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**Fintech & Digital Assets | Crypto Resource Center Update**

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# Update on the U.S. Digital Assets Regulatory Framework – Market Structure, Banking, Payments, and Taxation

*This update provides a discussion on the President's Report and other current developments in digital asset regulation related to market infrastructure, the banking system and broader payment activities, and taxation of digital assets.*

Recent developments in the digital asset space aim to establish a clear regulatory framework for digital assets, while encouraging innovation and enabling a pathway of compliance for eligible current market participants.  Given the Administration's agenda to transform the United States into a global leader in digital assets and blockchain technology and Congressional support for this agenda, the digital asset regulatory framework is likely to take shape quickly—with rulemakings and specific guidance to follow over a substantially longer timeframe.

On July 30, 2025, the President's Working Group on Digital Asset Markets (PWG) published the Strengthening American Leadership in Digital Financial Technology Report (Report) in response to Executive Order 14178.  The Report reiterates the Administration's support for digital assets and provides a roadmap of recommendations for Congress and regulators to modernize the U.S. digital asset regulatory framework, including in connection with digital asset market structure, banking and payments, countering illicit finance, and taxation.  The Report emphasizes the need for a clear, fit-for-purpose system to foster innovation, protect investors, and position the United States as a global leader in digital financial technology.

In light of all of the moving pieces, below is a discussion on the Report and other current developments in digital asset regulation related to market infrastructure, the banking system and broader payment activities, and taxation of digital assets. For additional information on the Report's recommendations for countering illicit finance, please see our accompanying Client Alert. In addition, for a fulsome discussion on the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act), see our prior publication.

## I. Market Infrastructure

The market structure for digital assets presents a web of potential licensing and registration requirements that have long been unaddressed. The reforms outlined in the Report, the launch of "Project Crypto" by the U.S. Securities and Exchange Commission (SEC), and pending legislation relating to market structure, including the envisioned roles of the SEC and the Commodity Futures Trading Commission (CFTC), aim to address these open questions to provide more certainty for industry participants. Specifically, we highlight components of the House of Representatives' Digital Asset Market Clarity Act (CLARITY Act) and the Senate's discussion draft of the Responsible Financial Innovation Act of 2025 (Discussion Draft), as well as the request for information from the industry in connection with the development of the digital assets market oversight framework.

### A. The PWG Report

The Trump Administration has unequivocally articulated its ambition for the United States to position itself as an international leader at the forefront of technological advancement in the digital asset space, "usher[ing] in the Golden Age of Crypto" and "lead[ing] the blockchain revolution."[1] The Report acknowledged risks within the digital assets space, but emphasizes the valuable opportunities for U.S. leadership in international standard-setting, including promoting technology-neutral regulatory approaches, ensuring standards accurately reflect risk profiles rather than political preferences, and maintaining the importance of the dollar in emerging digital payment systems. Throughout, the Report acknowledges a geopolitical dimension, noting that cross-border payment innovation may be crucial to maintaining dollar dominance as existing inefficiencies could create demand for alternatives that "may be filled by U.S. adversaries."

In focusing on the market infrastructure, the Report addresses the evolving nature of digital asset markets and categorizes digital assets as security tokens, commodity tokens, and tokens for commercial and consumer use—emphasizing the importance of economic functionality in determining the appropriate regulatory fit.

The Report provides several recommendations for the SEC and the CFTC, encouraging both to use their rulemaking and exemptive authorities to foster the trading of digital assets and ensure American businesses remain competitive internationally. The Report also lauds the CLARITY Act, indicating that it provides an "excellent foundation" for the digital asset market in the United

States. However, the PWG also provides the following key recommendations to Congress as it works to finalize this legislation:

- The CFTC should have authority to regulate spot markets in non-security digital assets.
- Registrants should be permitted to engage in multiple business lines under an efficient, clear, and simple licensing and regulatory framework.
- Federal law should preempt state law for intermediaries, including for state virtual currency businesses, blue sky laws, and commodity broker laws.
- Intermediaries should be permitted to lend, net, and hedge securities against non-securities, accounting for applicable risk characteristics.
- Registrants should be required to adopt best practices for cybersecurity standards.
- Trading platforms should be allowed to custody customer digital assets with appropriate controls.

### B. Potential Legislation: The CLARITY Act and the Discussion Draft

The CLARITY Act currently awaits consideration in the Senate after passing in the House of Representatives on July 17 with strong bipartisan support (216 Republicans and 78 Democrats). However, on July 22, Senate Committee on Banking, Housing, and Urban Affairs (Senate Banking Committee) Chairman Tim Scott, Subcommittee on Digital Assets Chair Cynthia Lummis, Senator Bill Hagerty, and Senator Bernie Moreno released the Discussion Draft as an alternative to the CLARITY Act. Along with the Discussion Draft, Senator Scott and his colleagues issued a Request for Information for stakeholders to submit feedback on the draft, posing a wide array of questions.

Both the CLARITY Act and the Discussion Draft aim to provide a foundation on which to develop a clear framework to classify digital assets and jurisdiction between the SEC and CFTC, depending on whether the digital assets are securities or commodities. It is important to note that unlike the CLARITY Act, which is a complete bill that passed the House with bipartisan support, the Discussion Draft is a preliminary discussion draft of a potential future bill and was issued by the Senate Banking Committee, which has jurisdiction over the SEC, and aims to build on the momentum of the CLARITY Act. The Senate Committee on Agriculture, Nutrition, and Forestry (Senate Agriculture Committee), which has jurisdiction over the CFTC, is also expected to introduce its own draft legislation on digital assets. The two committees will then need to reconcile the jurisdictional divide between the SEC and CFTC and other matters before a full bill can be advanced. The introduction of the Discussion Draft suggests that there may be some issues that will need to be considered more carefully in order to garner the necessary support for the CLARITY Act in the Senate.

A summary of certain components of the CLARITY Act and the Discussion Draft are set forth below.

### 1. Regulatory Oversight

The CLARITY Act would give the CFTC oversight of "digital commodities," a defined category of digital assets that (1) are intrinsically linked to, and derive their value from, a "mature" blockchain system, (2) are sufficiently decentralized, and (3) do not confer ownership rights. Digital assets that are securities—such as tokens conferring equity, debt, or other rights similar to those conferred by securities—would fall under the SEC's jurisdiction.

The CLARITY Act addresses the requirement to register offers and sales of securities under Section 5 of the Securities Act of 1933 (Securities Act) in two ways. First, it amends the definition of "investment contract" in Section 2(a)(1) to exclude a new term of art, the "investment contract asset," and it also provides an exemption from the registration requirements of the Securities Act for offers and sales of investment contracts involving digital commodities on blockchains that are "mature" (*i.e.*, sufficiently decentralized) or are "intended" to be "mature" within four years from the date of first sale, subject to specified conditions.

The Discussion Draft provides a preliminary structure predicated on preexisting definitions and authorities but provides only limited insight into a potential framework, pending input from the Request for Information, the expected draft legislation from the Senate Agriculture Committee, and reconciliation. In lieu of the CLARITY Act's definitional exemption and offering exemption, the Discussion Draft employs the concept of an "ancillary asset," defined as an intangible, fungible asset that is provided to a person in connection with the sale of a security through an investment contract. If certain conditions are satisfied in the offering process, including compliance with periodic disclosure requirements and a self-certification requirement, then, by operation of the Discussion Draft, the ancillary asset "shall not be a security." The Discussion Draft calls for the SEC to promulgate rules under a proposed "Regulation DA" to define how and when a digital asset qualifies as an ancillary asset that becomes a commodity over time.

### 2. Licenses and Registration Requirements

The CLARITY Act and the Discussion Draft would impose different registration and licensing schemes on market participants.

The CLARITY Act creates three new categories of CFTC registrants: (i) digital commodity exchanges; (ii) digital commodity brokers; and (iii) digital commodity dealers. Each of these registrants would be required to register with the CFTC, similar to their traditional counterparts, and comply with digital asset-specific regulations. Additionally, U.S. issuers that issue no more than $75 million of digital commodities within a 12-month period would be exempt from registration under the Securities Act, and dual-registration would be available to entities transacting in both securities and digital commodities.

The Discussion Draft does not currently propose a new licensing regime for digital assets and instead calls for the SEC to tailor existing registration, disclosure, and reporting obligations for digital asset activities, and to promulgate rules under the proposed Regulation DA, which may include registration or licensing requirements. However, the Discussion Draft prohibits the SEC from imposing more onerous obligations on digital asset activities than would otherwise be applicable to functionally analogous conduct not in the digital asset space. As previously indicated, the Discussion Draft will likely be supplemented with CFTC-related requirements by the Senate Agriculture Committee.

### 3. Considerations for Foreign Issuers

The CLARITY Act and the Discussion Draft both aim to make the U.S. a more hospitable jurisdiction for digital assets. However, as one would expect, the CLARITY Act is more explicit than the Discussion Draft in addressing the regulatory treatment of foreign issuers and intermediaries, providing mechanisms for their participation in U.S. markets subject to disclosure and compliance requirements. The Discussion Draft touches on international cooperation and reciprocity but, as a discussion draft, is less detailed than the CLARITY Act on the specific obligations of foreign issuers.

### 4. Primary v. Secondary Trading

A critical issue is how digital asset sales in the primary market are treated as compared to trading in the secondary market. The CLARITY Act draws a clear line between the two, subjecting primary offerings of digital assets that originate as investment contracts to specific disclosure and reporting requirements and allowing for unrestricted secondary trading of such assets as digital commodities on CFTC-regulated platforms. Similarly, the Discussion Draft proposes to require "ancillary asset originators" to comply with certain disclosure requirements in connection with primary offerings, and gives jurisdiction over secondary transactions to the CFTC, contingent on a certification by the ancillary asset originator and a waiting period.

### 5. State Preemption

Both the CLARITY Act and the Discussion Draft provide for preemption of state law, although the CLARITY Act is more comprehensive.

The CLARITY Act would amend the Securities Act to classify digital commodities as "covered securities," thereby restricting the ability of the states to impose separate registration or qualification requirements on offers or sales of the same. It also grants the CFTC exclusive jurisdiction over registered digital commodity exchanges, digital commodity brokers, and digital commodity dealers, preempting any related provision of law dealing with activities subject to the Commodity Exchange Act.

The Discussion Draft is, naturally, more nebulous but provides that any rules adopted under the proposed Regulation DA would preempt state registration requirements.

### 6. Regulatory Uncertainty Remains

Although the CLARITY Act and the Discussion Draft are a step toward the legislation of digital assets, many questions remain. The Discussion Draft remains just that, a discussion draft, and will need to be reconciled with responses to Senator Scott's Request for Information and the

Senate Committee on Agriculture's own draft legislation, which remain pending. Notably, the Administration appears to support the CLARITY Act, as evidenced by the Report.

### C. The PWG Report v. Proposed Legislation

The Report's market structure recommendations broadly align with the spirit of the CLARITY Act and the Discussion Draft, but go further in certain respects. For instance, the Report and the proposed bills all acknowledge the importance of preserving decentralized finance (DeFi) innovation. However, the Report contemplates the integration of DeFi into mainstream finance while the CLARITY Act and the Discussion Draft merely propose to protect the ability to develop decentralized protocols by limiting burdensome registration requirements, but stop short of incorporating DeFi into the regulatory framework or into traditional financial infrastructure. Uncertainty remains as to what constitutes sufficient decentralization and how to address evolving governance models. Similarly, the PWG recommends that the SEC and CFTC "immediately enable" crypto trading within the existing regulatory framework, communicating a sense of urgency, whereas the proposed legislation contemplates a time horizon of up to a year for recommended rulemakings.

### D. Project Crypto

On July 31, SEC Chairman Atkins announced the launch of "Project Crypto" at the SEC, an initiative led by himself and Commissioner Hester Peirce.[2] Project Crypto is aimed at swiftly implementing the Report's recommendations within the SEC's purview under five initiatives:

- Clarifying the definitional confusion around what is a security, encouraging innovative offerings of digital assets, including tokenized securities, and bringing back and supporting more capital raising related to digital assets in the United States;
- Providing maximum flexibility for market participants with respect to custody of and trading digital assets;[3]
- Allowing securities intermediaries to offer a wide range of non-security cryptoassets, cryptoasset securities, traditional securities, and other services under a single license;
- Updating archaic rules and regulations to "unleash the potential of on-chain software systems in our securities markets"; and
- Fostering innovation and entrepreneurship by providing an "innovation exemption" that allows "innovators and visionaries . . . to immediately enter the market with new technologies and business models," subject to compliance with "certain principles-based conditions designed to achieve the core policy aims of the federal securities laws."

Chairman Atkins explicitly directed SEC staff to draft "clear and simple rules of the road," in line with the PWG's call for immediate regulatory clarity. Consistent with the recommendations of the PWG, Chairman Atkins also disclosed that while formal rules are in process, the SEC will consider employing interpretive and exemptive authorities to provide paths forward for industry participants.

## II. Banking and Payments

The Report notes several key roles of traditional banks in the digital assets ecosystem and the Report's recommendations for actions of the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), as well as state banking and insurance regulators.

Banks provide core services including commercial deposit accounts, loans, and capital markets advisory services to digital asset firms. The Report emphasizes that access to traditional banking services is "essential for any company or individual" and enables digital asset firms to "manage cash flows, pay employees and vendors, and conduct their operations efficiently." Further, banks have focused on services and activities related to digital assets, including providing custody services and facilitating trade execution (primarily through finder authority).

### A. Existing Regulatory Framework

While many of the activities referenced above are permissible for national banks and bank holding companies without further action from the OCC and the Federal Reserve, there are key gaps. The Report highlights several OCC Interpretive Letters that were originally issued during the first Trump Administration, including with regard to the ability of national banks to provide digital asset custody and execution services,[4] hold deposits that serve as reserves for stablecoins,[5] and use distributed ledger technology for certain payment activities,[6] which were reaffirmed by the OCC in 2025.[7] Notwithstanding those several OCC Interpretive Letters, the Report highlights that there remains uncertainty regarding the permissibility of digital asset-related activities at the depository institution level beyond those addressed in prior OCC Interpretive Letters or where clear authority already exists, and within the broader bank holding company ownership structure.

### B. Key Recommendations for Banking Agencies

#### 1. Clarify Permissible Activities

Of course, many of the highlighted activities are permissible under current regulations—*e.g.*, custody, finder activities, payment facilitation—but additional clarity on expected risk management practices and capital requirements would enable more certainty by banks (and their holding companies) engaging in digital asset-related activities.

Specifically, the Report identifies several areas where additional clarity may be necessary:

- Whether and how banks may use public, permissionless blockchains;
- Whether banks may acquire and use digital assets to pay transaction fees (*g.*, gas fees) for blockchain operations;
- Whether banks may purchase and sell digital assets solely as riskless principals;
- Whether banks may, and the potential limits to, create markets in digital assets; and

- Guidelines for the tokenization of deposits and other financial products.

While the foregoing may benefit the industry, as noted, there is existing authority for banks to engage in a wide range of digital-asset related activities without additional rulemakings or formal guidance.

### 2. Adopt a Technology-Neutral Approach to Risk Management Expectations

The Report emphasizes a "technology-neutral" regulatory approach, whereby digital asset activities are evaluated on the basis of their actual risk profiles rather than on their technological characteristics. It highlights the importance of banks and other financial industry participants to innovate and that traditional banking institutions should be allowed to engage in "safe and sound" digital asset activities "without prior regulatory approval or notice." This technology-neutral principle is especially important for permissionless blockchain usage, where the Report notes that other jurisdictions have allowed banks to interact with public chains for years while "the U.S. banking agencies have effectively prohibited it." The new framework also identifies the need to implement carefully regulated pathways to facilitate such activities.

The Report also emphasizes that tokenization should not affect prudential treatment when the underlying risk profile remains unchanged. Specifically, the Report notes that Banking Agencies should "clarify the circumstances, using risk-based guidelines, under which tokenized assets and tokenized asset collateral would be subject to the same capital and liquidity treatment as the underlying asset or collateral."

### 3. Implement Technology-Neutral Capital Requirements

The Report raises concerns with the existing Basel Committee on Banking Supervision (BCBS) cryptoasset standards, particularly with regard to the defined asset classes and risk weights that do not accurately reflect the risk profiles.

Currently, the BCBS framework divides cryptoassets into categories (which are further subdivided). In short, Group 1 assets are backed by traditional assets meeting specified conditions, and are subject to capital requirements based on underlying exposures. In contrast, Group 2 assets fail to meet at least one Group 1 condition and have a 100% capital charge, provided they meet hedge recognition criteria—otherwise they are subject to a 1250% risk weight.

The Report identifies several flaws in the BCBS approach. First, the current framework discriminates against permissionless blockchain-based assets regardless of their actual risk characteristics. Put differently, the Report notes that "cryptoassets relying on permissionless blockchains pose risks that may prevent them from being included in Group 1," despite strong evidence to the contrary that technical risk mitigation strategies are being actively developed and implemented. Second, the Report contends that the current system fails to offer "a clear enough distinction between cryptoassets widely used for payment and investment purposes and other cryptoassets, such as memecoins." And third, it may be the case that BCBS standards are simply outdated; they do not reflect “recent innovations and changes in the cryptoasset market since the BCBS standards were first published” in 2022.

The Report recommends that the U.S. adopt capital requirements that “accurately reflect the risk of the asset or activity” by:

- Simplifying the cryptoasset grouping system;
- Allowing for certain use of permissionless blockchain for cryptoassets, subject to continued development and implementation of risk mitigation strategies;
- Adopting appropriate risk-based guidelines that ensure tokenized assets receive equivalent treatment to underlying assets; and
- Implementing comprehensive data analysis that incorporates recent market developments.

However, in making the above recommendations, the Report further recommends that the United States advocate that the BCBS revisit the cryptoasset standards to ensure similar treatment to U.S. capital requirements.

### C. Need for Global Coordination and Alignment

Although the U.S. has considerable flexibility in setting its own capital standards, the practical influence of BCBS recommendations on global banking practices means that the U.S. must weigh the implications of deviating from the BCBS standards. U.S. banks with international operations benefit from the U.S. capital regime’s alignment with BCBS standards and, to the extent there are material deviations from such standards, such U.S. banks may face heightened scrutiny from foreign regulators who view the U.S.’s oversight as inadequate. In addition, inducing more regulatory fragmentation may create compliance burdens for international banks operating across multiple jurisdictions.

As the Report notes, “[i]t is important for the United States to lead in such international forums” and it encourages the route of global engagement and coordination to minimize further roadblocks confronting financial institutions engaged in, or seeking to engage in, digital asset activities. Importantly, this represents another opportunity for stakeholders to engage with regulators and other policymakers through advocacy efforts to shape capital standards and mitigate or avoid unintended consequences that disrupt industry innovation efforts or increase capital costs to banks’ participation in such efforts.

## III. Stablecoins and Payments

The Report highlights the GENIUS Act as foundational to the Administration’s ongoing digital asset strategy, identifying the following key objectives achieved through the GENIUS Act.

- <u>Regulatory Clarity</u>: Establishing clear licensing regime for stablecoin issuers.
- <u>Consumer Protection</u>: Requiring full reserve backing and segregated custody.
- <u>Market Integrity</u>: Ensuring transparent reporting and auditing requirements.

- Dollar Competitiveness: Promoting development of dollar-backed stablecoins globally.

Given the recent adoption of the GENIUS Act, the Report limits its analysis and recommendations on the potential framework for issuances, but rather focuses on a few key recommendations.

### A. Support Stablecoins as Payment Infrastructure

The Report positions stablecoins as fundamental infrastructure for addressing inefficiencies in existing payment systems espousing several technological advantages, including (i) instantaneous settlement; (ii) reduced intermediation; (iii) continuous operation; and (iv) programmability of smart contracts to allow for automation of payment conditions. Partially as a function of these advantages, the Report explicitly links stablecoin development to the overall competitiveness of the U.S. dollar—implicitly emphasizing the need for stablecoins to be pegged to the U.S. dollar.

### B. CBDC Policy Concerns

Separate from stablecoins, which are addressed in more detail in the GENIUS Act, the PWG reasserts its opposition to Central Bank Digital Currency (CBDC) development.[8] The Report identifies several specific concerns with retail CBDCs, including "compromising individual economic and privacy rights," loss of control of over monetary policy, and undermining the private banking system.

The Report further emphasizes that at least 90 countries are actively considering or experimenting with CBDCs, including China's e-CNY pilot project and the European Central Bank's digital euro development. The Report emphasizes that "[r]etail CBDC efforts, both domestically and abroad, pose severe risks to individual rights, financial systems, and the sovereignty of the United States."

In short, the PWG strongly favors private sector innovations like stablecoins over CBDCs to better preserve the economic liberty of money movements while capturing technological benefits.

### C. Banking Agency Coordination and Guidance

In addition to the traditional banking activities and actions addressed in Part II, above, state and federal banking regulators are also responsible for the oversight of permissible payment stablecoin issuers and development of the regulations under the GENIUS Act. In furtherance of these responsibilities, the Report emphasizes that bank supervisors should apply risk management processes "based on risk, with the intensity and rigor of risk management corresponding to, among other things, the complexity, criticality, and magnitude of the technological change or new activity." Additionally, banking agencies must ensure evaluation teams are "adequately educated on issues related to digital assets and the consistent application of best practices and standards across institutions." And, once again referencing its broader technology-neutral approach, the Report states that banking agencies should "examine banks' activities from a technology-neutral approach, focusing on such activities' material risks and the banks' abilities to manage such risks."

In addition to the principles-based approach to supervision, the Report identifies the specific areas requiring immediate regulatory attention:

- Provide "best practices" guidance for custody activities;
- Clarify permissible sub-custodian and infrastructure provider arrangements;
- Updated reserve guidance reflecting new GENIUS Act requirements;
- Clarify on balance sheet and capital treatment for digital asset holdings;
- Establish a pilot program framework for bank participation in digital asset initiatives; and
- Provide guidance on risk-based standards for deposit tokenization and other activities.

### D. Charter Applications

The Report emphasizes the need for transparency and predictability in the bank charter application process for digital asset firms and asserts three recommendations. While concerns on charter reviews and timelines are not specific to the digital asset space, we support the recommendations for clarity and objective standards for applications.

First, the Report recommends that banking agencies should "clarify and define in regulation the expected timelines for decision-making on completed applications for charter licensing (including federal deposit insurance where applicable) and requesting a Reserve Bank master account." The Report further recommends that if regulatory timelines are not met for a given application, then, absent extraordinary circumstances, the application should be deemed approved.

Establishing a level of certainty around regulatory expectations and review timelines is critical for entities seeking licenses. From a practical perspective, establishing objective criteria to commence the review period is central to the concept of transparency in review timelines. We recognize that the banking agencies receive a wide variety of applications and, therefore, understand that the mere submission of an application is not in all cases the appropriate starting point. We encourage engagement with the industry on how to define the commencement of the timeline (*i.e.*, when an application is deemed "complete" or "substantially complete") and transparency for new applicants on the expectations for what constitutes a "complete" or "substantially complete" application.

The Report further recommends that banking agencies should confirm that "otherwise eligible entities are not prohibited from obtaining bank charters, obtaining federal deposit insurance, or receiving Reserve Bank master accounts or services solely because they engage in digital asset-related activities." In practice, the provision of what constitutes permissible activities under the various charters should align with this recommendation.

Lastly, the Report recommends that the banking agencies provide data on the average time to review and complete applications on an individual and aggregate basis, primarily with regard to bank mergers, de novo licensing, acquisition of federal deposit insurance, and Reserve Bank master account applications.

## IV. Taxation

The Report indicates that the IRS has issued little guidance that deals directly with the taxation of digital assets. At a high level, current guidance provides that digital assets are treated as property for tax purposes, as opposed to currency, and that general federal income tax principles apply to digital asset transactions.[9]

The PWG highlighted certain recent legislative efforts, such as the joint resolution signed into law by the President in April 2025 to overturn prior efforts to define DeFi developers as "brokers" for tax purposes, as the type of "pro-innovation" approach to tax law that the Administration wants the federal government to embrace.

The Report identifies certain substantive tax issues, with calls for priority guidance recommendations to be implemented by the Treasury and the IRS intended to support the growth of digital assets, especially the future development of DeFi platforms. The Report also highlights several priority legislative recommendations for Congress, including modifying how digital assets are characterized for U.S. federal income tax purposes, and a number of lower priority issues on which stakeholders have requested guidance that could be addressed in future guidance or legislation. The final priority tax issue included in the Report is the reporting requirements for digital assets, with a special emphasis on reporting requirements for digital assets held by U.S. taxpayers on offshore digital exchanges. See Appendix A for the highlighted issues that the Report identifies and the related recommendations for Congress, the Treasury and the IRS.

## V. Countering Illicit Finance

The Report provides an overview of the PWG's view regarding the extent and types of risks in the digital asset space and outlines recommendations for the U.S. government's strategic responses. It also emphasizes the need for updated regulatory frameworks, stronger but more targeted enforcement, strong cybersecurity practices to prevent attacks, and enhanced cooperation to mitigate systemic vulnerabilities. See our accompanying Client Alert for additional information.

## VI. Conclusion

The Administration's agenda to position the United States as a global leader in digital financial technology is rapidly taking shape. However, a significant amount of work remains to be done. The evolving regulatory landscape presents both significant opportunities and challenges for market participants and the PWG's Report, the GENIUS Act, the CLARITY Act, the Discussion Draft, and Project Crypto all signal a strong commitment from the Administration, Congress, and federal agencies to work with both traditional financial institutions and the digital assets industry in developing and implementing a regulatory framework. Of course, as the framework continues to develop, proactive engagement will be essential.

# APPENDIX A

## PWG Report – Taxation Issues and Recommendations

### I. Priority Administrative Regulatory Recommendations

#### A. Corporate Alternative Minimum Tax

The corporate alternative minimum tax (CAMT) requires certain corporations to pay U.S. federal income tax on their adjusted financial statement income (AFSI) at a rate of at least 15 percent. For the CAMT to apply, the corporation must meet certain AFSI thresholds over a three-year testing period. While the CAMT does not directly address digital assets, the PWG states that it "creates a potential punitive effect on the growth of the digital assets sector and contradicts the policy goals of Executive Order No. 14219," directing agencies to identify and remove certain regulations and guidance that impede private enterprise and entrepreneurship.

The Report acknowledges that stakeholders have requested guidance that would provide that AFSI does not include financial accounting unrealized gains and losses on cryptocurrency, or on investments generally. The priority guidance recommendation falls short of that request, saying that Treasury and the IRS should publish guidance addressing the determination of AFSI with respect to financial accounting unrealized gains and losses on investment assets other than stock and partnership interests.

#### B. Staking

The Report states that many U.S. investment funds that hold digital assets that qualify as exchange-traded products under securities laws often choose to hold such investments in investment trusts treated as grantor trusts. Such trusts must meet certain requirements regarding their activities, but if those requirements can be met, the investors are treated as if they were the direct owners of trust assets. One of the priority guidance initiatives is publishing guidance addressing whether, assuming all other requirements are met, such a trust holding digital assets can stake those assets and receive staking awards.

#### C. Wrapping

Wrapping is a process used to convert a digital asset native to one blockchain into a digital asset native to another blockchain. The Report calls for priority guidance to address whether wrapping and unwrapping transactions are taxable transactions.

#### D. Non-Priority Issues

While not identified as priority items, the Report notes that stakeholders have requested guidance on the following issues that could be addressed in future guidance or legislation:

- Clarification on timing of income from staking and mining awards and whether staking constitutes a trade or business for federal income tax purposes;
- How to value digital assets that are traded on multiple exchanges or thinly traded;
- How non-fungible tokens are generally taxed, including whether they are treated as collectibles for purposes of sections 408(m) and 1(h)(5);
- Standards and acceptable proof for claiming worthlessness and abandonment, including with respect to thefts of digital assets;
- Removing the requirement for a qualified appraisal for chartable donations of digital assets worth more than $5,000;
- Whether tokenization of an asset gives rise to a new asset for federal income tax purposes, and if so under what circumstances;
- The application of the investment company rules of sections 351(e) and 721(b) to digital assets;
- Distributions of digital assets in partnership liquidations (the “marketable securities” rules) under section 731;
- The application of the “hot asset” rules of section 751 to sales of partnerships holding digital assets;
- Expanding the classes of assets that may be held by regulated investment companies to include digital assets;
- The treatment of digital assets for purposes of the subpart F, global intangible low-taxed income (GILTI),[10] and passive foreign investment company rules;
- The tax treatment of blockchain splits and mergers; and
- The rules applicable to digital assets with respect to retirement accounts.

## II. Priority Legislative Recommendations

### A. Characterization of Digital Assets

As noted above, current guidance characterizes digital assets as property for tax purposes but does not specify whether a digital asset is considered a security or a commodity. The classification of an asset as a security or a commodity for U.S. federal income tax purposes impacts the application of multiple provisions of the Code, including the ability to elect to mark commodities to market under section 475(e), eligibility for trading commodities safe harbors under section 864(b)(2)(B), and eligibility for certain passive income exceptions for publicly traded partnerships under section 7704(d)(1)(G).

The Report recommends that Congress enact legislation that would treat digital assets as a new class of assets subject to modified legacy provisions determining the taxation of securities and commodities. Part of the recommendation includes expanding section 475 (mark-to-market election), section 864(b) (trading safe harbors), section 1058 (securities loans) and section 7704 (publicly traded partnership rules) to apply to this new class of asset.

The PWG also recommends that sections 1091 (wash sale rules) and 1259 (constructive sales) be expanded to explicitly apply to digital assets.

### B. Stablecoins as Debt

The Report states that a stablecoin is a digital asset that is intended to maintain a stable value relative to a reference asset, usually a currency and most often the U.S. dollar. The GENIUS Act sets forth a framework for the issuance of payment stablecoins in the United States,[11] which are generally used in transactions in a manner similar to a cash-equivalent asset. Under the GENIUS Act, U.S.-licensed issuers of payment stablecoins will be obligated to convert, redeem, or repurchase such stablecoins for a fixed amount of monetary value and must be collateralized with high quality liquid assets.[12] Despite the tendency for stablecoins to be used as a cash-equivalent, the Report takes the position that it is unlikely that the tax law would treat them as currency for several reasons, including that no rules currently exist to deal with the possibility of gains or losses on payment stablecoins treated as currency. The PWG takes the position that characterizing payment stablecoins as debt is the most appropriate approach, provided that certain carveouts are made to ensure that the wash sale rules and the anti-bearer bond rules[13] do not apply to payment stablecoins. There are a few alternative recommendations included with respect to the wash sale rules including that the wash sale rules to not apply to payment stablecoins at all, that the wash sale rules do not apply to de minimis losses from payment stablecoins, or that, more broadly, gains and losses on payment stablecoins are disregarded for U.S. federal income tax purposes.

## III. Reporting Recommendations

### A. De Minimis Digital Asset Receipts

The Report outlines the many ways in which holders of digital assets receive new digital assets that may have minimal or speculative value, whether through staking or unsolicited airdrops related to marketing promotions. Digital assets acquired in this manner are often illiquid and hard to value. After an airdrop or a hard fork, the value of the digital assets often falls significantly. Under current IRS guidance,[14] taxpayers must recognize the fair market value of digital assets as income from the point at which the taxpayer has dominion and control over the asset. Citing the potential for a high volume of transactions involving low value assets, rapidly changing valuations, and difficulties around determining the precise moment a taxpayer takes dominion and control of an asset, the PWG recommends that the Treasury and IRS prioritize issuing administrative guidance that addresses reporting requirements for receipts of *de minimis* digital assets.

For similar reasons related to fluctuating valuations and difficulty determining exactly when the taxpayer has dominion and control over the asset, the Report also recommends that Congress, the Treasury, and the IRS consider measures to clarify or modify the guidance around the timing of income from staking and mining. Possible legislative proposals include deferring recognition of income from staking or mining until the year of the sale or other disposition of the rewards.

### B. Foreign Digital Asset Reporting

The Report recommends that the Treasury and the IRS consider proposing regulations that would implement the Crypto-Asset Reporting Framework (CARF), an international tax transparency standard requiring digital asset service provides to report certain transactions to the tax authorities in the provider's jurisdiction.  The Report considers that adopting CARF would create several benefits.  For taxpayers, the reporting could be coordinated with existing foreign financial reporting requirements such as FATCA and FBAR to ensure that owning digital assets does not create duplicative filing obligations.  More importantly, the PWG expects that implementing CARF would discourage U.S. taxpayers from moving their digital assets to offshore digital asset exchanges, which supports the administration's overall policy of promoting the growth and use of digital assets within the United States and on U.S. exchanges.

### IV. Outlook for Market Participants

The Report's recommendations for increased clarity on the taxation of digital assets and transactions involving digital assets should be beneficial for all marketplace participants as they plan future investments and activities.  Key open questions for marketplace participants will include how much of the input from stakeholders that is included in the Report (that is generally favorable to marketplace participants) will make it into any tax guidance or legislation that is ultimately implemented.  Another key open question for any marketplace participants with holdings in offshore digital asset exchanges will be timing around any potential adoption of CARF and what the tax implications will be of moving those holdings to U.S. exchanges or leaving them offshore.

[1] *Fact Sheet: The President's Working Group on Digital Asset Markets Releases Recommendations to Strengthen American Leadership in Digital Financial Technology*, The White House (July 30, 2025), *available at* https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-the-presidents-working-group-on-digital-asset-markets-releases-recommendations-to-strengthen-american-leadership-in-digital-financial-technology/.

[2] As of February 2025, Commissioner Peirce has been designated head of the SEC's Crypto Task Force.

[3] In addition to announcing Project Crypto, Chairman Atkins "asked the staff to evaluate the use of Commission authority to permit non-security crypto assets that are subject to an investment contract to trade on trading venues that are not registered with the Commission," noting that he is "keen to pursue such a solution . . . ."

[4] *See* Interpretive Letters No. 1170 (July 2020) and No 1184 (May 2025).

[5] *See* OCC Interpretive Letter No. 1172 (September 2020).

[6] *See* OCC Interpretive Letter 1174 (January 2021).

[7] *See* OCC Interpretive Letters 1183 (March 2025).

[8] The Trump Administration previously addressed its opposition to CBDC in Executive Order No. 14178, which explicitly prohibiting federal agencies from undertaking actions to establish,

issue, or promote CBDCs domestically or internationally. On July 17, 2025, the U.S. House of Representatives passed the Anti-CBDC Surveillance State Act (H.R. 1919) with a vote of 219-210. The act would prohibit the Federal Reserve from issuing a CBDC or using a CBDC to implement monetary policy.

[9] *See* 2014-16 I.R.B. 938 (April 14, 2014); Notice 2014-21. *See also* Rev. Rul. 2019-24, 2019-44 I.R.B. 1004 (Oct. 28, 2019) (addressing taxation of hard forks, which is when a blockchain changes the way it operates typically splitting the blockchain); Rev. Rul. 2023-214, 2023-33 I.R.B. 484 (Aug. 14, 2023) (addressing taxation of staking, which is the process of using the native asset of a blockchain to secure the network); Notice 2023-27, 2023-15 I.R.B. 634 (Apr. 10, 2023) (addressing taxation of non-fungible tokens, which is a type of token that is a unique digital asset and has no equal token).

[10] References to GILTI presumably included reference to net Controlled Foreign Corporations tested income, or "NCTI," the successor regime to GILTI under the law commonly known as the One Big Beautiful Bill Act.

[11] S. 1582, 119th Cong. (2025) § 2(22).

[12] S. 1582, 119th Cong. (2025) § 2(22)(A)(ii)(I); *See* S. 1582, 119th Cong. (2025) § 4(a)(i)(A).

[13] *See* sections 149(a), 163(f), 165(j), 312(m), 871(h), 881(c), 1287, and 4701.

[14] Notice 2014-21.

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Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Fintech & Digital Assets practice group, or the authors:

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