



An Overview of H.R. 4763, Financial Innovation and Technology for the 21st Century Act

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The House Committee on Financial Services on July 26, 2023, and the House Committee on Agriculture on July 27, 2023, [ordered to be reported](#) to the House [H.R. 4763](#) (Financial Innovation and Technology for the 21st Century Act). If enacted, it would introduce significant changes to the way digital assets are regulated. Currently, there is [no overarching digital-asset-specific federal regulatory framework](#).

Depending on the specific circumstances, various existing laws and regulations may apply, including those administered by the [Securities and Exchange Commission \(SEC\)](#) and the [Commodity Futures Trading Commission \(CFTC\)](#). Some policymakers believe [existing laws and regulations sufficiently accommodate digital assets](#), while others believe [additional authorities are required or that the regulatory framework otherwise needs to be reformed](#).

Decentralization and Digital Commodities Framework

One aspect of digital asset regulation that often generates uncertainty in the industry is whether a particular digital asset, given its individual features, should be regulated as a security by the SEC, as a commodity by the CFTC, or both. H.R. 4763 aims to resolve this uncertainty by creating specific classification criteria explicitly subjecting digital assets to a particular set of regulations and by establishing new regulatory requirements based on how a digital asset is classified.

H.R. 4763 would classify a digital asset as a commodity, regulated by the CFTC, if the blockchain (digital ledger) on which it runs is certified as decentralized. The bill would define *decentralized network* as, among other things, one in which no one person or entity has “unilateral authority” to control the operation of or access to the blockchain. The proposal would provide parallel permissions for individuals and firms to certify with the SEC or the CFTC that digital assets they plan to list meet the decentralized criteria. The proposal would provide the SEC and CFTC authority to reject such certifications with cause within a specific time frame. Digital assets that run on blockchains that are not decentralized would, depending on certain characteristics, be classified as securities.

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By explicitly classifying such decentralized digital assets as commodities, the bill aims to address a [perceived digital asset regulatory gap](#) by giving the CFTC new authorities, granting it exclusive jurisdiction over “cash” or “spot” market digital commodities, and requiring that entities (including exchanges, brokers, dealers, etc.) offering trade in digital commodities register with it. The bill would impose certain requirements on intermediaries, including ensuring trading is not susceptible to manipulation, requiring disclosures, and addressing market integrity and recordkeeping requirements. Seeming to address concerns that platforms’ current consolidation of various functions represents a [conflict of interest](#), the bill would prohibit an exchange from acting as a counterparty to transactions on its own platform. The bill would prohibit platforms from comingling their own funds with those of customers but would permit a customer to waive this for certain reasons. Less-sophisticated investors would be required to access digital commodity exchanges through digital commodity brokers.

SEC Regulation of Offers, Sales, and Intermediaries

Generally, investment assets are classified as securities if their characteristics meet the U.S. Supreme Court’s four-part [Howey test](#). Currently, this test also applies to digital assets. Under H.R. 4763, qualified digital assets would receive exemption from the existing [securities regulation](#) if they could meet the act’s new requirements, including restrictions on transaction amount, [non-accredited investor](#) access caps, purchaser limits, and requirements for issuer disclosure and compliance.

For [primary market](#) transactions, the act would provide a disclosure regime that includes items often appearing in [traditional securities disclosure](#) regimes, such as the description of risk factors and key persons, as well as other requirements specific to digital assets.

For [secondary market](#) transactions, the act would establish new registration and compliance requirements for digital asset trading systems and digital asset broker-dealers. While these intermediaries could also register as national securities exchanges, broker-dealers, and alternative trading systems under the existing securities regulation, the act would require the SEC to complete new rules for entities with multiple registrations to reduce potential duplication and conflicts. The act would mandate new SEC rulemaking for digital asset trading systems to include order display, fair access, system integrity, examination, recordkeeping, reporting, and other requirements. Digital asset broker-dealers would face requirements including custody, segregation of funds, capital, and reporting and recordkeeping. Selected aspects of these requirements appear to reference existing regulation governing certain [trading platforms](#) and [broker-dealers](#).

In addition, the act would mandate selected intermediaries to develop conflict-of-interest procedures, exempt digital assets from certain state securities registration requirements, and provide new treatment for banks that offer digital asset custody services. The act would reverse an [SEC accounting bulletin](#) that is perceived to increase risk transparency but may disincentivize banks’ willingness to participate in digital asset custody services because of increased [capital requirements](#).

Provisional Registration and Other Provisions

The bill would establish a provisional registration process, allowing entities to file notices of intent to register with the CFTC and SEC. The provisional registration regime would require entities to provide certain disclosures and prohibit comingling of funds, among other requirements. Firms that proceed with the provisional registration process would be granted a limited safe harbor from enforcement actions. However, the CFTC and/or SEC would be authorized to force intermediaries to delist assets that do not comport with the bill’s provisions or broader securities and/or commodities laws.

Other Provisions

The bill includes various provisions that take into consideration the potential coexistence of digital securities and commodities frameworks. The bill would allow firms that want to offer both digital security and commodities for trade to register with both the CFTC and SEC. The bill would exempt payment stablecoins from both frameworks but preserves the CFTC's and SEC's antifraud powers over their trade. Firms that solely perform "ancillary activities," such as participating in the operation of blockchains (e.g., [mining](#)), would be exempt from the bill's provisions.

The bill would require the SEC and CFTC to perform joint rulemakings to further define key terms, reduce duplicative regulations, and provide clarity for mixed digital asset transactions, in which a security is traded for a commodity or vice versa.

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