

Articles + Publications | September 15, 2025

Senate Bill Could Overhaul Digital Asset Market Structure

WRITTEN BY

Genna Garver | Ethan G. Ostroff | Jeremy Murphy

Published in [Law360](#) on September 15, 2025. © Copyright 2025, Portfolio Media, Inc., publisher of Law360. Reprinted here with permission.

Since the U.S. House of Representatives passed the Clarity Act on July 17, the U.S. Senate Committee on Banking, Housing and Urban Affairs, which has oversight of the U.S. Securities and Exchange Commission, has been busy working on its own version of the U.S. cryptocurrency regulatory framework.

On July 21, Chairman Tim Scott, R-SC, along with Sens. Cynthia Lummis, R-WY; Bill Hagerty, R-TN; and Bernie Moreno, R-OH, released a discussion draft of the Responsible Financial Innovation Act of 2025.^[1] The committee released an updated draft on Sept. 5.

This comprehensive legislation aims to provide regulatory clarity, encourage innovation and address key risks in the rapidly evolving digital asset ecosystem. This article highlights critical elements of the draft bill, offering an overview of its major provisions and implications.

Alongside the initial draft, the Senate Banking Committee issued a broad request for information to solicit feedback from the public.^[2] Many industry leaders submitted feedback by the Aug. 5 deadline.

If enacted, the Senate Banking Committee's draft digital asset market structure bill would fundamentally reshape the regulatory landscape for financial companies and their legal counsel by establishing clear definitions for digital and ancillary assets, assigning primary oversight to the SEC with limited joint rulemaking authority alongside the Commodity Futures Trading Commission, and introducing tailored disclosure, anti-money laundering and compliance obligations.

This comprehensive framework would not only clarify the roles and responsibilities of financial institutions engaging in digital asset activities — including custody, trading and lending — but also require counsel to navigate new compliance regimes, reporting requirements, and risk management protocols, thereby significantly affecting operational, legal and strategic decision-making across the financial sector.

Key Highlights of the Draft Legislation

The Senate draft proposes a sweeping framework for digital asset regulation, building on the foundation of the Clarity Act. While the House-passed Clarity Act focused on empowering the CFTC and classifying digital assets as

commodities, the Senate bill provides the SEC with primary regulatory authority over “ancillary assets.”^[3]

However, the draft bill requires the SEC to consult with the CFTC on certain rulemakings — such as joint rules for portfolio margining — reflecting a divergent approach from the House while still ensuring the CFTC retains a meaningful role in the digital asset market going forward.^[4]

Treatment and Exceptions for Ancillary Assets

The bill proposes that ancillary assets should not be considered securities, and secondary transactions involving ancillary assets should not be treated as securities transactions under federal securities laws — and for purposes of the Securities Investor Protection Act of 1970.^[5]

Additionally, the bill specifies that gratuitous distributions of ancillary assets — meaning distributions made in exchange for no more than a nominal value — are also not considered securities transactions.^[6]

Ancillary Asset Originator Disclosure Requirements

The bill centers extensively on ancillary asset originators’ disclosure requirements to the SEC, establishing a framework intended to promote transparency while tailoring obligations to the size and nature of the originator. The disclosure requirements include the following:^[7]

- Ancillary asset originators must provide semiannual disclosures to the SEC, covering corporate information, economic details about the ancillary asset, risk factors and more. However, disclosure is not required if the originator raises less than \$5 million per ancillary asset in a 12-month period and if the average daily trading volume of the asset is less than \$5 million.
- Disclosures are deemed a “prospectus” for certain liability purposes and are not considered a registration statement.
- Periodic disclosure is not required if the originator certifies to the SEC that it has not engaged in more than a nominal level of managerial efforts in the prior year.
- Proposed rules cannot require financial statements to be present in disclosures.
- Any disclosure rule adopted should not apply to ancillary assets if the offer or sale of said asset does not exceed either 10% of the total dollar value of those ancillary assets outstanding in the market, or the asset fails to gross more than \$75 million in any calendar year for a period of up to four consecutive years.

Safe Harbor for Forward-Looking Statements

The Senate draft also includes important protections for those promoting ancillary assets by providing that no liability arises for forward-looking statements made in disclosures if the statements are clearly identified as forward-looking statements, accompanied by meaningful cautionary language, and the party bringing the action fails to prove that the person making the statement knew it was false or misleading at the time it was made.^[8]

Special Disposition Restrictions by Related Persons

The bill further anticipates the power dynamic between ancillary asset originators and general ancillary asset holders, and it provides important safeguards to address this power dynamic.

Specifically, it imposes holding periods and volume limits on sales of ancillary assets by related persons, along with additional reporting requirements for significant holders.

Furthermore, if a related person sells ancillary assets in violation of these restrictions, any profits realized from such sales are recoverable by other holders of the ancillary asset, ensuring accountability and discouraging improper disposition practices.^[9]

Protections From Illicit Activity

The bill includes a comprehensive approach to combating illicit finance risks associated with digital assets.^[10] It mandates new anti-money laundering and countering the financing of terrorism regulations, directing the secretary of the Treasury to establish a risk-focused examination and review process for financial institutions engaged in digital asset activities.

Additionally, the bill calls for the creation of a pilot information-sharing program that enables secure collaboration between government agencies and private sector entities to identify and address potential illicit finance violations and emerging risks.

To further strengthen these efforts, the bill establishes an “Independent Financial Technology Working Group to Combat Terrorism and Illicit Financing,” which brings together representatives from multiple federal agencies and private sector experts.

This working group is tasked with conducting research on the illicit use of digital assets and developing legislative and regulatory proposals to improve AML and countering the financing of terrorism regulations.^[11]

Application to the Banking Sector

One of the biggest challenges to establishing a robust digital asset market is defining how banks and traditional financial institutions fit into the evolving digital asset ecosystem.

The bill addresses this challenge by expressly permitting banks and financial holding companies to engage in a wide range of digital asset activities — including custody, trading, lending, payment activities, node operation, and brokerage or derivatives services — subject to existing banking laws.^[12]

Regulatory Innovation

The bill takes significant steps to promote regulatory innovation and international cooperation in the digital asset space. The bill directs the SEC to pursue reciprocal arrangements with foreign regulators to maintain U.S. leadership in digital asset regulation and to advocate for the development and adoption of technology-neutral, open standards globally.

To further foster responsible innovation, the bill establishes what it calls the “CFTC-SEC Micro-Innovation Sandbox,” allowing eligible firms to test innovative products and services under limited exemptions, excluding anti-fraud laws, for up to two years, with possible extension if the firm is actively pursuing permanent regulatory relief.

The bill also encourages international cooperation through cross-border sandboxes and tasks the SEC with leading these international coordination efforts, reflecting a comprehensive approach to harmonizing domestic and global digital asset regulation while supporting technological advancement and market integrity.[\[13\]](#)

SEC-CFTC Joint Rulemaking

Finally, the bill does strike a balance of regulatory authority between the SEC and the CFTC.

It requires both agencies to jointly issue rules to facilitate portfolio margining of securities, swaps, futures, options and digital commodities.

This collaborative approach ensures that both the SEC and CFTC play a meaningful role in overseeing critical aspects of the digital asset market, reflecting the bill's intent to coordinate regulatory oversight and leverage the expertise of both commissions.[\[14\]](#)

Request for Information: Shaping the Future of Digital Asset Regulation

The committee's RFI sought detailed feedback on a wide range of topics, including:[\[15\]](#)

- The appropriate allocation of regulatory jurisdiction between the SEC and CFTC;
- The definition and classification of digital assets;
- Disclosure requirements and investor protection mechanisms;
- The role of intermediaries, including access to digital assets and custody solutions;
- Illicit finance risks, AML compliance and potential solutions to curb the use of digital assets in unlawful activities; and
- The treatment of new technological developments underpinning digital assets.

Final Thoughts

The Senate Banking Committee's release of these discussion drafts and RFI joined the whirlwind of legislative and regulatory developments in the digital assets space this summer.

The committee's updated discussion draft furthers CFTC and SEC cooperation through the establishment of the Joint Advisory Committee on Digital Assets, which would be responsible for providing nonbinding recommendations on the regulation of digital assets.

It also further defines "ancillary asset" and adds provisions on tokenization and decentralized finance software developers.[\[16\]](#) After the release of the updated discussion draft, on Sept. 9, 12 Democratic senators unveiled a framework for market structure legislation.[\[17\]](#) The proposal outlines seven key pillars, such as closing gaps in the spot market for nonsecurity digital assets, clarifying legal statuses and preventing illicit finance.

At the SALT Wyoming Blockchain Symposium in August, Lummis said she anticipates the committee will pass a proposal by the end of September, and she still expects market legislation to be on the president's desk before the end of 2025, perhaps even prior to Thanksgiving.

Scott has said his goal is to get the SEC portion of the legislation voted out of the committee by Sept. 30, and during his remarks at the SALT symposium indicated an expectation that 12-18 Democrats are open to voting for market structure legislation.

The Senate Committee on Agriculture, Nutrition and Forestry, which has oversight of the CFTC, is then expected to take up the legislation in October, including drafting language focused on digital commodities.

During a Senate Agricultural Committee hearing in July titled “Stakeholder Perspectives on Federal Oversight of Digital Commodities,” which focused on how to divide regulatory authority over digital assets between the CFTC and the SEC, Chairman John Boozman, R-Ark., shared his perspective that jurisdiction over the trading of digital commodities should be exclusively with the CFTC, while others advocated for a joint regulatory framework involving both the CFTC and SEC.

The two committees will need to reconcile questions about jurisdiction between the SEC and CFTC prior to a comprehensive legislative package advancing to the Senate floor.

[1] See generally Senate Banking Committee Digital Asset Market Structure Legislation Discussion Draft (Discussion Draft) at

https://www.banking.senate.gov/imo/media/doc/senate_banking_committee_digital_asset_market_structure_legislation_discussion_draft.pdf.

[2] See generally Market Structure RFI at https://www.banking.senate.gov/imo/media/doc/market_structure_rfi.pdf.

[3] Ancillary asset means an intangible, commercially fungible asset, including a digital commodity [not defined], that is offered, sold, or otherwise distributed to a person in connection with the purchase and sale of a security through an arrangement that constitutes an investment contract. Ancillary assets specifically exclude assets that provide debt or equity interests, liquidation rights, entitlements to interest or dividends, or other express or implied financial interests in the originator. Discussion Draft at 3. Note, the SEC must adopt a final rule specifying clear criteria and definitions, which for the term “investment contract” requires the following elements: (1) an investment of more than a de minimis amount of money or services; (2) investment in a business entity; (3) an express or implied agreement for the issuer to perform essential managerial efforts; (4) a reasonable expectation of profits based on the agreement and statements by the issuer; and (5) profits derived from the entrepreneurial or managerial efforts of the counterparty or its agents on behalf of the enterprise, where such efforts (i) are post-sale and essential to the operation or success of the enterprise and (ii) do not include ministerial, technical, or administrative activities. Discussion Draft at 18-19.

[4] Discussion Draft at 11-12, 28-29.

[5] Id. at 4-5.

[6] Id.

[7] See id. at 5-12. The updated draft released on Sept. 5 removes the SEC’s obligation to consult with the CFTC prior to establishing requirements for disclosure.

[8] Id. at 11.

[9] See id. at 15-18.

[10] Digital asset means any digital representation of value that is recorded on a cryptographically-secured distributed ledger; Discussion Draft at 2. The updated draft released on Sept. 5 removes the prior exclusion of nonfungible assets from the definition of digital assets.

[11] See id. at 21-26.

[12] Id. at 20-21.

[13] See id. at 30-31, 33-34.

[14] Id. at 11-12, 28-29.

[15] See generally Market Structure RFI.

[16] See generally at

https://fm.cnbc.com/applications/cnbc.com/resources/editorialfiles/2025/09/05/Market_Structure-Discussion-Draft-9-5-25.pdf. Unlike the initial draft, which was accompanied by a Majority press release from the Senate Banking Committee, the committee has not formally released the updated draft or issued a press release regarding it.

[17] See generally A Framework for Market Structure Legislation at <https://www.gallego.senate.gov/wp-content/uploads/2025/09/Market-Structure-Framework-Final.pdf>.

RELATED INDUSTRIES + PRACTICES

- Consumer Financial Services
- Digital Assets + Blockchain