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Forthcoming Bipartisan Legislation Regulating Digital Assets

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Last week, Senator Lummis of Wyoming and Senator Gillibrand of New York addressed their much-anticipated legislation on the regulation of digital assets at an event hosted by Politico called Regulating the Digital Gold Rush. Establishing a regulatory framework for the digital assets field, which includes cryptocurrency, stablecoin, and central bank digital currency, is a priority for Congress and the federal government at large. For example, in early March, President Biden signed an Executive Order on Ensuring Responsible Development of Digital Assets, which requires relevant federal agencies to submit reports and evaluations on various aspects of digital assets administration and regulation over the coming months. The senators said their legislation would cover a broad range of digital assets topics, including those addressed in the recent White House Executive Order.

Digital assets play a key role in the broader financial markets, with an estimated market capitalization of $3 trillion. That said, digital assets are highly varied, covering numerous and often divergent types of assets. The disparate nature of many digital assets has raised questions about which federal regulatory agencies should regulate them, a matter which Senator Lummis and Senator Gillibrand addressed at the event. They discussed the key role the SEC and the CFTC will play in the regulation of digital assets.

At the event, which was presented by digital assets management company Grayscale, the senators said their legislation will cover the important topics of privacy, safety and soundness, and consumer protection. Their legislation will also address the taxation of digital assets, including cryptocurrencies, which is a hotly debated topic.

One of the many interesting subjects the senators touched on was the role energy will play in digital assets development. In a recent White House brief, Dr. Alondra Nelson, head of the Office of Science and Technology Policy and Deputy Assistant to the President, stated that cryptocurrencies require “a large amount of computing resources that collectively use a lot of electricity [and that some researchers estimate that cryptocurrencies] use more electricity each year than many individual countries in the world, including some industrialized nations.” Senator Lummis discussed how energy developers in her state were addressing this issue by utilizing flare mitigation to power digital assets infrastructure. Broadly, well production of oil results in the release of natural gas byproduct. This byproduct is often captured and transported by pipeline for other uses. However, in some instances capture is unfeasible, and the natural gas is disposed of at the well site in a process called “flaring.” Oil producers and digital assets companies in Wyoming and other states are working together to utilize natural gas that would otherwise be flared to run digital assets computing resources, in many instances at the well site.

The senators plan to introduce their legislation in the coming weeks, and are optimistic of a vote by the end of the year.

You can also learn about this topic by watching the video on our YouTube channel.

If you have any questions concerning Congressional or federal agency action regarding the development of digital assets regulation and policy please do not hesitate to reach out to Kilpatrick Townsend's Government and Regulatory practice contacts Stephen Anstey at sanstey@kilpatricktownsend.com or John Loving at jloving@kilpatricktownsend.com.

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