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S. 2355

To clarify the applicability of sanctions and antimoney laundering compliance obligations to United States persons in the decentralized finance technology sector and virtual currency kiosk operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2023

Mr. REED (for himself, Mr. ROUNDS, Mr. WARNER, and Mr. ROMNEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To clarify the applicability of sanctions and antimoney laundering compliance obligations to United States persons in the decentralized finance technology sector and virtual currency kiosk operators, 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 “Crypto-Asset National
5 Security Enhancement and Enforcement Act of 2023”.

1 **SEC. 2. DECENTRALIZED FINANCE NATIONAL SECURITY**
2 **ENHANCEMENT.**

3 (a) DEFINITIONS.—In this section:

4 (1) CONTROL.—The term “control”, with re-
5 spect to a digital asset protocol, includes the power,
6 directly or indirectly, to direct a change in the com-
7 puter code or other terms governing the operation of
8 the protocol, as determined by the Secretary of the
9 Treasury. Such power may be exercised through
10 ownership of governance tokens, administrator privi-
11 leges, ability to alter or upgrade computer code, or
12 otherwise.

13 (2) DIGITAL ASSET.—The term “digital asset”
14 means any digital representation of value that is re-
15 corded on a cryptographically secured distributed
16 ledger or any similar technology or another imple-
17 mentation, which was designed and built as part of
18 a system to leverage or replace blockchain, distrib-
19 uted ledger technology, or their derivatives.

20 (3) DIGITAL ASSET PROTOCOL.—The term
21 “digital asset protocol” means any communication
22 protocol, smart contract, or other software—

23 (A) deployed through the use of distributed
24 ledger or similar technology; and

1 (B) that provides a mechanism for users to
2 interact and agree to the terms of a trade for
3 digital assets.

4 (4) DIGITAL ASSET PROTOCOL BACKER.—

5 (A) IN GENERAL.—The term “digital asset
6 protocol backer” means any person that—

7 (i) holds governance tokens of a dig-
8 ital asset protocol valued at more than
9 \$25,000,000 (subject to adjustment under
10 subparagraph (B)); or

11 (ii) makes—

12 (I) an investment in the develop-
13 ment of a digital asset protocol of
14 \$25,000,000 (subject to adjustment
15 under subparagraph (B)) or more; or

16 (II) any combination of invest-
17 ments in the development of a digital
18 asset protocol if—

19 (aa) any such investment is
20 not less than \$2,500,000 (subject
21 to adjustment under subpara-
22 graph (B)); and

23 (bb) such investments, in
24 the aggregate, equal or exceed
25 \$25,000,000 (subject to adjust-

1 (II) rely on sales in a private
2 market; or

3 (III) rely on secondary market
4 trades through a financial institution
5 (as defined in section 1010.100(t) of
6 title 31, Code of Federal Regulations
7 (or a successor regulation)).

8 (ii) CONSULTATION REQUIRED.—The
9 Securities and Exchange Commission shall
10 consult with the Secretary of the Treasury
11 before prescribing regulations under clause
12 (i).

13 (iii) CERTIFICATION REQUIRED.—
14 Each digital asset protocol backer de-
15 scribed in paragraph (4) or in section
16 5312(a)(2)(AA) of title 31, United States
17 Code, as amended by subsection (c) of this
18 section, shall submit to the Securities and
19 Exchange Commission and the Secretary
20 of the Treasury an annual certification
21 with respect to the value of the governance
22 tokens of the digital asset protocol held by
23 the digital asset protocol backer, beginning
24 on the earlier of—

1 (I) the date on which the value of
2 those governance tokens equals or ex-
3 ceeds the dollar amount specified in
4 subparagraph (A)(i), as may be ad-
5 justed by the Secretary of the Treas-
6 ury; or

7 (II) the date on which the Secu-
8 rities and Exchange Commission or
9 the Secretary of the Treasury request
10 information about the valuation of the
11 governance tokens.

12 (5) DIGITAL ASSET TRANSACTION
13 FACILITATOR.—The term “digital asset transaction
14 facilitator” means any person that—

15 (A) controls a digital asset protocol, as de-
16 termined by the Secretary of the Treasury; or

17 (B) makes available an application de-
18 signed to facilitate transactions using a digital
19 asset protocol.

20 (6) UNITED STATES PERSON.—The term
21 “United States person” means any United States
22 citizen, permanent resident alien, entity organized
23 under the laws of the United States or any jurisdic-
24 tion within the United States (including foreign
25 branches), or any person in the United States.

1 (b) APPLICABILITY OF SANCTIONS COMPLIANCE OB-
2 LIGATIONS TO UNITED STATES PERSONS IN THE DECEN-
3 TRALIZED FINANCE SECTOR.—

4 (1) IN GENERAL.—In the case of a violation de-
5 scribed in paragraph (2) that is conducted through
6 the use of a digital asset protocol, each person de-
7 scribed in paragraph (3) shall be subject to the pen-
8 alties set forth in subsections (b) and (c) of section
9 206 of the International Emergency Economic Pow-
10 ers Act (50 U.S.C. 1705) to the same extent as a
11 person that commits an unlawful act described in
12 subsection (a) of that section.

13 (2) VIOLATIONS DESCRIBED.—A violation de-
14 scribed in this paragraph is a violation of a license,
15 order, regulation, or prohibition issued to implement
16 sanctions administered by the Office of Foreign As-
17 sets Control.

18 (3) PERSONS DESCRIBED.—A person described
19 in this paragraph is a United States person that is
20 a digital asset transaction facilitator or a digital
21 asset protocol backer of a digital asset protocol used
22 in a violation described in paragraph (2).

23 (4) EXEMPTION FOR CONTROLLED DECENTRAL-
24 IZED FINANCE PROTOCOLS.—A digital asset protocol
25 backer shall not be subject to paragraph (1) for a

1 violation described in paragraph (2) if the Secretary
2 has determined that the digital asset protocol is con-
3 trolled by a digital asset transaction facilitator or by
4 another person, who may be appointed by contract
5 or another means.

6 (5) APPLICABILITY.—Paragraph (1) shall apply
7 with respect to violations described in paragraph (2)
8 that occur on or after the date that is 90 days after
9 the date of the enactment of this Act.

10 (c) BANK SECRECY ACT APPLICATION TO THE DE-
11 CENTRALIZED FINANCE SECTOR.—

12 (1) IN GENERAL.—Section 5312(a)(2) of title
13 31, United States Code, as amended by section
14 6110(a)(1) of the Anti-Money Laundering Act of
15 2020 (division F of Public Law 116–283), is amend-
16 ed—

17 (A) in subparagraph (Z), by striking “or”
18 at the end;

19 (B) by redesignating subparagraph (AA)
20 as subparagraph (BB); and

21 (C) by inserting after subparagraph (Z)
22 the following:

23 “(AA) a digital asset
24 transaction facilitator or a
25 digital asset protocol backer

1 of a digital asset protocol;
2 or”.

3 (2) EFFECTIVE DATE.—Subparagraph (AA) of
4 section 5312(a)(2) of title 31, United States Code,
5 as added by subsection (a), shall take effect on the
6 day after the effective date of the final rules issued
7 by the Secretary of the Treasury pursuant to section
8 6110(b) of the Anti-Money Laundering Act of 2020
9 (division F of Public Law 116–283).

10 (3) EXEMPTION FOR CONTROLLED DECENTRAL-
11 IZED FINANCE PROTOCOLS.—The Secretary of the
12 Treasury may exercise the exemptive authority
13 under section 5318(a)(7) of title 31, United States
14 Code, with respect to a digital asset protocol backer
15 of a digital asset protocol, if—

16 (A) the Secretary of the Treasury finds
17 that such digital asset protocol is controlled by
18 a digital asset transaction facilitator or by an-
19 other person, who may be appointed through
20 contract or other means; and

21 (B) the digital asset transaction facilitator
22 or other person described in subparagraph (A)
23 is subject to the requirements under this section
24 and regulations prescribed under this section

1 for transactions conducted through the use of
2 such digital asset protocol.

3 **SEC. 3. PROHIBITIONS OR CONDITIONS ON CERTAIN**
4 **TRANSMITTALS OF FUNDS.**

5 Section 5318A of title 31, United States Code, is
6 amended—

7 (1) in subsection (a)(2)(C), by striking “sub-
8 section (b)(5)” and inserting “paragraphs (5) and
9 (6) of subsection (b)”;

10 (2) in subsection (b)—

11 (A) in paragraph (5), by striking “for or
12 on behalf of a foreign banking institution”;

13 (B) by adding at the end the following:

14 “(6) PROHIBITIONS OR CONDITIONS ON CER-
15 TAIN TRANSMITTALS OF FUNDS.—If the Secretary
16 finds a jurisdiction outside of the United States, 1
17 or more financial institutions operating outside of
18 the United States, 1 or more types of accounts with-
19 in, or involving, a jurisdiction outside of the United
20 States, or 1 or more classes of transactions within,
21 or involving, a jurisdiction outside of the United
22 States to be of primary money laundering concern,
23 the Secretary, in consultation with the Secretary of
24 State, the Attorney General, and the Chairman of
25 the Board of Governors of the Federal Reserve Sys-

1 tem, may prohibit, or impose conditions upon, cer-
2 tain transmittals of funds (to be defined by the Sec-
3 retary), to or from any domestic financial institution
4 or domestic financial agency if such transmittal of
5 funds involves any such jurisdiction, institution,
6 class of transaction, or type of account.”.

7 **SEC. 4. VIRTUAL CURRENCY KIOSK NATIONAL SECURITY**
8 **ENHANCEMENT.**

9 (a) **DEFINITIONS.**—In this section:

10 (1) **VIRTUAL CURRENCY.**—The term “virtual
11 currency” means any digital representation of value
12 that is recorded on a cryptographically secured dis-
13 tributed ledger or any similar technology or another
14 implementation, which was designed and built as
15 part of a system to leverage or replace blockchain,
16 distributed ledger technology, or their derivatives.

17 (2) **VIRTUAL CURRENCY TRANSFER.**—The term
18 “virtual currency transfer” means a withdrawal, ex-
19 change, or other payment or transfer that involves
20 a transaction in virtual currency.

21 (3) **VIRTUAL CURRENCY KIOSK.**—The term
22 “virtual currency kiosk” means a stand-alone ma-
23 chine that facilitates a virtual currency transfer.

24 (4) **VIRTUAL CURRENCY KIOSK OPERATOR.**—
25 The term “virtual currency kiosk operator” means

1 any person who operates a virtual currency kiosk at
2 which consumers initiate virtual currency transfers.

3 (b) ANTIMONEY LAUNDERING.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), before effecting any virtual currency
6 transfer, a virtual currency kiosk operator shall
7 verify and record, at a minimum, the name and
8 physical address of the—

9 (A) consumer, which shall include review of
10 an official document evidencing nationality or
11 residence that includes a photograph of the con-
12 sumer; and

13 (B) counterparty to such transfer.

14 (2) EXCEPTION.—Paragraph (1) shall not
15 apply to a counterparty described in paragraph
16 (1)(B) that conducts a virtual currency transfer
17 using a wallet held at a financial institution, as de-
18 fined in section 5312 of title 31, United States
19 Code, that is subject to the requirements of sub-
20 chapter II of title 31, United States Code.

21 (c) RULEMAKING.—Not later than 360 days after the
22 date of enactment of this Act, the Financial Crimes En-
23 forcement Network shall promulgate regulations requiring
24 each virtual currency kiosk operator to—

- 1 (1) furnish to the Financial Crimes Enforce-
2 ment Network a list of the locations, including phys-
3 ical addresses, of all virtual currency kiosks that are
4 owned or operated by such operator; and
- 5 (2) update the list described in paragraph (1)
6 every 90 days.

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