

117TH CONGRESS  
1ST SESSION

# H. R. 1628

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to exclude digital tokens from the definition of a security, to direct the Securities and Exchange Commission to enact certain regulatory changes regarding digital units secured through public key cryptography, to adjust taxation of virtual currencies held in individual retirement accounts, to create a tax exemption for exchanges of one virtual currency for another, to create a de minimis exemption from taxation for gains realized from the sale or exchange of virtual currency for other than cash, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2021

Mr. DAVIDSON (for himself, Mr. SOTO, Mr. BUDD, Mr. GOTTHEIMER, and Mr. PERRY) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to exclude digital tokens from the definition of a security, to direct the Securities and Exchange Commission to enact certain regulatory changes regarding digital units secured through public key cryptography, to adjust taxation of virtual currencies held in individual retirement accounts, to create a tax exemption for exchanges of one virtual currency for another, to create a de minimis exemption from taxation

for gains realized from the sale or exchange of virtual currency for other than cash, and for other purposes.

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 “Token Taxonomy Act  
5 of 2021”.

6 **SEC. 2. SECURITIES ACT OF 1933.**

7       (a) DEFINITION OF DIGITAL TOKEN.—Section 2(a)  
8 of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amend-  
9 ed by adding at the end the following:

10           “(20) DIGITAL TOKEN.—The term ‘digital  
11 token’ means a digital unit—

12                   “(A) that is created—

13                           “(i) in response to the verification or  
14 collection of proposed transactions;

15                           “(ii) pursuant to rules for the digital  
16 unit’s creation and supply that cannot be  
17 altered by any single person or persons  
18 under common control; or

19                           “(iii) as an initial allocation of digital  
20 units that will otherwise be created in ac-  
21 cordance with clause (i) or (ii);

22                   “(B) that has a transaction history that—

23                           “(i) is recorded in a distributed, dig-  
24 ital ledger or digital data structure in

1           which consensus is achieved through a  
2           mathematically verifiable process; and

3                   “(ii) after consensus is reached, re-  
4           sists modification or tampering by any sin-  
5           gle person or group of persons under com-  
6           mon control;

7                   “(C) that is capable of being transferred  
8           between persons without an intermediate custo-  
9           dian; and

10                   “(D) that is not a representation of a fi-  
11           nancial interest in a company or partnership,  
12           including an ownership interest or revenue  
13           share.

14                   “(21) DIGITAL UNIT.—The term ‘digital unit’  
15           means a representation of economic, proprietary, or  
16           access rights that is stored in a computer-readable  
17           format.”.

18           (b) DEFINITION OF SECURITY.—Section 2(a)(1) of  
19           the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) is  
20           amended—

21                   (1) by inserting “(A)” after “(1)”; and

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

23                   “(B) Such term does not include a digital  
24           token.”.

1 (c) EXEMPTION.—Section 4(a) of the Securities Act  
2 of 1933 (15 U.S.C. 77d(a)) is amended by adding at the  
3 end the following:

4 “(8) Transactions involving the offer, pro-  
5 motion, or sale of a digital unit if—

6 “(A) the person offering, promoting, or  
7 selling the digital unit has a reasonable and  
8 good faith belief that such digital unit is a dig-  
9 ital token; and

10 “(B) within ninety days following a written  
11 notification from the Commission to such per-  
12 son that such digital unit has been determined  
13 by the Commission to be a security, posts pub-  
14 lic notice of such notification and takes reason-  
15 able efforts to cease all sales and return all pro-  
16 ceeds from any sales of such digital unit, ex-  
17 cluding funds reasonably spent on the develop-  
18 ment of technology associated with the digital  
19 unit.”.

20 (d) PREEMPTION OF STATE LAW.—Section 18 of the  
21 Securities Act of 1933 (15 U.S.C. 77r) is amended—

22 (1) by redesignating subsection (d) as sub-  
23 section (e); and

24 (2) by inserting after subsection (c) the fol-  
25 lowing:

1 “(d) DIGITAL TOKENS.—

2 “(1) IN GENERAL.—No law, rule, regulation, or  
3 order, or other administrative action of any State or  
4 any political subdivision thereof—

5 “(A) requiring, or with respect to, registra-  
6 tion or qualification of securities, or registration  
7 or qualification of securities transactions, shall  
8 directly or indirectly apply to a digital token;

9 “(B) shall directly or indirectly prohibit,  
10 limit, or impose any conditions upon the use  
11 of—

12 “(i) with respect to a digital token,  
13 any disclosure document concerning an  
14 offer or sale of a digital token that is pre-  
15 pared by or on behalf of a person devel-  
16 oping, offering, or selling a digital token;  
17 or

18 “(ii) any proxy statement, report to  
19 digital token-holders, or other disclosure  
20 document relating to a digital token or a  
21 person developing, offering, or selling a  
22 digital token;

23 “(C) shall directly or indirectly prohibit,  
24 limit, or impose conditions, based on the merits  
25 of a digital token offering or a person devel-

1           oping, offering, or selling a digital token, upon  
2           the offer or sale of any digital token; or

3                   “(D) shall directly or indirectly require the  
4           filing of any notices or other documents, or the  
5           assessment of any fees, with respect to digital  
6           tokens or digital token transactions.

7                   “(2) PRESERVATION OF FRAUD AUTHORITY.—  
8           States and political subdivisions thereof shall retain  
9           jurisdiction under the laws of such State to inves-  
10          tigate and bring enforcement actions with respect to  
11          fraud or deceit, or unlawful conduct by any person,  
12          in connection with digital tokens or digital token  
13          transactions.”.

14 **SEC. 3. SECURITIES EXCHANGE ACT OF 1934.**

15           (a) DEFINITION OF BANK.—Section 3(a)(6)(C) of  
16 the Securities Exchange Act of 1934 (15 U.S.C.  
17 78c(a)(6)(C)) is amended—

18                   (1) by inserting “or trust company,” after  
19           “Home Owners’ Loan Act,”; and

20                   (2) by striking “receiving deposits or exercising  
21           fiduciary powers” and inserting “receiving deposits,  
22           providing custodial services, or exercising fiduciary  
23           powers”.

1 (b) DEFINITION OF SECURITY.—Section 3(a)(10) of  
2 the Securities Exchange Act of 1934 (15 U.S.C.  
3 78c(a)(10)) is amended—

4 (1) by inserting “(A)” after “(1)”; and

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

6 “(B) Such term does not include a digital  
7 token.”.

8 (c) DEFINITION OF DIGITAL TOKEN.—Section 3(a)  
9 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))  
10 is amended by adding at the end the following:

11 “(82) DIGITAL TOKEN.—The term ‘digital  
12 token’ has the meaning given to it in section 2(a) of  
13 the Securities Act of 1933.”.

14 (d) CLERICAL AMENDMENTS.—Section 3(a) of the  
15 Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is  
16 amended—

17 (1) by moving paragraph (79) so as to appear  
18 after paragraph (78); and

19 (2) by redesignating the second paragraph (80)  
20 (relating to “Funding portal”) as paragraph (81).

21 **SEC. 4. INVESTMENT ADVISERS ACT OF 1940.**

22 (a) DEFINITION OF DIGITAL TOKEN.—Section  
23 202(a) of the Investment Advisers Act of 1940 (15 U.S.C.  
24 80b–2(a)) is amended—

1           (1) by redesignating the second paragraph (29)  
2           as paragraph (31); and

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

4           “(32) The term ‘digital token’ has the meaning  
5           given to it in section 2(a) of the Securities Act of  
6           1933.”.

7           (b) DEFINITION OF SECURITY.—Section 202(a)(18)  
8           of the Investment Advisers Act of 1940 (15 U.S.C. 80b–  
9           2(a)(18)) is amended—

10           (1) by inserting “(A)” after “(18)”; and

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

12           “(B) Such term does not include a digital  
13           token.”.

14           (c) DEFINITION OF BANK.—Section 202(a)(2)(C) of  
15           the Investment Advisers Act of 1940 (15 U.S.C. 80b–  
16           2(a)(2)(C)) is amended by striking “receiving deposits or  
17           exercising fiduciary powers” and inserting “receiving de-  
18           posits, providing custodial services, or exercising fiduciary  
19           powers”.

20           **SEC. 5. INVESTMENT COMPANY ACT OF 1940.**

21           (a) DEFINITION OF DIGITAL TOKEN.—Section  
22           202(a) of the Investment Company Act of 1940 (15  
23           U.S.C. 80a–2(a)) is amended by adding at the end the  
24           following:



1           “(55) The term ‘digital token’ has the meaning  
2           given to it in section 2(a) of the Securities Act of  
3           1933.”.

4           (b) DEFINITION OF SECURITY.—Section 202(a)(36)  
5 of the Investment Company Act of 1940 (15 U.S.C. 80a–  
6 2(a)(36)) is amended—

7           (1) by inserting “(A)” after “(36)”; and

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

9           “(B) Such term does not include a digital  
10          token.”.

11          (c) DEFINITION OF BANK.—Section 2(a)(5) of the  
12 Investment Company Act of 1940 (15 U.S.C. 80a–  
13 2(a)(5)) is amended by striking “receiving deposits or ex-  
14 ercising fiduciary powers” and inserting “receiving depos-  
15 its, providing custodial services, or exercising fiduciary  
16 powers”.

17 **SEC. 6. RULE OF CONSTRUCTION WITH RESPECT TO CFTC**  
18 **AND FTC.**

19          Nothing in this Act or the amendments made by this  
20 Act shall be construed to limit the application of the Com-  
21 modity Exchange Act or the Federal Trade Commission  
22 Act.

1 **SEC. 7. SATISFACTORY CONTROL LOCATION REQUIRE-**  
2 **MENT.**

3 Not later than 90 days after the date of the enact-  
4 ment of this Act, the Commission shall amend section  
5 240.15e3-3 of title 17, Code of Federal Regulations, to  
6 provide that the requirement for a satisfactory control lo-  
7 cation for any digital unit (as defined under section 2(a)  
8 of the Securities Act of 1933) that is a security is fulfilled  
9 by protecting the digital unit using public key cryptog-  
10 raphy and by following commercially reasonable cybersecu-  
11 rity practices to maintain the privacy and accessibility of  
12 sufficient private key material to solely be able to sign on  
13 behalf of such digital unit.

14 **SEC. 8. INDIVIDUAL RETIREMENT ACCOUNT INVESTMENTS**  
15 **IN CERTAIN VIRTUAL CURRENCIES NOT**  
16 **TREATED AS DISTRIBUTIONS.**

17 (a) IN GENERAL.—Section 408(m) of the Internal  
18 Revenue Code of 1986 is amended—

19 (1) in paragraph (3)—

20 (A) in the heading of the paragraph, by  
21 striking “AND BULLION” and inserting “, BUL-  
22 LION, AND VIRTUAL CURRENCIES”;

23 (B) in subparagraph (A)(iv), by striking  
24 “or”;

25 (C) in subparagraph (B), by inserting “or”  
26 after “futures contract,”;

1 (D) by inserting after subparagraph (B)  
2 the following:

3 “(C) virtual currency.”; and

4 (E) by striking “if such bullion” and in-  
5 serting “This paragraph shall only apply to bul-  
6 lion which”; and

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

8 “(4) VIRTUAL CURRENCY DEFINED.—For pur-  
9 poses of this subsection, the term ‘virtual currency’  
10 means a digital representation of value that is used  
11 as a medium of exchange and is not currency (with-  
12 in the meaning of section 988).”.

13 (b) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to sales or exchanges on or after  
15 January 1, 2021.

16 **SEC. 9. CERTAIN EXCHANGES OF VIRTUAL CURRENCY**  
17 **TREATED AS NON-TAXABLE EXCHANGES.**

18 (a) IN GENERAL.—Section 1031 of the Internal Rev-  
19 enue Code of 1986 is amended—

20 (1) in the heading, by striking “**REAL PROP-**  
21 **ERTY**” and inserting “**CERTAIN PROPERTY**”; and

22 (2) in subsection (a), by adding at the end the  
23 following new paragraph:

24 “(4) EXCHANGE OF VIRTUAL CURRENCY.—An  
25 exchange of virtual currency (as defined under sec-

1       tion 408(m)) shall be treated as if such exchange  
2       were an exchange of real property under this sec-  
3       tion.”.

4       (b) CLERICAL AMENDMENT.—The table of parts for  
5       part III of subchapter O of chapter 1 of such Code is  
6       amended by striking “Exchange of real property” and in-  
7       serting “Exchange of certain property”.

8       (c) EFFECTIVE DATE.—The amendments made by  
9       this section shall apply to exchanges made on or after Jan-  
10      uary 1, 2021.

11      **SEC. 10. GAIN FROM SALE OR EXCHANGE OF VIRTUAL CUR-**  
12    **RENCY.**

13      (a) IN GENERAL.—Part III of subchapter B of chap-  
14      ter 1 of the Internal Revenue Code of 1986 is amended  
15      by inserting after section 139H the following new section:

16      **“SEC. 139I. GAIN FROM SALE OR EXCHANGE OF VIRTUAL**  
17    **CURRENCY.**

18      “(a) IN GENERAL.—Gross income shall not include  
19      gain from the sale or exchange of virtual currency (as de-  
20      fined under section 408(m)) for other than cash or cash  
21      equivalents.

22      “(b) LIMITATION.—

23              “(1) IN GENERAL.—The amount of gain ex-  
24      cluded from gross income under subsection (a) with

1 respect to a sale or exchange of virtual currency  
2 shall not exceed \$600.

3 “(2) AGGREGATION RULE.—For purposes of  
4 this subsection, all sales or exchanges which are part  
5 of the same transaction (or a series of related trans-  
6 actions) shall be treated as one sale or exchange.

7 “(c) INFLATION ADJUSTMENT.—In the case of any  
8 taxable year beginning in a calendar year after 2022, the  
9 dollar amount in subsection (b) shall be increased by an  
10 amount equal to—

11 “(1) such dollar amount, multiplied by

12 “(2) the cost-of-living adjustment determined  
13 under section 1(f)(3) for the calendar year in which  
14 the taxable year begins, determined by substituting  
15 ‘calendar year 2022’ for ‘calendar year 2016’ in sub-  
16 paragraph (A)(ii) thereof.

17 Any increase determined under the preceding sentence  
18 shall be rounded to the nearest multiple of \$50.”.

19 (b) CLERICAL AMENDMENT.—The table of sections  
20 for part III of subchapter B of chapter 1 of such Code  
21 is amended by inserting after the item relating to section  
22 139H the following new item:

“Sec. 139I. Gain from sale or exchange of virtual currency.”.

23 (c) REPORTING OF GAINS OR LOSSES.—The Sec-  
24 retary of the Treasury shall issue regulations providing for  
25 information returns on transactions in virtual currency (as

1 defined under section 408(m) of the Internal Revenue  
2 Code of 1986) for which gain or loss is recognized.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to transactions en-  
5 tered into on or after January 1, 2021.

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