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United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Paul Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

June 3, 2025

Subject: Request for SEC's Technical and Impact Analysis of the CLARITY Act

Dear Chairman Atkins:

I am writing to request that the U.S. Securities and Exchange Commission (SEC) provide a comprehensive technical and impact analysis of the H.R. 3633, the Digital Asset Market Clarity (CLARITY) Act of 2025. The SEC previously produced written technical assistance to both the Majority and Minority staff (referenced herein as "SEC TA") on previous crypto legislation, including the prior version of this Act, and former Chair Gensler also issued a statement at my request analyzing the impact of that bill on SEC's tripartite mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. I also note that my staff has yet to receive the same technical analysis (both in written form and oral presentation) of this bill that the Commission has provided to the Majority. My staff has asked several times for the same written materials, and we have yet to receive it. This is a vast and regrettable departure from established practice and precedent. As you know, the apolitical technical feedback that agencies provide to Congress is a critical and necessary resource for informed legislating. Additionally, I also recognize and regret you have not yet been invited to testify and publicly offer your views on this bill. Given the significant implications this bill would have on the regulatory landscape for digital assets, investor protection, capital formation, market competition, and the SEC's ongoing regulatory efforts, a current and thorough analysis from the Commission is needed for informed policymaking.

My staff has prepared a series of questions that I request you, drawing from the expertise of all relevant SEC staff (not limited to those who serve on the Crypto Taskforce), to answer. Your answers would help me and other Members to assess whether and how this bill would impact the SEC's mission. These questions, where applicable, incorporate comments from prior SEC TA. These questions are organized around the core areas of the SEC's mission. We request your prompt written responses to these questions, as well as any other comments or technical assistance you may have. We further ask that you provide written answers as they become available, and not necessarily wait to compile all of them into one volume.

I. Impact on the SEC's Ability to Protect Digital Asset Investors

The CLARITY Act, like the prior FIT 21 bill, introduces new definitions, exemptions, and regulatory frameworks. Prior SEC TA noted concerns that the prior bill "would in fact obscure the classification of assets that rely on blockchain technology to trade and settle" and attempts to replace "well-established securities law analysis...with a narrower, and less versatile, technology-based framework." (SEC TA, p. 1)

1. Definition of "Digital Asset" and "Investment Contract Asset:" Section 101 of the CLARITY Act (amending Section 2(a) of the Securities Act of 1933) introduces a definition for "digital asset." Section 201(a) of the CLARITY Act further amends Section 2(a) of the Securities Act of 1933 by adding paragraph (36) defining "investment contract asset" and states in paragraph (1) that the term "investment contract" does not include an "investment contract asset." TA provided by the SEC

warned that the definition of "digital asset" as "any digital representation of value which is recorded on a cryptographically-secured distributed ledger" is overbroad, potentially including all securities issued digitally (e.g., tokenized equity, debt, security-based swaps), and that removing these from the traditional securities regime based on network characteristics rather than economic realities "would undermine securities markets." (SEC TA, p. 2)

- Does the current Commission share the concern that the proposed definition of "digital asset" could inadvertently capture traditional securities if they are merely "recorded on a cryptographically-secured distributed ledger or other similar technology," and what would be the impact on existing securities regulations?
- How would the exclusion of "investment contract assets" from the definition of an "investment contract" affect the application of the Howey test? What are the potential risks if an asset currently considered a security is regulated differently due to this new classification?
- Given that courts in cases like Terraform, Coinbase, Binance, and Kraken have consistently applied the flexible, economics-based Howey test to various crypto assets (e.g., LUNA, UST, BNB, ADA, ALGO, SOL, FIL, POL), how does the current Commission view CLARITY Act's attempt to create a distinct "investment contract asset" category that is then excluded from the traditional "investment contract" definition? What is the effect on the principle, upheld in SEC v. Coinbase, that "form should be disregarded for substance and the emphasis should be on [the] economic reality"?
- TA previously provided by the SEC suggested that limiting the new regime to investment contracts "would likely upset jurisprudence with regard to all investment contract analysis." (SEC TA, p. 2) Has SEC staff's technical assessment changed?

2. Definition of a "Digital Commodity": SEC staff raised concerns that the bill assigns regulatory jurisdiction "through a flawed process based on the characteristics not of the asset itself, but of the network on which the asset is deployed" (SEC TA, p. 1) and that "providing the CFTC exclusive jurisdiction over listed digital commodities gives the CFTC direct authority to define whether a digital asset is a security under the federal securities laws, which authority is inconsistent with existing SEC savings clauses in the CEA." (SEC TA, p. 5)

- What are the practical implications and risks associated with the updated proposed mechanism for determining jurisdiction between the SEC and CFTC, particularly the certification (examined in greater detailed below) pathway to becoming a "digital commodity" as defined in Section 101 of the CLARITY Act?

3. Further lack of clarity regarding definitions: SEC staff indicated that under definitions like "end user distribution" and "digital commodity" (both in Section 101 of the Clarity Act), "the same digital asset may be both a digital commodity and a security" depending on how it's issued and to whom, potentially confusing intermediaries. (SEC TA, p. 3). It also found the reliance on "outstanding" digital assets for ownership tests "unworkable and subject to manipulation and abuse." (SEC TA, p. 4)

- What are the potential implications and risks associated with a framework where an asset's regulatory status can change based on the holder or method of distribution, rather than its inherent economic characteristics?
- What recommendations does SEC staff have to address concerns that percentage ownership tests based on "outstanding" units of a digital commodity (e.g., on page 7, line 11 and page 8, line 15 of the CLARITY Act) are difficult to verify and could be manipulated, especially given that "blockchain networks may 'mint' billions or trillions of digital assets that are then held by the digital asset issuer in a so-called 'treasury'"? (SEC TA, p. 4)

4. Self-Certification for "Mature Blockchain Systems" and Network Definitions: Section 202(a) introduces an exemption for investment contracts involving units of a digital commodity if the

related blockchain system is certified as a "mature blockchain system" or intended to become one within four years. Section 205 further details the certification process for "Mature Blockchain Systems," allowing issuers to self-certify. The SEC would have only 60 days to review and challenge such certifications.

- What resources would the SEC require to adequately review the potentially large volume of self-certifications for "mature blockchain systems" within the proposed 60-day timeframe (detailed in Section 42(a)(3), or page 92 lines 18 through 23 of the CLARITY Act)? Does SEC staff maintain the assessment that this timeframe is insufficient, especially since there is no way for the SEC to confirm whether the details included in the self-certification are true, and the information in the self-certification is "solely within the knowledge of the operators of the blockchain networks, the DAOs, and persons owning or holding the digital assets,"? (SEC TA, p. 5). Would the significant attrition of SEC staff over the past few months exacerbate this issue and what staffing resources would be needed to adequately review these certifications?
- What are the specific risks to investors if an issuer self-certifies a system as "mature" and the SEC is unable to rebut this certification effectively within the given timeframe, particularly if the system does not meet the criteria outlined in Sections 42(b) and (c) (beginning, respectively, at page 96 line 3 and page 97 line 9 of the CLARITY Act?
- How does the "rebuttable presumption" (Section 42(a)(3), or page 92 lines 18 through 23 of the CLARITY Act) and the subsequent appeal process (Section 42(a)(8)), beginning on page 95 line of the CLARITY Act) for such certifications align with the SEC's current enforcement and investor protection mechanisms?
- Section 42(c)(2)(G) (page 101 lines 11 through 16 of the CLARITY Act) states a condition for a system being deemed mature is that "No digital commodity issuer, digital commodity related person, or digital commodity affiliated person beneficially owns, in the aggregate, 20 percent or more of the total amount of units of the digital commodity." How would the SEC verify such ownership thresholds for globally distributed digital assets that may be spread across anonymous addresses?
- Is the SEC still concerned that the definition of a "decentralized governance system" is "so broad that effectively all blockchain networks will be 'decentralized' if there is a 'decentralized organization' that controls it, even if such organization is the digital asset issuer itself"? (SEC TA, p. 3) If not, why? What is the SEC's analysis of this definition and the potential for conflicts of interest if an issuer can control a network certified as decentralized?
- What risks are associated with the bill's reliance on network attributes, which SEC staff stated are "irrelevant as trades on or through intermediaries are typically 'off-chain'" (SEC TA, p. 1)?

5. Exempted Transactions and Investor Limits: Section 202(a)(1) of the CLARITY Act (starting on page 62, line 10) allows for sales up to $75,000,000 in a 12-month period under this exemption, and further limits a purchaser to owning no more than 10% of the outstanding units.

- What is the SEC's assessment of the investor protection implications of the $75,000,000 offering limit under the new exemption in Section 4(a)(8) of the Securities Act?
- As drafted, non-accredited investors may purchase crypto assets up to 10% of their net worth or annual income before the issuer is required to provide any type of disclosure. How does the bill's framework for limiting purchases by non-accredited investors compare to existing accredited investor definitions and protections, and what are the potential impacts on retail investors?
- How does SEC staff view the suitability of the myriad existing capital raising exemptions for crypto-related projects?

6. Secondary Market Transactions: Section 203(a) of the CLARITY Act states that "the offer or sale of a digital commodity that originally involved an investment contract by a person other than

the issuer of such digital commodity…shall be deemed not to be an offer or sale of the investment contract originally involving the digital commodity between the issuer of the investment contract involving the digital commodity…and the purchaser of such digital commodity under…" (page 80, line 24, through page 81, line 8).

- How would this provision affect the SEC's ability to regulate secondary market transactions of digital assets that were initially part of an investment contract?
- What investor protections, if any, would apply to these secondary market transactions if they are not considered securities transactions between the issuer and the purchaser?

7. Anti-Fraud Authority: Section 302(a) of the CLARITY Act extends certain anti-fraud authorities to "permitted payment stablecoins and digital commodity transactions engaged in by a broker or dealer or through an alternative trading system…"(page 105, line 10, through page 106, line 5).

- Would this provision maintain the SEC's full existing anti-fraud and anti-manipulation authority, including authorities established by court precedent, over all instruments currently considered securities, including those that might be reclassified as "digital commodities" under this bill?
- How does this compare to the broader anti-fraud provisions currently applicable under securities laws?
- What protections may be lost or reduced when the SEC's role is limited to responding to already-committed or ongoing fraud, compared to SEC's existing abilities to proactively and prophylactically address investor protection concerns? For example, does the staff have confidence that the anti-fraud authorities maintained under the CLARITY Act would enable the SEC to propose and enact rules that address frequently appearing crypto fraud and manipulations, such as rug-pulls or wash trading? Would the SEC maintain the ability to conduct risk-based examinations of the intermediaries in digital assets, especially those that list or facilitate the trading of digital commodities (as defined under the CLARITY Act) and securities? Examinations could uncover (and deter) custody shortfalls, conflicted listing practices, spoofing practices, and other market abuses, before losses occur; how would the SEC reduce fraud and maintain investor confidence in digital assets if its regulatory reach is limited to essentially be the clean-up crew?
- Will the SEC have enough information to identify fraud, manipulation, and insider trading of digital commodity transactions?

8. Provisional Registration: SEC staff TA indicated that provisional registration (Section 106 of the CLARITY Act) and potential enforcement deferrals could "enable digital asset trading platforms to continue to operate without critical investor and market protections" and allow bad actors to "fraudulently market and transact in digital assets without allowing the SEC or investors to pursue" violations. It also noted that an "interminable suspension of the SEC's ability to pursue securities law remedies would gravely threaten the integrity of this market." (SEC TA, pp. 4-5). Unlike FIT 21, the current draft of the CLARITY Act is silent on whether the Commission may bring enforcement actions against an entity that has filed a statement of provisional registration (referred to as "Notice of Intent to Register" in FIT 21).

- What are the risks associated with the period of provisional registration under Section 106 of the CLARITY Act, particularly before final rules are promulgated?
- How would the SEC ensure adequate investor protection and market integrity during any period where enforcement actions related to activities covered by the CLARITY Act might be deferred or altered pending full implementation?
- SEC TA highlighted the protracted nature of provisional registration in other contexts. If enacted as drafted, how would the SEC ensure a timely transition to a full regulatory framework under the CLARITY Act? Would additional language be needed to ensure a smooth and timely transition?

9. Decentralized Finance (DeFi) Exclusion: Similar to the FIT 21 bill from the 118th Congress, Sections 309 and 409 of the CLARITY Act draft (beginning, respectively, on page 118, line 11 and page 203, line 1) exempt broadly-defined "decentralized finance" entities.

- Are the definitions of "decentralized finance messaging system" (CLARITY Act Section 105, amending Commodity Exchange Act Section 1a) and "decentralized finance trading protocol" (CLARITY Act Section 104, also amending Commodity Exchange Act Section 1a) clear to prevent regulatory arbitrage?
- What are the risks of excluding entities that label themselves as "DeFi" and perform core financial functions (for example: intermediation, lending, or exchange functions) from regulatory oversight?
- Section 15H(a) and Section 4v(a) (as proposed by CLARITY Act Sections 309 and 409, respectively) list several excluded activities. Would providing a "user-interface" or "developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or a decentralized finance trading protocol" encompass activities that currently require registration and oversight by the SEC or other federal financial agencies? If so, what are the practical investor and market risks associated with this new exclusion?

10. Custody of Digital Assets: CLARITY Act Section 105(c) includes a "Protection of self-custody" (page 40, line 9); Section 310 addresses the "Treatment of custody activities by banking institutions" (page 120, line 6).

- How do these provisions, along with the requirements for "qualified digital asset custodians" (e.g., Section 405), impact the safety and segregation of customer assets compared to current SEC Customer Protection rules (e.g., Rule 15c3-3)?
- Section 5i(d)(5) (as proposed by Section 404, or page 138 line 10) allows customers to waive segregation restrictions for "Participation in Blockchain Services." What are the potential investor protection, systemic, and market risk concerns if customers can waive, including by signing terms and conditions, segregating their assets for services like staking or lending through an exchange, or other offerings?
- In the *SEC v. Kraken Complaint*, the SEC details allegations of Kraken commingling customer assets, with its auditor identifying "a significant risk of loss." Do the custody rules prescribed under the CLARITY Act provide safeguards equivalent to existing securities rules against such practices?

II. Impact on Facilitating Capital Formation in the Digital Assets Industry

1. New Exemption under CLARITY Act Section 203(a)(1) (page 80, line 21):
   - How does the SEC assess the potential for this new exemption to facilitate capital formation? The SEC TA previously indicated that under the prior FIT 21 bill, "issuers of assets that use traditional means to trade and settle would be disadvantaged in capital formation simply because they chose to deploy an economically identical asset via a different distribution mechanism." (SEC TA, p. 1)
   - What are the potential impacts on capital formation if an asset's regulatory status is primarily determined by technological network characteristics, rather than its economic characteristics?
   - Section 202(a) (page 62, line 16 of the CLARITY Act) creates a new exemption for "the offer or sale of an investment contract involving units of a digital commodity by a digital commodity issuer" under certain conditions.
     i. How does the SEC assess the potential for this new exemption to facilitate capital formation compared to existing exemptions like Regulation A or Regulation D?
     ii. What is SEC staff's assessment as to whether issuers would be able to meet the disclosure requirements in the proposed Section 4B of the Securities Act

("Requirements with Respect to Certain Digital Commodity Transactions" on page 65, line 10 of the CLARITY Act) for issuers utilizing this exemption?

iii. Would the SEC have sufficient authorities and expertise to enforce and assess compliance with the requirements of Sec. 202(a)? Are there sufficient penalties afforded in the discussion draft to compel compliance?

iv. Section 4B(a)(3) mandates "Ongoing Disclosure Requirements" including semiannual and current reports (CLARITY Act page 70, line 21). How do these compare to existing ongoing reporting obligations for public companies?

v. How might the process of defining and certifying "digital commodities" for this exemption impact the speed and cost of bringing digital asset projects to market?

vi. Could the dual regulatory structure (SEC and CFTC) for assets that may transition from an "investment contract asset" to a "digital commodity" create complexities or efficiencies for capital formation?

- Section 205 (CLARITY Act page 81, line 4) introduces Section 42 to the Securities Exchange Act, outlining restrictions on transactions by related and affiliated persons. How do the holding periods and volume limitations for sales by insiders compare to existing rules like Rule 144, and what is their likely impact on an issuer's ability to compensate and retain talent?
- The pathway to becoming a "mature blockchain system" and thus potentially falling under a different regulatory regime could influence project development. Could the criteria for a "mature blockchain system" (e.g., Section 42(c)(2) criteria like system value, functional system, open and interoperable system, programmatic system, system governance, impartial system, distributed ownership) incentivize or disincentivize particular technological architectures or governance models in ways that affect capital raising?

III. Impact on Fostering Competition and Efficiencies in the Digital Assets Industry

1. CFTC Exclusive Jurisdiction over Financing Agreements (Proposed change to Commodity Exchange Act Section 2(c)(2), via page 127, line 1 of CLARITY Act Section 401(c)): SEC TA highlighted that the "exclusive jurisdiction granted to the CFTC over any agreement, contract, or transaction involving a digital commodity...will include trades in which a security is one side of the trade," potentially providing an "escape from SEC protections for many securities transactions" and allowing a "parallel securities market to develop...without any of the investor protections." (SEC TA, p. 4)

- As drafted, if a "digital commodity" is used to purchase traditional securities would existing Securities Act protections apply?

2. Alternative Trading Systems (ATS): Section 303(b) of the CLARITY Act (page 109 lines 1 through 6) amends Section 3(a)(2) of the Exchange Act to state: "An alternative trading system primarily facilitating the trading of digital commodities, permitted payment stablecoins, or both is not a 'facility' of an exchange."

- What are the implications for investor protection and market transparency if these platforms are not regulated as exchanges? What are the potential consequences to price discovery and fair competition if these trading systems are not regulated as national securities exchanges?
- How would this exclusion impact the application of rules related to order handling, best execution, and market surveillance typically associated with registered exchanges?
- Section 303 allows for the operation of ATSs for digital commodities and permitted payment stablecoins, potentially by affiliates of national securities exchanges. Section 303(a) states the SEC "may not preclude a trading platform from operating pursuant to a covered exemption on the basis that the assets traded" are "digital commodities or permitted payment stablecoins" (CLARITY Act page 108, lines 12 through 17). This language

specifically excludes crypto asset trading systems from the definition of an exchange. How would allowing SEC-registered brokers or dealers (also registered with the CFTC) to operate an ATS for digital commodities impact the existing market structure for digital asset trading? What existing investor protections currently afforded to investors on registered exchanges will not be available on crypto asset trading systems?

- What are the competitive implications of allowing national securities exchanges or their affiliates to operate such ATSs?

3. Dual Registration: What are the potential efficiencies or redundancies that could arise from the dual registration and oversight framework proposed for intermediaries dealing in both securities and digital commodities?

- How effectively can MOUs between the CFTC and SEC ensure non-duplicative supervision and consistent requirements, as envisioned in Section 5k of the Commodity Exchange Act (referenced in CLARITY Act page 115, line 16)?

IV. Impact on Current SEC Work and Rulemaking for Digital Assets

1. Impact on Existing SEC Initiatives, including its ongoing efforts through the Crypto Taskforce led by Commissioner Hester Peirce, and impact on the timely responses to President Trump's January 23, 2025, Executive Order "STRENGTHENING AMERICAN LEADERSHIP IN DIGITAL FINANCIAL TECHNOLOGY:"

- How would the CLARITY Act affect the SEC's current analyses or planned rulemakings or exemptive orders for digital assets?
- SEC TA noted the bill is "complex and appears to have internal inconsistencies." (SEC TA, p. 1) Given the new definitions and frameworks, how would this impact the SEC's ability to develop timely rules as mandated by Section 110 of the CLARITY Act?
- Would resources for implementation, such as proposed Exchange Act §42(a)(1) certifications (CLARITY Act page 91, line 9), and joint rulemaking per Section 105 (CLARITY ACT page 40, line) affect other SEC digital assets related priorities, including the Commission's responsiveness to President Trump's Executive Orders related to digital assets?
- Would the CLARITY Act's framework supersede, conflict with, or complement any ongoing SEC efforts to provide clarity or targeted exemptions for the digital asset industry?
- Specifically, how would the bill's self-certification process for "digital commodities" (Section 205) and the defined exemptions (e.g., Section 203) interact with any SEC considerations for a "safe harbor" or other conditional exemptive relief for developing projects or intermediaries?
- The CLARITY Act mandates numerous joint and individual rulemakings by the SEC and CFTC, generally within 180 to 360 days (see, e.g., page 41, line 25 and page 42, line 12). What is the SEC's assessment of the feasibility of meeting these rulemaking deadlines given the complexity and scope of the required rules?
- How would the resources required to implement the CLARITY Act impact the SEC's ability to pursue other rulemaking priorities, including any existing plans related to digital assets?

V. Baking in Existing Conflicted Business Practices

1. Vertical Integration and Conflicts of Interest:

- Section 404 of the CLARITY Act prohibits a digital commodity exchange or its affiliate from trading "for its own account" (page 142, line 6) but provides exceptions, including for "customer direction," "risk management," "operational needs," and "functional use." Could these exceptions be interpreted broadly enough to permit activities substantially similar to proprietary trading or allow an affiliated market maker to operate on the exchange in a manner that could disadvantage other market participants or customers?

- What safeguards would be in place to manage conflicts of interest if an exchange affiliate is engaging in significant trading activity on the platform, even under these exceptions?
- Section 303(b) of the CLARITY Act exempts ATSs that "primarily facilitate[] the trading of digital commodities, permitted payment stablecoins, or both" from being a 'facility' of an exchange. What is SEC's assessment of this new exemption?
- How would the SEC ensure the integrity of the settlement process and the safety of customer assets if these functions are vertically integrated within an exchange or ATS that is not a registered clearing agency for these activities?
- To what extent would the CLARITY Act permit an exchange or ATS to also act as a broker (see proposed Commodity Exchange Act Section 4u, via Section 406 of the CLARITY Act on page 178, line 5) or make recommendations? Are the business conduct standards proposed in the bill sufficient for such conflicts? What protections would customers or investors in digital assets lose should the securities laws framework not apply to the conduct of intermediaries, including brokers and investment advisers, in digital assets? How would the "best interest" standards applicable to broker-dealers under securities law apply, if at all, to entities or individuals providing recommendations on "digital commodities" under the proposed framework?

The Commission's expert analysis of the CLARITY Act and fulsome answers to the questions raised above are necessary for the American people, through their representatives in Congress, to determine whether this legislative proposal addresses the unique risks related to crypto, and would facilitate the most conducive environment for responsible innovation. The U.S. Securities and Exchange Commission has played a historical and indispensable role in setting and strengthening investor confidence, which has been the irreplaceable ingredient of capital formation and economic growth. Without your active leadership and support, crypto investors will not be protected and Web3 innovation will fail to achieve its potential. Thank you for your time and attention to this important matter. We look forward to your response by June 6, 2025.

Sincerely,

Representative Maxine Waters
Ranking Member

CC: Chairman French Hill, Committee on Financial Services, U.S. House of Representatives
Katherine Reilly, Acting Inspector General, SEC