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From Bad to Worse: Key differences between crypto industry-backed CLARITY Act and FIT 21 deregulatory measures

This year's crypto market structure legislation promoted by the industry shares many of the flaws of last year's crypto legislation, but the deregulatory elements in the Digital Asset Market Clarity Act of 2025 (H.R. 3633 or CLARITY Act) pose greater threats to crypto investors and the financial system than last year's Financial Innovation and Technology for the 21st Century Act (H.R 4763 or FIT 21). The CLARITY Act offers a broader deregulatory approach that worsens many of the substantial flaws in FIT 21.

Both crypto industry-backed bills give a federal seal of approval to the crypto industry that will further enmesh the industry's widespread volatility, fraud, and money laundering into the financial system without providing the necessary safeguards for consumers or the market. This federal imprimatur will allow the risks of crypto to saturate the financial sector and create systemic risks that could imperil financial stability and the real economy.

FIT 21 primarily created a weak regulatory framework for cryptocurrencies and other digital assets. It was a deeply flawed proposal that would have provided crypto investors and consumers with less protection from the crypto industry's predation and systemic risks and also threatened to undermine key aspects of overall financial market regulations beyond crypto.

The CLARITY Act exacerbates many of FIT 21's substantial deregulatory flaws, but it also includes measures that allow even more exemptions and fosters even less oversight, allowing crypto scams and illicit finance to proliferate and pose greater risks to consumers and the financial system than FIT 21. The CLARITY Act has taken the crypto industry's deregulatory agenda from bad to worse.

Broader, more lasting regulatory exemptions for DeFi: Decentralized finance (DeFi) is replete with risks and practices that can harm consumers, investors, and financial markets, including the unique vulnerability of DeFi to cyberattacks, the extractive and exploitative nature of the products and services offered on DeFi platforms, and investors' exposure to illicit finance and money laundering on or facilitated by DeFi platforms. FIT 21 did not fully address the question of how or whether to regulate decentralized finance (DeFi) platforms and intermediaries. It gave these platforms temporary exemptions from oversight by regulators such as the Commodity Futures Trading Commission (CFTC).

In contrast, the CLARITY Act fulfills the DeFi industry's wish list. It provides broad exemptions for a wide variety of DeFi actors from both traditional broker-dealers and exchange regulatory obligations or even comparable provisions to the milquetoast guidelines for other crypto commodity traders and exchanges under the rest of the bill.

This means a huge swathe of the industry will be subject to almost no federal oversight (save some minimal anti-fraud and piecemeal anti-money laundering requirements). Crypto investors on DeFi platforms will largely be left to fend for themselves. It also means that DeFi —already a space filled with theft, hacks, and scams — will be an incubator for even more predatory and scammy activity, which can bleed over into more centralized exchanges — as the crypto industry is deeply interconnected, with trading and token introduction in one space linked to others.

More loopholes for other crypto assets and trading: The purported rationale for both FIT and CLARITY is to close an ostensible gap in the regulation of the spot market for crypto and digital assets (whether they were securities or commodity derivatives). This narrative is oversold and oversimplistic and the reality is that any gap in spot market oversight has been relatively narrow and related to a small class of assets such as Bitcoin or Ether. In reality, most digital assets either could fall under a securities framework (under the Securities and Exchange Commission) or a derivatives framework (under the CFTC). FIT attempted to plug this alleged gap by taking a sledgehammer to the financial regulatory framework. It created a fast-track process for classifying crypto assets as commodities which would have created a stampede of crypto assets, actors, and activities seeking self-certification under the CFTC as digital commodity brokers, asset issuers, or platforms, undermining SEC authority and the agency's more robust investor protection.

While this was bad, FIT still might have been able to exert minimal oversight and investor protection for much of the crypto industry via CFTC. In contrast, CLARITY uses a similar approach, but also specifically exempts a broad set of crypto assets such as meme coins, non-fungible tokens, and other assets from any oversight by declaring they are neither securities nor commodities. People issuing these assets and those trading them, to some extent, would be subject to little or no oversight by either the SEC or CFTC. That means that investors interacting with these assets — which are huge sources of speculative activity in crypto ecosystems — would have little or no regulatory protection. Again, they would be largely left to fend for themselves. The bill's authors have made an 11th hour change to purportedly address this criticism, but have only offered hollow, half measures meant for crypto actors seeking to trade or transact with these assets, which will provide little meaningful investor protection.

Weaker oversight and disclosure for those few crypto assets deemed securities: Though FIT 21 clearly stacked the regulatory deck by allowing many crypto assets to be regulated under the less robust commodities framework, it did create a weak and permissive pathway for those remaining assets and issuers still covered by securities law. It allowed issuers to seek an exemption to standard securities asset registration, sidestepping most traditional disclosures that might inform investors. Currently, those types of exemptions are reserved for private securities offerings to a more limited set of sophisticated investors, but FIT allowed this new class of exempt crypto securities offerings to be sold to all retail investors, up to a generous limit of $75 million, despite requiring fewer disclosures and allowing for more risk exposure.

CLARITY doubles down on this approach. Compared to FIT, crypto issuers are given more time and the ability to delay or defer more fulsome disclosure to investors, allowed to raise more capital under over a broader period of time, creates more opportunities for these issuers to retain significant ownership and control of those assets (locking in informational asymmetry over retail investors), and allows them to sell to a broader array to retail, and likely less informed, investors. It creates the mirage of SEC oversight over crypto securities, but does not offer substantive, real oversight, or timely material information for investors. The issuers and venture capital funds that are early investors in crypto firms would stand to benefit the most from this framework. Not surprisingly, these are the firms that have funded much of the lobbying for FIT and CLARITY.

The CLARITY Act was crafted by and for the crypto industry and expands upon the deregulatory giveaways proposed in FIT 21. The pitifully weak and loophole-ridden legislation is a giveaway to crypto firms, investors, and billionaires that will expose crypto investors — and the financial system and real economy — to growing risk, rampant fraud, and money laundering without effective and sufficient investor protections need to curb the widespread predation in the crypto industry.