

115TH CONGRESS
2D SESSION

H. R. 7356

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

DECEMBER 20, 2018

Mr. DAVIDSON (for himself and Mr. SOTO) 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.

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

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

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

11 “(A) is created—

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

14 “(ii) pursuant to rules for the digital
 15 unit’s creation and supply that cannot be
 16 altered by a single person or group of per-
 17 sons under common control; or

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

21 “(B) has a transaction history that—

22 “(i) is recorded in a distributed, dig-
 23 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, can-
4 not be materially altered by a single person
5 or group of persons under common control;

6 “(C) is capable of being traded or trans-
7 ferred between persons without an intermediate
8 custodian; and

9 “(D) is not a representation of a financial
10 interest in a company, including an ownership
11 or debt interest or revenue share.

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

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

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

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

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

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

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

3 “(A) the person developing, offering, or
4 selling the digital unit has a reasonable and
5 good faith belief that such digital unit is a dig-
6 ital token; and

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

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

18 (a) DEFINITION OF BANK.—Section 3(a)(6)(C) of
19 the Securities Exchange Act of 1934 (15 U.S.C.
20 78c(a)(6)(C)) is amended—

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

23 (2) by striking “receiving deposits or exercising
24 fiduciary powers” and inserting “receiving deposits,

1 providing custodial services, or exercising fiduciary
2 powers”.

3 (b) DEFINITION OF SECURITY.—Section 3(a)(10) of
4 the Securities Exchange Act of 1934 (15 U.S.C.
5 78c(a)(10)) is amended—

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

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

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

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

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

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

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

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

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

24 Section 202(a)(2)(C) of the Investment Advisers Act
25 of 1940 (15 U.S.C. 80b–2(a)(2)(C)) is amended by strik-

1 ing “receiving deposits or exercising fiduciary powers” and
 2 inserting “receiving deposits, providing custodial services,
 3 or exercising fiduciary powers”.

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

5 Section 2(a)(5) of the Investment Company Act of
 6 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking “re-
 7 ceiving deposits or exercising fiduciary powers” and in-
 8 serting “receiving deposits, providing custodial services, or
 9 exercising fiduciary powers”.

10 **SEC. 6. SATISFACTORY CONTROL LOCATION REQUIRE-**
 11 **MENT.**

12 Not later than 90 days after the date of the enact-
 13 ment of this Act, the Commission shall amend section
 14 240.15c3–3 of title 17, Code of Federal Regulations, to
 15 provide that the requirement for a satisfactory control lo-
 16 cation is fulfilled by protecting a digital unit (as defined
 17 under section 2(a) of the Securities Act of 1933) through
 18 public key cryptography and following commercially rea-
 19 sonable cybersecurity practices.

20 **SEC. 7. INDIVIDUAL RETIREMENT ACCOUNT INVESTMENTS**
 21 **IN CERTAIN VIRTUAL CURRENCIES NOT**
 22 **TREATED AS DISTRIBUTIONS.**

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

25 (1) in paragraph (3)—

1 (A) in the heading of the paragraph, by
2 striking “AND BULLION” and inserting “, BUL-
3 LION, AND VIRTUAL CURRENCIES”;

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

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

8 (D) by inserting after subparagraph (B)
9 the following:

10 “(C) virtual currency.”; and

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

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

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

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to sales or exchanges on or after
22 January 1, 2017.

1 **SEC. 8. CERTAIN EXCHANGES OF VIRTUAL CURRENCY**
 2 **TREATED AS NON-TAXABLE EXCHANGES.**

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

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

7 (2) in subsection (a), by adding at the end the
 8 follow new paragraph:

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

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

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to exchanges made on or after Jan-
 20 uary 1, 2017.

21 **SEC. 9. GAIN FROM SALE OR EXCHANGE OF VIRTUAL CUR-**
 22 **RENCY.**

23 (a) IN GENERAL.—Part III of subchapter B of chap-
 24 ter 1 of the Internal Revenue Code of 1986 is amended
 25 by inserting after section 139F the following new section:

1 **“SEC. 139G. GAIN FROM SALE OR EXCHANGE OF VIRTUAL**
2 **CURRENCY.**

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

7 “(b) LIMITATION.—

8 “(1) IN GENERAL.—The amount of gain ex-
9 cluded from gross income under subsection (a) with
10 respect to a sale or exchange of virtual currency
11 shall not exceed \$600.

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

16 “(c) INFLATION ADJUSTMENT.—In the case of any
17 taxable year beginning in a calendar year after 2018, the
18 dollar amount in subsection (b) shall be increased by an
19 amount equal to—

20 “(1) such dollar amount, multiplied by

21 “(2) the cost-of-living adjustment determined
22 under section 1(f)(3) for the calendar year in which
23 the taxable year begins, determined by substituting
24 ‘calendar year 2017’ for ‘calendar year 2016’ in sub-
25 paragraph (a)(ii) thereof.

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

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for part III of subchapter B of chapter 1 of such Code
5 is amended by inserting after the item relating to section
6 139F the following new item:

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

7 (c) REPORTING OF GAINS OR LOSSES.—The Sec-
8 retary of the Treasury shall issue regulations providing for
9 information returns on transactions in virtual currency (as
10 defined under section 408(m) of the Internal Revenue
11 Code of 1986) for which gain or loss is recognized.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply with respect to transactions en-
14 tered into on or after January 1, 2017.

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