126 Democratic Wins in the Clarity Act

- This bill is fundamentally a consumer protection bill that brings digital assets fully inside the regulatory perimeter for the first time and imposes strong consumer protection requirements, grants the CFTC jurisdiction over retail transactions, and authorizes record funding for the CFTC and FinCEN.
- There are 126 substantive, distinct wins requested by Democrats and agreed to by Republicans in the Clarity Act listed below.

Division A—Banking Committee

Title I, Division A—Responsible Securities Innovation

1. Adopts the Network Token framework, replacing the prior technology neutral approach with a structure focused on tokens intrinsically linked to distributed ledger systems. This was done at Democrats' request to limit potential evasion in traditional securities markets.
2. Expands disqualifying financial interests to include interests that are "economically or functionally equivalent" to securities.
3. Eliminates the ability to disclaim, in writing, implied financial interests to avoid securities treatment.
4. Authorizes the SEC to define, by rule, what constitutes entrepreneurial or managerial efforts.
5. Creates a mandatory SEC front door for ancillary asset originators relying on Regulation Crypto or reselling to the public, such that they must certify that they are offering or selling ancillary assets (not securities) prior to reliance of Regulation Crypto or reselling to the public.
6. Requires rulemaking (instead of guidance) specifying circumstances under which a person is jointly and severally considered an ancillary asset originator.
7. Includes comprehensive anti-evasion language allowing the SEC to assess the totality of facts and circumstances when evaluating compliance with primary restrictions under this Act.
8. Requires disclosures prior to listing on a digital asset intermediary for offers or sales of ancillary assets after the Act's enactment.
9. Requires that an SEC or CFTC-registered exchange delist a digital asset and remove it from trading if the related ancillary asset originator has failed to comply with disclosure obligations.
10. Requires public disclosure prior to resale to the public for ancillary assets first sold in connection with a Reg D offering.
11. Provides that ancillary asset originators may not terminate disclosure requirements until "substantially all material information that is reasonably

expected to contribute to the value of the ancillary assets" has been made available to the public.

12. Adds change in circumstances authority allowing the SEC to deny certifications based on new facts.
13. Includes tolling authority which allows the SEC to extend the period under which it may consider an ancillary asset certification.
14. Clarifies that the SEC may deny, suspend, or revoke an ancillary asset certification by citing material misstatements or omissions in such certification.
15. Reduces the annual Regulation Crypto cap to $50 million dollars per year from $75 million.
16. Introduces a $200 million lifetime limit on the amount ancillary asset originators may raise in reliance on Regulation Crypto.
17. Broadened resale restrictions to apply to all resales of ancillary assets that were first sold by methods other than in reliance on Regulation Crypto, including public offerings or Regulation D, for example.
18. Broadens resale restrictions applying to all related persons regardless of initial sale method providing that they apply to persons who beneficially own 3% (rather than 5%) of the total outstanding units of an ancillary asset.
19. Allows the SEC to deny a certification of non-control in the event of a material change in circumstances.
20. Require related persons to disclose significant ownership stakes and regularly report ancillary asset sales to the SEC and public while subject to resale restrictions.
21. Prevent persons who are disqualified under Regulation A from relying on Regulation Crypto (previously, only those prohibited under Regulation D were disqualified).
22. Prevent persons convicted of any felony offense in the last ten years involving insider trading, embezzlement, cybercrime, money laundering, financing of terrorism, or financial fraud from relying on Regulation Crypto.
23. Added insider trading rulemaking for ancillary assets, and a requirement memorandum of understanding (MoU) between the SEC and CFTC on insider trading enforcement with respect to ancillary assets.
24. Explicit preservation of SEC anti-fraud and market manipulation authority.
25. Elimination of investment contract rulemaking provision.
26. Struck provision adding "innovation" to the SEC's mission.
27. Struck tailoring requirements in provision requiring the SEC to modernize its record-keeping requirements.
28. Struck provision requiring the SEC to ensure its rules for digital assets are no more burdensome that rules for traditional securities activities.

29. Reduced broad preemption of state law previously in the text and aligned state preemption with the larger Clarity Act framework.
30. Requires ancillary asset originators to include financial statements (which must be audited if gross proceeds are above $25,000,000; reviewed if below) as part of their disclosure requirements.
31. Requires the SEC to designate an office to manage ancillary asset certifications.
32. Clarification that an ancillary asset originator that caused offers, sales, or distributions of ancillary assets are treated as investment contract transactions, except for gratuitous distributions.
33. Clarification that the SEC may deny an ancillary asset certification where the applicable network token includes a disqualifying financial right.
34. Documents submitted under Regulation Crypto are subject to Securities Act Sec. 17(a) liability for material misstatements or omissions.
35. Edits to Sec. 10104's to clarify that the resale restriction do not hinge upon "net" sales.
36. Striking Sec. 10104's fee shifting for unsuccessful private disgorgement actions.
37. Explicitly preserves State consumer protection laws, including common law remedies, except where expressly preempted.

Title II, Division A—Protecting Against Illicit Finance

1. Edits incorporated into section clarifying that digital asset intermediaries are financial institutions under the Bank Secrecy Act.
2. Edits incorporated into section imposing risk-based examination standards for financial institutions engaged in digital asset activities to assess BSA compliance.
3. Edits to the Treasury-private sector illicit finance partnership.
4. Comprehensive federal consumer protections for digital asset ATMs, without any state law preemption.

Title III, Division A—Responsible Innovation in Decentralized Finance

1. Mandated compliance with securities laws for non-decentralized finance trading protocols.
2. Mandated compliance with Bank Secrecy Act for non-decentralized finance trading protocols.
3. Mandates front-end DeFi platform sanctions compliance with enforcement and penalties.

4. Provides new Special Measure 6 authority to restrict certain transmittals of funds involving digital assets where there is a primary money laundering concern, including with respect to DeFi platforms and offshore exchanges like Binance.
5. Amendments to "monetary instrument" definition.
6. Struck reference to the Blockchain Regulatory Certainty Act.
7. Preserves Treasury's Bank Secrecy Act authority with respect to persons determined by rulemaking to be subject to the BSA.
8. Clarification that financial institutions' DeFi risk management must consider whether trading will involve activity related to a primary money laundering concern.
9. Study on financial stability risks of DeFi.
10. Study on digital asset mixers and tumblers.

<u>Title IV, Division A—Responsible Banking Innovation</u>

1. Scoped applicability of digital asset activities for banks and credit unions.
2. Payment stablecoin yield compromise.

<u>Title V, Division A—Responsible Regulatory Innovation</u>

1. Democratic edits incorporated into the micro innovation sandbox.
2. Democratic edits incorporated into SEC foreign regulator coordination section.
3. Democratic edits incorporated into the automated compliance studies.
4. Struck ombudsman provision.
5. Democratic revisions to tokenization provision.
6. Minor edits made to post-quantum cryptography standards.
7. Struck decentralized physical infrastructure networks (DePIN) section.
8. Democratic edits to artificial intelligence (AI) sandbox

<u>Title VI, Division A—Protecting Software Developers and Software Innovation</u>

1. Edits addressing Democratic concerns, pending agreement between SIFMA and digital asset stakeholders, incorporated into the section 10601 DeFi protections.
2. Democratic edits incorporated into the non-fungible token (NFT) study.
3. Democratic edits incorporated into Keep Your Coins Act (self-custody).
4. Edits requested by Democrats on the Blockchain Regulatory Certainty Act, which restricts developer protections to civil only, including the Bank Secrecy Act.

Title VIII, Division A—Consumer Protection

1. Requires digital asset intermediaries to provide clear educational materials on digital asset risks, market structure, disclosures, and fraud awareness.
2. Preserves the Federal Trade Commission's authority over consumer protection, competition, education, and enforcement relating to non-fungible tokens and other digital consumer tokens.
3. Directs the SEC and CFTC to jointly study digital asset financial literacy among retail investors, identify effective education strategies and partnerships, and report findings and recommendations to Congress.
4. SIPC broker-dealer disclosures in bankruptcy.

Title XI, Division A—Other Matters

1. Struck Treasury Secretary resolution of disagreements section.
2. $150 million in appropriations for the Financial Crimes Enforcement Network.

Division B—Agriculture Committee

Titles I and II, Division B

1. Broader definition of "digital commodity" that includes meme coins, network tokens, and ancillary assets.
2. CFTC authority to regulate NFT trading, if traded in a manner similar to digital commodities.
3. CFTC rulemaking on non-decentralized finance trading protocols and requirements to register as an intermediary.
4. Broader definition of "digital commodity broker" that captures brokering on behalf of a digital commodity dealer with no control over customer funds.
5. Mandated compliance with Bank Secrecy Act for non-decentralized finance trading protocols.
6. Limitation on developer protections to cash and spot transactions (narrower than House).
7. Other miscellaneous edits to DeFi section.
8. Capturing as digital commodity brokers the solicitation or acceptance of an order from non-eligible contract participant (ECP) on behalf of a digital commodity dealer (not in House bill).
9. Democratic edits to conflicts of interest rulemaking (stricter than House).
10. Democratic edits to affiliate trading language (stricter than House).
11. Democratic changes to exemptive authority, tied to section 4(c).
12. Deletion of "as in effect" language referencing the Bank Secrecy Act.
13. Commissioners' quorum and staffing Sense of Congress (not in House).

14. Requirement for digital commodity exchanges to recruit culturally diverse board of directors (not in House).
15. Enhanced system safeguard language requiring digital commodity exchanges to have ability to access private keys and periodically test access and ability to transfer digital commodities in possession of the digital commodity exchange (not in House).
16. Consumer protection exchange disclosures rulemaking (not in House).
17. Chief Compliance Officer prohibitions on affiliated entities (not in House).
18. Less strict federal preemption language than House, especially on unfair and deceptive acts or practices (UDAAP).
19. New private right of action language (not in House).
20. Intermediaries prohibited from offering trading in digital commodities readily susceptible to manipulation (not in House).
21. Best execution rulemaking (not in House).
22. Requirement for digital commodity brokers and dealers to communicate in a fair and balanced manner based on principles of fair dealing and good faith (not in House).
23. Griffin Fix (not in House).
24. Volume-based CFTC fee structure (stricter fee structure than House).
25. Authorization of $150 million in appropriations for CFTC.
26. Creation of a new Office of the Retail Commodity Advocate at the CFTC.
27. Historically underserved report with respect to digital commodities (not in House).
28. Digital Commodity Pool Operator and Digital Commodity trading advisor regulatory regime (not in House).
29. Large trader reporting requirements (not in House).
30. Credit rulemaking (not in House).
31. 6(c) reference in conflict of interest penalties section.
32. Sense of Congress around ECP-ECP leveraged digital commodity trading (not in House).
33. Provisional registration requiring exchanges with direct retail access to register with National Futures Association (not in House).
34. Provisional registration requires compliance with a number of consumer protection standards.
35. Provision registration regime requires exchanges to intermediate any retail customer transactions on the exchange through a digital commodity broker or dealer.
36. Fixed limitation on the duration of the notice of intent to register period (2 years after enactment).
37. Imposition of state law on intermediaries if the agency has failed to finalize its rules by the end of the notice of intent to register period.

38. Expedited rulemaking by a registered futures association (180 days) imposing significant compliance requirements on participating digital commodity brokers and digital commodity traders.
39. Filers liable for providing false information.
40. Whistleblower protections provided.
41. Expanded public information requirements including imposing a fair dealing and good faith standard and prescriptive customer protection information
42. Required certified annual financial statement filings with the CFTC.
43. Prohibition on using exchange issued digital commodities to meet capital requirements, like FTX did.
44. Rulemaking for digital commodity exchanges holding of customer funds (not in House).
45. Ancillary asset manipulation language (not in House).
46. Removal of House provision exemptive digital commodity exchanges that meet de minimis standard (remove House language).
47. Removal of exemption for digital commodity exchanges, digital commodity brokers, and digital commodity dealers only operating in a single state (remove House language).
48. Foreign regulators/regulations must undergo a comparability determination for a foreign custodian to be deemed a QDAC.
49. Custodians not registered with a federal, state, or foreign prudential regulator, but registered with the CFTC must also register with the CFTC as a qualified digital asset custodian (QDAC) if they want to be act as a QDAC.

Division C—Ethics

1. Ban on Federal elected officials, senior executive branch officials and employees, and Federal judges from issuing or sponsoring a digital asset or maintaining a significant financial interest in an issuer of digital assets.
2. Increased civil monetary penalties enforced by the Department of Justice.
3. State attorney general enforcement by bringing a civil action against the U.S. Attorney General for injunctive relief and the authority to bring suit against digital asset exchanges.
4. Updates to ethics disclosure reporting.
5. Effective date of ethics provisions in one year.