

118TH CONGRESS  
1ST SESSION

# S. 1357

To address advertising by digital asset intermediaries, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 27, 2023

Ms. SINEMA (for herself and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To address advertising by digital asset intermediaries, 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 “Responsible Digital  
5 Asset Advertising Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **COMMISSIONS.**—The term “Commissions”  
9 means the Securities and Exchange Commission and

1 the Commodity Futures Trading Commission, acting  
2 jointly.

3 (2) COVERED ADVERTISEMENT.—The term  
4 “covered advertisement”—

5 (A) means a communication that—

6 (i) relates to—

7 (I) the desirability of purchasing  
8 or entering into a transaction for a  
9 digital asset; or

10 (II) the availability of digital  
11 asset-related services; and

12 (ii) is widely available to the general  
13 public, as specified by rule of the Commis-  
14 sions; and

15 (B) includes any script, slide, handout, or  
16 other written (including electronic) material  
17 used in connection with a public appearance  
18 with respect to a digital asset or the availability  
19 of digital asset-related services.

20 (3) DIGITAL ASSET.—The term “digital asset”  
21 means a natively electronic asset that—

22 (A) confers economic, proprietary, or ac-  
23 cess rights or authorities; and

1 (B) is recorded using cryptographically-se-  
2 cured distributed ledger technology, or any  
3 similar analogue.

4 (4) DIGITAL ASSET INTERMEDIARY.—The term  
5 “digital asset intermediary” means a person that—

6 (A) holds a license, registration, or other  
7 similar authorization pursuant to the Com-  
8 modity Exchange Act (7 U.S.C. 1 et seq.), the  
9 Securities Act of 1933 (15 U.S.C. 77a et seq.),  
10 the Corporation of Foreign Bondholders Act,  
11 1933 (15 U.S.C. 77bb et seq.), the Trust In-  
12 denture Act of 1939 (15 U.S.C. 77aaa et seq.),  
13 the Securities Exchange Act of 1934 (15  
14 U.S.C. 78a et seq.), the Securities Investor Pro-  
15 tection Act of 1970 (15 U.S.C. 78aaa et seq.),  
16 the Investment Company Act of 1940 (15  
17 U.S.C. 80a–1 et seq.), the Investment Advisers  
18 Act of 1940 (15 U.S.C. 80b–1 et seq.), or the  
19 Omnibus Small Business Capital Formation  
20 Act of 1980 (title V of Public Law 96–2); and

21 (B) engages in market activities relating to  
22 digital assets.

23 **SEC. 3. ADVERTISING BY DIGITAL ASSET INTERMEDIARIES.**

24 (a) APPROVAL BY OFFICER.—Before a digital asset  
25 intermediary may make a covered advertisement available

1 to the public, an officer of the digital asset intermediary  
2 shall be required to approve that covered advertisement  
3 and certify compliance with the requirements of this sec-  
4 tion.

5 (b) PROCEDURES.—

6 (1) IN GENERAL.—Each digital asset inter-  
7 mediary shall establish written procedures, which are  
8 appropriate and reasonable to the business, size,  
9 structure, and customers of the digital asset inter-  
10 mediary, for the review of covered advertisements, as  
11 required under subsection (a), which shall include—

12 (A) provisions for the education and train-  
13 ing of applicable employees of the digital asset  
14 intermediary regarding the procedures of the  
15 digital asset intermediary governing covered ad-  
16 vertisements;

17 (B) documentation of the education and  
18 training required under subparagraph (A); and

19 (C) surveillance and follow-up measures to  
20 ensure that the digital asset intermediary im-  
21 plements and adheres to those procedures.

22 (2) RECORDKEEPING.—

23 (A) PERIOD OF MAINTENANCE.—Each dig-  
24 ital asset intermediary shall maintain the

1 records required under this subsection for not  
2 less than 5 years.

3 (B) TYPES OF RECORDS.—The types of  
4 records that a digital asset intermediary is re-  
5 quired to maintain under subparagraph (A) in-  
6 clude, with respect to each covered advertise-  
7 ment made by the digital asset intermediary—

8 (i) a copy of the covered advertise-  
9 ment;

10 (ii) the dates of the first and, if appli-  
11 cable, last use of the covered advertise-  
12 ment;

13 (iii) the name of the officer of the dig-  
14 ital asset intermediary who approved the  
15 covered advertisement, as required under  
16 subsection (a), including the date on which  
17 the officer gave that approval;

18 (iv) information concerning the source  
19 of all data, statistical tables, charts,  
20 graphs, or other illustrations or outside  
21 sources used in the covered advertisement;  
22 and

23 (v) for a covered advertisement that  
24 includes or incorporates a performance  
25 ranking or comparison with another digital

1           asset intermediary, a copy of the ranking  
2           or performance used.

3           (c) REQUIREMENTS FOR COVERED ADVERTISE-  
4 MENTS.—Each covered advertisement shall adhere to the  
5 following standards:

6           (1) The covered advertisement shall—

7                 (A) be based on principles of fair dealing  
8                 and good faith; and

9                 (B) provide a sound basis for evaluating  
10                the facts with respect to any particular digital  
11                asset or type of digital asset, industry, or serv-  
12                ice that is the subject of the covered advertise-  
13                ment.

14           (2) The covered advertisement may not omit  
15           any material fact or qualification if that omission, in  
16           light of the context of the material presented, would  
17           cause the covered advertisement to be misleading.

18           (3) The covered advertisement may not make  
19           any false, exaggerated, unwarranted, promissory, or  
20           misleading statement or claim.

21           (4) Information may be placed in a legend or  
22           footnote within the covered advertisement only if  
23           that placement would not inhibit understanding of  
24           the covered advertisement.

1           (5) The covered advertisement shall be con-  
2           sistent with risks that are present with respect to  
3           the subject matter of the covered advertisement, in-  
4           cluding volatility with respect to the value of digital  
5           assets, the amount of potential returns, and oper-  
6           ational risks for digital asset intermediaries.

7           (6) The covered advertisement shall—

8                   (A) consider the nature of the audience to  
9                   which the covered advertisement will be di-  
10                  rected; and

11                   (B) provide details and explanations that  
12                   are appropriate for the audience described in  
13                   subparagraph (A).

14           (7)(A) The covered advertisement may not pre-  
15           dict or project performance, imply that past per-  
16           formance will recur, or make any exaggerated or un-  
17           warranted claim, opinion, or forecast.

18                   (B) Nothing in subparagraph (A) may be con-  
19                   strued to prohibit the use of—

20                           (i) a hypothetical illustration of mathe-  
21                           matical principles, if that illustration does not  
22                           predict or project the performance of a par-  
23                           ticular strategy;

24                           (ii) an analysis tool, or a written report  
25                           produced by an analysis tool; or

1 (iii) a price target contained in a research  
2 report, if the target has a reasonable basis, the  
3 report discloses the valuation methods used to  
4 determine the price target, and the price target  
5 is accompanied by a disclosure concerning the  
6 risks that may impede achievement of the price  
7 target.

8 (8) Any comparison in the covered advertise-  
9 ment between digital assets, digital asset inter-  
10 mediaries, or digital asset-related services shall dis-  
11 close key material differences between the applicable  
12 items, including, as applicable, differences with re-  
13 spect to return objectives, costs and expenses, liquid-  
14 ity, safety, guarantees or insurance, volatility, and  
15 tax features.

16 (9) The covered advertisement shall promi-  
17 nently disclose the following:

18 (A) The fact that the covered advertise-  
19 ment is governed by this section and is subject  
20 to Federal law.

21 (B) The name of the applicable digital  
22 asset intermediary.

23 (C) The name of the officer who made the  
24 certification with respect to the covered adver-  
25 tisement, as required under subsection (a).



1 (D) Any relationship between the applica-  
2 ble digital asset intermediary and any person  
3 that appears in the covered advertisement or  
4 any compensation offered by that digital asset  
5 intermediary to such a person.

6 (E) Registrations, licenses, or other au-  
7 thorizations in good standing that are held by  
8 the applicable digital asset intermediary.

9 (10)(A) In the covered advertisement, any ref-  
10 erence to tax-free or tax-exempt income shall indi-  
11 cate which taxes apply, or which do not, unless in-  
12 come is free from all applicable taxes.

13 (B) For the purposes of subparagraph (A), the  
14 covered advertisement may not characterize income  
15 or returns as tax-free or exempt from income tax if  
16 tax liability is merely postponed or deferred, such as  
17 when taxes are payable upon redemption.

18 (C) The Commissions may, by rule, adopt fur-  
19 ther standards regarding tax considerations that ap-  
20 pear in covered advertisements.

21 (11) The covered advertisement shall disclose  
22 the amounts of the following fees with respect to the  
23 digital asset or digital asset-related services that are  
24 the subject of the covered advertisement, which shall  
25 be set forth prominently and, in any print advertise-

1 ment, in a prominent text box that contains only  
2 such information:

3 (A) Custody fees.

4 (B) Account fees.

5 (C) Applicable bank fees.

6 (12) If any testimonial in the covered advertise-  
7 ment concerns a technical aspect of purchasing or  
8 otherwise entering into a transaction for digital as-  
9 sets—

10 (A) the person making the testimonial  
11 shall have the knowledge and experience to  
12 form a valid opinion regarding the issue; and

13 (B) the testimonial, if the testimonial con-  
14 cerns the advisability of purchasing digital as-  
15 sets or the performance of a digital asset, shall  
16 prominently disclose—

17 (i) the fact that the testimonial may  
18 not be representative of the experience of  
19 other customers;

20 (ii) the fact that the testimonial is no  
21 guarantee of future performance or suc-  
22 cess; and

23 (iii) if more than \$1,000 in value is  
24 paid for the testimonial—

1 (I) the fact that the testimonial  
2 is a paid testimonial; and

3 (II) the amount and type of com-  
4 pensation paid, which shall include, if  
5 compensation was paid in digital as-  
6 sets, an identification of each specific  
7 digital asset.

8 (13) If the covered advertisement includes a  
9 recommendation to purchase, or otherwise transact  
10 in, a digital asset, the covered advertisement shall—

11 (A) have a reasonable basis for the rec-  
12 ommendation; and

13 (B) if applicable, disclose—

14 (i) that, at the time the covered adver-  
15 tisement was published or distributed, the  
16 applicable digital asset intermediary was  
17 conducting trading activities in the digital  
18 asset;

19 (ii) that the applicable digital asset  
20 intermediary—

21 (I) is directly and materially in-  
22 volved in the preparation of the con-  
23 tent of the covered advertisement; and

24 (II) has a financial interest the  
25 digital assets being recommended; and

1 (iii) the nature of any financial inter-  
2 est disclosed under clause (ii), including  
3 whether that financial interest consists of  
4 any option, right, warrant, future, or long  
5 or short position, unless the extent of that  
6 financial interest is nominal.

7 (14)(A) Except as otherwise provided by sub-  
8 paragraph (B), the covered advertisement may not  
9 refer, directly or indirectly, to past specific rec-  
10 ommendations made by the applicable digital asset  
11 intermediary that were or would have been profitable  
12 to any person.

13 (B) The covered advertisement may set out or  
14 offer to furnish a list of all recommendations as to  
15 the same type of digital assets made by the applica-  
16 ble digital asset intermediary during the 1-year pe-  
17 riod preceding the date on which the covered adver-  
18 tisement is released, if the communication or list—

19 (i) states the name of each digital asset  
20 recommended, the date and nature of each such  
21 recommendation (such as whether to buy, sell,  
22 or hold the digital asset), the market price (as  
23 of the date of the recommendation), the price at  
24 which a person was meant to act upon the rec-  
25 ommendation, and the market price of each

1 such digital asset, as of the most recent prac-  
2 ticable date; and

3 (ii) contains the following warning, which  
4 shall appear prominently within the communica-  
5 tion or list: “it should not be assumed that rec-  
6 ommendations made in the future will be profit-  
7 able or will equal the performance of the digital  
8 assets in this list.”.

9 (d) SOURCES SUPPORTING A RECOMMENDATION.—

10 (1) IN GENERAL.—A digital asset intermediary  
11 shall provide, or offer to provide upon request, avail-  
12 able information or sources supporting any rec-  
13 ommendation described in subsection (c)(13).

14 (2) PRICE DISCLOSURE.—When a digital asset  
15 intermediary recommends a digital asset in a cov-  
16 ered advertisement, as described in subsection  
17 (c)(13), the digital asset intermediary shall provide  
18 the price of the digital asset, as of the date on which  
19 the recommendation is made.

20 (e) INFORMATION PROVIDED IN PUBLIC APPEAR-  
21 ANCES.—

22 (1) IN GENERAL.—When an officer or employee  
23 of a digital asset intermediary is sponsoring or par-  
24 ticipating in a seminar, forum, or radio or television  
25 interview, or when such an individual is otherwise

1 engaged in a public appearance or speaking activity,  
2 paragraphs (1), (2), and (3) of subsection (c) shall  
3 apply to that appearance to the same extent as those  
4 provisions apply to a covered advertisement.

5 (2) RECOMMENDATIONS.—If an officer or em-  
6 ployee of a digital asset intermediary recommends a  
7 digital asset in a public appearance, that individual  
8 shall—

9 (A) have a reasonable basis for the rec-  
10 ommendation; and

11 (B) disclose, as applicable—

12 (i) whether the individual has a finan-  
13 cial interest in the digital asset rec-  
14 ommended;

15 (ii) the nature of the financial interest  
16 disclosed under clause (i), including wheth-  
17 er that financial interest consists of any  
18 option, right, warrant, future, or long or  
19 short position, unless the extent of that fi-  
20 nancial interest is nominal; and

21 (iii) any other actual, material conflict  
22 of interest of which the individual knows or  
23 has reason to know at the time of the pub-  
24 lic appearance.

1 (f) PROCEDURES FOR PUBLIC APPEARANCES.—Each  
2 digital asset intermediary shall establish written proce-  
3 dures that are appropriate and reasonable to the business,  
4 size, structure, and customers of the digital asset inter-  
5 mediary in order to supervise the public appearances of  
6 the officers and employees of the digital asset inter-  
7 mediary, which shall include—

8 (1) provisions for the education and training of  
9 employees of the digital asset intermediary regarding  
10 those procedures;

11 (2) documentation of the education and train-  
12 ing required under paragraph (1); and

13 (3) surveillance and follow-up measures to en-  
14 sure that the digital asset intermediary implements  
15 and adheres to those procedures.

16 (g) ENFORCEMENT BY COMMISSIONS.—

17 (1) IN GENERAL.—The Securities and Ex-  
18 change Commission, the Commodity Futures Trad-  
19 ing Commission, or any applicable self-regulatory or-  
20 ganization operating under delegated authority by  
21 the appropriate commission, as applicable to a dig-  
22 ital asset intermediary, shall regularly ascertain the  
23 compliance with this section by the digital asset  
24 intermediary (and applicable individuals) at the time

1 of each regular examination of the intermediary by  
2 the applicable entity.

3 (2) INVESTIGATIONS.—The appropriate com-  
4 mission or self-regulatory organization, as applica-  
5 ble, may conduct an investigation into a suspected  
6 violation of this section and take enforcement action  
7 outside of a regular examination of a digital asset  
8 intermediary, which shall be comprised of the fol-  
9 lowing:

10 (A) With respect to such a violation by  
11 that digital asset intermediary, the following:

12 (i) For an initial violation of this sec-  
13 tion, the imposition of a civil monetary  
14 penalty in an amount that is not more  
15 than \$100,000.

16 (ii) For any subsequent violation of  
17 this section, the imposition of a civil mone-  
18 tary penalty in an amount that is not more  
19 than \$1,000,000.

20 (iii) The enjoinder of future viola-  
21 tions of this section by the digital asset  
22 intermediary and the requirement that the  
23 digital asset intermediary submit to the en-  
24 forcing entity appropriate remediation  
25 plans.



1 (B) For repeated, knowing violations of  
2 this section by an individual, the imposition of  
3 a temporary or permanent bar from the digital  
4 asset industry with respect to that individual.

5 (h) APPLICABILITY TO DISCLOSURES.—A document  
6 filed with the Securities and Exchange Commission, as  
7 otherwise required by law or regulation, is not subject to  
8 the requirements of this section.

9 (i) RULES.—The Commissions, after not less than a  
10 120-day comment period, shall adopt rules to implement  
11 this section.

12 (j) AUTHORIZATION OF APPROPRIATIONS.—For the  
13 purposes of appointing employees to enforce the require-  
14 ments of this section, and for other costs relating to the  
15 enforcement of this section, there is authorized to be ap-  
16 propriated, for fiscal year 2023, to remain available until  
17 September 30, 2024—

18 (1) \$25,000,000 to the Securities and Ex-  
19 change Commission; and

20 (2) \$25,000,000 to the Commodity Futures  
21 Trading Commission.

22 **SEC. 4. OFFSETTING THE COSTS OF DIGITAL ASSET ADVER-**  
23 **TISING SUPERVISION.**

24 (a) RECOVERY OF CERTAIN COSTS OF ANNUAL AP-  
25 PROPRIATIONS.—

1           (1) IN GENERAL.—Beginning October 1, 2024,  
2 the Securities and Exchange Commission and the  
3 Commodity Futures Trading Commission may, joint-  
4 ly, by rule, collect fees—

5           (A) to fund expenses relating to the super-  
6 vision of advertising by digital asset inter-  
7 mediaries; and

8           (B) that are designed to recover the costs  
9 to the Federal Government of the annual ap-  
10 propriation to each commission by Congress for  
11 the cost of the supervision of advertising by dig-  
12 ital asset intermediaries.

13           (2) REGISTERED ENTITIES.—A fee shall be im-  
14 posed under paragraph (1) only—

15           (A) on an entity that—

16           (i) is licensed, registered, or similarly  
17 authorized pursuant to a provision of law  
18 described in section 2(4)(A); and

19           (ii) is engaged in activities relating to  
20 digital assets, including a digital asset  
21 intermediary that is registered with either  
22 commission as otherwise may be provided  
23 by Federal law; and

1 (B) in relation to the regulation of those  
2 activities under a provision of law described in  
3 section 2(4)(A).

4 (3) FEE RATES.—A fee imposed under para-  
5 graph (1) shall—

6 (A) be strictly related to the cost to the  
7 Commissions relating to the supervision of ad-  
8 vertising by digital asset intermediaries;

9 (B) minimize negative impacts on market  
10 liquidity; and

11 (C) maintain the efficiency, competitive-  
12 ness, and financial integrity of digital asset  
13 markets.

14 (4) COLLECTION OF FEES.—The Commissions  
15 shall collect fees under this subsection in such man-  
16 ner and within such time as may be specified by the  
17 Commissions, by rule.

18 (b) FEE RATE ORDERS.—

19 (1) IN GENERAL.—Each fiscal year, the Com-  
20 missions shall jointly adopt an order setting rates  
21 for fees that are collected under subsection (a) dur-  
22 ing that fiscal year.

23 (2) PUBLICATION.—The Commissions shall  
24 publish in the Federal Register each order adopted  
25 under paragraph (1), which shall include—

1 (A) projections on which the fees are  
2 based; and

3 (B) an explanation of the method used for  
4 calculating applicable fee rates.

5 (c) DEPOSIT OF FEES.—

6 (1) OFFSETTING COLLECTIONS.—Fees collected  
7 under subsection (a) for any fiscal year shall—

8 (A) be split evenly between the Commis-  
9 sions;

10 (B) be deposited and credited as offsetting  
11 collections to the accounts providing appropria-  
12 tions to each respective commission; and

13 (C) not be collected or available for obliga-  
14 tion for any fiscal year except to the extent pro-  
15 vided in advance in appropriation Acts.

16 (2) GENERAL REVENUES PROHIBITED.—No fee  
17 collected under subsection (a) may be deposited and  
18 credited as general revenue of the Treasury.

19 (d) LAPSE OF APPROPRIATIONS.—If a regular appro-  
20 priation to a commission has not been enacted on the first  
21 day of a fiscal year, the commission shall continue to col-  
22 lect fees under this section at the rates in effect on Sep-  
23 tember 30 of the preceding fiscal year until the regular  
24 appropriation for the fiscal year has been enacted and the

1 commission has published fees based on the appropriation  
2 under subsection (b)(2).

3 (e) LIMITATIONS.—

4 (1) LEVERAGED, MARGINED, OR FINANCED  
5 TRANSACTIONS.—Nothing in this section may be  
6 construed to authorize the imposition of fees on a  
7 registered entity relating to leveraged, margined, or  
8 financed transactions under this Act, including those  
9 activities relating to digital assets.

10 (2) OTHER APPROPRIATIONS.—Notwithstanding  
11 any other provision of law, a commission may use  
12 appropriations otherwise made available by law to  
13 fund expenses relating to the supervision of digital  
14 asset advertising under section 2.

15 (f) CEILING ON FEES.—Unless otherwise provided by  
16 law, the total amount of fees collected under this section  
17 shall not exceed \$50,000,000.

○