JUNE 7, 2022

Digital Assets Regulation Framework - Commerce Solicits Public Comment

by Stephen M. Anstey

On May 19, 2022, the U.S. Department of Commerce (Commerce) published a Request for Comment titled "Developing a Framework on Competitiveness of Digital Asset Technologies" (Request for Comment). Digital assets, in this context, cover a broad array of assets, including "cryptocurrencies, stablecoins, [and central bank digital currencies (CBDCs),]" each of which has been the focus of recently proposed federal regulation and legislation. Commerce published the Request for Comment pursuant to the Biden Administration's March 9, 2022, Executive Order "Ensuring Responsible Development of Digital Assets", which requires numerous federal regulatory and executive agencies to submit reports and evaluations on digital assets regulation and administration. The Request for Comment solicits public input on various aspects of digital assets development, including: U.S. competitiveness in a global market, consumer protection, systemic risk, environmental impacts and sustainability, international trade implications, and the current and future digital assets regulatory landscape. Written comments must be received by Commerce "on or before 5 p.m. Eastern Time on July 5, 2022."

Purportedly, the Request for Comment primarily responds to the Executive Order's requirement that "[w]ithin 180 days of the date of this order, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, and the heads of other relevant agencies, shall establish a framework for enhancing United States economic competitiveness in, and leveraging of, digital asset technologies[.]" That said, the information solicited in the Request for Comment goes beyond "competitiveness." Commerce provides seventeen questions to consider, and encourages respondents to "address any or all of the […] questions, or to provide any other comments relevant to the development of the [digital assets] framework." While each of the seventeen questions address important topics, below are several that may be of particular relevance:

> Question (3): How does the current U.S. regulatory landscape affect U.S. digital asset businesses' global competitiveness? Are there future regulatory shifts that could support greater global competitiveness of U.S. digital asset businesses? How does the U.S. regulatory landscape for digital assets compare to that in finance or other comparable sectors?
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> Question (6): What, if any, is the future role of digital assets mining in the U.S. digital assets sector? Can digital assets be compatible with a low-carbon economy that emphasizes renewable energy? If so, how? In what ways can the U.S. government and U.S. companies drive competitive, sustainable (for the environment and energy consumption) development of digital assets?
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> Question (7): What impact, if any, will global deployment of central bank digital currencies (CBDC) have on the U.S. digital assets sector? To what extent would the design of a U.S. CBDC (e.g., disintermediated or intermediated, interoperable with other countries' CBDCs and other domestic and international financial services, etc.) impact the sector?

Question (10): Beyond enhanced economic competitiveness, how can the U.S. digital assets sector advance the other objectives outlined in the Executive Order? These other objectives include protection of consumers, investors, and business in the United States; protection of United States and global financial stability and the mitigation of systemic risk; and mitigation of illicit finance and national security risks posed by misuse of digital assets.

Question (12): What factors and conditions, if any, that have driven and sustained the global leadership of U.S.-based legacy financial institutions will foster the same leadership for U.S. digital asset businesses? If there are no common factors, what factors and conditions will differentiate global competitiveness for U.S. digital asset businesses?

Question (15): To what extent do new standards for digital assets and their underlying technologies need to be maintained or developed, for instance those related to custody, identity, security, privacy, and interoperability? What existing standards are already relevant? How might existing standardization efforts be harmonized to support the responsible development of digital assets?

Given the key role the Executive Order and its implementation will play in the development of a comprehensive U.S. digital assets framework, digital assets companies and those working in, or affected by, the digital assets sphere should strongly consider responding to Commerce's Request for Comment. If you have any questions concerning federal agency or Congressional action regarding the development of digital assets regulation and policy, please do not hesitate to reach out to Stephen Anstey at sanstey@kilpatricktownsend.com.

If of interest, please find our previous alerts regarding digital assets regulation:

- Stablecoin Regulation in an Unstable Time: The Fed and Treasury Address a Stablecoin Regulatory Framework – May 27, 2022
- Crypto Enforcement Is Here, and Always Has Been – May 9, 2022
- Treasury Secretary Delivers Key Remarks on Digital Assets Regulation - Three Takeaways – April 11, 2022
- Forthcoming Bipartisan Legislation Regulating Digital Assets – March 28, 2022
- Congressional and Federal Agency Action Following Executive Order on Digital Assets Policy and Regulation – March 14, 2022
- Announced Cryptocurrency Executive Order Will Shape Federal Regulations for the $3 Trillion Digital Assets Market – March 9, 2022

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