Statement for the Record

On Behalf of

Americans for Financial Reform

to the

House Committee on Financial Services

and

House Committee on Agriculture

"American Innovation and the Future of Digital Assets:

From Blueprint to a Functional Framework"

June 4, 2025

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(Submitted June 9, 2025)

Dear Chairs Hill and Thompson, Ranking Members Waters and Craig, and members of the Committees,

Thank you for the opportunity to submit comments for the record regarding the Committee's recent hearings on digital asset policy and crypto market structure legislation. Americans for Financial Reform (AFR) is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR continues to work towards a strong, stable, and ethical financial system. We are committed to eliminating inequity and systemic racism and fighting for a just and sustainable economy for everyone.

H.R. 3633, referred to as the CLARITY Act, fails to live up to its moniker. The bill seeks to achieve industry friendly regulatory objectives that were the hallmark of previous legislation introduced last Congression (known as FIT 21): a light-touch regulatory regime for crypto assets, actors, and activities. In some respects, it uses different terminology and policy structures, but the result is the same. Rather than taking the "same activities, same risks, same rules" approach that has guided many efforts to establish robust investor protections and oversight of financial markets, this bill creates significant carveouts for the crypto industry that provide significantly less protection for investors and consumers and threaten to undermine financial market protections more broadly.

While we have many substantive concerns about this bill, at the outset we believe that a vote for this legislation would also enable and condone ethically problematic crypto business activities by the Trump administration, organization, and family – ones that raise unprecedented concerns about presidential conflicts of interest, corruption, and the abuse of public office for private gain.

In the first one hundred days of the administration, the Trump family and organization crypto business ventures have blurred or crossed the lines between the first family's private business interests and the administration's responsibility to uphold the public interest. For example, the Trump administration's special Envoy to the Middle East, Steve Witkoff, has had previous business dealings in the crypto world, including in the Middle East. His son, Zach Witkoff, is a key executive in Trump Organization's World Liberty Financial. World Liberty Financial's top investor is crypto mogul Justin Sun, who has faced civil and criminal charges for suspicious activity around the world.

Yet, the Trump administration's Securities and Exchange Commission (SEC) dismissed charges against Sun's platform TRON around the time Sun made a multi-million dollar investment in WLF. Changpeng Zhao (known as CZ), founder of Binance, pled guilty to anti-money laundering charges in 2023 for his platform's flagrant, widespread, and willful violations of these rules. Mr. Zhao denied any involvement in WLF's financial dealings for months, until he admitted Binance's involvement in WLF's financial dealings in late April. News reports suggest that Mr. Zhao has sought a pardon by the Trump Administration, in line with other convicted crypto criminals Trump has pardoned.

And President Trump and his family have used the issuance and sales of his memecoin to generate millions of dollars in profits from transaction fees and other measures and curry undue influence with foreign investors. This culminated in the Trump-hosted private dinner for the top buyers of the memecoin, many of whom were offshore crypto barons. This dinner occurred even as news reports suggested more than 750,000 other buyers of the Trump memecoin have lost money on their purchases.

Yet, this bill lacks the necessary tools sufficient to address or curb the unprecedented legal, ethical, and operational risks posed by the President's own crypto business ventures and business partners. And, even if the bill contained strong conflict of interest measures, it is highly unlikely that the current leadership of federal banking, securities, and exchange regulators would exert sufficient oversight — either due to complicity with or fear of the crypto industry and its allies in the Trump Administration. It is not credible that these regulators would undertake robust oversight of the crypto industry that could impact the profits of the First Family's crypto empire.

What's more, efforts to advance this bill are also taking place as the Trump administration has repeatedly undermined the independence of financial regulators by unlawfully removing commissioners and board members, purging regulatory staff, and rolling back oversight and enforcement. In March, commissioners were purged from their seats at the FTC. In April, board members were removed from their roles at the NCUA. The administration has purged CFPB staff and taken other steps to diminish the agency's efficacy and independence. The repeated threats to remove the chair of the Federal Reserve Board have roiled financial markets and undermined confidence in the stewardship of the economy.

These disruptive removals leave significant gaps in leadership at the agencies and have targeted leaders committed to advancing the public interest and taking on powerful corporate interests when it is necessary to do so. All of these expulsions are extraordinary direct blows to the independence of these agencies that were designed to be insulated from economic and political pressures that threaten to undermine key democratic pillars of U.S. society, fair and effective financial oversight, and economic stability.

And, efforts to advance legislation such as CLARITY which, despite proponents' claims, are deregulatory in nature and leave a great deal of discretion to conflicted and captured regulators, are at best wishful thinking and at worst a path towards a world that realizes much of the crypto industry's ideological vision for financial markets: where financial freedom is for those who can afford it, and where caveat emptor is the regulatory standard for financial markets.

There are many flaws with CLARITY regulatory approach to crypto oversight that fail to protect investors or the financial system. The critical shortcomings of CLARITY include:

Enshrines a crypto-industry demand to dodge the Howey test for what is a security: CLARITY would broadly amend securities laws by exempting many crypto assets from securities laws coverage. The bill asserts that the term "investment contract" does not include an "investment contract asset," which the legislation defines as a "digital commodity" owned or exchanged via blockchain and offered under the generous conditions of the bill. This exemption would include secondary market sales of such digital commodities (provided the secondary issuer doesn't offer direct interest in ownership, revenues, etc.).

The bill's language mirrors the outlying legal arguments made by the Southern District of New York's Judge Torres in SEC v. Ripple. Many courts have ruled otherwise in crypto cases, finding that such sales can and do constitute investment contracts subject to securities laws, but the bill's authors have decided to put their thumb on the scale in favor of the crypto industry.

The Howey Test has worked effectively as a "facts and circumstances" test that uses not just asset classification but economic analysis to determine how and whether securities-related investor rules and protections should apply.

For digital assets, CLARITY cuts that process off at the knees, meaning that a wide swathe of digital asset offerings won't be subject to the robust investor protection under Howey and its application. This will boost crypto industry profits, but it subjects buyers to amplified potential risk, manipulation, and harm. It also creates opportunities for other non-crypto financial market actors to use CLARITY's treatment of investment contract assets as an operational or legal roadmap for regulatory evasion.

Establishes an anemic and permissive private market oversight regime for crypto securities offerings: CLARITY gives digital assets issuers an incredibly generous exemption framework for those that want to make offerings under securities law. Rather than make a public offering, digital "commodities" related to a "mature" blockchain system (or one that intends to be mature within several years of issuance) can seek an exemption under the 1933 Securities Act, as long the issuer keeps sales of the commodity under $75 million within a 12-month period.

Under the exemption, rather than meeting public Initial Public Offering disclosure requirements, an issuer must merely provide some information on the issuer's financial condition, the source code for the commodity's related blockchain, transaction history, digital commodity economics (or "tokenomics"), risk factors, and development plans — which amounts to the pitiful disclosure crypto issuers are currently offering under unregulated issuances. These details fall far short of the types of disclosures issuers are required to provide for public offerings. Yet, unlike similar exemptions under existing law that limit comparable private offerings to accredited investors, this bill allows these exempt offerings to be made directly to retail investors, despite the fact that such limited information increases the potential risk for such investors.

Gives major exemptions and carve-outs for decentralized finance (DeFi): CLARITY excludes a long list of DeFi-related activities from core market regulatory oversight and obligations. The exempted activities include, but are not limited to, operating nodes on blockchain; creating user interfaces for crypto investors; developing and maintaining a blockchain system; operating liquidity pools that executes sales of digital commodities; creating and maintaining tools that facilitates communications about DeFi platform operations, data, financial activities, and more.

The rationale for these exemptions relies on a core aspiration of DeFi proponents: that somehow, by creating, deploying and operating software used to facilitate financial market activity and calling it "decentralized," the people and entities using, managing, governing and administering such tools and activities are magically exempt from most, if not all, financial market regulatory requirements.

Yet, many of the activities facilitated by DeFi developers and admins constitute financial market intermediation in ways that are comparable to existing financial markets, and many DeFi platforms and systems demonstrate high degrees of concentration or common control, undermining the contention that "no one" is in charge or managing these systems. These factors contradict the aspirational promotions and claims of the DeFi industry and highlight the need for market regulation.

And, while DeFi proponents claim technological solutions can supplant or substitute for the types of compliance activities traditional financial market intermediaries must undertake, even by its own standards, the industry has largely failed to demonstrate that's the case.

As such, the bill's regulatory exemptions for DeFi platforms and activities have the potential to further legitimize risky, speculative, and predatory activity that are widespread in DeFi markets, leaving investors to largely fend for themselves while providing the DeFi industry with a government seal of approval.

Creates a definition of digital commodity that leaves out more than it includes: The purported rationale of this bill is to create a regulatory framework for the spot market in digital commodities. Yet, this bill's definition of digital commodity, as House Financial Services Committee witness Timothy Massad conveyed in last week's CLARITY hearing, would likely refer only to a subset of tokens. Non-fungible tokens, memecoins, rewards points, game tokens, various "utility tokens" would not be considered digital commodities, or, presumably, securities. Platforms, registered under the CFTC or SEC, would still be allowed to list these products that are unregulated or unsupervised under the bill, and intermediaries would be allowed to trade them or trade on behalf of clients. DeFi platforms listing these tokens, because of exemptions in this bill, would have even fewer obligations to their customers with respect to how these assets could be introduced or traded online. Instead of creating the promised rules of the road for crypto customers, this bill would only regulate a few drivers on the congested crypto roadway. Most crypto cars (memecoins, NFTs, etc.) would be traded on government sanctioned platforms but would be exempt from rules of the road and could ignore traffic signals or speed limits that would pose real risks to crypto customers.

Creates lax obligations for digital commodity brokers and dealers: The bill establishes a weak regulatory framework for digital commodity brokers and dealers that only requires these intermediaries to meet certain, minimalist business conduct requirements, disclose information about the material risks and characteristics of the digital commodities they offer, and to have policies intended to mitigate conflicts of interests. However, these measures pale in comparison to the standards SEC-registered broker-dealers must meet, including Regulation BI (Best Interest), which requires broker-dealers to act in the best interest of their retail customers when recommending investments or products. In practice, this means that crypto customers will be more vulnerable to exploitative or manipulative practices by these newly established intermediaries.

Legitimizes many crypto platform's conflicted and vertically integrated business models. Current investor protections for securities markets require financial market intermediaries — such as brokers, exchanges and clearing agencies — to be kept separate, to mitigate or avoid conflicts of interest that would create financial incentives to cheat or mislead their clients or customers. However, many crypto platforms operating today provide all of these services under one roof. This gives crypto platform operators leverage over their customers regarding asset pricing information, access to trading activity, how and when trades are executed and more. This sort of leverage gives platforms the ability to front-run their clients, which is a documented practice in the industry. Rather than offer crypto investors similar safeguards found in securities markets against such unfair practices, CLARITY largely endorses this type of business organization.

These are just some of our concerns about this bill. We believe this bill is structurally flawed; attempts to address smaller details in the bill during Committee or Congressional floor activity, however well intentioned, are unlikely to address the bill's major problems. Instead, if this bill is enacted in its current form, crypto investors and investors as a whole are likely to be worse off. Conflicted crypto business models, extractive industry practices, and unstable, unsecure platforms will receive a government imprimatur and find legitimacy under a weak and permissive regulatory regime. The ensuing bubble of economic activity fostered by this bill's seal of approval will attract retail and institutional investors alike, lured by a fear of missing out and a false sense of security. Ultimately, when crypto platforms and markets fail, more investors, companies, and communities will be harmed as a result.

We urge Committee members to oppose the advancement of this bill. Instead, Committee members should work to empower regulators to use their existing authorities to conduct robust regulatory oversight of the crypto industry in a manner comparable to that of other financial market actors and provide investors with comparable levels of protection and remedy. Any legislation Congress advances to address regulatory gaps should be narrowly tailored and built upon existing standards.