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Corn, Wheat, Hogs and … NFTs?

On June 7, Senators Kirsten Gillibrand, D-N.Y., and Cynthia Lummis, R-Wy., introduced the Responsible Financial Innovation Act (RFIA), a bipartisan bill that, if enacted, would create a complete regulatory framework for digital assets, including non-fungible tokens (NFTs). While only a proposed bill, the bill is significant in that it telegraphs current congressional thinking on the future regulation of NFTs – something that all involved in the NFT space should be monitoring closely and planning for.

The most significant facet of this bill is that it would treat NFTs as a commodity subject to regulation by the Commodity Futures Trading Commission (CFTC) and not the Securities and Exchange Commission, as many have anticipated. The CFTC is the federal agency tasked with regulating the commodity futures and options markets. Commodities include agricultural products, metals and certain financial instruments, among others. Designation of the CFTC as responsible for NFTs may alter the way technology companies using NFTs plan to conduct business.

The scope of the RFIA and the requirements included in it are extensive and, of course, may never become law or may be materially amended by Congress. That said, businesses utilizing NFTs or operating in the NFT space should be aware of a few core requirements in the bill, including that digital asset issuers (1) maintain high-quality liquid assets valued at 100 percent of the face value of all outstanding payments; (2) publicly disclose relevant information about the assets backing the stablecoin and their value; and (3) have the financial backing to redeem all outstanding stablecoin payments at par.

NFT regulation is coming, and the RFIA is a strong hint at what Congress foresees. Businesses should consider how their current and future NFT plans may be affected by a move into the commodity markets and CFTC regulation.

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Authors



Kritika Bharadwaj
Partner

New York, NY | (212) 297-2477

kbharadwaj@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Alex P. Garens
Partner

Boston, MA | (617) 345-4872

agarens@daypitney.com



William J. Roberts
Partner

Hartford, CT | (860) 275-0184

wroberts@daypitney.com



Mindy S. Tompkins
Partner

Hartford, CT | (860) 275-0139

mtompkins@daypitney.com



Stephanie M. Gomes-Ganhão
Associate

Hartford, CT | (860) 275-0193

sgomesganhao@daypitney.com



John F. Kaschak
Associate

Parsippany, NJ | (973) 966-8034

jkaschak@daypitney.com



Phoebe A. Roth
Senior Associate

New Haven, CT | (203) 752-5045

proth@daypitney.com