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118TH CONGRESS
2D SESSION

H. R. 10561

To codify the special purpose broker dealer, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 27, 2024

Mr. DAVIDSON introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To codify the special purpose broker dealer, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Broker-Dealer Tokenization Act".

SEC. 2. REGISTRATION AND REGULATION OF APPROVED BROKERS AND DEALERS FOR QUALIFIED TOKENIZED SECURITIES.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G the following:

"SEC. 15H. REGISTRATION AND REGULATION OF APPROVED BROKERS AND DEALERS FOR QUALIFIED TOKENIZED SECURITIES.

"(a) REGISTRATION.—

"(1) IN GENERAL.—A registered broker or dealer may register with a national securities association as an 'approved broker or dealer for qualified tokenized securities', if the registered broker or dealer complies with the requirements specified in subsection (b).

"(2) RULE OF CONSTRUCTION.—A registered broker or dealer performing activities unrelated to qualified tokenized securities or permitted payment stablecoins may register with a national securities association as an 'approved broker or dealer for qualified tokenized securities' to the same extent as a registered broker or dealer only performing activities related to qualified tokenized securities or permitted payment stablecoins.

"(b) REQUIREMENTS.—With respect to a registered broker or dealer, the requirements specified in this subsection are the following:

"(1) The broker or dealer complies with Rule 15c3–3 (17 CFR 240.15c3–3) (and any successor rule), except that, for purposes of complying with such Rule:

"(A) Permitted payment stablecoins shall be treated as funds.

"(B) The broker or dealer shall be deemed to have control of a qualified tokenized security or permitted payment stablecoin if—

"(i) the broker or dealer has access to the qualified tokenized security or permitted payment stablecoin and the capability to transfer it using the associated distributed ledger technology;

"(ii) the broker or dealer establishes, maintains, and enforces reasonably designed written policies and procedures to assess the characteristics of a qualified tokenized security's distributed ledger technology and associated network prior to undertaking to maintain custody of the qualified tokenized security and at reasonable intervals thereafter;

"(iii) the broker or dealer—

"(I) is not aware of, or is aware of and is able to promptly mitigate or eliminate, any material security or operational problems or weaknesses with the distributed ledger technology and associated network used to access and transfer the qualified tokenized security or permitted payment stablecoin; and

“(II) is not aware of other material risks posed to the business of the broker or dealer by the qualified tokenized security or permitted payment stablecoin;

“(iv) the broker or dealer establishes, maintains, and enforces reasonably designed written policies, procedures, and controls that are consistent with industry best practices to—

“(I) demonstrate the broker or dealer has exclusive control over any qualified tokenized securities and permitted payment stablecoins the broker or dealer holds in custody; and

“(II) protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the qualified tokenized securities and the permitted payment stablecoins the broker or dealer holds in custody; and

“(v) the broker or dealer establishes, maintains, and enforces reasonably designed written policies, procedures, and arrangements to—

“(I) identify, in advance, the steps the broker or dealer will take in response to events that could affect custody of qualified tokenized securities or permitted payment stablecoins, including—

“(aa) blockchain malfunctions;

“(bb) 51 percent attacks;

“(cc) hard forks; or

“(dd) airdrops;

“(II) allow for the broker or dealer to comply with a court-ordered freeze or seizure of a qualified tokenized security or permitted payment stablecoin; and

“(III) allow for the transfer of the qualified tokenized securities or permitted payment stablecoins held by the broker or dealer to another approved broker or dealer for qualified tokenized securities, a trustee, receiver, liquidator, or person performing a similar function, or to another appropriate person, in the event the broker or dealer can no longer continue as a going concern and self-liquidates or is subject to a formal bankruptcy, receivership, liquidation, or similar proceeding.

"(2) The broker or dealer establishes, maintains, and enforces reasonably designed written policies and procedures that protect against risks that the custody of qualified tokenized securities or permitted payment stablecoins may have on other aspects of the business of the broker or dealer that are not directly related to the custody of qualified tokenized securities and permitted payment stablecoins.

"(3) The broker or dealer establishes, maintains, and enforces reasonably designed written policies and procedures to conduct and document an analysis that confirms that a qualified tokenized security is offered and sold pursuant to an effective registration statement or an available exemption from registration.

"(4) The broker or dealer provides written disclosures to prospective customers on behalf of whom the broker or dealer would be transacting in qualified tokenized securities or permitted payment stablecoins, clarifying the following:

"(A) The broker or dealer is deemed to be in control of qualified tokenized securities or permitted payment stablecoins for the purposes of paragraph (b)(1) of Rule 15c3–3.

"(B) The risks of investing in or holding qualified tokenized securities or permitted payment stablecoins, including by—

"(i) describing the risks of fraud, manipulation, theft, and loss associated with qualified tokenized securities or permitted payment stablecoins;

"(ii) describing the risks relating to valuation, price volatility, and liquidity associated with qualified tokenized securities; and

"(iii) describing, at a high level that would not compromise any security protocols, the processes, software and hardware systems, and any other formats or systems utilized by the broker or dealer to—

"(I) create, store, or use the broker or dealer's private keys; and

"(II) protect those private keys from loss, theft, or unauthorized or accidental use.

"(5) The broker or dealer enters into a written agreement with each customer on behalf of whom the broker or dealer will be transacting in qualified tokenized securities or permitted payment stablecoins that sets forth the terms and conditions with respect to receiving, purchasing, holding, safe-keeping, selling, transferring, exchanging, custodying, liquidating, and otherwise transacting in qualified tokenized securities or permitted payment stablecoins on behalf of the customer.

"(6) The broker or dealer obtains any approval required under the rules of any national securities association of which the broker of dealer is a member prior to operating as an approved broker or dealer for qualified tokenized securities.

"(c) CONSIDERATION OF APPLICATIONS.—With respect to a membership application to operate as an approved broker or dealer for qualified tokenized securities, a registered national securities association shall—

"(1) make a final decision on the application not more than 120 days after the later of—

"(A) the date it receives the application;

"(B) if the application is amended or supplemented after it is received, the date of the final amendment or supplement to such application; or

"(C) such later date as the applicant may specify in a writing to such registered national securities association;

"(2) with respect to an application that is denied by the registered national securities association—

"(A) include with the denial an explanation in detail of the reason for denial; and

"(B) permit the broker or dealer to reapply; and

"(3) prioritize applications submitted by a member which has been approved to operate under the conditions set out in the statement of the Securities and Exchange Commission titled 'Custody of Digital Asset Securities by Special purpose brokers or dealers' (86 Fed. Reg. 11627; published February 26, 2021).

"(d) RULEMAKING.—

"(1) POSSESSION OR CONTROL OF QUALIFIED TOKENIZED SECURITIES AND PERMITTED PAYMENT STABLECOINS.—Not later than 12 months after the date of enactment of this section, the Commission shall issue a rule to amend section 240.15c3–3 of title 17, Code of Federal Regulations to—

"(A) apply appropriate customer protection requirements for permitted payment stablecoins for purposes of custodying such permitted payment stablecoins by brokers or dealers; and

"(B) provide that a qualified tokenized security or permitted payment stablecoin shall be deemed to be under the control of a broker or dealer under conditions substantially similar to those specified in subsection (b)(1)(B), with such modifications as the Commission may consider necessary or appropriate in the public interest or for the protection of investors.

"(2) CLARIFICATION OF RECORDKEEPING AND REPORTING RULES.—Following the date on which final rules are issued under paragraph (1)(B), the Commission may amend sections 240.17a–3, 240.17a–4, and 240.17a–5 of title 17, Code of Federal Regulations, as well as any other sections the Commission determines necessary, to clarify the application of these recordkeeping and reporting requirements with respect to qualified tokenized securities and permitted payment stablecoins, including by clarifying the manner in which blockchain-based records are treated as meeting recordkeeping and reporting requirements.

''(e) DEFINITIONS.—In this section:

''(1) APPROVED BROKER OR DEALER FOR QUALIFIED TOKENIZED SECURITIES.—The term 'approved broker or dealer for qualified tokenized securities' means a registered broker or dealer that carries permitted payment stablecoins or qualified tokenized securities for the account of any customers or other brokers or dealers.

''(2) PERMITTED PAYMENT STABLECOIN.—

''(A) IN GENERAL.—The term 'permitted payment stablecoin' means a digital asset issued using distributed ledger technology—

''(i) that is or is designed to be used as a means of payment or settlement;

''(ii) the issuer of which—

"(I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value;

"(II) represents will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value; and

"(III) is subject to regulation by a Federal or State regulator with authority over entities that issue payment stablecoins; and

"(iii) that is not—

"(I) a national currency; or

"(II) a security issued by an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)).

"(B) MONETARY VALUE DEFINED.—For purposes of subparagraph (A), the term 'monetary value' means a national currency, deposit (as defined under section 3 of the Federal Deposit Insurance Act), or an equivalent instrument that is denominated in a national currency.

"(3) QUALIFIED TOKENIZED SECURITY.—The term 'qualified tokenized security' means a security that is issued and transferred using distributed ledger technology as the primary record of ownership;".

(b) EXISTING SPECIAL PURPOSE BROKERS OR DEALERS.—No registered national securities association shall require a member which has been approved to operate under the conditions set out in the statement of the Securities and Exchange Commission titled "Custody of Digital Asset Securities by Special purpose brokers or dealers" (86 Fed. Reg. 11627; published February 26, 2021) to complete a membership application to continue its approved scope of business.

(c) SUNSET.—Section 15H of the Securities Exchange Act of 1934 is repealed effective on the effective date of the final rule required under section 15H(d)(1) of the Securities Exchange Act of 1934 is issued.

SEC. 3. STUDY ON FINANCIAL MARKET INFRASTRUCTURE IMPROVEMENTS.

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to assess whether additional guidance or rules are necessary to facilitate the development of tokenized securities, to the extent such guidance or rules would foster the development of fair and orderly financial markets, be necessary or appropriate in the public interest, and be consistent with the protection of investors and customers.

(b) REPORT.—

(1) TIME LIMIT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit to the relevant congressional committees a report that includes the results of the study required by subsection (a).

(2) RELEVANT CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ''relevant congressional committees'' means—

(A) the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Banking, Housing, and Urban Affairs of the Senate.

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