

116TH CONGRESS  
2D SESSION

# H. R. 8378

To amend the securities laws to exclude investment contract assets from the definition of a security.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2020

Mr. EMMER (for himself, Mr. CONAWAY, Mr. SOTO, and Mr. KHANNA) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the securities laws to exclude investment contract assets from the definition of a security.

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 “Securities Clarity Act”.

5 **SEC. 2. SENSE OF CONGRESS; PURPOSE.**

6 (a) SENSE OF CONGRESS.—It is the sense of Con-  
7 gress that—

8 (1) among the ways that participants in the  
9 digital asset industry have raised capital and earned  
10 revenue is through arrangements in which investors

1 provide funds for the development of blockchain-  
2 based protocols in exchange for digital assets or the  
3 future delivery of digital assets to be used in those  
4 protocols;

5 (2) although certain of those fundraising ar-  
6 rangements may be deemed to be “investment con-  
7 tracts” within the meaning given to that term in  
8 section 2(a) of the Securities Act of 1933 (the “Se-  
9 curities Act”), the underlying assets sold pursuant  
10 to these arrangements are frequently not themselves  
11 inherently securities as defined in section 2(a) of the  
12 Securities Act and, like other assets sold pursuant to  
13 investment contracts in the past, do not become se-  
14 curities as so defined merely because they are sold  
15 pursuant to an investment contract;

16 (3) under *SEC v. W.J. Howey Co.*, 328 U.S.  
17 293 (1946), and its progeny, the Federal courts  
18 have consistently held that “an investment contract,  
19 for purposes of the Securities Act, means a contract,  
20 transaction, or scheme whereby a person invests his  
21 money in a common enterprise and is led to expect  
22 profits solely from the efforts of the promoter or a  
23 third party”, and have not endorsed the notion that  
24 an asset underlying an investment contract (for ex-  
25 ample, the orange groves sold in *Howey*) is also con-

1       ferred “security” status merely as a result of its  
2       being sold pursuant to the relevant contract, trans-  
3       action, or scheme;

4           (4) although the distinction between an invest-  
5       ment contract, which is a security, and the assets  
6       sold pursuant to it had been well-settled for pur-  
7       poses of section 2(a) of the Securities Act, the two  
8       have been unnecessarily conflated in the context of  
9       digital assets; and

10          (5) this new approach, which conflates an in-  
11       vestment contract and the asset sold pursuant to  
12       that contract or scheme, differs from the approach  
13       taken in many other major jurisdictions around the  
14       world, has discouraged development of the digital  
15       asset sector in the United States, and has hindered  
16       innovation in that industry here without providing  
17       concomitant benefits to those who enter into invest-  
18       ment contracts for the purpose of acquiring digital  
19       assets.

20          (b) PURPOSE.—The purpose of this Act is to clarify  
21       and codify that an asset sold pursuant to an investment  
22       contract, whether tangible or intangible (including an  
23       asset in digital form), that is not otherwise a security  
24       under the Act, does not become a security as a result of

1 being sold or otherwise transferred pursuant to an invest-  
2 ment contract.

3 **SEC. 3. TREATMENT OF INVESTMENT CONTRACT ASSETS.**

4 (a) SECURITIES ACT OF 1933.—Section 2(a) of the  
5 Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

6 (1) in paragraph (1), by adding at the end the  
7 following: “The term ‘security’ does not include an  
8 investment contract asset.”; and

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

10 “(20) The term ‘investment contact asset’  
11 means an asset, whether tangible or intangible, in-  
12 cluding assets in digital form—

13 “(A) sold or otherwise transferred, or in-  
14 tended to be sold or otherwise transferred, pur-  
15 suant to an investment contract; and

16 “(B) that is not otherwise a security pur-  
17 suant to the first sentence of paragraph (1).”.

18 (b) INVESTMENT ADVISERS ACT OF 1940.—Section  
19 202(a)(18) of the Investment Advisers Act of 1940 (15  
20 U.S.C. 80b–2(a)(18)) is amended by adding at the end  
21 the following: “The term ‘security’ does not include an in-  
22 vestment contract asset (as such term is defined under  
23 section 2(a) of the Securities Act of 1933).”.

24 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
25 2(a)(36) of the Investment Company Act of 1940 (15

1 U.S.C. 80a-2(a)(36)) is amended by adding at the end  
2 the following: “The term ‘security’ does not include an in-  
3 vestment contract asset (as such term is defined under  
4 section 2(a) of the Securities Act of 1933).”.

5 (d) SECURITIES EXCHANGE ACT OF 1934.—Section  
6 3(a)(10) of the Securities Exchange Act of 1934 (15  
7 U.S.C. 78c(a)(10)) is amended by adding at the end the  
8 following: “The term ‘security’ does not include an invest-  
9 ment contract asset (as such term is defined under section  
10 2(a) of the Securities Act of 1933).”.

11 (e) SECURITIES INVESTOR PROTECTION ACT OF  
12 1970.—Section 16(14) of the Securities Investor Protec-  
13 tion Act of 1970 (15 U.S.C. 78lll(14)) is amended by add-  
14 ing at the end the following: “The term ‘security’ does  
15 not include an investment contract asset (as such term  
16 is defined under section 2(a) of the Securities Act of  
17 1933).”.

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