

August 4, 2025

Re: Senate Banking Committee Digital Asset Market Structure Request for Information

Dear Chairman Tim Scott, Senators Cynthia Lummis, Bill Hagerty, and Bernie Moreno:

Coin Center thanks the Senate Banking Committee for providing this opportunity to comment on your discussion draft of market structure legislation. Ensuring adequate and appropriate regulation of trusted entities in the cryptocurrency ecosystem while clearly carving out and protecting mere software and infrastructure providers is a difficult but essential goal to enable American leadership in these technologies. We applaud the careful approach taken to developing these policies.

Coin Center's primary mission is to protect software developers and other truly non-controlling (as in controlling customer funds) service providers from undue licensing and registration requirements.That includes protection from any new requirements created by market structure legislation as well as from the misapplication of existing laws such as money transmission licensing or national securities exchange regulation. To that end, we are extremely gratified to find that the safe harbor for non-controlling blockchain developers and service providers from the House's Blockchain Regulatory Certainty Act has been included in this early draft. We will work to socialize that language with members who are still educating themselves about market structure legislation. Additionally, we will continue to advocate for clear carve-outs from new market structure licensing obligations at the CFTC and SEC for similar non-controlling software and infrastructure providers. For the remainder of this comment we will reply to the provided RFI questions that are most relevant to our mission. Thank you, again, for your diligent and careful work on this important piece of legislation.

1. The proposed legislation aims to provide clarity on how to allocate jurisdiction over digital assets between the CFTC and the SEC. Does the legislation strike the right balance?

> *(f) Should legislation clarify the status of certain technology functions that are inherent to the operation of a distributed ledger network? This could include technology functions such as running consensus algorithms, executing smart contracts, or engaging in activities like staking and mining.*

Response: Coin Center supports a technology-neutral approach to legislation and generally cautions against calling out specific technical functionalities in statute. That said, to the extent the discussion draft uses managerial control or ongoing effort as a basis for imposing disclosure obligations on ancillary asset originators, it is important to clarify that the mere operation of open protocols, such as relaying messages, validating blocks, or providing interfaces to smart contracts, should not be presumed to reflect managerial control. These activities often occur without any contractual promises to users and without discretion or ability to act on behalf of network participants. To avoid chilling innovation or sweeping in non-custodial developers, we encourage the drafters to ensure that the final language does not inadvertently treat these technology functions as indicia of control warranting disclosure obligations. We support the approach taken in Sections 309 and 409 of the Digital Asset Market Clarity Act of 2025 (CLARITY), which specifically exempts certain "decentralized finance activities" from regulation.

11. How should legislation address centralized intermediaries involved in the trading of digital assets?

> *(c) Should legislation create a new pathway to register intermediaries involved in the trading of digital assets? If so, how?*

Response: Coin Center supports the creation of a uniform federal framework for the regulation of centralized digital asset intermediaries, particularly as an alternative to the existing patchwork of state money transmission licensing (MTL) regimes. The current 50-state system imposes duplicative, costly, and often inconsistent requirements on custodial exchanges and wallet providers, creating unnecessary barriers to entry and compliance challenges without materially improving consumer protection. A well-designed federal framework limited to custodial actors and focused on prudential and consumer protection standards could improve regulatory clarity, streamline oversight, and promote innovation while preserving states' ability to regulate truly local activity. We do not believe such a framework should extend to non-custodial actors or impose federal licensing on decentralized technologies. In creating any

new registration pathway, it will be essential to precisely define which intermediaries must register to avoid encompassing software developers or non-custodial infrastructure providers who do not hold customer assets or facilitate trade execution on behalf of others. As noted, Sections 309 and 409 of CLARITY carefully defines certain decentralized finance activities to ensure that software developers and non-custodial infrastructure providers are not unnecessarily scoped into regulation.

12. How should legislation address the role of broker-dealers in the context of digital assets and distributed ledger technology, including any complexities these innovations may pose?

Response: Some smart contract platforms allow users to submit and route orders through open protocols or interfaces without relying on traditional broker-dealer intermediation. While this functionality may resemble activities historically performed by brokers, it does not always involve discretion, control, or fiduciary obligation. Coin Center does not advocate for technology-specific exemptions for brokers, but we believe existing legal principles—such as the standard articulated in *SEC v. Lowe*, 472 U.S. 181 (1985)—remain appropriate. That decision drew a clear distinction between general-purpose publication tools and personalized services that "take the customer's affairs firmly in hand." A person who merely operates or contributes to a protocol that enables decentralized order matching without custody, discretion, or representation should not be deemed a broker-dealer. Regulating such neutral technological activity may also raise First Amendment concerns where software or interfaces constitute protected speech.

15(g). What, if any, changes should Congress consider to preserve the right to self-custody digital assets?

Response: Congress should affirm the right to self-custody cryptocurrencies as a matter of individual privacy, property rights, and financial autonomy. Coin Center supports the *Keep Your Coins Act*, which would prohibit federal agencies from restricting the ability to use self-hosted wallets. Self-custody is a foundational feature of cryptocurrency networks that enable users to transact without intermediaries, similar to the right to hold physical cash or gold. It is particularly important for protecting vulnerable populations, facilitating private charitable donations, and enabling speech in politically sensitive contexts. Any regulatory framework that implicitly or explicitly restricts the use of self-hosted wallets would raise serious constitutional concerns and undermine the open architecture that makes cryptocurrencies a meaningful innovation.

16. What laws, requirements, and practices relating to illicit finance and anti-money laundering do digital asset market participants already follow?

Response: Custodial intermediaries that accept and transmit cryptocurrency on behalf of customers have been explicitly subject to federal registration as money services businesses (MSBs) since FinCEN issued guidance in 2013. As MSBs, these entities are required to implement risk-based anti-money laundering programs, maintain customer identification procedures, and file suspicious activity reports. In addition, all U.S. persons—regardless of whether they are custodial intermediaries—must comply with U.S. sanctions laws. In recent years, OFAC has designated individuals and entities using cryptocurrency for illicit purposes, including by identifying specific wallet addresses associated with those actors.

17. How should legislation address illicit finance and anti-money laundering issues as they relate to digital assets?

> *(b) Do digital asset mixers and tumblers warrant special legislative, regulatory or supervisory attention? What are potential ways to combat illicit activities using these technologies while safeguarding privacy rights and free speech?*

Response: A critical distinction must be made between persons operating custodial mixers as a service and privacy-enhancing software tools that merely make blockchain transactions more difficult to trace. For businesses that take custody of customer funds and provide anonymization services, additional legislation is not necessary as these entities already meet the definition of money transmitters under existing FinCEN guidance and are subject to registration and AML requirements as MSBs. The challenge lies in ensuring that these requirements are consistently enforced.

By contrast, attempting to regulate open-source privacy tools, such as wallets with CoinJoin features or zero-knowledge protocols, would stretch financial regulation into areas where it has never traditionally reached and raise serious constitutional concerns. These tools do not involve custody, discretion, or intermediation, and are functionally equivalent to publishing software that enhances financial privacy. Efforts to ban or heavily restrict such tools in the name of anti-money laundering would risk undermining basic rights without improving outcomes. There is little evidence that mass surveillance of blockchain activity is either necessary or particularly effective in preventing illicit finance. Law enforcement has

demonstrated success using traditional investigative techniques without resorting to bans on privacy-preserving technology.

(c) Which digital asset market participants should be considered financial institutions pursuant to the Bank Secrecy Act?

Response: For cryptocurrencies that do not otherwise meet the definition of a traditionally regulated financial instrument (such as a security or derivative), FinCEN appropriately drew the line in its 2019 guidance by distinguishing between custodial actors, who have independent control over customer funds, and non-custodial software developers or infrastructure providers, who do not. Under that framework, only custodial businesses are considered financial institutions for purposes of the Bank Secrecy Act. Coin Center believes this distinction remains both workable and well-justified in most contexts.
However, the crypto networks can also be used to support assets that may fall within traditionally regulated categories like securities or derivatives. In those cases, custody may not be the only relevant factor. Longstanding principles still guide when an entity should be considered, for example, a broker-dealer or futures commission merchant subject to BSA obligations. Notably, the Supreme Court in *SEC v. Lowe* emphasized regulation of those who have "taken the customer's affairs firmly in hand." Regulatory design in the cryptocurrency space should similarly focus on functional roles and relationships of trust, rather than on arbitrary classifications or the mere use of emerging technologies.

26. What action should market structure legislation take with respect to decentralized finance?
a. How should an exemption for decentralized finance be structured?
b. What changes, if any, should Congress make to prior legislative attempts to structure an exemption for decentralized finance?

Response: The first priority in addressing decentralized finance (DeFi) through legislation should be the use of well-crafted definitions that clearly distinguish between the publication of software and the provision of regulated financial services. Regulatory frameworks should begin by affirming that those who merely develop or publish DeFi software, including open-source protocols and interfaces, are not engaged in activity that should be subject to registration or licensing requirements. Creating and sharing code is a protected form of speech, and legislation should ensure that developers are not burdened with obligations intended for custodians, brokers, or other fiduciaries.

At the same time, the use of DeFi tools to engage in activities that would traditionally trigger regulation—such as facilitating trading in securities, issuing derivatives, or holding customer funds—should remain within the scope of regulatory oversight. A DeFi exemption should not become a blanket shield for conduct that would otherwise be subject to financial regulation. Instead, the focus should remain on functional roles and responsibilities, not on the technology used to carry them out.

Coin Center believes the approach taken in the CLARITY Act of 2025 reflects this balance effectively. That bill uses clear definitions to protect non-custodial developers and infrastructure participants, while preserving the ability of regulators to address genuinely intermediary activity. Any future DeFi-related provision should follow this model—protecting innovation and speech while ensuring accountability for regulated conduct.

35. Should federal legislation preempt certain state laws, and if so, how?

Response: Consistent with Coin Center's position since 2018, Congress should establish a uniform federal regulatory regime for cryptocurrency markets that preempts state money transmission statutes. The vast majority of these state laws were not designed to address the unique attributes of crypto networks and often impose inconsistent, duplicative, and burdensome requirements on custodial businesses. A federal alternative would provide clarity, reduce barriers to entry, and enable effective oversight tailored to the risks presented by custodial activity, while preserving state authority over truly local or traditional money transmission businesses.

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Thank you again for the opportunity to comment on your discussion draft. Please do not hesitate to contact us if we can provide more information or assistance in the drafting process.

Sincerely,
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