

Congress Crypto Movement Could Bring CFTC 'Clarity' At Last

By **Eric Forni, Brian Wilmot and David Stier** (July 15, 2025)

The Digital Asset Market Clarity Act establishes a foundational regulatory framework for digital asset markets, positioning the U.S. Commodity Futures Trading Commission at the center of these efforts, and could pass the U.S. House as soon as Wednesday with bipartisan support.[1]

The Clarity Act will receive further scrutiny, but its bipartisan introduction and support in the House, as well as the U.S. Senate's passage of the Guiding and Establishing National Innovation for U.S. Stablecoins, or GENIUS, Act, demonstrates enduring support for legislation addressing digital assets and the CFTC's important role in a future regulatory structure.

Below, we outline the Clarity Act's key provisions concerning the CFTC, with a focus on its expanded enforcement authority over digital assets.

Overview of the Clarity Act

The Clarity Act, in large part, began as the FIT21 Act from the 118th Congress.[2] The Clarity Act defines a structure for the regulation of digital assets and related markets, distinguishing between those digital assets subject to the jurisdiction of the U.S. Securities and Exchange Commission and digital commodities, for which it would grant the CFTC near-exclusive jurisdiction.[3]

The CFTC's jurisdiction would encompass digital commodity exchanges, brokers and dealers, much as it does for other nondigital commodities.

A draft of the Clarity Act was formally introduced with bipartisan support at the end of May.[4]

Both the House Financial Services and Agriculture Committees quickly marked up and amended the bill, and it received bipartisan support during its passage out of committee on June 10.[5]

The Clarity Act now comes to the House floor at the same time the House is considering the GENIUS Act, which recently passed the Senate, and as the House considers both during its "Crypto Week," which is ongoing.[6]

While this activity suggests increased momentum for passage of both bills into law, the passage of the Clarity Act, or any similar structural legislation, is likely to be more controversial in the Senate. When asked about a potential combination of the Clarity and GENIUS Acts in the House, Sen. Bill Hagerty, R-Tenn., advised against such a move.[7]

He suggested that market structure legislation like the Clarity Act could complicate passage of a combined bill because his Senate colleagues may not have the same understanding of



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the complexities of the market structure bill as his House colleagues.

Even considering its remaining legislative hurdles, the Clarity Act provides helpful insight into the likely contours of a comprehensive, digital asset regulatory framework.

Key Elements of the Clarity Act

Definitions of Digital Assets

The Clarity Act would divide digital assets into three categories: securities, commodities and stablecoins.

"Digital commodity" is broadly defined as "a digital asset that is intrinsically linked to a blockchain system, and the value of which is derived from or is reasonably expected to be derived from the use of the blockchain system." [8]

Although the definition of digital commodity explicitly exempts investment contracts, it significantly narrows the scope of digital assets that constitute securities, exempting a new category of investment contract assets from the definition of investment contract.

CFTC Oversight and Responsibilities of Digital Commodities

The Clarity Act would grant exclusive regulatory jurisdiction for digital commodities to the CFTC, including digital commodity exchanges, brokers and dealers, except when digital commodities are transacted by SEC-registered exchanges, brokers and dealers.

In these limited circumstances, the SEC would retain anti-fraud and market manipulation authority. Otherwise, under the Clarity Act, digital commodities, by definition, would not be securities nor subject to the SEC's regulatory jurisdiction.

Separately, the CFTC and SEC would share oversight of "permitted payment stablecoins," but the CFTC's authority is limited to cash or spot transactions involving stablecoins that are subject to the CFTC's jurisdiction or that are transacted by a CFTC-registered entity. [9]

Futures Association Oversight

Digital commodity broker-dealers and exchanges subject to registration under the Clarity Act also will have to register with a registered futures association, e.g., the National Futures Association, a requirement under the act and a requirement for existing commodity broker-dealers and exchanges. [10]

The National Futures Association, the self-regulatory organization associated with the CFTC, imposes its own additional regulatory requirements, including supervisory responsibilities over employees, agents and third parties.

Enforcement Authority and Fraud Provisions

Digital exchanges, digital commodity brokers and digital commodity dealers would be subject to the CFTC's anti-fraud and market manipulation enforcement authority, as well as subject to inspection and examination by the relevant futures association by virtue of their membership.

In addition to existing enforcement authorities granted to the CFTC, the Clarity Act would

require digital commodity broker-dealers to develop business conduct standards. It also incorporates an explicit "prohibition on fraudulent practices," including schemes to defraud fraudulent or deceitful conduct with customers or counterparties, and any fraudulent, deceptive or manipulative practice.

Decentralized Finance Exemptions

The Clarity Act would exempt six specific categories of decentralized finance activities from its provisions, but it would not exempt these activities from the "anti-fraud, anti-manipulation, and false reporting enforcement authorities of the [CFTC]."[11]

These exempted activities include compiling network transactions, operating a node, providing an interface to access data about a blockchain system, publishing a blockchain system that is not a decentralized finance trading protocol, providing decentralized systems for executing spot contracts in digital commodities, and maintaining wallets.

Mature Blockchain System, Federal Preemption and Bank Secrecy Act

The act includes the concept of a mature blockchain system, which is "a blockchain system, together with its related digital commodities, that is not controlled by any person or group of persons under common control." [12]

Once a blockchain system is certified as mature, i.e., sufficiently decentralized, a digital asset relying upon that system may be exempted from certain disclosure requirements.

It also includes strong federal preemption language that preempts state regulation of digital commodities, which would include regulation under state securities laws.

It would also explicitly add digital commodity exchanges, brokers and dealers to the list of financial institutions subject to the Bank Secrecy Act.

CFTC Enforcement Authority as Applied to Digital Assets

The act's regulatory scheme for digital commodity markets, including digital commodity exchanges and broker-dealers, relies heavily on the CFTC's existing regulatory structure for commodity markets.

This structure will be familiar to existing commodity market participants and those current exchanges and broker-dealers that already register and comply with CFTC requirements.

While the Clarity Act addresses some of the uncertainty and regulatory overlap for digital commodities under the current status quo, it also will pose many challenges for newer and less experienced market entrants and non-U.S. players not already accustomed to U.S. commodities market regulatory obligations, including intensive compliance and supervisory obligations imposed by the CFTC and futures associations.

We also expect there to be significant interest from nontraditional participants who see opportunities in the burgeoning digital asset markets.

Key Takeaways

Even if passed by the House, the Clarity Act is likely to attract continued attention and possible modification in the Senate, in its current form or otherwise.

However, it has been introduced at a time of heightened interest in digital asset regulation in Congress, and the Clarity Act's bipartisan support improves its chances of passing in some form.

The act includes strong federal preemption provisions, but those could be loosened during the legislative process to allow for some state involvement in digital asset regulation, as Congress did when it removed the ban on state regulation of AI in the reconciliation bill.

The CFTC is likely to play a central role in any future regulatory framework for digital assets, whether under the Clarity Act or separate legislation.

The CFTC already plays an important role in these markets, and the SEC is in the process of adjusting its regulatory posture toward digital assets and blockchain technology that focuses on enabling participation in its existing securities markets.

The success of a new regulatory structure for digital assets at the CFTC will be affected by the success of a major leadership transition that is underway. The announced resignations of all current commissioners create the real possibility that the CFTC may have a single commissioner for an extended period of time.

Significant changes also occurred within CFTC leadership last month, including in the Division of Enforcement. The current deputy director of enforcement, Paul G. Hayeck, took over in June from acting Director Brian Young, who had been in the role since January.

Even if the CFTC ultimately has near-exclusive jurisdiction over certain digital assets, to the extent such assets are offered and sold as securities, e.g., in the form of investment contracts,[13] or traded on national securities exchanges or by SEC-registered intermediaries exempt from CFTC registration, the SEC will continue to have jurisdiction as well.

Although the Clarity Act does not specifically address how Bank Secrecy Act and anti-money laundering requirements, such as those articulated in the U.S. Department of the Treasury's May 2019 convertible virtual currency guidance,[14] will apply to certified mature blockchain systems, including decentralized finance platforms, Congress appears committed to extending Bank Secrecy Act and AML requirements for digital commodity market participants.

AML enforcement by executive branch agencies in the cryptocurrency space will likely remain a focus, particularly where it involves the Trump administration's enforcement priorities, including national security and money laundering prevention, illicit opioid trafficking, and/or terrorist financing involving, Iran, China and Mexico.

The CFTC has a long history of joint enforcement with the U.S. Department of Justice, particularly in more egregious cases involving fraud.

Although the administration announced its desire to end "regulation by prosecution,"[15] we expect to see further collaboration on misconduct involving digital assets where the conduct is willful, particularly egregious, and involves fraud and harm to investors.

If enacted, the Clarity Act would represent a significant step toward a unified regulatory framework for digital asset markets, but many steps remain.

Some form of market structure legislation seems inevitable as well as the CFTC's important role in that structure.

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[1] Digital Asset Market Clarity Act, H.R. 3633, 119th Cong. (as reported to House June 23, 2025), <https://www.congress.gov/bill/119th-congress/house-bill/3633/text/ih>.

[2] Financial Innovation and Technology for the 21st Century Act, H.R.4763, 118th Cong. (as passed by House, May 22, 2024), <https://www.congress.gov/bill/118th-congress/house-bill/4763>.

[3] This exclusivity is subject to some exceptions. The SEC maintains some enforcement authority for digital commodities traded on SEC-registered exchanges or by SEC-registered brokers and dealers. For stablecoins and other hybrid digital assets with the features of a commodity and a security, CFTC and SEC share responsibilities.

[4] House Committee on Agriculture, Thompson, Hill, and Bipartisan Leaders Release Digital Asset Market Structure Legislation, Press Release (May 29, 2025), <https://agriculture.house.gov/news/documentsingle.aspx?DocumentID=7921>.

[5] Passing 47-6 in the House Committee on Agriculture and 32-19 in the House Committee on Financial Services.

[6] House Announces Week of July 14th as Crypto Week, Press Release (July 3, 2025), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=410793>.

[7] Landmark GENIUS Stablecoin Bill Passes Senate! What's Next? | Bill Co-author Senator Bill Hagerty, Bankless Podcast (Jun 18, 2025), <https://www.youtube.com/watch?v=CSdhHkH8nMk>.

[8] Clarity Act, § 103. Definitions under the Commodity Exchange Act.

[9] Id. at § 401.

[10] Id. at §§ 404 and 406.

[11] Id. at § 409.

[12] Id. at § 101.

[13] The Act establishes a new type of digital asset that is exempted from the definition of investment contract: Investment contract assets. An investment contract asset is a digital commodity that "(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; and (B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract." Id. at § 201.

[14] Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FinCEN Guidance (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

[15] Memorandum from Deputy Attorney General Todd Blanche to All DOJ Employees: Ending Regulation by Prosecution (Apr. 7, 2025), <https://www.justice.gov/dag/media/1395781/dl?inline>.