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**June 22, 2022**

## **Bipartisan Senate Bill on Crypto/Digital Assets Introduced**

On June 7, 2022, U.S. Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) introduced a bipartisan bill to regulate the cryptocurrency/digital assets market. A copy of the Lummis-Gillibrand Responsible Financial Innovation Act Bill ("Lummis-Gillibrand" or "Bill") can be found [Here](#). While the Lummis-Gillibrand Bill will no doubt undergo substantial amendments before - and if - it becomes law, its bipartisan provenance points to likely directions for U.S. crypto/digital assets law and regulation. Some of the Lummis-Gillibrand provisions are revolutionary. The Bill's proposals include:

### **Securities v. Commodities Regulation**

- On the persistent securities v. commodities regulation issue, to notionally split a digital asset from the investment contract that sells it. The investment contract would be a security and regulated by the U.S. Securities and Exchange Commission ("SEC"). The notionally split-off digital asset would be called an "ancillary asset" of the investment contract - a novel idea - and regulated as a commodity, when appropriate, by the Commodity

Futures Trading Commission ("CFTC"). Digital assets not having attributes of securities such as debt or equity interests, liquidation, dividend and profit-sharing rights derived from the managerial efforts of others would be presumptively subject to CFTC jurisdiction, excepting non-fungible tokens (NFTs) or other non-fungible digital assets and most stablecoins issued by depository institutions (Currently, the SEC has jurisdiction over "digital asset securities").

- Authorization of spot crypto asset exchanges for the physical delivery of digital assets to register with the CFTC.
- To amend the 2021 Infrastructure Investment and Jobs Act to include in its expanded definition of "Broker" any person who is responsible for effecting transfer of digital assets on behalf of another person.

### **Banking**

- To permit depository institutions to issue payment stablecoins (those redeemable for U.S. dollars) subject to reserve and redemption requirements.
- Prohibits banks from using reputational risk in examination ratings and requires appropriate reasons for requesting termination of a customer account.

### **Taxation**

- Excludes gain or loss of U.S. \$200 or less in transactions for "goods and services" from gross income for federal income tax purposes.
- Makes clear that crypto/digital mining and staking proceeds are not treated as gross income until the taxpayer exercises dominion over them.
- Makes clear that a loan of digital assets is generally not a taxable event.

### **Jurisdiction**

- Applies in its jurisdiction to incorporated and licensed legal entities, but not to unincorporated "decentralized autonomous organizations" or "DAOs," users of digital assets and "decentralized finance," or "DeFi" protocols.

### Consumer Protection

- Requires regulated entities to make transaction-specific disclosures to consumers.
- Directs state regulators to adopt uniform money transmitter license requirements for digital asset transactions.

We reported previously on the Biden administration's March 9 Executive Order initiating a government-wide effort to study and report on development and regulation needed in the cryptocurrency - digital asset market (see, U.S. Executive Order Issued to Develop Cryptocurrency/Digital Asset Regulatory Framework, March 10, 2022, available [Here](#)).

The all-governmental reports to be issued on the E.O. will no doubt inform future action on the Lummis-Gillibrand Bill and any other Congressional action on cryptocurrencies and digital assets. However, unlike the E.O., the Lummis-Gillibrand Bill is an actual proposed law that can, with or without amendments, be passed by both houses of Congress and signed into law by President Biden. We will closely follow the Lummis-Gillibrand Bill's progress through the legislative process and report in detail on any final law.

For additional information, please contact us at [info@kurtinlaw.com](mailto:info@kurtinlaw.com).

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Kurtin PLLC | One Rockefeller Plaza, Floor 11, New York, NY 10020

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