U.S. SENATE BANKING
SUBCOMMITTEE *on* DIGITAL ASSETS
SUBCOMMITTEE CHAIR CYNTHIA LUMMIS

Section 10102

TOPLINE

For far too long, digital asset markets have operated without clarity on what constitutes a security or a commodity, leaving innovators, investors, and regulators to guess where the legal lines are drawn. Senator Cynthia Lummis' *Digital Asset Market Clarity Act* fixes that starting with Section 10102, the *Lummis-Gillibrand Responsible Financial Innovation Act,* which builds on over four years of work with Senator Gillibrand to develop characteristics of an ancillary asset and a network token, and establish a new disclosure regime housed at the Securities and Exchange Commission (SEC) for ancillary assets.

KEY SECTION 10102 PROVISIONS INCLUDE:

- **A clear legal line between digital assets that are securities and commodities –** For the first time, this legislation specifies that digital assets that do not convey legal rights to the holder of the asset, like rights to equity, dividends, and repurchase, are not securities when offered as part of an investment contract ("ancillary assets"). This legislation ends the debate that has been ongoing for over a decade.
- **Based on *Howey* principles—** This provision builds on the U.S. Supreme Court's *Howey* case (1946) and its progeny by requiring disclosures as long as "entrepreneurial and managerial efforts" by the originator of the ancillary asset are ongoing.
- **Robust disclosures –** This section requires the originator of the ancillary asset to file semi-annual disclosures with the SEC with respect to the management and financial health of the originator, the functionality of the ancillary asset, its programming, and the risks that accompany the purchase of the asset. Traditional securities liability standards apply for fraudulent or misleading statements.
- **Protects genuine end user distributions –** Defines "end user distribution" to distinguish broad, equitable token distributions — like mining or staking rewards — from capital-raising activity that should be regulated as a securities offering.
- **Consumer protection –** Prohibits listing of ancillary assets on a Commodity Futures Trading Commission (CFTC) digital commodity exchange unless all required SEC disclosures have been filed.
- **Lock-Up Periods –** Requires that insiders who obtain ancillary assets from the first sale of the asset (and who likely have insider information) hold their assets for a minimum period of time before reselling to the public, preventing "pump and dump" schemes.

For the first time, digital assets have durable legal clarity on what constitutes a security or a commodity.

BOTTOM LINE

Section 10102 lays the legal groundwork that the rest of the *Digital Asset Market Clarity Act* depends on. By clearly drawing the line between digital assets that are securities and commodities under the Securities Act of 1933, this legislation gives regulators bright lines to enforce, innovators certainty to build, and consumers clarity about what protections apply, ending years of guesswork that has driven digital asset innovation offshore.