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How Crypto Firms Can Prep As Clarity Act Inches Toward Law

By **Lewis Rinaudo Cohen, Samson Enzer and Sarah Chen** (June 9, 2026, 12:41 PM EDT)


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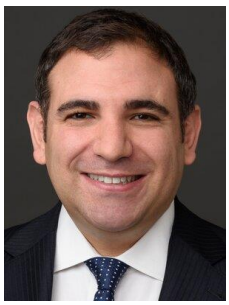
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After years of regulatory uncertainty and a succession of enforcement actions in lieu of rulemaking, the U.S. digital asset market is on the verge of a comprehensive statutory framework.

On May 14, the U.S. Senate Banking Committee advanced the Digital Asset Market Clarity Act in a 15-9 bipartisan vote.[1] It is now headed to the Senate floor to be reconciled with the Digital Commodity Intermediaries Act, which passed the Senate Agriculture Committee on a party-line vote this January, and an earlier House version, H.R. 3633.

Yet the core substantive framework is now sufficiently developed that many market participants are already considering their plans for a post-Clarity Act world.[2] The legislative text is complex, interconnected, and introduces new terms and concepts.[3]

Stablecoin Yield: The Bipartisan Compromise

Section 404 of the bill's May text substantially rewrites the stablecoin yield provisions, the single most contested provision in the January version of the bill. The revised framework prohibits covered parties from making payments to U.S. customers "solely in connection with the holding of such restricted recipient's payment stablecoins" or payments that are "economically or functionally equivalent to the payment of interest or yield on an interest-bearing bank deposit."[4]

This formulation deliberately places substance over form: It reaches any compensation replicating deposit interest, regardless of labeling or structure.

Notably, the yield prohibition builds on the definition of "payment stablecoin" established in Genius Act, the first federal stablecoin law, which was signed in July 2025. This means the Clarity Act's yield framework operates within the Genius Act's existing regulatory perimeter. The practical consequence is a reorientation of permissible stablecoin economics from a buy-and-hold model to a buy-and-use model.

Activity-based rewards tied to bona fide transactions and platform use remain permissible, including compensation for transaction and payment activity, liquidity provision, collateral posting, governance participation, staking, validation, and loyalty programs.[5] A joint rulemaking by the U.S. Securities and

Exchange Commission, U.S. Commodity Futures Trading Commission and U.S. Department of the Treasury must produce a nonexhaustive list of permissible activity-based rewards within one year of enactment.[6]

What Market Participants Need to Know

Stablecoin issuers, digital asset service providers and exchanges operating rewards or yield programs must evaluate whether their existing programs satisfy the bona fide activity standard or require restructuring. The one-year rulemaking window creates short-term uncertainty, so firms should begin mapping current reward structures against the "economically or functionally equivalent" standard in advance of that rulemaking.

The banking industry continues to press for tighter restrictions, and further amendments remain possible as the bill moves to the Senate floor.

Digital Asset Taxonomy: Practical Implications of the Three-Tier Framework

The Clarity Act's three-tier taxonomy of digital commodities, network tokens and ancillary assets provides the jurisdictional architecture that market participants have lacked.

Network tokens — digital commodities intrinsically linked to a distributed ledger system that derive value from system use — are treated as nonsecurities.[7] This classification focuses compliance with federal securities law primarily on capital raising and ongoing disclosures by fundraising parties. However, a network token will be considered a security for all purposes if it conveys certain disqualifying financial rights, such as debt or equity interests, or other investment-type rights or interests in a person, as opposed to allowing for participation in economic activity occurring through a distributed ledger system.[8]

Ancillary assets are a subset of network tokens whose value depends on the entrepreneurial or managerial efforts of a person.[9] Primary sales of ancillary assets are securities transactions, but most secondary trading of these tokens is not.

The May text introduces a certification mechanism through which a network token may no longer be considered an ancillary asset once the relevant entrepreneurial efforts are no longer primarily driving value. Critically, the May text makes elimination of "coordinated control" of the relevant distributed ledger system a prerequisite to exiting ancillary asset status — a new concept that replaces the January draft's "common control" standard.

Under the Clarity Act, unless the relevant project falls within certain de minimis thresholds, an originator of an ancillary asset, even though not a securities issuer, must address potential information asymmetries by furnishing the SEC with publicly available information targeted toward the needs of users of, and investors in, the token. These reporting obligations cease when the asset originator, or one of certain related entities, certifies to the absence of material entrepreneurial efforts during a designated lookback period.

What Market Participants Need to Know

Token project teams must assess whether disqualifying financial rights are present in their token structures and plan for exiting ancillary asset status, if relevant. Exchanges listing third-party tokens

should note the new intermediary certification pathway as a practical mechanism for satisfying disclosure requirements without originator coordination.

A failure to furnish the required disclosures does not, by itself, cause an ancillary asset to be treated as a security; however, regulated exchange listing of the token can be barred if the SEC and CFTC jointly find a material disclosure failure after a reasonable opportunity to cure.

Token Launches, "Regulation Crypto" and Disposition Restrictions for Related Persons

The Clarity Act's new capital formation pathway, dubbed Regulation Crypto, provides a domestic route for retail-facing token sales without SEC registration, subject to a $50 million annual cap for up to four years and a $200 million lifetime aggregate cap.[10] However, a U.S. entity selling tokens will generally recognize taxable gain on sales — unlike fundraising through the issuance of traditional equity or debt, the proceeds of which generally do not trigger income recognition. This outcome may result in Regulation Crypto initially proving most useful for U.S. tax-exempt entities or corporations with sufficient losses to offset gain.

A token disposition restriction framework in the Clarity Act would impose lockup and volume limitations on related persons holding covered tokens. Before a noncoordinated control certification, sales of tokens by covered persons would require a 12-month holding period and compliance with SEC-set volume limits. After certification, the holding period drops to six months, with a volume floor of at least 10% of outstanding units per 12-month period, making certification the key threshold event for founders and early token holders seeking liquidity.

The May text directs the SEC to define "coordinated control" by rule using statutory indicia, including the openness of the distributed ledger system, the system's permissionless and credibly neutral operation, concentrations above 49% of outstanding units or voting power, autonomy, and economic independence. The May text makes the elimination of coordinated control a prerequisite to completing the entrepreneurial- or managerial-efforts determination for certification, replacing the January draft's nonbinding "sense of Congress."

This change will make it more challenging for projects with founding teams that retain meaningful control to exit ancillary asset status until control is demonstrably eliminated.

What Market Participants Need to Know

Token project teams have a new domestic statutory pathway for retail-facing token sales without full Securities Act registration, subject to meaningful disclosure obligations and hard dollar caps. The $200 million lifetime cap will constrain larger projects, and the U.S. organization requirement carries a tax burden that traditional securities issuances do not.

Founders and early token holders should prioritize the noncoordinated control certification as the mechanism for reducing lockup periods and unlocking volume floor protections. Distributed ledger projects with security councils should ensure the powers granted to those councils are narrowly scoped to incident response functions, as broader authority over parameter changes, upgrades or fee-setting may constitute coordinated control, subjecting insider token sales to the full disposition restriction regime.

Protections Against Illicit Finance

The Clarity Act brings digital commodity brokers, dealers and exchanges within the framework of the Bank Secrecy Act. This means they will be treated as financial institutions subject to customer identification procedures, suspicious activity monitoring, Office of Foreign Asset Control sanctions compliance, and anti-money laundering and countering the financing of terrorism program requirements.

The Treasury, through the Financial Crimes Enforcement Network and in consultation with the CFTC, must issue tailored Bank Secrecy Act regulations. Separately, the Treasury must establish coordinated, risk-based examination standards for financial institutions involved in digital asset activities.

What Market Participants Need to Know

Digital asset intermediaries operating as digital commodity brokers, dealers or exchanges must develop robust AML/CFT programs, customer identification procedures, suspicious activity monitoring and reporting, and OFAC sanctions compliance infrastructure.

The legislation also establishes an illicit finance information-sharing pilot program with liability protections for good faith participation. It furthermore creates the Independent Financial Technology Working Group to research and develop proposals addressing digital asset use in terrorist financing and narcotics trafficking.

Decentralized Finance and Developer Protections

Title VI and the relevant Title III provisions of the Clarity Act address the regulatory treatment of software developers, providers of front-end interfaces that allow user access to distributed ledger applications including decentralized finance trading protocols, NFT platforms and self-custody wallet providers under the securities and federal money transmission laws. Title VI's Section 604 is captioned the Blockchain Regulatory Certainty Act.

Section 301 sorts trading protocols into two regulatory buckets — decentralized and nondecentralized finance trading protocols — based on whether the protocols are deemed decentralized under the Clarity Act. For persons or groups of persons that control nondecentralized finance trading protocols, the SEC, in consultation with the Treasury, must adopt tailored rules clarifying compliance with intermediary obligations under securities law. The Treasury, in consultation with the SEC, must adopt tailored rules defining compliance with applicable Bank Secrecy Act and AML/CFT obligations.

What Market Participants Need to Know

The binary categorization in Section 301, combined with the governance clarification and Title VI developer protections, provides meaningful assurances for developers contributing to protocols with genuine on-chain governance and distributed infrastructure. Several protections use a "solely" qualifier, meaning that combining protected activities with other conduct could eliminate the protection.

Security councils with authority broader than incident response — including parameter changes, fee adjustments or protocol upgrades — should be reviewed for scope. NFT project teams should assess whether their structures fall within the mass-minted series or fractionalization exclusions.

Conclusion

The May text represents the most comprehensive attempt to date to establish a national framework for digital asset market structure in the U.S. Its classification taxonomy, capital formation pathway, certification regime, stablecoin yield compromise and developer protections collectively address questions that market participants have navigated without clear statutory guidance for years.

But the path to enactment remains uncertain. The bill must clear the full Senate with 60 votes. This will require at least seven Democratic crossovers beyond the two members who voted in favor in the Banking Committee and who have not yet committed to a position on the Senate floor — and additional Democratic votes will be needed to the extent that some Republican senators choose not to support the bill.

The bill will also need to be reconciled with the Digital Commodity Intermediaries Act and the House-passed H.R. 3633, then overcome the unresolved conflict-of-interest provisions — all before the midterm campaign calendar narrows the legislative window. The White House has targeted signing the bill on the nation's July 4 semiquincentennial — a laudable, if challenging, goal.

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[1] Digital Asset Market Clarity Act, S. ___, 119th Cong. (Manager's Amendment, May 12, 2026) (hereinafter the "May text"). The January draft refers to the version introduced in the Senate on Jan. 13, 2026. References herein to the "Securities Act" are to the Securities Act of 1933, as amended, and references to the "Exchange Act" are to the Securities Exchange Act of 1934, as amended.

[2] This commentary is derived from a more detailed Cahill memorandum available at Cahill.com.

[3] To aid understanding of this complex legislative text, CahillNXT has released the CahillNXT Clarity Map, an interactive tool that allows users to break down the proposed legislation into its component elements by visually presenting the interconnections between the many new terms and concepts introduced in Title I, with coverage being expanded as the bill advances. The map can be found online here: https://static.cahill.com/cahillnxt-clarity-act-resource-hub/clarity-act-view-1-hierarchy.html.

[4] May text § 404(c).

[5] Id. § 404(c)(2).

[6] Id. § 404(c)(3).

[7] Securities Act of 1933 § 4B(a)(7)(A), as added by the May text § 102(a).

[8] Id. at § 4B(a)(7)(B).

[9] Id. at § 4B(a)(1).

[10] May text at §§ 103(b)(1)-(2), (c)(3)(A).