

Senate Banking Committee Crypto Market Structure Principles

Chairman Tim Scott, Senator Cynthia Lummis, Senator Thom Tillis, and Senator Bill Hagerty

Legislation Should Clearly Define the Legal Status of Digital Assets

- A clear, economically rational line distinguishing digital asset securities from digital asset commodities should be fixed in statute, contemplating existing law and providing predictability, enhanced legal precision, and much-needed regulatory certainty.

Jurisdiction Should Be Clearly Allocated Among Regulators

- Regulatory authority should be clearly allocated in statute, preventing an all-encompassing regulator from emerging.
- Legislation should acknowledge that not all distributed ledger technology should be regulated equally.
 - Legislation should recognize the different risks and benefits between centralized firms, decentralized finance protocols, and non-custodial software platforms.
 - For similar reasons, self-custody of digital assets should be explicitly preserved.
 - Likewise, the use of distributed ledger technology and smart contracts for other, non-financial purposes, such as to manage health data, should not be regulated like financial products.

Regulation Should be Modernized to Foster Innovation

- Regulations should be modernized to account for the unique nature of digital assets and distributed ledger technology.
 - A new SEC exemption for certain digital asset fundraising should be included in legislation.
 - The SEC should revisit its burdensome registration requirements for digital asset issuers, and instead provide a clear, appropriately tailored pathway to compliance for good faith, innovative actors.
 - Clear, pro-innovation principles regarding the trading of digital assets on the secondary market should be established.
- Legislation should not apply principles designed for centralized firms to decentralized protocols.
 - Tokenization should be recognized as an evolution of financial infrastructure that enhances efficiency, transparency, and liquidity, rather than a fundamental change to the nature of the underlying asset.

Regulation Should Protect Those Who Purchase or Trade Digital Assets

- Centralized digital asset intermediaries should be subject to innovation-friendly registration and risk management requirements similar to that of other centralized intermediaries today.
 - Requirements could include illicit finance compliance, clear and right-sized capital, custody and segregation requirements, and appropriate enforcement authority.
- Legislation should also ensure that customer funds are protected during bankruptcy.

Illicit Finance Measures Should Be Targeted and Pro-Innovation

- A small, common-sense package of measures directed at preventing money laundering and sanctions evasion with digital assets should be included.
- Potential provisions can and should be targeted and pro-innovation. This could include requiring the adoption of examination standards and clarifying that the Bank Secrecy Act and International Emergency Economic Powers Act (IEEPA) extends to entities abroad with U.S. touchpoints.
- Reforms should also consider the ways digital assets and distributed ledger technology can improve transparency, efficiency, and the detection of illicit activity, including money laundering.

Federal Financial Regulators Should Welcome Responsible Innovation

- Federal financial regulators should take common-sense steps to respond to responsible innovation, including potentially through increased use of no-action guidance, sandboxes, safe harbors, coordination, and appropriate application requirements.
- Federal financial regulators should provide clear guidance affirming that many crypto-related activities are permissible for banks and other financial institutions, provided they do not threaten the safety and soundness of the institution.
- Clear guidance will also improve and better enforcement by establishing well-defined rules and expectations, fostering accountability, and enabling consistent application of regulations, leading to better understanding and compliance.