

## Bipartisan Senators Propose Regulatory Overhaul of Crypto Markets

On June 7, 2022, Senators Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY) unveiled their long-awaited bipartisan framework to overhaul the regulation of cryptocurrencies and digital assets. The “Responsible Financial Innovation Act,” seeks to provide certainty and clarity to the digital asset and blockchain industries, along with the agencies governing these industries. The proposed legislation, which has been in development since March 2022, would define most digital assets, including bitcoin and ether, as commodities, enact rules governing stablecoins, and provide the CFTC with exclusive jurisdiction over digital asset spot markets.

The Act, also known as Lummis-Gillibrand, contains the following relevant provisions:

- Creates a Clear Distinction between Digital Assets that are Securities and those that are Commodities.
  - Lummis-Gillibrand codifies existing precedent under the *Howey* test and defines many digital currencies as “ancillary assets,” which are provided to a purchaser under an investment contract. These ancillary assets are presumed to be commodities unless the asset is debt, equity, or provides profit sharing or similar rights.
- Assigns Exclusive Jurisdiction over Digital Asset Spot Markets to the CFTC:
  - Lummis-Gillibrand grants the CFTC clear authority over applicable digital asset spot markets, including exclusive jurisdiction to regulate bitcoin and ether as commodities.
- Defines and Creates Requirements for Stablecoins:
  - Lummis-Gillibrand defines stablecoins as a digital asset that is redeemable, on demand, on a one-to-one basis in United States dollars.
  - Stablecoins are required to: (1) maintain high-quality liquid assets valued at 100% of the face value of all outstanding payment stablecoins; (2) provide public disclosures on the assets backing the stablecoins and their value; and (3) have the ability to redeem all outstanding payment stablecoins at par in legal tender.

Lummis-Gillibrand, further, directs various agencies, including the CFTC, SEC, IRS, GAO, FERC, and OMB to conduct various studies and analyses to determine and report on: (i) the development of a self-regulatory organization for digital assets; (ii) guidance relating to cybersecurity for digital asset intermediaries; (iii) a workable structure for the taxation of digital assets; (iv) opportunities and risks associated with investing retirement savings in digital assets; (v) energy consumption in the digital assets industry; and (vi) the national security implications of the digital yuan.

It is unclear whether Lummis-Gillibrand will advance through the Senate or the House of Representatives.

McGonigle's team will continue to monitor this bipartisan effort and to advise on developments in this space. It is well-positioned to assist companies with regulatory and policy advice as well as compliance with regulations.

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