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House Financial Services Approves Major Bills Establishing Regulatory Framework for Cryptocurrency Assets

Hopes for a Bipartisan Stablecoins Bill Fade As White House, Fed Voice Objections

The House Financial Services Committee today (Thursday, July 27), in a session that lasted until 10:30 pm, completed a two-day markup of major bills that would create regulatory frameworks for digital assets generally (HR 4763) and for payment stablecoins specifically (HR 4766), as well as several other bills related to digital assets; environmental, social and governance (ESG) issues; fentanyl; Russia and other areas. Committee Republicans were able to attract the support of six Democrats for their broad “market structure” cryptocurrency bill, which establishes rules for the road by designating some digital assets as SEC-regulated securities and others as commodities regulated by the Commodity Futures Trading Commission (CFTC). But a negotiating process that had fostered hopes for a related, bipartisan stablecoins bill broke down on Thursday when the White House raised objections and Democrats asked to postpone the bill’s consideration until after the August recess, but Republicans pivoted to a previous draft of the bill and went ahead. Five Democrats supported the stablecoins bill despite the partisan discord.

Separately, the House Agriculture Committee, which has jurisdiction over the CFTC, today (July 27) approved, by voice vote, its piece of the market structure bill (HR 4763) that gives the CFTC broad new authority to classify certain digital assets as commodities and to register digital commodity exchanges and service providers. Importantly, the committee included an authorization of \$120 million over three years to fund the additional responsibilities the bill gives the CFTC.

The committee’s web pages with materials on the markups are posted [here](#) (Wednesday) and [here](#) (Thursday). Attached with this alert please find PDFs of a section-by-section summary of the 200-page market structure crypto bill (HR 4763) and a committee document itemizing changes made to the previous discussion draft of that bill.

[HR 4763, Financial Innovation and Technology for the 21st Century Act](#)

In its Wednesday (July 26) session, the committee approved, by a vote of 35-13, HR 4763, the *FIT for the 21st Century Act*, sponsored by Agriculture Committee Chairman G.T. Thompson (R-PA) and Reps. French Hill (R-AR), Dusty Johnson (R-SD), Warren Davidson (R-OH) and Tom Emmer (R-MN). The six Democrats who supported the bill – highlighting a divide between them and Ranking Member Maxine Waters (D-CA), who opposed the bill’s fundamental approach – were Jim Himes (CT), Josh Gottheimer (NJ), Steven Horsford (NV), Wiley Nickel (NC), Brittany Pettersen (CO) and Ritchie Torres (NY).

Broadly, HR 4763 seeks to provide regulatory clarity for cryptocurrencies, blockchain development, stablecoin payments and the broader digital asset ecosystem. It requires joint rulemakings between the SEC and the CFTC to define the bill’s key terms, such as “digital assets” and “decentralized,” and requires those agencies to establish oversight of dually registered exchanges and mixed digital-asset transactions. It would prohibit the CFTC and SEC from making any rule limiting the self-custody of digital assets by an individual. The bill would also exempt certain types of digital asset transactions while setting requirements for others; establish anti-fraud authority over permitted payment stablecoins; require registration of digital asset trading systems; assign jurisdiction over digital commodity

transactions to the CFTC; and require futures commission merchants to use qualified digital commodity custodians. Controversially for some Democrats, the bill provides a path for a digital asset to exit the SEC's authority and move into the CFTC's jurisdiction when custodians affirm that the assets are suitably "decentralized."

The bill stipulates that a digital asset is not a security just because it is sold as part of an investment contract, reflecting a July 13 court ruling in *SEC v. Ripple*. Digital asset exchanges and related firms would be permitted to file a notice of intent to register with the SEC or CFTC. The bill also mandates that the SEC and CFTC must conduct a joint study to "assess whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products."

In his opening [statement](#), Chairman Patrick McHenry (R-NC) said the committee was undertaking "a historic step for American innovation and consumer protection, as we undertake the first ever legislative markup of digital asset legislation." He said the bill represented "years of bipartisan efforts and numerous hearings," and noted that some financial products that are now familiar had once appeared exotic and unusual: "Just as joint stock companies revolutionized how companies are owned, digital assets and their underlying blockchain technology hold the same promise to revolutionize ownership in the digital economy." McHenry said the bill focuses on "two key issues: decentralization and functionality," and "recognizes a key issue: digital assets that are not inherently securities may be offered as part of an investment contract, but that does not make them securities." He also noted the committee's "unprecedented collaboration with the House Agriculture Committee" on the bill, given the panels' split jurisdiction over the SEC and the CFTC.

In her [statement](#), Ranking Member Waters laid out a number of concerns with the bill's approach, including an appeal to allow the SEC to retain its traditional authority over securities contracts, and skepticism that such a broad rewrite of securities laws was necessary. "You don't need to invent new regulatory structures simply because crypto companies refuse to follow the rules of the road," she said. "I am disappointed that Republicans have made the decision to move forward with a massive market structure bill to rewrite our nation's investor protection acts." Waters said the bill "heeds the calls from the crypto industry, while disregarding the views of the administration, the [SEC] and consumer and investor advocates... Our securities laws have effectively protected investors and retirees for 90 years." She contended the bill would create "loopholes" for traditional financial institutions to bypass existing requirements, and said the bill would allow for the commingling of customer funds, as the collapsed exchange FTX is accused of doing with its affiliate, Alameda Research.

Other senior Democrats on the committee echoed Waters' complaints, including Stephen Lynch (D-MA), who called HR 4763 "the worst piece of legislation that has been presented for markup" in his 20 years in Congress, and Brad Sherman (D-CA), who warned that public companies could exploit the bill by reissuing their securities as blockchain tokens, shifting them to CFTC oversight. "The scent of Sam Bankman-Fried still wafts in the air," Sherman said, suggesting that the bill's purpose is to avoid SEC regulation altogether. But Rep. Himes, a senior Democrat with expertise in capital markets issues, said that "after hundreds of hours of engagement with this bill on the part of me and my staff, I am confident that this legislation, while not perfect, makes the status quo better."

Amendments. The committee approved a substitute amendment offered by Rep. Hill gathering up a number of changes made to the original draft relating to provisional registration, decentralization and SEC authority; and an amendment from Rep. Lynch that removed a section adding "innovation" to the SEC's mandate, after Democrats complained that the change could allow some firms to escape oversight. The committee approved an amendment by Rep. Gottheimer directing the SEC and CFTC to do a joint rulemaking creating a process for delisting an asset, as well as an amendment by Rep. Himes giving the SEC six months, instead of three, to determine whether an exchange is "decentralized," and another from Rep. Horsford requiring the SEC to conduct a study on expanding financial literacy among digital asset holders.

Senate Prospects. The bill now moves to the House floor, though the prospects for a bipartisan, bicameral crypto regulation effort with the Senate appear unlikely right now. Numerous Senate Democrats have expressed skepticism about the need to create a regulatory framework for digital assets, and critics like Sen. Elizabeth Warren (D-MA) have called the House bill “the crypto industry’s wish list. I don’t see how a bill like that makes it through.” Senate Banking Committee Chairman Sherrod Brown (D-OH) on July 21 told *Politico* that the House GOP bill “is fairly simplistic and doesn’t really bring into the regulatory umbrella who it should... It’s, not surprisingly, pretty inadequate.” Brown has said that digital assets, exchanges and firms should first be required to comply with anti-money-laundering (AML) laws, an approach reflected in a bipartisan bill ([S. 2355](#)) recently offered by Sens. Jack Reed (D-RI), Mike Rounds (R-SD), Mark Warner (D-VA) and Mitt Romney (R-UT). Their bill would require decentralized crypto exchanges and other digital-asset services to comply with the same AML and economic sanctions obligations as other financial companies.

HR 4766, Stablecoins Regulation

In its Thursday session (July 27), the committee approved, by a vote of 34-16, HR 4766, the *Clarity for Payment Stablecoins Act*, sponsored by Chairman McHenry. Five Democrats supported the bill: Reps. Himes, Gottheimer, Torres, Nickel and Gregory Meeks (NY). The bill would create a regulatory regime for stablecoins, digital tokens whose value is pegged to a fiat currency like the dollar (or another commodity) to minimize their volatility. Stablecoin issuers support the token with reserves that can come in the form of cash or other real-world assets.

Committee Republicans had been negotiating with Democrats in the hope of producing a bipartisan bill, but in the end Democrats said objections from the White House and the Federal Reserve, related to the bill’s language allowing states to regulate stablecoin issuers (among other provisions), had prevented them from supporting the negotiated text. That left Republicans to mark up a previous GOP draft instead. In his prepared [statement](#) Thursday, Chairman McHenry said, “Today, I had hoped to announce an agreement with the Ranking Member on stablecoins. That will not be the case. Instead, we will move forward with the bill that was originally noticed for today’s markup. Unfortunately, there was a third party in this negotiation that did not share our same sense of urgency: the White House. A bipartisan deal was within reach – we were closer than we’ve ever been. A few small, but nonetheless important, provisions stood between us and a deal. It was the White House’s unwillingness to compromise that has once again brought negotiations to a halt. It’s a shame, but at some point you have to put the pens down.”

In her own [statement](#) Thursday, Ranking Member Waters outlined her concerns about the bill, and faulted the majority for insisting on moving forward with the markup instead of revisiting the bill in September. “I know that today many of you expected this committee to markup a broadly bipartisan stablecoins bill. Important legislation takes time, but the chair is impatient and has decided to abruptly end our negotiations and move forward with a bill that is deeply problematic,” Waters said. She said the bill “promotes a race to the bottom by creating 58 different licenses with federal regulatory approval and robust oversight over only two of the licenses... for banks and Fed-approved nonbanks. Moreover, Republicans take preemption to a whole new level, allowing individual states to preempt each other. Texas, for example would have no ability to stop coins from being issued in their state by coins from New York.” Waters said the bill “undermines strong reserve requirements by allowing any federal or state payment stablecoin regulator to unilaterally expand the list of eligible reserve assets, without restriction, at any time.” She said strong reserves should be the “core” of any stablecoins bill. Waters added that the bill also “removes the ban on all commercial entities from participating as an issuer. So under this framework, Amazon, Walmart or Facebook can create their own stablecoins, or even be affiliated with a stablecoin issuer. Does no one remember the numerous hearings we had when Mark Zuckerberg tried to do this just four years ago?”

Waters also faulted the bill for not giving the Fed appropriate supervisory or examination powers for state licensed entities, “so it is unclear on what authority and to what extent they could act. Look around the world – no other global regime undermines their central government’s authority with something so important as a nation’s money supply.” She added that “the Fed did not support the bill, Treasury does not support the bill, and we don’t have support of those

who've asked us to get involved with a stablecoin bill to begin with." Rep. Lynch said, "We have had no meaningful opportunity to amend this bill... That's an embarrassment. We want to be heard, and we want to have input on this."

During the markup's morning session, Democrats protested the majority's move to proceed with the previous text by "noting the absence of a quorum" and leaving the hearing room, which briefly halted the markup. Democrats also used tactics like points of order, roll call votes and required readings of the bill's complete text to delay the markup. During a break, Waters told *Punchbowl News* that the gap in regulation between state and federal authorities was a "big objection" for the White House, saying, "We've got to have a federal role. We cannot have a central bank without the ability to exercise its authority." The morning delays left Republicans to recess until the afternoon, then conduct the markup well into the evening.

Other Cryptocurrency Bills. In its Wednesday session (July 26), the committee also approved, by a vote of 29-21, HR 1747, the *Blockchain Regulatory Certainty Act*, sponsored by Rep. Emmer, which would free blockchain developers and service providers – including miners, multi-signature service providers and decentralized finance platforms – from having to acquire licenses as long as they do not deal in cryptocurrencies or hold customer funds.

In its Thursday session (July 27), the committee approved, by a vote of 29-21, HR 4841, the *Keep Your Coins Act*, sponsored by Rep. Davidson, which would prohibit any federal agency from implementing any rule or taking any action that would restrict an individual's ability to transact with digital assets through self-hosted wallets.

Anti-ESG Bills. In its Thursday session, the committee reported out a number of bills taking aim at environmental, social and governance (ESG) policies, an area that has preoccupied committee Republicans this summer. The committee:

- Approved, by a vote of 29-21, HR 4790, the *Guiding Uniform and Responsible Disclosure Requirements and Information Limits (GUARDRAIL) Act*, a package of bills offered by other members, sponsored by Bill Huizenga (R-MI). The bill would amend the Securities Act of 1933 to require that information required to be disclosed to the SEC by issuers be material to voting or investment decisions regarding those issuers. Title II, drawn from legislation sponsored by Alex Mooney (R-WV), would amend require the SEC to disclose and report on non-material disclosure mandates, maintain a list of such mandates and provide justifications for them every five years. Another title, drawn from legislation sponsored by Frank Lucas (R-OK), would establish within the SEC the Public Company Advisory Committee.

- Approved, by a vote of 29-21, HR 4767, the *Protecting Americans' Retirement Savings from Politics Act*, sponsored by Bryan Steil (R-WI), a package of 11 bills offered by other members. The bill's various elements would:

- Authorize the exclusion of shareholder proposals from proxy or consent solicitation material if such proposals are substantially similar to previously included proposals;
- Authorize companies to exclude shareholder proposals related to environmental, social or political issues from their proxy or consent solicitation materials;
- Authorize companies to exclude shareholder proposals, regardless of whether they pertain to significant social policy issues;
- Require the SEC to conduct a study of certain issues with respect to shareholder proposals, proxy advisory firms and the proxy process;
- Require proxy advisory firms to register with the SEC, establish requirements for managing conflicts of interest, and mandate disclosure of certain information;
- Amend Section 14 of the 1934 Securities Exchange Act to state that failure to disclose material information or making material misstatements regarding proxy voting advice will be considered false or misleading with respect to a material fact;
- Require institutional investors to share specific information about their voting decisions on shareholder proposals, and require larger asset managers to provide economic analyses for these decisions;
- Prohibit "robo-voting" with respect to votes related to proxy or consent solicitation materials; and

- Amend the 1940 Investment Advisers Act to specify requirements concerning the consideration of pecuniary and non-pecuniary factors, to require the SEC to conduct a study on climate change and other environmental disclosures in the municipal bond market, and require the SEC to conduct a study on the solicitation of municipal securities business.

- Approved, by a vote of 29-21, HR 4823, the *American Financial Institution Regulatory Sovereignty and Transparency Act*, a package of four bills offered by other members, sponsored by Barry Loudermilk (R-GA), which would: Require the federal banking agencies to notify the House Financial Services Committee and the Senate Banking Committee before implementing any non-binding recommendation from the chair of the Financial Stability Oversight Council or contained in an executive order; require the federal banking regulators to report on interactions with non-governmental international organizations; and remove the designation of a member of the Federal Reserve Board as Vice Chairman for Supervision.

- Approved, by a vote of 29-21, HR 4655, the *Businesses Over Activists Act*, sponsored by Ralph Norman (R-SC), which would amend the Securities Exchange Act of 1934 to prohibit the SEC from compelling the inclusion or discussion of shareholder proposals or proxy or consent solicitation materials.

Other Bills. In its Wednesday (July 26) session, the committee:

- Approved, by a vote of 49-0, HR 3244, the *Stop Fentanyl Money Laundering Act*, sponsored by Blaine Luetkemeyer (R-MO), which would authorize the Treasury secretary to take special measures against certain entities outside of the U.S. of primary money-laundering concern in connection with illicit fentanyl and narcotics financing.
- Approved by a vote of 49-0, HR 4765, the *Exposing China's Support for the Taliban Act*, sponsored by Rep. Lynch, which would require Treasury to conduct a study on the financial activities of China and Chinese entities in connection with the finances of Afghanistan and the Taliban, including activities that support illicit financial networks.
- Approved by a vote of 49-0, HR 4768, the *No Russian Agriculture Act*, sponsored by Ranking Member Waters, which states that the U.S. executive directors of international financial institutions must use their votes and influence to encourage those institutions to invest in projects that decrease other countries' reliance on Russia for agricultural commodities, particularly fertilizer and grain, and to stimulate private investment in such projects.
- Approved, by voice vote, HR 2969, the *Financial Technology Protection Act*, sponsored by Zach Nunn (R-IA), which would establish an Independent Financial Technology Working Group to Combat Terrorism and Illicit Financing within the Treasury Department to research terrorists' use of new financial technologies, including digital assets, and issue a report on their findings.
- In its Thursday (July 27) session, the committee approved, by a vote of 29-21, H.J. Res. 66, sponsored by Roger Williams (R-TX), which would use the Congressional Review Act to disapprove of the Consumer Financial Protection Bureau's rule on data collection for small businesses.

If you have questions, please contact Will Heyniger or Bob Schellhas at (202) 293-7474 or wcey@ey.com.

Hyperlinks in this alert:

- Wednesday markup page: <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408922>
- Thursday markup page: <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408925>
- McHenry Weds. statement: <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408928>

- Waters Weds. statement: <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=410718>
- S. 2355 information: <https://www.reed.senate.gov/news/releases/bipartisan-us-senators-unveil-crypto-anti-money-laundering-bill-to-stop-illicit-transfers>
- McHenry Thursday statement: <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408941>
- Waters Thursday statement: <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=410720>

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