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Recent Updates on Market Structure Legislation: Senate Agriculture Committee Releases Draft

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Coming off a lengthy government shutdown, the Senate is showing bipartisan progress on digital asset market structure legislation, with both the Senate Agriculture and Banking Committees working to advance their respective drafts toward a comprehensive legislative framework. On Nov. 10, Senate Agriculture Committee Chair John Boozman (R-AK) and Sen. Cory Booker (D-NJ) [released](#) a bipartisan [discussion draft](#) of market structure legislation governing the CFTC's authority to regulate digital assets. The Senate Agriculture Committee has jurisdiction over the CFTC. The Boozman-Booker draft builds off of the CLARITY Act ([H.R. 3633](#)) by defining digital commodities, establishing consumer protections and regulating spot trading. Portions of the Senate Agriculture bill are still being drafted, including sections concerning blockchain developers, decentralized finance and anti-money laundering laws. The Senate Agriculture Committee has not set a date to markup the legislation and is soliciting feedback from interested parties.

On July 22, Senate Banking Committee Chair Tim Scott (R-SC) and Sens. Cynthia Lummis (R-WY), Bill Hagerty (R-TN) and Bernie Moreno (R-OH) released a [discussion draft](#) of digital asset market structure legislation covering issues under the Banking Committee's jurisdiction, along with a [request for information](#). Last week, Chair Scott stated that the Committee will mark up the bill in December and hopes to get it to the Senate floor early 2026. After the two Committees mark up their portions of the legislation, they will likely combine and reconcile the two drafts before any unified legislative package advances to the Senate floor.

Digital Asset Commodities

While Congress continues to develop the shape of market structure legislation, the Senate Agriculture Committee draft and the House-passed CLARITY Act each introduce definitions to classify digital commodities. The Senate Agriculture draft focuses on whether the digital asset can be transferred without an intermediary, while the CLARITY Act focuses on whether the digital asset is intrinsically linked to a blockchain. The Senate Agriculture draft excludes the term “security” but leaves this term bracketed, while the CLARITY Act further defines the types of “securities” excluded from the “digital commodity” category.

	Senate Agriculture Draft	House CLARITY Act
Definitions	Digital Commodity. Broadly defines digital commodities as “any fungible digital asset that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger.” Sec. 101, p. 13.	Digital Commodity. The term “digital commodity” means 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.” Sec. 103, pp. 22. A digital asset is considered “intrinsically linked” if it is generated by the blockchain, used to transfer value between participants, used to access services on a blockchain, used to participate in governance or used as incentive for participants to engage in activities or to validate transactions. Sec. 103, pp. 22-24.
Exclusions	Excludes. The term “digital commodity” excludes the following: (i) security; (ii) security derivative; (iii) permitted payment stablecoin; (iv) banking deposit; (v) commodity; (vi) commodity derivative; (vii) pooled investment vehicle; or (viii) good, collectible and other non-commodity assets. Sec. 101, pp. 13-19. The term “security” is bracketed and is not further defined. Sec. 101, p. 14.	Excludes. The term “digital commodity” excludes the following: (i) security; (ii) security derivative; (iii) permitted payment stablecoin; (iv) banking deposit; (v) commodity; (vi) commodity derivative; (vii) pooled investment vehicle; (viii) good, collectible and other non-commodity asset. Sec. 103, pp. 24-31. The term “security” is further defined to describe what is not a “digital commodity,” including a note, investment contract or profit-sharing agreement that gives the holder an interest in the revenues, profits, assets or debts of an issuer. Sec. 103, pp. 25.

Spot Market Authority and Stablecoin Treatment

Both bills establish a spot market digital commodity regulatory regime with the CFTC. The CFTC would have jurisdiction over cash or spot transactions in a permitted payment stablecoin offered by a registered entity. However, the CFTC would not have authority to make any rule or impose any requirements on a permitted payment stablecoin issuer.

	Senate Agriculture Draft	House CLARITY Act
Definitions	Spot Transaction Authority. The CFTC “shall have exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity in interstate commerce, including in a digital commodity cash or spot market ” that is offered by an entity registered or required to be registered by the CFTC. Sec. 201, p. 59.	Spot Transaction Authority. The CFTC “shall have exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity or tradable asset ... including in a digital commodity or tradable asset (as so defined) cash or spot market ” that is offered by an entity registered or required to be registered by the CFTC. Sec. 401, pp. 129-130.
Limitations	Limitations. The above clause shall not apply to certain “custodial or depository activities for a digital commodity,” or a securities offering involving a digital commodity, or a mixed digital transaction. Sec. 201, pp. 59-60.	Limitations. The above clause shall not apply to certain “custodial or depository activities for a digital commodity,” or a securities offering involving a digital commodity, or a mixed digital transaction. Sec. 401, pp. 130-131.
Stablecoin Treatment	Stablecoin Transaction Rules. The Act may apply to stablecoin transactions “only for the purpose of regulating the offer, execution, solicitation, or acceptance of a cash or spot permitted payment stablecoin transaction on a registered entity or by any other entity registered with the Commission, as if the permitted payment stablecoin were a digital commodity.” Sec. 201, pp. 60-61. The CFTC shall not make a rule or impose obligations with regard to a permitted payment stablecoin issuer. Sec. 201, p. 61.	Stablecoin Transaction Rules. The CLARITY Act may apply to stablecoin transactions “only for the purpose of regulating the offer, execution, solicitation, or acceptance of a cash or spot permitted payment stablecoin transaction on a registered entity or by any other entity registered with the Commission, as if the permitted payment stablecoin were a digital commodity.” Sec. 401, pp. 132-133. The CFTC shall not make a rule or impose obligations with regard to a permitted payment stablecoin issuer. Sec. 401, p. 133.

Digital Asset Custodians

The Senate Agriculture draft introduces a new term, “digital commodity custodian,” and requires digital commodity exchanges to hold digital commodities that are the property of a customer in a qualified digital commodity custodian. The CLARITY Act has similar requirements but uses the term “qualified digital asset custodian.”

	Senate Agriculture Draft	House CLARITY Act
Requirements	Requirements. “A digital commodity exchange shall hold in a qualified digital commodity custodian each unit of a digital commodity that is ... the property of a customer of the digital commodity exchange” or otherwise required. Sec. 204, pp. 106-107.	Requirements for Futures Commission Merchants. “[A]ny such property that is a digital asset shall be held in a qualified digital asset custodian.” Sec. 402, p. 134.
Definitions	Digital Commodity Custodian. The term “digital commodity custodian” means “a person who, as a regular business, holds, maintains, or safeguards digital commodities for others.” Sec. 101, p. 23. Qualified Digital Commodity Custodian. The term “qualified digital commodity custodian” means a digital commodity custodian that “holds digital commodities on behalf of a person registered under this Act or a customer of a person registered under this Act” and is in compliance with various supervision and examination requirements. Sec. 101, p. 25. Rulemaking. “The Commission shall prescribe rules to permit a digital commodity custodian registered with the Commission to be a qualified digital commodity custodian.” Sec. 101, p. 29.	Qualified Digital Asset Custodians. “A person is a qualified digital asset custodian for purposes of this Act if the person ... holds digital assets on behalf of a person registered under this Act or a customer of a person registered under this Act” and is in compliance with various supervision and examination requirements. Sec. 405, p. 176.

Decentralized Finance

The Senate Agriculture Committee draft has a “decentralized finance” section that is bracketed, with some initial definitions. The CLARITY Act generally excludes decentralized finance activities.

	Senate Agriculture Draft	House CLARITY Act
Decentralized Finance	Decentralized Finance. This section is bracketed and states: “Seeking further feedback.” Sec. 208, p. 138.	Digital Commodity Intermediaries; Exclusion for Decentralized Finance Activities. “Notwithstanding any other provision of this Act, a person shall not be subject to this Act and the regulations promulgated under this Act based on the person directly or indirectly engaging in any of the following activities ... in relation to the operation of a blockchain system or in relation to decentralized finance trading protocol”: (i) compiling or validating network transactions; (ii) operating a node; (iii) providing a user-interface that enables a user to access data about a blockchain system; (iv) developing a decentralized finance messaging system; (v) maintaining a decentralized finance messaging system or operating a liquidity pool; or (vi) developing wallets. Sec. 409, pp. 208-209.
Definitions	Decentralized Finance Messaging System. This term is bracketed and states: “a software application that provides a user with the ability to create or submit an instruction, communication, or message to a decentralized finance trading protocol[.]” Sec. 101, p. 9. Decentralized Finance Trading Protocol. This term is bracketed and states: a “blockchain application through which multiple participants can execute a financial transaction[.]” Sec. 101, p. 10.	Decentralized Finance Messaging System. This term is bracketed and states: “a software application that provides a user with the ability to create or submit an instruction, communication, or message to a decentralized finance trading protocol[.]” Sec. 101, p. 20. Decentralized Finance Trading Protocol. This term is bracketed and states: a “blockchain system through which multiple participants can execute a financial transaction[.]” Sec. 101, p. 21.

Effective Date

The effective date differs between the two pieces of legislation. The Senate Agriculture draft would generally take effect 18 months after the date of enactment, while the CLARITY Act would take effect 360 days or 270 days after the date of enactment, depending on the provisions referenced.

	Senate Agriculture Draft	House CLARITY Act
Timeline	General Effective Date. “Except as provided in subsection (b) and as otherwise provided in this Act or an amendment made by this Act, this Act and the amendments made by this Act shall take effect on the date that is 18 months after the date of enactment of this Act.” Sec. 109, p. 54. Rulemaking Provisions. “To the extent that a provision of this Act or an amendment made by this Act requires a rulemaking, the provision shall take effect on the later of— (1) 18 months after the date of enactment of this Act; and (2) 120 days after the publication in the Federal Register of the final rule implementing the provision.” Sec. 109, p. 55.	Offers and Sales of Digital Commodities; Effective Date. “Unless otherwise provided in this title, this title and the amendments made by this title shall take effect 360 days after the date of enactment of this Act, except that, to the extent a provision of this title requires a rule-making, the provision shall take effect on the later of— (1) 360 days after the date of enactment of this Act; or (2) 60 days after the publication in the Federal Register of the final rule implementing the provision.” Sec. 206, pp. 106-107. Registration for Digital Commodity Intermediaries; Effective Date. “Unless otherwise provided in this title, this title and the amendments made by this title shall take effect 270 days after the date of the enactment of this Act.” Sec. 414, p. 220.

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