatory spectrum. The RFIA addresses the most significant issues which arise at the intersection of traditional financial regulation and digital asset innovation across taxation, securities, banking, and consumer protection and helps position the United States at the forefront of the pursuit to set a global regulatory agenda for the space.

Among the key provisions of the RFIA are: clarifying when digital assets are properly treated as commodities, including a rebuttable presumption that certain digital assets offered as part of investment contracts are not themselves securities if they do not have the essential characteristics of a "security"; heightened requirements for collateralization and transparency for payment stablecoin issuers; targeted SEC-furnished disclosure requirements for entities that fundraise through the sale or distribution of digital assets and continue to provide "entrepreneurial or managerial efforts" that primarily determine the value of the digital assets; and requirements for timely studies and final guidance issuance on a number of regulatory ambiguities not directly addressed by the RFIA. (See Appendix B)

There are several other bills addressing aspects of the digital asset sector on the Congressional docket for 2022[1] but none except the RFIA aim to address all sectors of regulatory oversight in one coordinated effort. The RFIA includes or draws upon a number of these pieces of legislation, building upon and synthesizing earlier work. We have highlighted when that is the case in the memo below.

While we don't anticipate that the RFIA will become law while the current Congress is in session, given the breadth of the RFIA and the multiple Congressional committees to be navigated, the anticipated introduction of the RFIA is a tremendous milestone for industry and positions Senator Lummis and Senator Gillibrand as the nation's go-to thought leaders in the space, as they gather feedback and community input and work to reintroduce the RFIA in the next Congress (2023).

Below, we explain some of the key provisions of the RFIA, how these provisions could affect the future of digital asset business, and how businesses utilizing digital assets can prepare accordingly.

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[1] *See, e.g.*, The Digital Commodity Exchange Act (H.R. 7614); Virtual Currency Tax Fairness Act of 2022 (H.R. 6582); Keep Innovation In America Act (H.R. 6006); The Securities Clarity Act (H.R. 4451); U.S. Virtual Currency Consumer Protection Act of 2021 (H.R. 5100); The Blockchain Regulatory Certainty Act (H.R. 5045); The Token Taxonomy Act (H.R. 1628); Clarity for Digital Tokens Act of 2021 (H.R.5496); The Eliminate Barriers to Innovation Act of 2021 (H.R. 1602); The Digital Taxonomy Act (H.R. 3638).

TITLE I - DEFINITIONS

Our observations: Title I lays the groundwork for the rest of the RFIA by providing the level-setting definitions needed to establish a common language across a range of pre-existing regulatory frameworks. This starts with a flexible term for value stored on a blockchain, "digital asset," while acknowledging the unique utilities and risks of different digital asset sub-categories. By creating both broad and flexible language to discuss the digital asset sector, Title I allows for the development of the tailored regulatory approach that follows.

The RFIA begins by adding a number of important definitions to the United States Code ("USC"). Title I of the RFIA would provide a federal definition of the term "digital asset":

[A] natively electronic asset that (i) confers economic, proprietary, or access rights or powers; and (ii) is recorded using cryptographically secured distributed ledger technology, or any similar analogue; and [B] includes (i) virtual currency and ancillary assets, consistent the Commodity Exchange Act; (ii) payment stablecoins (as defined below); and (iii) other securities and commodities, that meet the digital asset definition.

In addition, with all of the focus recently on "stablecoins", the RFIA provides a relevant definition of "payment stablecoin", which is a digital asset that:

(A) [I]s redeemable, on demand, on a one to one basis for instruments denominated in United States dollars and defined as legal tender or for the instruments defined as legal tender under the laws of a foreign country (excluding virtual currency defined as legal tender under the laws of a foreign country); (B) is issued by a business entity; (C) is accompanied by a statement from the issuer, that the asset is redeemable as specified in subparagraph (A) from the issuer or another identified person; (D) is backed by 1 or more financial assets (excluding other digital assets), consistent with subparagraph (A); and (E) is intended to be used as a medium of exchange.

This definition will pick up "traditional" stablecoins that are backed by financial assets; however, algorithmic stablecoins such as the Terra ecosystem's UST (which recently made the news due to its downfall) would fall wholly outside this framework. Algorithmic stablecoins under the RFIA are "virtual currency," which is defined to mean:

[A] digital asset that (i) is used primarily as a medium of exchange, unit of account, store of value, or any combination of such functions; (ii) is not legal tender, as described in section 5103; and (iii) does not derive value from or is backed by an underlying financial asset (except other digital assets); and (B) includes a digital asset, consistent with subparagraph (A) that is accompanied by a statement from the issuer that a denominated or pegged value will be maintained and be available upon redemption from the issuer or other identified person, based solely on a smart contract.

It's important to note that the RFIA differentiates "virtual currencies" from "payment stablecoins" in that virtual currencies are digital assets that may have their own intrinsic value or may derive their value from other digital assets that underlie them, whereas "payment stablecoins" must necessarily derive their value from underlying financial assets that are *not* themselves other digital assets.

Definitions are also added for the terms "smart contract" (computer code within the distributed ledger technology that executes an instruction based on the occurrence or nonoccurrence of specified conditions), "distributed ledger technology" (a ledger shared across a series of nodes that could be either closed or open to others and includes some type of consensus mechanism) and "digital asset intermediary" (someone with a license to conduct digital asset market activities and not a depository institution) among others.

TITLE II – TAXATION

Our observations: Title II addresses many of the most pressing issues relating to the taxation of digital assets and their use. This will help to resolve questions from innovators in the digital asset industry and others that use digital assets regarding the taxation while responding to the Administration's concerns that digital asset users are paying their fair share of tax on their economic activity.

Title II of the RFIA addresses several of the questions relating to the taxation of digital assets and the use of decentralized finance applications that have most concerned the blockchain community since the passage of the Infrastructure Investment and Jobs Act in 2021. Guidance on the tax treatment of digital assets was first issued by the Internal Revenue Service (the "IRS") in 2014[2] and the agency has since maintained a helpful FAQ on its website explaining how Notice 2014-21 and other tax provisions apply to digital assets.[3] However, as technology has rapidly developed in the digital asset space, new questions and controversies have emerged that many have asserted require additional clarity.

Tax policy quickly became the digital asset sector's most pressing issue in November 2021 when President Biden signed the Infrastructure Investment and Jobs Act (H.R. 3684) (the "Infrastructure Act") into law. The Infrastructure Act included a controversial digital asset tax provision expanding the definition of "broker" to include "any person who (for consideration) is responsible for providing any service effectuating transfers of digital assets on behalf of another person."[4] The expansion drew strong criticism from the digital asset community for being overly broad.[5] The language of the Infrastructure Act could be read to include cryptocurrency "miners" or even some software developers.

Title II includes portions of HR 3708 which was introduced earlier this year and provides further clarity. Specifically, Section 202 of the RFIA eliminates the problematic definition of "broker" included in the Infrastructure Bill and replaces it with, "any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers."[6] This definition would more appropriately tailor the reporting and taxation requirements imposed by broker classification to digital asset exchanges, who are better positioned to manage the relevant reporting obligations.

[2] IRS Notice 2014-21.
[3] *See* Frequently Asked Questions on Virtual Currency Transactions, IRS.Gov.
[4] IRC § 6045(c)(1)(D).
[5] *See, e.g.*, U.S. Infrastructure Bill's Crypto Broker & Tax Fracas Shows Regulatory Hill to Climb, Sygna.
[6] Section 202, proposed IRC § 6045(c)(1)(D).

Title II also removes an obligation to include gain or loss from the change of value in a virtual currency used for personal transactions under $200.[7] This provision is intended to encourage retail use of virtual currency for modest everyday payments. Under current federal tax rules, when a taxpayer trades a digital asset for other property, the trade is a taxable event for which a taxpayer has to report a gain or loss. By exempting transactions under $200 from this treatment, individuals can pay for goods and services in virtual currency without keeping track of minor purchases or price fluctuations. The Virtual Currency Tax Fairness Act (H.R. 6582), introduced in February, also called for this $200 exemption. Notably, unlike H.R. 6582, the RFIA's exemption would apply only to Virtual Currencies, which, as defined above, are digital assets that are used "as a medium of exchange" (and so would likely not pick up governance tokens or other assets used primarily for purposes other than payments). To avoid "structuring", the section aggregates all dispositions which are part of the same transaction (or a series of related transactions). On a positive note, the Senators included an inflation adjustment to ensure that the modest exemption does not lose value if inflation takes off. Important to keep in mind is that under the RFIA both algorithmic stablecoins and digital asset backed stablecoins are within the definition of Virtual Currency.[8]

In another important move on the taxation front, Title II addresses the tax treatment of certain decentralized autonomous organizations ("DAOs"), an issue that has caused practitioners much consternation. Under section 204 of the RFIA, a DAO is defined as an organization:

(i) which utilizes smart contracts to effectuate collective action for a business, commercial, charitable, or similar entity, (ii) governance of which is achieved primarily on a distributed basis, and (iii) which is properly incorporated or organized under the laws of a State or foreign jurisdiction as a decentralized autonomous organization, cooperative, foundation or any similar entity.

This definition, while broad, still requires the presence of some legal formality, while providing flexibility to DAO proponents as the precise type of entity is utilized. Section 204 categorizes DAOs as business entities which are not disregarded for tax purposes. Section 204 clarifies that treasury management (including mining and staking) and raising funds for charitable purposes are not business activities for determining whether a DAO is a tax-exempt social club.[9]

Section 206 requires the Secretary of the Treasury to adopt guidance within one year for treating digital asset mining and staking as income not realized until disposition of the assets, for what may happen in forks, for merchant acceptance of digital assets as

[7] Section 201(a).
[8] Section 201(a).
[9] Section 204, proposed IRC § 7701(a)(51).

payments, for payment stablecoins (as defined by the legislation) and for charitable contributions of digital assets over $5000.[10]

Section 207 instructs the Comptroller General of the United States to conduct a study and provide a report relating to retirement investing in digital assets. This report will be coordinated by multiple regulatory agencies and would be due to Congress (should the RFIA be adopted this year) by March 2023.

Section 208 provides much needed clarity to proof-of-work miners and proof-of-stake validators by clarifying that income relating to such activities will not be included in the taxpayer's "gross income" until the taxable year of the disposition of those assets produced or received in connection with those activities.

[10] Section 206(a)(4).

Title III - Securities Offerings Involving Certain Intangible Assets

Our Observations: Title III provides the first framework that balances the well-understood need to ensure fulsome disclosures to the general public when digital assets are widely traded after having been used to raise funds for the development of blockchain project with the fundamental challenges that would stem from creating a “legal fiction” that assets that, by their terms lack the basic characteristics of “securities”, must comply with a regulatory scheme designed for a completely separate purpose. This framework, if adopted into law, would assure that the U.S. is the global leader in this space and is providing the most protection for digital asset users while still fostering growth and innovation in the blockchain space.

Title III of the RFIA seeks to resolve one of the most pressing questions impacting the digital asset space – when activity involving digital assets is governed by the federal securities laws and when federal commodities laws properly apply – by adding a new Section 41 to the Securities Exchange Act of 1934 (the “Exchange Act”) entitled “Securities Offerings Involving Certain Intangible Assets”. By granting additional statutory oversight authority to the Securities and Exchange Commission (“SEC”), the RFIA allows for a division of responsibilities between the SEC and the Commodities Futures Trading Commission (the “CFTC”) that aligns with their respective core competencies.

By way of background, as early as 2017, state and federal market regulators recognized that many digital asset sales (often styled as “initial coin offerings” or “ICOs”) fell squarely within the long-running pattern of cases where companies fundraise through the purported commercial sale of an asset that is being purchased by a buyer with an expectation of profit driven by the “entrepreneurial or managerial efforts” of the seller, rather than with a primarily “consumptive interest” in the asset. Following the seminal 1946 Supreme Court case, *Securities and Exchange Commission v. W. J. Howey Co.,*[11] courts look at the “economic realities” of fundraising transactions of this type. Where there is (i) an investment of money, (ii) in a common enterprise, (iii) where the purchaser has a reasonable expectation of profit, (iv) resulting primarily from the efforts of others (the well-known “*Howey* test”), the transaction will be characterized as an “investment contract” and considered a treated as a

[11] 328 U.S. 293 (1946).

securities transaction,[12] regardless of the nature of the asset being sold.[13] If members of the general public are being solicited in the fundraising transaction, then federal registration is required. Importantly, unlike earlier legislative efforts in this space, the Act does not attempt to alter the 70-plus years of *Howey* jurisprudence that is a part of our judicial fabric.[14]

Following a number of successful and high-profile enforcement actions involving sales of digital assets, including most notably *SEC v. Kik Interactive, Inc*.,[15] companies developing new blockchain-based protocols utilizing digital assets largely abandoned attempts to solicit the general public in the U.S. and turned instead to private placement transactions with venture capital firms and other "accredited investors" that could qualify for a valid exemption from registration requirements. While this addressed the most immediate concern raised by the proliferation of dubious fundraisings offered to the general public, it left unanswered the question of the status of the various digital assets themselves when transferred among persons unrelated to the initial fundraising. It is this issue that Title III takes on within the legislation.

Raising concerns about the information asymmetries that can arise between the entities that create and deploy digital assets and subsequent digital asset owners, senior SEC staff, in endeavoring to address this question, focused on whether the protocol to which a digital asset relates is "sufficiently decentralized", arguing that until this "decentralization" occurs, most digital assets should themselves be considered securities.[16] While an understandable stopgap in the absence of a better legislative solution, this position results in an imperfect and impractical application of the federal securities laws, as "sufficient decentralization" is not a concept courts have considered in the past. Accordingly, persons not part of the original transaction who seek to purchase, sell, or deal in digital assets are left in a position

[12] This can be thought of as a "constructive" sale of securities meaning that courts will consider the purportedly commercial transaction to be subject to securities laws, even if neither the seller nor the buyer documented it as a securities transaction or even believed that they were entering into a securities transaction.

[13] Courts have found purportedly commercial transactions involving a wide variety of non-securities assets to be constructive securities offerings under the "investment contract" clause of the Securities Act. These include tracts of land used to grow oranges (*Howey*), animals, such as beavers, chinchillas and silver foxes, grown for their pelts, whiskey being aged, bank certificates of deposit, payphones, and real estate under development, none of which transactions purported to involved the offer or sale of "securities".

[14] In particular, under the RFIA, a company that solicits members of the general public in the U.S. to invest in "investment contract" transactions by purchasing digital assets for investment (non-consumptive) purposes (*i.e.*, conduct an "ICO") will still be required to register that transaction with the SEC.

[15] 492 F. Supp. 3d 169, 175 (S.D.N.Y. 2020).

[16] *See* Securities and Exchange Commission, "Framework for 'Investment Contract' Analysis of Digital Assets"(2019) (the "Token Framework"). While clearly intended as helpful guidance, the Token Framework doesn't weigh the 60-plus factors identified as being relevant, making it extremely difficult for practitioners to provide meaningful guidance to clients. Moreover, the *Howey* test by its terms applies only to "contracts, transactions or schemes," *not* to the assets sold in those transactions. Accordingly, attempting to apply the *Howey* framework to the assets sold pursuant to investment contracts is itself a significant extension of the existing jurisprudence.

of potentially transacting in unregistered securities without a meaningful way of discerning when the SEC believes a digital asset should be treated as a "security."

Instead of addressing the SEC's information asymmetry concerns by treating as "securities" most digital assets that, at their core, are simply tools that allow their owners to give instructions to a network of computers and do not generally represent rights in, or obligations of, a business entity (the hallmark of a "security"), Title III of the RFIA focuses on imposing disclosure obligations on the companies that fundraise through the sale of digital assets sold in transactions properly characterized as "investment contracts" under *Howey* – even where the securities offering was validly conducted as a private placement.[17]

Under the RFIA's new Section 41(b)(1) of the Exchange Act, if a company with jurisdictional ties to the U.S. offers, sells, or otherwise executes investment contract transactions that provide their counterparty with an "ancillary asset",[18] that company will be subject to the periodic disclosure requirements for the one-year period beginning on the date that is 180 days after the first date on which the security is offered, sold, or otherwise provided by the company if two conditions apply:

(i) *First*, the average daily aggregate value of all ancillary assets offered, sold, or otherwise provided by the company in relation to the offer, sale, or provision of the investment contract in all spot markets open to the public in the United States (based on the knowledge of the company after due inquiry) must be greater than US$5 million (the "Trading Volume Test") for the 180-day period immediately succeeding the date of that first offer, sale, or provision; and

(ii) *Second,* during that 180-day period, the company, or any entity controlled by the company, has engaged in the "entrepreneurial or managerial efforts" that primarily determined the value of the ancillary asset.

[17] In this respect, Title III draws on Section 12(g) of the Exchange Act for inspiration. Under Section 12(g), an issuer that conducts valid private placements of securities may still have to provide disclosure to the market where there is a public policy interest in that disclosure (in the case of Section 12(g), that public policy arises as a result of there being a certain minimum number of U.S. persons holding an interest in those securities). Under Section 41, the public policy interest in a company's disclosure arises due to there being an active trading market for the (commodity) ancillary assets used by the company to raise funds in otherwise compliant private placement securities transactions (*i.e.*, the related "investment contract" transactions").

[18] Under Section 41(a), term "ancillary asset" means an intangible, fungible asset that is offered, sold, or otherwise provided to a person in connection with the purchase and sale of an investment contract but does not include an asset that provides the holder of the asset with any of the following rights in a business entity: (i) a debt or equity interest in that entity; (ii) a profit or revenue share derived from that entity; (iii) an entitlement to an interest or dividend payment from that entity; (iv) a profit or revenue share in that entity derived solely from the entrepreneurial or managerial efforts of others; or (v) any other financial interest in that entity." (Although extremely uncommon, should the asset provided pursuant to an investment contract provide one or more of these rights, then that asset will likely be considered a "security" – the proper result under current law).

The term "ancillary asset" will likely pick up the large majority of digital assets currently in the market, since very few of these assets provide the holder with equity or debt-like rights in a separate "business entity" – they simply allow for instructions to be given to a network of computers, as noted above. However, there is a broad design space available when digital assets are created and when a digital asset does create (or at least purports to create) actual legal rights that can be enforced in a traditional judicial proceeding (as would be the case with equity or debt rights), then the parties would need to carefully consider whether a "security" had been created. This determination is left to existing *Howey* and related jurisprudence.

The RFIA includes an additional Section 41(b)(2) which calls for re-applying the above test each year. This section focuses on whether the party raising money from the investment contract has reason to be providing disclosure to the market (*i.e.*, meets the two tests described above) in order to address the information asymmetry problem. Current regulatory positions have put users and others dealing in digital assets in jeopardy of non-compliance with applicable securities laws as they try to navigate when a regulator may consider that a given digital asset has "morphed" from a security to something else after its associated project is "sufficiently decentralized" (and then, potentially "re-morphed" back to being a security if the project later finds itself more "centralized").[19] Instead, Title III focuses on whether the party raising money from the investment contract has reason to be providing disclosure to the market (*i.e.*, meets the two tests described above) in order to address the information asymmetry problem. A transition rule is also provided in Section 41(b)(3) to address "ancillary assets" that came into existence prior to the statute having been adopted.

New subsections (A) and (B) of Section 41(b)(4) are at the heart of the securities framework proposed by the RFIA. Section 41(b)(4)(A) applies to companies raising money by means of an offering of ancillary assets through investment contracts (and to a limited set of those companies' affiliated persons), and Section 41(b)(4)(B) applies to all other persons (including users of the relevant assets, dealers in the assets, centralized and decentralized exchanges making the assets available, and investors in the assets). Both subsections of Section 41(b)(4) provide presumptions that the relevant ancillary asset is a "commodity" consistent with Section 2(c)(2)(F) of the Commodity Exchange Act (the "CEA"), and not a security under any of the main definitions in the federal securities laws[20] or any applicable provision of State law. Thus, in these instances, the assets are not required to be registered as a security or within the security legal structure. The difference between the two presumptions is that under Section 41(b)(4)(A), to benefit from the presumption, the company must be in compliance with the periodic disclosure requirements described

[19] *See* Lewis Cohen, *Ain't Misbehavin': An Examination of Broadway Tickets and Blockchain Tokens*, 65 Wayne L. Rev. 82 (2019).
[20] These include Section 3(a) of the Exchange Act, Section 2(a)(1) of the Securities Act, Section 2(a) of the Investment Company Act of 1940, and Section 202(a) of the Investment Advisers Act of 1940.

below, whereas for all other persons dealing in the relevant assets the presumption is not conditional.

However, in order to avoid abuse of this provision and use of the statutory presumption as a "loophole" from appropriate compliance with the federal securities law, Section 41(b)(4)(C) contains an exception, clarifying that the presumption shall not apply if a U.S. court, after an appropriate proceeding, issues an order finding that there is not a substantial basis for the presumption that a given ancillary asset is a commodity and not a security.[21] Although under current market practice we are not aware of any actual securities being distributed as part of a transaction deemed to be an "investment contract", it is at least theoretically possible and this exception avoids any potential misuse of the new Section 41 framework.

Title III also provides the new disclosure framework triggered when a company raises money through a distribution of digital assets (or any other type of "ancillary assets") and continues to be engaged in the "entrepreneurial or managerial efforts" that primarily determine the value of the relevant asset.[22] As noted by SEC Commissioner Hester Peirce in announcing her original "Safe Harbor" proposal in February 2020, some entrepreneurs seeking to create decentralized networks "choose to remain actively and publicly involved in building a network for some time".[23] Where that is the case, Title III provides a very practical solution. Rather than the decision to remain actively involved resulting in the risk that the relevant *assets* are deemed to be "securities", Title III looks to the *transaction* pursuant to which these assets were distributed – the sale of securities under current law. As the result of having sold securities these entities are given a robust but targeted set of disclosure requirements focusing on (1) the company that sold the assets and (2) the assets themselves.[24]

The relevant entity is required to furnish these "Section 41(c)" disclosures to the SEC on a semi-annual basis. To ensure that companies in the digital asset space are not faced with a "moving target" of disclosures, Section 41(c) sets out in complete and *exclusive* detail, the specific disclosures that will be required (rather than leaving the development of the disclosure regime to a regulatory process that can take significant time to complete and, even after promulgation, can be subject to further change depending on the regulatory outlook of the moment). The full set of disclosures is set out in Schedule 1 of this memorandum.

[21] This subsection also provides that the exception does not preclude the SEC from entering into a settlement agreement relating to violations or alleged violations of Section 41.
[22] And where the US$5 million daily average trading volume threshold under Section 41(b)(1), (2) or (3) is met.
[23] *See* Hester Peirce, "Running on Empty: A Proposal to Fill the Gap Between Regulation and Decentralization" (February 6, 2020).
[24] The complete list of disclosure requirements is set out in Appendix A of this memorandum.

We would expect that the disclosures will also be made available on company websites. Ideally, a robust analytic community will develop around the disclosures ensuring that users and investors alike in digital assets will have the most relevant information about the projects they engage with. Of course, as with other commodities, parties not related to the original investment contract may take on an important role regarding the value of a particular ancillary asset. To the extent that such other entities engage in behavior intended to manipulate the market for the relevant asset, they will be subject to enforcement action by the CFTC for market manipulation or fraud.

One of the clearest ways to confirm that most digital assets are not themselves "securities" is that they do not represent a clear legal connection to an identifiable legal entity – an "issuer." This most basic hallmark of the distinction between "securities" and "commodities" (which likewise do not have a legal connection with an identifiable entity) means that Title III must grapple with the potential for "shenanigans" among the individuals and entities involved in the creation and distribution of the relevant ancillary assets.[25] To this end, the new Section 41(d) addresses this issue by providing rules for the application of Section 41 to successor entities and certain affiliates.

The RFIA's Section 41(d) focuses on two concepts:

1) A "follow the money" rule: if a company sold ancillary assets (and is subject to the Section 41(c) disclosures described above) but is no longer in operation, then any successor entity that directly or indirectly received 50 percent (or more) of the proceeds of the sale of the investment contract and is engaged in the entrepreneurial or managerial efforts that primarily determine the value of the applicable ancillary asset, is required to furnish the relevant Section 41(c) disclosures to the SEC.

2) A "look through" rule: if an entity controlled by the company selling the relevant ancillary assets is subject to Section 41(c) disclosure requirements and is engaged in entrepreneurial or managerial efforts that primarily determine the value of an ancillary asset, then such entity may submit Section 41(c) disclosures to the SEC.

[25] For example, if the issuer of a "security" were to liquidate and cease to exist, any securities issued by that entity would also cease to exist, even though the equity owners of the entity (be they individuals or other legal persons) continued to operate. However, in the case of most digital assets, if the legal entity that originally distributed the assets was liquidated, the assets would continue to exist, and the same individuals or other legal entities could continue to perform the same "entrepreneurial or managerial" functions that determine the value of that asset.

Section 41(e) allows for voluntary disclosure in certain circumstances. In particular, a company not otherwise subject to the periodic disclosure requirements under Section 41(c) (for example, because the average daily trading threshold had not yet been met) may voluntarily furnish to the SEC the information required under that subsection if the issuer believes that it is reasonably likely that it will become subject to those requirements in the future. This preemptive disclosure could serve a number of purposes, including facilitating the listing of the relevant assets on various centralized digital asset markets or encourage the creation of liquidity pools on decentralized exchanges.

The SEC also has the ability to exempt an ancillary asset from the specified periodic disclosure requirements if it determines that the public policy goals of disclosure and consumer protection are not satisfied by requiring disclosures relating to an ancillary asset. Additionally, the RFIA provides that noncompliance with these disclosure requirements does not automatically result in a presumption that the ancillary asset is a security.

One key element that distinguishes the Section 41 framework from others that have been proposed is that the required disclosures do not impact the determination of whether a given digital asset is (or is not) deemed a "security". As a result, the question of when an entity otherwise providing disclosures is appropriately able to cease being part of the disclosure regime is somewhat less fraught, since an inability to reach a clear conclusion involves only another semi-annual disclosure submission. Nevertheless, there will still be time and cost involved in preparing and furnishing the Section 41(c) disclosures to the SEC, so we anticipate that many digital asset companies will be eager to establish that such disclosures are no longer required.

Under the legislation, the obligation to provide disclosures generally terminates on the date that is 90 days after the date on which the company files a required certification which includes reasonable evidence, based on the knowledge of the issuer filing the certification, after due inquiry, that either (i) the Trading Volume Test is not met in the 12-month period preceding the date on which the certification is filed; or (ii) during the 12-month period preceding the date on which the certification is filed, neither the applicable company, nor any entity controlled by the company, engaged in entrepreneurial or managerial efforts that primarily determined the value of the relevant ancillary asset.

Again, to ensure that market participants are not manipulating the RFIA's Title III framework inappropriately, the SEC, by majority vote (but only after public notice and the opportunity for hearing), may deny a certification filed if they find that the certification is not supported by substantial evidence. Although any such denial terminates the immediate certification, it does not prevent the applicable company from filing another certification, if the re-filed certification is filed not earlier than 180 days after the date on which the original certification is denied. To avoid digital asset companies from finding themselves in a "disclosure limbo", the RFIA provides that termination of the disclosure requirements applicable to a company that has filed a certification will be deferred pending review by the SEC of the evidence supporting the certification and that if, as of the date that is 90 days after receiving a certification, the SEC has not requested additional evidence with respect to the certification from the applicable company, the disclosure obligations that are the subject of the certification will terminate.

In addition to adding new Section 41 to the Exchange Act, Title III also contains two other important provisions. Section 303 of the RFIA requires that the SEC complete its multi-year study with respect to the modernization of its rules relating to customer protection[26] and custody of securities, digital assets, and client funds[27] and, consistent with the results of this study, adopt final rules relating to the issues so identified. Section 304 of the RFIA requires the SEC to adopt final guidance permitting, for the purposes of the Customer Protection Rule, a broker or a dealer to perform, within the same legal entity, both trading and custodial activities relating to fully-paid and excess margin digital assets, including virtual currency and digital assets that are securities or may represent ownership of securities, in addition to traditional securities, client funds, and other assets permitted by the SEC to be within the control of a broker or dealer.[28]

[26] Exchange Act Rule 15c3-3 (known as the "Customer Protection Rule").
[27] Advisers Act Rule 206(4)–2 (known as the "Custody Rule").
[28] This would override a December 2020 SEC no-action position requiring that broker-dealers holding digital asset securities on behalf of customers deal *only* in digital asset securities (and not also traditional securities), a position that was widely seen as designed to limit the development of the use of digital asset securities. *See* "SEC Issues Statement and Requests Comment Regarding the Custody of Digital Asset Securities by Special Purpose Broker-Dealers".

Title IV – Commodities Regulation

Our Observations: The RFIA provides greater clarity to the digital asset industry as to how to define digital assets and, more importantly, enable digital asset innovation to continue to grow. It gives the authority to the CFTC to regulate the digital asset spot market. Defining a "digital asset exchange" which must operate under the core principles set by the CFTC will also bring more entities under the CFTC's jurisdiction and supervision.

First and foremost, it is critical to understand that the RFIA starts by defining a "digital asset" as a commodity under the CFTC's jurisdiction. Excluded from this definition are assets that provide the holder of the asset with a debt or equity interest, liquidation rights, entitlement to a dividend or payment, a profit or revenue sharing based on the entrepreneurial or management of others, or any other financial interest in the entity that would traditionally be treated as a security.

Title IV expands the CFTC's jurisdiction to include ordinary buying-and-selling activities with respect to digital assets (*i.e*., "spot" trading). The CFTC currently has jurisdiction over fraud and manipulation relating to spot markets, but not over spot trading activities, cybersecurity, customer protection, custody and other important market integrity principles.

Under Title IV of the RFIA, the CFTC will also have jurisdiction over a new type of market – digital asset exchanges. Just as with other types of markets, digital asset exchanges will also be required to register or partner with those registered entities that provide custody services. The RFIA sets core principles, rulemaking, and preemption standards for digital asset exchanges. Importantly, the SEC will continue to have spot trading jurisdiction over *digital asset securities* (*i.e.*, those digital assets that provide their holders with equity or debt rights in an entity, or confer voting rights, dividend rights or a liquidation preference in an entity) but all other non-security asset trading (including other types of "ancillary assets") will be under CFTC jurisdiction.

Title IV codifies the CFTC's jurisdiction over retail digital asset transactions. In 2019, the CFTC released guidance pertaining to the actual delivery of these digital assets. Section 403 of the legislation codifies most of that guidance and clarifies the exceptions for these transactions, a point of confusion amongst the industry once the guidance was issued. However, registering as a digital asset exchange with the CFTC will not be sufficient for trading *derivative* products. In order to offer any contract of sale of a commodity for future delivery, an exchange must be registered as a designated contract market (a “DCM”) or swap execution facility (an “SEF”).[29]

Title IV also creates parameters for how a futures commission merchant (an “FCM”) must treat customer funds. FCMs will have to hold customer funds in a registered entity and cannot commingle a customer’s funds. The FCM must hold customer money in a manner that “minimize[s] the customer’s risk of loss of, or unreasonable delay in the access to, the money assets and property.” An FCM cannot act as a counterparty in any transaction involving a digital asset that has not been listed for trading on a registered digital asset exchange.[30]

This section also inserts “digital assets” into the bankruptcy provisions of the Commodities Exchange Act.

[29] Section 404, proposed 7 U.S.C. 1.
[30] Section 403(c), proposed 7 U.S.C. 6d.

Title V – Responsible Consumer Protection

Our Observations: Title V validates digital asset lending and borrowing while solving information asymmetry concerns between providers and customers. By requiring enhanced customer disclosures, the RFIA seeks to reduce the number of uninformed investors and discourage unfair business practices among digital asset institutions, a point of contention amongst many policymakers.

The Consumer Protection section of the RFIA will require financial institutions that offer digital asset products to clearly identify and disclose the risks of engaging in digital asset transactions including lending/borrowing a particular digital asset to consumers. Some activities will require the affirmative consent of the consumer.

Section 501 of the RFIA provides for rehypothecation of digital assets so long as there are appropriate disclosures.[31] There, the term "rehypothecation" is defined as the pledging of an asset as collateral for a financial transaction by a person after the pledging of the asset as collateral by a customer of that person. In short, as drafted, this Bill will require that lenders provide clear disclosures to the customer about the intent to rehypothecate and obtain affirmative consent from customers. The person rehypothecating must also consider and appropriately mitigate risks of (a) liquidity and volatility (b) past failures to deliver a particular digital asset (c) concentration (d) the existence of an issuer or lender of last resort (e) the capital, leverage, and market position of the person, and (f) legal obligations of the person to customers and other persons in the market who provide digital asset services.

Another provision of Title V addresses source code changes. Under Section 502, a person who provides digital assets must agree in writing to the source code version of the project. A person who provides digital asset services shall not be required to support digital assets and source code versions that the person has not entered into an agreement with customers to support.[32]

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[31] Section 501, proposed 31 U.S.C. 9802(e).

[32] Section 502, proposed 31 U.S.C. 9803(B)(3).

Title VI – Payment Stablecoins

Our Observations: Title VI, if codified, would adopt the recommendations and alleviate some of the concerns of policymakers and regulators regarding stablecoins. This section is clearly to differentiate a new asset class as defined by the RFIA, the payment stablecoin. However, this section still enables and welcomes innovation in this asset class and provides a platform in which the government can amend the regulatory framework as needed.

Title VI of the RFIA addresses payment stablecoins. Algorithmic stablecoins and digital asset backed stablecoins are not governed by this section.[33] If passed, Title VI would authorize depository institutions, including State- or Federally-chartered insured banks, credit unions and a new limited-purpose depository institution, to issue a stablecoin under clear standards. This bill does not prohibit entities other than depository institutions from issuing a payment stablecoin.

Following the recommendations of The President's Working Group Report on Stablecoins, Title VI would require depository institutions issuing payment stablecoins to apply to the state or federal banking agency at least six months prior to issuance of the payment stablecoin.[34] Applicants would also be required to demonstrate a recovery plan in the event of a redemption of all outstanding claims and to prove that their payment coin is 100% backed by high quality liquid assets.[35] Additionally, depository institutions that issue payment stablecoins would be required to publicly disclose a summary of the assets backing their payment stablecoins.[36] The federal banking agency has four months from the time of the application to approve the payments stablecoin and can deny the stablecoin from being issued if the agency believes the operations included within the application are not "safe and sound", the depository institution doesn't have the required resources and expertise to maintain payment stablecoin operations, or the depository institution doesn't have the appropriate policies and procedures in place.

Title VI also requires depository institutions to clear payment stablecoins at par, upon demand, from other depository institutions.

Gramm-Leach-Bliley privacy provisions would apply to these depository institutions and the federal banking agencies should look at the overall asset category when making capital and leverage requirements. It's also important to note that although the RFIA specifically requires depository institutions to issue payment stablecoins, it also says that nothing in the legislation prohibits non-depository institutions from issuing these assets.

[33] Algorithmic and Digital-Asset-Backed Stablecoins are categorized as "virtual currencies".
[34] Section 601, proposed 12 U.S.C. 4810(e).
[35] Section 601, proposed 12 U.S.C. 4810(b).
[36] Section 601, proposed 12 U.S.C. 4810(c).

Guidance is expected on various aspects of these stablecoins. Treasury, under the RFIA, is required to issue guidance associated with sanctions compliance within 120 days after the enactment of the legislation. The RFIA also places limitations on the use of the digital yuan (the Chinese equivalent of the "digital dollar") on government devices. Standards and guidelines for having the digital yuan on these devices are set to be issued within 60 days of the legislation's enactment.

The RFIA also creates an "innovation laboratory" within FINCEN. This laboratory will be led by an innovation officer and will study changes in the digital asset industry and make recommendations to Congress on legislation due to these industry changes. The "innovation laboratory" can also fund pilot projects with financial services companies that help to facilitate the supervision of financial technology.

Title VII – Banking

Our Observations: Title VII, if codified, would encourage uniformity across jurisdictions in regard to digital asset custody law. This would minimize systemic risks and promote innovation. Importantly, Title VII would clearly define customer rights and obligations of digital asset custodians.

If implemented, Title VII would clarify long-standing issues in digital asset banking regarding custody. Specifically, Title VII would address lacking uniformity and regulatory certainty by codifying basic custody principles and defining the duties that digital asset custodians have to customers.

Under Section 706 of Title VII, "[C]ustody of financial assets is accomplished by a bailment and established by a written customer agreement. Custody shall not be a fiduciary or trust activity unless the custodian is providing substantial discretionary services with respect to an account, including through investment advice or investment discretion, and the custodian owes a customer a higher standard of care or duty with respect to the customer of that account."

Additionally, Section 702 of Title VII clarifies that certain depository institutions, including some payment stablecoin issuers, would be eligible for Federal Reserve services under the proposal.

Section 707 of Title VII would prohibit use of reputation risk in assigning a depository institution examination rating, eliminating the possibility of another Operation Chokepoint and discrimination against legal marijuana businesses by banking regulators.

Title VII also clarifies that the Federal Reserve would have no discretion with respect to the issuance of a master account to a validly chartered depository institution.

Lastly, Title VII calls for studies related to distributed ledger technology's use in depository institutions. Section 701 requires the Federal Financial Institutions Examination Council, in consultation with the Financial Crimes Enforcement Network, to issue final guidance on a number of digital asset activities including anti-money laundering, custody, fiduciary and capital markets, information technology standards, payment system risk, and consumer protection.

Title VIII – Interagency Coordination

Our Observations: The RFIA acknowledges that there is still much to learn in the digital assets industry. However, coordination between regulators will create clarity and enable digital asset innovators to benefit from regulatory continuity across state lines. Businesses will be able to expand without the time and money constraints that current mismatched policies impose. Regulators will also have the opportunity to study the markets and refresh guidance/principles as necessary.

Title VIII provides a framework to remedy regulatory confusion among innovators and regulatory contradictions among agencies. Section 801 of the bill requires financial regulators to respond to individualized requests for interpretive guidance within 180 days of the request filing.[37] In addition to requiring timely clarity on future questions, Title VIII instructs agencies to issue analysis related to state licensing, decentralized finance markets, digital asset energy consumption, and digital asset self-regulatory agencies.[38]

The RFIA sets out requirements for companies participating in State financial sandboxes who want to operate in another State. The business wanting to do so must first submit an application to their State financial regulator and to the Federal financial regulator that may typically regulate these type of products. Upon agreement, the company will be able to operate in additional states with certain parameters (i.e., number of customers served, additional collateral requirements, adherence to some of the federal regulations). Under this new provision, "a financial company in good standing in a State financial regulatory sandbox and operating for not less than 6 months in that sandbox program, may do business nationally under the standards of this section."[39]

Section 803 of the RFIA will create uniform money transmitter standards for digital assets. Under current state and federal laws, prospective money transmitters must obtain a Money Service Business license from the federal government. Then, a business must seek individual state licenses. Each state has different criteria for when a business requires a money transmitter license and for determining if a business will be granted a money transmitter license. Only some states have issued guidance on how any of these requirements apply to digital asset institutions. This hodge podge of state licensing condemns many digital asset companies to regulatory purgatory, unsure if their conduct is violating state laws, despite federal licensing and state compliance efforts. The process of obtaining the needed state licenses or appropriate no-action letters can be costly and time-consuming.

The RFIA instructs the Conference of State Bank Supervisors and the Money Transmission Regulators Association to issue uniform guidance on whether digital assets are subject to

[37] Section 801, proposed 31 U.S.C. 9901.
[38] Section 805; Sec 806; Section 807.
[39] Section 802, proposed 31 U.S.C. 9902.

money transmission licensing and if so, under which circumstances a company needs a money transmitter license. Within two years of the enactment of the RFIA, states must adopt laws that reflect the uniform treatment settled up on by the Conference of State Bank Supervisors and the Money Transmission Regulators Association.[40]

The RFIA allows for information sharing between Federal and State regulators, while maintaining the privacy and the confidentiality of the information. This would enable these agencies to continue to learn from each other while not stepping on provisions which currently do not allow them to do so.

The RFIA also asks for a number of studies/guidance on the digital asset industry. These include: 1) the Treasury, the SEC, and the CFTC to work with the private sector on studying decentralized finance markets and technologies. This report is due one year after the enactment of the legislation; 2) the Federal Energy Regulatory Commission, the CFTC and the SEC to study the energy consumption of digital asset markets; 3) the CFTC and SEC, in consultation with digital asset intermediaries, to study and issue a proposal on a self-regulatory organization for the digital assets market. This study will be issued in an interim final rule with the opportunity to comment; and 4) the CFTC and SEC, in consultation with the Treasury and the National Institute of Science and Technology, must issue guidance relating to cybersecurity standards for digital asset intermediaries.

Section 809 of Title VIII requires the establishment of an advisory committee on financial regulation. The committee would consist of presidential appointees from the fintech industry and consumer education/consumer protection, an SEC commissioner, a CFTC commissioner, a Federal Reserve board member, and a state financial regulator. The committee would be responsible for conducting studies on financial services, including digital assets, and issuing an annual report of their findings. [41]

[40] In September 2021, the CSBS released its model framework for modernization of payments. RFIA would build off that model law and enable there to be consistency regarding how States treat digital assets.

[41] Section 809.

Concluding Thoughts

We are excited to see proposed legislation that would provide long-overdue regulatory clarity to the digital asset space and provide robust investor protection to digital asset users while balancing the need to promote, not stifle, innovation. Though the RFIA will be introduced in Congress this session, we are still far from seeing it become law. The earliest the RFIA could realistically be enacted is 2023. However, before that, it will first need to pass both the House and the Senate, and it may be changed significantly in various Committees before it passes. Nevertheless, the RFIA provides a comprehensive overview of regulatory concerns and the groundwork for well-informed, balanced, and bipartisan solutions.

Appendix A

Disclosures for Ancillary Asset Issuers Under Title III, Section 41(c)

Specified Periodic Disclosure Requirements—If an issuer is subject to paragraph (1), (2), or (3) of Section 41(b), the issuer shall furnish, or cause the relevant affiliate to furnish, to the SEC, on a semi-annual basis, information that the SEC may, by rule, require relating to the issuer and any relevant ancillary asset, as necessary or appropriate in the public interest or for the protection of investors, which shall be exclusively comprised of the following:

(1) Basic corporate information regarding the issuer, including the following:

(A) The experience of the issuer in developing assets similar to the ancillary asset.

(B) If the issuer has previously provided ancillary assets to purchasers of securities, 5information on the subsequent history of those previously provided ancillary assets, 6including price history, if the information is publicly available.

(C) The activities that the issuer has taken in the relevant disclosure period, and is projecting to take in the 1-year period following the submission of the disclosure, with respect to promoting the use, value, or resale of the ancillary asset (including any activity to facilitate the creation or maintenance of a trading market for the ancillary asset and any network or system that utilizes the ancillary asset).

(D) The anticipated cost of the activities of the issuer in subparagraph (D) and whether the issuer has unencumbered, liquid funds equal to that amount.

(E) To the extent the ancillary asset involves the use of a particular technology, the experience of the issuer with the use of that technology.

(F) The backgrounds of the board of directors (or equivalent body), senior management, and key employees of the issuer, the experience or functions of whom are material to the value of the ancillary asset, as well as any personnel changes relating to the issuer during the period covered by the disclosure.

(G) A description of the assets and liabilities of the issuer, to the extent material to the value of the ancillary asset.

(H) A description of any legal proceedings in which the issuer is engaged (including inquiries by governmental agencies into the activities of the issuer), to the extent material to the value of the ancillary asset.

(I) Risk factors relating to the impact of the issuer on, or unique knowledge relating to, the value of the ancillary asset.

(J) Information relating to ownership of the ancillary asset by—

(i) persons owning not less than 10 percent of any class of equity security of the issuer; and

(ii) the management of the issuer.

(K) Information relating to transactions involving the ancillary asset by the issuer with related persons, promoters, and control persons.

(L) Recent sales or similar dispositions of ancillary assets by the issuer and affiliates of the issuer.

(M) Purchases or similar dispositions of ancillary assets by the issuer and affiliates of the issuer.

(N) A going concern statement from the chief financial officer of the issuer or equivalent official, signed under penalty of perjury, stating whether the issuer maintains the financial resources to continue business as a going concern for the 1-year period following the submission of the disclosure, absent a material change in circumstances.

(2) Information relating to the ancillary asset, including the following:

(A) A general description of the ancillary asset, including the standard unit of measure with respect to the ancillary asset, the intended or known functionality and uses of the ancillary asset, the market for the ancillary asset, other assets or services that may compete with the ancillary asset, and the total supply of the ancillary asset or the manner and rate of the ongoing production or creation of the ancillary asset.

(B) If ancillary assets have been offered, sold, or otherwise provided by the issuer to investors, intermediaries, or resellers, a description of the amount of assets offered, sold, or provided, the terms of each such transaction, and any contractual or other restrictions on the resale of the assets by intermediaries.

(C) If ancillary assets were distributed without charge, a description of each distribution, including the identity of any recipient that received more than 5 percent of the total amount of the ancillary assets in any such distribution.

(D) The amount of ancillary assets owned by the issuer.

(E) For the 1-year period following the submission of the disclosure, a description of the plans of the issuer to support (or to cease supporting) the use or development of the ancillary asset, including markets for the ancillary asset and each platform or system that uses the ancillary asset.

(F) Each third party not affiliated with the issuer, the activities of which may have a material impact on the value of the ancillary asset.

(G) Risk factors known to the issuer that may limit demand for, or interest in, the ancillary asset.

(H) The names and locations of the markets in which the ancillary asset is known by the issuer to be available for sale or purchase.

(I) To the extent available to the issuer, the average daily price for a constant unit of value of the ancillary asset during the relevant reporting period, as well as the 12-month high and low prices for the ancillary asset.

(J) If applicable, information relating to any external audit of the code and functionality of the ancillary asset, including the entity performing the audit and the experience of the entity in conducting similar audits.

(K) If applicable, any third-party valuation report or economic analysis regarding the ancillary asset or the projected market of the ancillary asset, which shall include the entity performing the valuation or analysis and the experience of the entity in conducting similar reports or analyses.

(L) Information relating to custody by the owner of the ancillary asset or a third party.

(M) Information on intellectual property rights claimed or disputed relating to the ancillary asset.

(N) A description of the technology underlying the ancillary asset.

(O) Any material tax considerations applicable to owning, storing, using, or trading the ancillary asset.

(P) Any material legal or regulatory considerations applicable to owning, storing, using, or trading the ancillary asset, including any legal proceeding that may impact the value of the ancillary asset.

(Q) Any other material factor or information that may impact the value of the 8 ancillary asset and about which the issuer is reasonably aware.

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Appendix B

I. Studies Required by the RFIA

Sec 207 – Retirement Investing	Requires the Comptroller General to conduct a study on retirement investing in digital assets and issue a report by March 1, 2023.
Sec 304 – SEC Rules Modernization	Requires the SEC to conduct a multi-year study with respect to the modernization of the rules of the Commission and issue final rules on investor protection, collaborative custody, market structure changes, regulatory burden reduction, etc. within 18 months of the enactment of this act.
Sec 701 – Distributed Ledgers in Depositories	Board of Governors of the Federal Reserve System study on use of distributed ledger technology for reduction of risk for depository institutions, 180 days after the date of enactment.
Sec 805 – Decentralized Finance	Requires the CFTC, SEC, and Secretary of the Treasury to analyze the market position of decentralized finance with respect to digital assets and submit a report no later than 1 year after enactment.
Sec 806 – Energy Consumption	Analysis of Energy Consumption in digital assets each year, must be published annually.
Sec 807 – Self Regulation and Digital Asset Associations	Requires the CFTC to conduct a study and issue a report on self-regulatory organizations and registered digital asset associations within 6 months of enactment. Not later than August 1, 2022, the CFTC and SEC shall jointly adopt an interim final rule specifying the scope of the study.

II. Future Guidance Required by the RFIA

Sec 206 – *Tax*	Not later than 1 year after the date of enactment the Secretary of the Treasury shall issue guidance on (1) forks, airdrops, and other subsidiary value as taxable, contingent upon the affirmative claim and disposition of the subsidiary value by a taxpayer, (2) merchant acceptance of digital assets (3) treatment of digital asset mining and staking, (4) charitable contributions of digital assets, (5) payment stablecoins as indebtedness.
Sec 303 – *Satisfactory Control Location*	Not later than 180 days after enactment SEC shall provide regulation for the satisfactory control location requirements.
Sec 304 – *SEC Rules Modernization*	SEC must modernize consumer protection rules within 18 months.
Sec 304 – *Dealers of Digital and Traditional Assets*	Not later than 270 days after enactment SEC adopts final guidance permitting brokers or dealers to trade and hold digital assets alongside traditional assets.
Sec 602 – *Payment Stablecoin Sanctions Compliance*	Not later than 120 days after enactment the Secretary shall adopt final guidance on sanctions compliance responsibilities.
Sec 603 – *Digital Yuan Use*	Not later than 60 days after enactment standards for adequate security measures for government devices using the Digital Yuan.
Sec 703 – *Federal Reserve Routing Numbers*	Not later than 2 years from the date of enactment of this Act the Federal Reserve shall assume responsibility for issuing routing transit numbers to depository institutions.
Sec 705 – *Depository Institutions*	Not later than 18 months after the date of enactment of this Act, the Federal Financial Institutions Examination Council, with FinCEN will publish final guidance for depository institutions on anti money laundering, custody fiduciary and capital market activities, information technology standards, payment system risk, and risk protection.
Sec 705 – *Digital Asset Intermediaries*	Not later than 18 months after the date of enactment of this Act the SEC and CFTC shall publish final guidance on AML and information technology standards for digital asset intermediaries.
Sec 803 – *State Money Transmission Coordination*	Not later than 2 years after the date of enactment of this Act States, through the Conference of State Bank Supervisors and the Money Transmission Regulators Association shall adopt uniform treatment of digital assets under state money transmission laws.
Sec 808 – *Cybersecurity*	Not later than 18 months from the date of enactment of this Act the SEC, CFTC and Secretary of Treasury shall develop comprehensive guidance relating to cybersecurity for digital asset intermediaries.

CONTACT US

DLx Law

Lewis Rinuado Cohen
lewis.cohen@dlxlaw.com

Angela Angelovska-Wilson
angela@dlxlaw.com

Gregory Strong
greg.strong@dlxlaw.com

Sarah Chen
sarah.chen@dlxlaw.com

Freeman Lewin
freeman.lewin@dlxlaw.com

Erin Engelmann
erin.engelmann@dlxlaw.com

www.dlxlaw.com
@DLxLawLLP

FS Vector

Melissa Netram
Mnetram@fsvector.com

Andy Barbour
Abarbour@fsvector.com

Peter Freeman
Pfreeman@fsvector.com

www.FSVector.com