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.

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

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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Token Taxonomy Act of 2021”.

SEC. 2. SECURITIES ACT OF 1933.

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

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

“(A) that is created—

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

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

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

“(B) that has a transaction history that—

“(i) is recorded in a distributed, dig-
ital ledger or digital data structure in
which consensus is achieved through a mathematically verifiable process; and

“(ii) after consensus is reached, resists modification or tampering by any single person or group of persons under common control;

“(C) that is capable of being transferred between persons without an intermediate custodian; and

“(D) that is not a representation of a financial interest in a company or partnership, including an ownership interest or revenue share.

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

(b) Definition of Security.—Section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) is amended—

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

(2) by adding at the end the following:

“(B) Such term does not include a digital token.”.
(c) EXEMPTION.—Section 4(a) of the Securities Act of 1933 (15 U.S.C. 77d(a)) is amended by adding at the end the following:

“(8) Transactions involving the offer, promotion, or sale of a digital unit if—

“(A) the person offering, promoting, or selling the digital unit has a reasonable and good faith belief that such digital unit is a digital token; and

“(B) within ninety days following a written notification from the Commission to such person that such digital unit has been determined by the Commission to be a security, posts public notice of such notification and takes reasonable efforts to cease all sales and return all proceeds from any sales of such digital unit, excluding funds reasonably spent on the development of technology associated with the digital unit.”.

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

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (e) the following:
“(d) Digital Tokens.—

“(1) In general.—No law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

“(A) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a digital token;

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

“(i) with respect to a digital token, any disclosure document concerning an offer or sale of a digital token that is prepared by or on behalf of a person developing, offering, or selling a digital token; or

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

“(C) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of a digital token offering or a person devel-
oping, offering, or selling a digital token, upon the offer or sale of any digital token; or

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

“(2) Preservation of fraud authority.—States and political subdivisions thereof shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by any person, in connection with digital tokens or digital token transactions.”.

SEC. 3. SECURITIES EXCHANGE ACT OF 1934.


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

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

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

(2) by adding at the end the following:

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

(c) Definition of Digital Token.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

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

(d) Clerical Amendments.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

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

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

SEC. 4. INVESTMENT ADVISERS ACT OF 1940.

(a) Definition of Digital Token.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended—
(1) by redesignating the second paragraph (29) as paragraph (31); and

(2) by adding at the end the following:

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

(b) Definition of Security.—Section 202(a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(18)) is amended—

(1) by inserting “(A)” after “(18)”;

(2) by adding at the end the following:

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

(c) Definition of Bank.—Section 202(a)(2)(C) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(2)(C)) is amended by striking “receiving deposits or exercising fiduciary powers” and inserting “receiving deposits, providing custodial services, or exercising fiduciary powers”.

SEC. 5. INVESTMENT COMPANY ACT OF 1940.

(a) Definition of Digital Token.—Section 202(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:
“(55) The term ‘digital token’ has the meaning given to it in section 2(a) of the Securities Act of 1933.”.

(b) Definition of Security.—Section 202(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(36)) is amended—

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

(2) by adding at the end the following:

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

(c) Definition of Bank.—Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking “receiving deposits or exercising fiduciary powers” and inserting “receiving deposits, providing custodial services, or exercising fiduciary powers”.

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

Nothing in this Act or the amendments made by this Act shall be construed to limit the application of the Commodity Exchange Act or the Federal Trade Commission Act.
SEC. 7. SATISFACTORY CONTROL LOCATION REQUIREMENT.

Not later than 90 days after the date of the enactment of this Act, the Commission shall amend section 240.15c3–3 of title 17, Code of Federal Regulations, to provide that the requirement for a satisfactory control location for any digital unit (as defined under section 2(a) of the Securities Act of 1933) that is a security is fulfilled by protecting the digital unit using public key cryptography and by following commercially reasonable cybersecurity practices to maintain the privacy and accessibility of sufficient private key material to solely be able to sign on behalf of such digital unit.

SEC. 8. INDIVIDUAL RETIREMENT ACCOUNT INVESTMENTS IN CERTAIN VIRTUAL CURRENCIES NOT TREATED AS DISTRIBUTIONS.

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

(1) in paragraph (3)—

(A) in the heading of the paragraph, by striking “AND BULLION” and inserting “, BULLION, AND VIRTUAL CURRENCIES”;

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

(C) in subparagraph (B), by inserting “or” after “futures contract,”;
(D) by inserting after subparagraph (B) the following:

“(C) virtual currency.”; and

(E) by striking “if such bullion” and inserting “This paragraph shall only apply to bullion which”; and

(2) by adding at the end the following:

“(4) VIRTUAL CURRENCY DEFINED.—For purposes of this subsection, the term ‘virtual currency’ means a digital representation of value that is used as a medium of exchange and is not currency (within the meaning of section 988).”.

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

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

(a) IN GENERAL.—Section 1031 of the Internal Revenue Code of 1986 is amended—

(1) in the heading, by striking “REAL PROPERTY” and inserting “CERTAIN PROPERTY”; and

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

“(4) EXCHANGE OF VIRTUAL CURRENCY.—An exchange of virtual currency (as defined under sec-
tion 408(m)) shall be treated as if such exchange were an exchange of real property under this section.”.

(b) CLERICAL AMENDMENT.—The table of parts for part III of subchapter O of chapter 1 of such Code is amended by striking “Exchange of real property” and inserting “Exchange of certain property”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to exchanges made on or after January 1, 2021.

SEC. 10. GAIN FROM SALE OR EXCHANGE OF VIRTUAL CURRENCY.

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

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

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

“(b) LIMITATION.—

“(1) IN GENERAL.—The amount of gain excluded from gross income under subsection (a) with
respect to a sale or exchange of virtual currency shall not exceed $600.

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

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

“(1) such dollar amount, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2022’ for ‘calendar year 2016’ in sub-

paragraph (A)(ii) thereof.

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

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

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

(e) REPORTING OF GAINS OR LOSSES.—The Sec-

retary of the Treasury shall issue regulations providing for 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.