

116TH CONGRESS
2D SESSION

H. R. 8378

To amend the securities laws to exclude investment contract assets from the definition of a security.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2020

Mr. EMMER (for himself, Mr. CONAWAY, Mr. SOTO, and Mr. KHANNA) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the securities laws to exclude investment contract assets from the definition of a security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securities Clarity Act”.

5 **SEC. 2. SENSE OF CONGRESS; PURPOSE.**

6 (a) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that—

8 (1) among the ways that participants in the
9 digital asset industry have raised capital and earned
10 revenue is through arrangements in which investors

1 provide funds for the development of blockchain-
2 based protocols in exchange for digital assets or the
3 future delivery of digital assets to be used in those
4 protocols;

5 (2) although certain of those fundraising ar-
6 rangements may be deemed to be “investment con-
7 tracts” within the meaning given to that term in
8 section 2(a) of the Securities Act of 1933 (the “Se-
9 curities Act”), the underlying assets sold pursuant
10 to these arrangements are frequently not themselves
11 inherently securities as defined in section 2(a) of the
12 Securities Act and, like other assets sold pursuant to
13 investment contracts in the past, do not become se-
14 curities as so defined merely because they are sold
15 pursuant to an investment contract;

16 (3) under SEC v. W.J. Howey Co., 328 U.S.
17 293 (1946), and its progeny, the Federal courts
18 have consistently held that “an investment contract,
19 for purposes of the Securities Act, means a contract,
20 transaction, or scheme whereby a person invests his
21 money in a common enterprise and is led to expect
22 profits solely from the efforts of the promoter or a
23 third party”, and have not endorsed the notion that
24 an asset underlying an investment contract (for ex-
25 ample, the orange groves sold in Howey) is also con-

1 ferred “security” status merely as a result of its
2 being sold pursuant to the relevant contract, trans-
3 action, or scheme;

4 (4) although the distinction between an invest-
5 ment contract, which is a security, and the assets
6 sold pursuant to it had been well-settled for pur-
7 poses of section 2(a) of the Securities Act, the two
8 have been unnecessarily conflated in the context of
9 digital assets; and

10 (5) this new approach, which conflates an in-
11 vestment contract and the asset sold pursuant to
12 that contract or scheme, differs from the approach
13 taken in many other major jurisdictions around the
14 world, has discouraged development of the digital
15 asset sector in the United States, and has hindered
16 innovation in that industry here without providing
17 concomitant benefits to those who enter into invest-
18 ment contracts for the purpose of acquiring digital
19 assets.

20 (b) PURPOSE.—The purpose of this Act is to clarify
21 and codify that an asset sold pursuant to an investment
22 contract, whether tangible or intangible (including an
23 asset in digital form), that is not otherwise a security
24 under the Act, does not become a security as a result of

1 being sold or otherwise transferred pursuant to an invest-
 2 ment contract.

3 **SEC. 3. TREATMENT OF INVESTMENT CONTRACT ASSETS.**

4 (a) SECURITIES ACT OF 1933.—Section 2(a) of the
 5 Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

6 (1) in paragraph (1), by adding at the end the
 7 following: “The term ‘security’ does not include an
 8 investment contract asset.”; and

9 (2) by adding at the end the following:

10 “(20) The term ‘investment contact asset’
 11 means an asset, whether tangible or intangible, in-
 12 cluding assets in digital form—

13 “(A) sold or otherwise transferred, or in-
 14 tended to be sold or otherwise transferred, pur-
 15 suant to an investment contract; and

16 “(B) that is not otherwise a security pur-
 17 suant to the first sentence of paragraph (1).”.

18 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
 19 202(a)(18) of the Investment Advisers Act of 1940 (15
 20 U.S.C. 80b–2(a)(18)) is amended by adding at the end
 21 the following: “The term ‘security’ does not include an in-
 22 vestment contract asset (as such term is defined under
 23 section 2(a) of the Securities Act of 1933).”.

24 (c) INVESTMENT COMPANY ACT OF 1940.—Section
 25 2(a)(36) of the Investment Company Act of 1940 (15

1 U.S.C. 80a-2(a)(36)) is amended by adding at the end
2 the following: “The term ‘security’ does not include an in-
3 vestment contract asset (as such term is defined under
4 section 2(a) of the Securities Act of 1933).”.

5 (d) SECURITIES EXCHANGE ACT OF 1934.—Section
6 3(a)(10) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78c(a)(10)) is amended by adding at the end the
8 following: “The term ‘security’ does not include an invest-
9 ment contract asset (as such term is defined under section
10 2(a) of the Securities Act of 1933).”.

11 (e) SECURITIES INVESTOR PROTECTION ACT OF
12 1970.—Section 16(14) of the Securities Investor Protec-
13 tion Act of 1970 (15 U.S.C. 78lll(14)) is amended by add-
14 ing at the end the following: “The term ‘security’ does
15 not include an investment contract asset (as such term
16 is defined under section 2(a) of the Securities Act of
17 1933).”.

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