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Amendments to the Securities Act of 1933 as made by the Financial Innovation and Technology for the 21st Century Act (May 10, 2024)

AN ACT To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

DEFINITIONS

Sec. 2. [77b]

(a) Definitions.—When used in this title, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term ‘security’ does not include an investment contract asset. The term does not include a digital commodity or permitted payment stablecoin.

...

(20) Affiliated person.—

(A) In general.—The term ‘affiliated person’ means a person (including a related person) that—

(i) with respect to a digital asset issuer—

(I) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such digital asset issuer; or

(II) was described under clause (i) at any point in the previous 3-month period; or

(ii) with respect to any digital asset—

(I) beneficially owns 5 percent or more of the units of such digital asset that are then outstanding; or

(II) was described under clause (i) at any point in the previous 3-month period.

(B) Beneficial ownership disclosure.—The Commission shall issue rules to require a person that beneficially owns 5 percent or more of the units of a digital asset that are then outstanding to file with the Commission a report at such time as the Commission determines appropriate.

(21) Blockchain.—The term ‘blockchain’ means any technology—

(A) where data is—

(i) shared across a network to create a public ledger of verified transactions or information among network participants;

(ii) linked using cryptography to maintain the integrity of the public ledger and to execute other functions; and

(iii) distributed among network participants in an automated fashion to concurrently update network participants on the state of the public ledger and any other functions; and

(B) composed of source code that is publicly available.

(22) Blockchain protocol.—The term ‘blockchain protocol’ means any executable software deployed to a blockchain composed of source code that is publicly available and accessible, including a smart contract or any network of smart contracts.

(23) Blockchain system.—The term ‘blockchain system’ means any blockchain or blockchain protocol.

(24) Decentralized governance system.—

(A) In general.—The term ‘decentralized governance system’ means, with respect to a blockchain system, any rules-based system permitting persons using the blockchain system or the digital assets related to such blockchain system to form consensus or reach agreement in the development, provision, publication, management, or administration of such blockchain system.

(B) Relationship of persons to decentralized governance systems.—Persons acting through a decentralized governance system shall be treated as separate persons unless such persons are under common control.

(C) Exclusion.—The term ‘decentralized governance system’ does not include a system in which—

(i) a person or group of persons under common control have the ability to—

(I) unilaterally alter the rules of consensus or agreement for the blockchain system; or

(II) determine the final outcome of decisions related to the development, provision, publication, management, or administration of such blockchain system;

(ii) a person or group of persons is directly engaging in an activity that requires registration with the Commission or the Commodity Futures Trading Commission other than—

(I) developing, providing, publishing, managing, or administering a blockchain system; or

(II) an activity with respect to which the organization is exempt from such registration; or

(iii) a person or group of persons seeking to knowingly evade the requirements imposed on a digital asset issuer, a related person, an affiliated person, or any other person registered (or required to be registered) under the securities laws, the Financial Innovation and Technology for the 21st Century Act, or the Commodity Exchange Act.

(25) Decentralized system.—With respect to a blockchain system to which a digital asset relates, the term ‘decentralized system’ means the following conditions are met:

(A) During the previous 12-month period, no person—

(i) had the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality or operation of the blockchain system; or

(ii) had the unilateral authority to restrict or prohibit any person who is not a digital asset issuer, related person, or an affiliated person from—

(I) using, earning, or transmitting the digital asset;

(II) deploying software that uses or integrates with the blockchain system;

(III) participating in a decentralized governance system with respect to the blockchain system; or

(IV) operating a node, validator, or other form of computational infrastructure with respect to the blockchain system.

(B) During the previous 12-month period—

(i) no digital asset issuer or affiliated person beneficially owned, in the aggregate, 20 percent or more of the total amount of units of such digital asset that—

(I) can be created, issued, or distributed in such blockchain system; and

(II) were freely transferrable or otherwise used or available to be used for the purposes of such blockchain system;

(ii) no digital asset issuer or affiliated person had the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of such digital asset or related decentralized governance system; or

(iii) the digital asset did not include voting power with respect to any decentralized governance system of the blockchain system.

(C) During the previous 3-month period, the digital asset issuer, any affiliated person, or any related person has not implemented or contributed any intellectual property to the source code of the blockchain system that materially alters the functionality or operation of the blockchain system, unless such implementation or contribution to the source code—

(i) addressed vulnerabilities, errors, regular maintenance, cybersecurity risks, or other technical changes to the blockchain system;

or

(ii) were adopted through the consensus or agreement of a decentralized governance system.

(D) During the previous 3-month period, neither any digital asset issuer nor any affiliated person described under paragraph (20)(A) has marketed to the public the digital assets as an investment.

(E) During the previous 12-month period, all issuances of units of such digital asset through the programmatic functioning of the blockchain system were end user distributions. For purposes of the previous sentence, any units of such digital asset that are made available over time and were created in the initial block of the blockchain system shall be considered issued at the point in time of creation.

(26) Digital Asset.—

(A) In general.—The term ‘digital asset’ means any fungible digital representation of value that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger.

(B) Exclusions.—The term ‘digital asset’ does not include—

(i) any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); or

(ii) any asset which, based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

(I) a contract of sale of a commodity (as defined under section 1a of the Commodity Exchange Act) for future delivery or an option thereon;

(II) a security futures product;

(III) a swap;

(IV) an agreement, contract, or transaction described in section 2(c)(2)(C)(i) or 2(c)(2)(D)(i) of the Commodity Exchange Act;

(V) a commodity option authorized under section 4c of the Commodity Exchange Act; or

(VI) a leverage transaction authorized under section 19 of the Commodity Exchange Act.

(C) Rule of construction.—Nothing in this paragraph shall be construed to create a presumption that a digital asset is a representation of any type of security not excluded from the definition of digital asset.

(D) Relationship to a blockchain system.—A digital asset is considered to relate to a blockchain system if the digital asset is intrinsically linked to the blockchain system, including—

(i) where the digital asset’s value is reasonably expected to be generated by the programmatic functioning of the blockchain system;

(ii) where the digital asset has voting rights with respect to the decentralized governance system of the blockchain system; or

(iii) where the digital asset is issued through the programmatic functioning of the blockchain system.

(E) Treatment of certain digital assets sold pursuant to an investment contract.—A digital asset offered or sold or intended to be offered or sold pursuant to an investment contract is not and does not become a security as a result of being sold or otherwise transferred pursuant to that investment contract.

(27) Digital asset issuer.—

(A) In general.—With respect to a digital asset, the term ‘digital asset issuer’ means any person that, in exchange for any consideration—

(i) issues or causes to be issued a unit of such digital asset to a person;

or

(ii) offers or sells a right to a future issuance of a unit of such digital asset to a person.

(B) Exclusion.—The term ‘digital asset issuer’ does not include any person solely because such person deploys source code that creates or issues units of a digital asset that are only distributed in end user distributions.

(C) Prohibition on evasion.—It shall be unlawful for any person to knowingly evade classification as a ‘digital asset issuer’ and facilitate an arrangement for the primary purpose of effecting a sale, distribution, or other issuance of a digital asset.

(28) Digital asset maturity date.—The term ‘digital asset maturity date’ means, with respect to any digital asset, the first date on which 20 percent or more of the total units of such digital asset that are then outstanding as of such date are—

(A) digital commodities; or

(B) digital assets that have been registered with the Commission.

(29) Digital commodity.—The term ‘digital commodity’ has the meaning given that term under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(30) End user distribution.—

(A) In general.—The term ‘end user distribution’ means an issuance of a unit of a digital asset that—

(i) does not involve an exchange of more than a nominal value of cash, property, or other assets; and

(ii) is distributed in a broad, equitable, and non-discretionary manner based on conditions capable of being satisfied by any participant in the

blockchain system, including, as incentive-based rewards—

(I) to users of the digital asset or any blockchain system to which the digital asset relates;

(II) for activities directly related to the operation of the blockchain system, such as mining, validating, staking, or other activity directly tied to the operation of the blockchain system; or

(III) to the existing holders of another digital asset, in proportion to the total units of such other digital asset as are held by each person.

(B) Prohibition on evasion.—It shall be unlawful for any person to facilitate an end user distribution to knowingly evade classification as a digital asset issuer, related person, or an affiliated person, or the requirements related to a digital asset issuance.

(31) Functional system.—With respect to a blockchain system to which a digital asset relates, the term ‘functional system’ means the network allows network participants to use such digital asset for—

(A) the transmission and storage of value on the blockchain system;

(B) the participation in services provided by or an application running on the blockchain system; or

(C) the participation in the decentralized governance system of the blockchain system.

(32) Permitted payment stablecoin.—

(A) In general.—The term ‘permitted payment stablecoin’ means a digital asset—

(i) that is or is designed to be used as a means of payment or settlement;

(ii) the issuer of which—

(I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; or

(II) represents will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value;

(iii) the issuer of which is subject to regulation by a Federal or State regulator with authority over entities that issue payment stablecoins; and

(iv) that is not—

(I) a national currency; or

(II) a security issued by an investment company registered under

section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-8(a)).

(B) Monetary value defined.—For purposes of subparagraph (A), the term ‘monetary value’ means a national currency, deposit (as defined under section 3 of the Federal Deposit Insurance Act), or an equivalent instrument that is denominated in a national currency.

(33) Related person.—With respect to a digital asset issuer, the term ‘related person’ means—

(A) a founder, promoter, employee, consultant, advisor, or person serving in a similar capacity;

(B) any person that is or was in the previous 6-month period an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity;

(C) any equity holder or other security holder; or

(D) any other person that received a unit of digital asset from such digital asset issuer through—

(i) an exempt offering, other than an offering made in reliance on section 4(a)(8); or

(ii) a distribution that is not an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934.

(34) Restricted digital asset.—

(A) In general.—The term ‘restricted digital asset’ means—

(i) prior to the first date on which each blockchain system to which a digital asset relates is a functional system and certified to be a decentralized system under section 44 of the Securities Exchange Act of 1934, any unit of the digital asset held by a person, other than the digital asset issuer, a related person, or an affiliated person, that was—

(I) issued to such person through a distribution, other than an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934; or

(II) acquired by such person in a transaction that was not executed on a digital commodity exchange;

(ii) during any period when any blockchain system to which a digital asset relates is not a functional system or not certified to be a decentralized system under section 44 of the Securities Exchange Act of 1934, any digital asset held by a related person or an affiliated person;

and

(iii) any unit of a digital asset held by the digital asset issuer.

(B) Exclusion.—The term ‘restricted digital asset’ does not include a permitted payment stablecoin.

(35) Securities laws.—The term ‘securities laws’ has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(36) Source code.—With respect to a blockchain system, the term ‘source code’ means a listing of commands to be compiled or assembled into an executable computer program.

(37) The term ‘investment contract asset’ means a fungible digital representation of value—

(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger;

(B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract; and

(C) that is not otherwise a security pursuant to the first sentence of paragraph (1).

Sec. 4. [77d]

(a) The provisions of section 5 shall not apply to—

...

(8) transactions involving the offer or sale of units of a digital asset by a digital asset issuer, if—

(A) the aggregate amount of units of the digital asset sold by the digital asset issuer in reliance on the exemption provided under this paragraph, during the 12-month period preceding the date of such transaction, including the amount sold in such transaction, is not more than \$75,000,000 (as such amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor);

(B) with respect to a transaction involving the purchase of units of a digital asset by a person who is not an accredited investor, the aggregate amount of all units of digital assets purchased by such person during the 12-month period preceding the date of such transaction, including the unit of a digital asset purchased in such transaction, does not exceed the greater of—

(i) 10 percent of the person's annual income or joint income with that person's spouse or spousal equivalent; or

(ii) 10 percent of the person's net worth or joint net worth with the person's spouse or spousal equivalent;

(C) after the completion of the transaction, the purchaser does not own more than 10 percent of the total amount of the units of the digital asset sold in reliance on the exemption under this paragraph;

(D) the transaction does not involve the offer or sale of any digital asset not offered as part of an investment contract;

(E) the transaction does not involve the offer or sale of a unit of a digital asset by a digital asset issuer that—

(i) is not organized under the laws of a State, a territory of the United States, or the District of Columbia;

(ii) is a development stage company that either—

(I) has no specific business plan or purpose; or

(II) has indicated that the business plan of the company is to merge with or acquire an unidentified company;

(iii) is an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act (15 U.S.C. 80a-3(b) or 80a-3(c));

(iv) is issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;

(v) is, or has been, subject to any order of the Commission entered pursuant to section 12(j) of the Securities Exchange Act of 1934 during the 5-year period before the filing of the offering statement; or

(vi) is disqualified pursuant to section 230.262 of title 17, Code of Federal Regulations; and

(F) the issuer meets the requirements of section 4B(a).

Sec. 4a. [77d-l] Requirements with respect to certain small transactions.¹

...

Sec. 4b. Requirements with respect to certain digital asset transactions.

(a) Requirements for digital asset issuers.—

(1) Information required in statement.—A digital asset issuer offering or

¹ All references to section 4(6) throughout this section probably should be a reference to section 4(a)(6).

selling a unit of digital asset in reliance on section 4(a)(8) shall file with the Commission a statement containing the following information:

(A) The name, legal status (including the jurisdiction in which the issuer is organized and the date of organization), and website of the digital asset issuer.

(B) The address and telephone number of the issuer or a legal representative of the issuer.

(C) A certification that the digital asset issuer meets the relevant requirements described under section 4(a)(8).

(D) An overview of the material aspects of the offering.

(E) A description of the purpose and intended use of the offering proceeds.

(F) A description of the plan of distribution of any unit of a digital asset that is to be offered.

(G) A description of the material risks surrounding ownership of a unit of a digital asset.

(H) A description of the material aspects of the digital asset issuer's business.

(I) A description of exempt offerings conducted within the past three years by the digital asset issuer.

(J) A description of the digital asset issuer and the current number of employees of the digital asset issuer.

(K) A description of any material transactions or relationships between the digital asset issuer and affiliated persons.

(L) A description of exempt offerings conducted within the past three years.

(2) Information required for purchasers.—a digital asset issuer that has filed a statement under paragraph (1) to offer and sell a unit of a digital asset in reliance on section 4(a)(8) shall disclose the information described under section 43 of the securities exchange act of 1934 on a freely accessible public website.

(3) Ongoing disclosure requirements.— A digital asset issuer that has filed a statement under paragraph (1) to offer and sell a unit of a digital asset in reliance on section 4(a)(8) shall file the following with the Commission:

(A) Annual reports.—An annual report that includes any material changes to the information described under paragraph (2) for the current fiscal year and for any fiscal year thereafter, unless the issuer is no longer obligated to file such annual report pursuant to paragraph (4).

(B) Semiannual reports.—Along with each annual report required under subparagraph (A), and separately six months thereafter, a report containing—

(i) an updated description of the current state and timeline for the development of the blockchain system to which the digital asset relates, showing how and when the blockchain system intends or intended to be considered a functional system and a decentralized system;

(ii) the amount of money raised by the digital asset issuer in reliance on section 4(a)(8), how much of that money has been spent, and the general categories and amounts on which that money has been spent; and

(iii) any material changes to the information in the most recent annual report.

(C) Current reports.—A current report shall be filed with the commission reflecting any material changes to the information previously reported to the Commission by the digital asset issuer.

(4) Termination of reporting requirements.—

(A) In general.—The ongoing reporting requirements under paragraph (3) shall not apply to a digital asset issuer 180 days after the end of the covered fiscal year.

(B) Covered fiscal year defined.— In this paragraph, the term ‘covered fiscal year’ means the first fiscal year of an issuer in which the blockchain system to which the digital asset relates is a functional system and certified to be a decentralized system under section 44 of the Securities Exchange Act of 1934.

(b) Requirements for intermediaries.—

(1) In general.—A person acting as an intermediary in a transaction involving the offer or sale of a unit of a digital asset in reliance on section 4(a)(8) shall—

(A) register with the Commission as a digital asset broker; and

(B) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(2) Purchaser qualification.—

(A) In general.—Each time, before accepting any commitment (including any additional commitment from the same person), an intermediary or digital asset issuer shall have a reasonable basis for believing that the purchaser satisfies the requirements of section 4(a)(8).

(B) Reliance on purchaser’s representations.—For purposes of subparagraph (A), an intermediary or digital asset issuer may rely on a

purchaser's representations concerning the purchaser's annual income and net worth and the amount of the purchaser's other investments made, unless the intermediary or digital asset issuer has reason to question the reliability of the representation.

(C) Reliance on issuer.—For purposes of determining whether a transaction meets the requirements described under subparagraph (A) through (C) of section 4(a)(8), an intermediary may rely on the efforts of a digital asset issuer.

(c) Additional provisions.—

(1) Acceptance of written offers; sales.—After an issuer files a statement under paragraph (1) to offer and sell a digital asset in reliance on section 4(a)(8)—

(A) written offers of the digital asset may be made; and

(B) the issuer may sell the digital assets in reliance on section 4(a)(8), if such sales meet all other requirements.

(2) Solicitation of interest.—

(A) In general.—At any time before the filing of a statement under paragraph (1), a digital asset issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering. Such communications are deemed to be an offer of a unit of a digital asset for sale for purposes of the anti-fraud provisions of the Federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the statement is filed.

(B) Conditions.—In any communication described under subparagraph (A), the digital asset issuer shall—

(i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(ii) state that no offer to buy a unit of a digital asset can be accepted and no part of the purchase price can be received until the statement is filed and then only through an intermediary; and

(iii) state that a person's indication of interest involves no obligation or commitment of any kind.

(C) Indications of interest.—Any written communication described under subparagraph (A) may include a means by which a person may indicate to the digital asset issuer that such person is interested in a potential offering. A digital asset issuer may require a name, address, telephone number, or email

address in any response form included with a communication described under subparagraph (A).

(3) Disqualification provisions.—The Commission shall issue rules to apply the disqualification provisions under section 230.262 of title 17, Code of Federal Regulations, to the exemption provided under section 4(a)(8).

SEC. 18. [77r] EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

...

(b) Covered Securities.—For purposes of this section, the following are covered securities:

...

(4) Exemption in connection with certain exempt offerings.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) section 4(a)(4);

(C) section 4(a)(6)²;

...

(F) Commission rules or regulations issued under section 4(a)(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(a)(2) that are in effect on September 1, 1996; ~~or~~

(G) section 4(a)(7); ~~or~~

(H) section 4(a)(8).

(5) Exemption for certain digital assets in connection with federally regulated intermediaries.—A restricted digital asset is treated as a covered security with respect to a transaction that is exempt from registration under this Act when it is—

(A) brokered, traded, custodied, or cleared by a digital asset broker or digital asset dealer registered under section 15H of the Securities Exchange Act of 1934; or

(B) traded through a digital asset trading system.

² The reference to section 4(6) in this subparagraph probably should be a reference to section 4(a)(6).