

118TH CONGRESS
1ST SESSION

S. _____

To address advertising by digital asset intermediaries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. SINEMA (for herself and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To address advertising by digital asset intermediaries, and for other purposes.

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 “Responsible Digital
5 Asset Advertising Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COMMISSIONS.—The term “Commissions”
9 means the Securities and Exchange Commission and
10 the Commodity Futures Trading Commission, acting
11 jointly.

1 (2) COVERED ADVERTISEMENT.—The term
2 “covered advertisement”—

3 (A) means a communication that—

4 (i) relates to—

5 (I) the desirability of purchasing
6 or entering into a transaction for a
7 digital asset; or

8 (II) the availability of digital
9 asset-related services; and

10 (ii) is widely available to the general
11 public, as specified by rule of the Commis-
12 sions; and

13 (B) includes any script, slide, handout, or
14 other written (including electronic) material
15 used in connection with a public appearance
16 with respect to a digital asset or the availability
17 of digital asset-related services.

18 (3) DIGITAL ASSET.—The term “digital asset”
19 means a natively electronic asset that—

20 (A) confers economic, proprietary, or ac-
21 cess rights or authorities; and

22 (B) is recorded using cryptographically-se-
23 cured distributed ledger technology, or any
24 similar analogue.

1 (4) DIGITAL ASSET INTERMEDIARY.—The term
2 “digital asset intermediary” means a person that—

3 (A) holds a license, registration, or other
4 similar authorization pursuant to the Com-
5 modity Exchange Act (7 U.S.C. 1 et seq.), the
6 Securities Act of 1933 (15 U.S.C. 77a et seq.),
7 the Corporation of Foreign Bondholders Act,
8 1933 (15 U.S.C. 77bb et seq.), the Trust In-
9 denture Act of 1939 (15 U.S.C. 77aaa et seq.),
10 the Securities Exchange Act of 1934 (15
11 U.S.C. 78a et seq.), the Securities Investor Pro-
12 tection Act of 1970 (15 U.S.C. 78aaa et seq.),
13 the Investment Company Act of 1940 (15
14 U.S.C. 80a–1 et seq.), the Investment Advisers
15 Act of 1940 (15 U.S.C. 80b–1 et seq.), or the
16 Omnibus Small Business Capital Formation
17 Act of 1980 (title V of Public Law 96–2); and
18 (B) engages in market activities relating to
19 digital assets.

20 **SEC. 3. ADVERTISING BY DIGITAL ASSET INTERMEDIARIES.**

21 (a) APPROVAL BY OFFICER.—Before a digital asset
22 intermediary may make a covered advertisement available
23 to the public, an officer of the digital asset intermediary
24 shall be required to approve that covered advertisement

1 and certify compliance with the requirements of this sec-
2 tion.

3 (b) PROCEDURES.—

4 (1) IN GENERAL.—Each digital asset inter-
5 mediary shall establish written procedures, which are
6 appropriate and reasonable to the business, size,
7 structure, and customers of the digital asset inter-
8 mediary, for the review of covered advertisements, as
9 required under subsection (a), which shall include—

10 (A) provisions for the education and train-
11 ing of applicable employees of the digital asset
12 intermediary regarding the procedures of the
13 digital asset intermediary governing covered ad-
14 vertisements;

15 (B) documentation of the education and
16 training required under subparagraph (A); and

17 (C) surveillance and follow-up measures to
18 ensure that the digital asset intermediary im-
19 plements and adheres to those procedures.

20 (2) RECORDKEEPING.—

21 (A) PERIOD OF MAINTENANCE.—Each dig-
22 ital asset intermediary shall maintain the
23 records required under this subsection for not
24 less than 5 years.

1 (B) TYPES OF RECORDS.—The types of
2 records that a digital asset intermediary is re-
3 quired to maintain under subparagraph (A) in-
4 clude, with respect to each covered advertise-
5 ment made by the digital asset intermediary—

6 (i) a copy of the covered advertise-
7 ment;

8 (ii) the dates of the first and, if appli-
9 cable, last use of the covered advertise-
10 ment;

11 (iii) the name of the officer of the digi-
12 tal asset intermediary who approved the
13 covered advertisement, as required under
14 subsection (a), including the date on which
15 the officer gave that approval;

16 (iv) information concerning the source
17 of all data, statistical tables, charts,
18 graphs, or other illustrations or outside
19 sources used in the covered advertisement;
20 and

21 (v) for a covered advertisement that
22 includes or incorporates a performance
23 ranking or comparison with another digital
24 asset intermediary, a copy of the ranking
25 or performance used.

1 (c) REQUIREMENTS FOR COVERED ADVERTISE-
2 MENTS.—Each covered advertisement shall adhere to the
3 following standards:

4 (1) The covered advertisement shall—

5 (A) be based on principles of fair dealing
6 and good faith; and

7 (B) provide a sound basis for evaluating
8 the facts with respect to any particular digital
9 asset or type of digital asset, industry, or serv-
10 ice that is the subject of the covered advertise-
11 ment.

12 (2) The covered advertisement may not omit
13 any material fact or qualification if that omission, in
14 light of the context of the material presented, would
15 cause the covered advertisement to be misleading.

16 (3) The covered advertisement may not make
17 any false, exaggerated, unwarranted, promissory, or
18 misleading statement or claim.

19 (4) Information may be placed in a legend or
20 footnote within the covered advertisement only if
21 that placement would not inhibit understanding of
22 the covered advertisement.

23 (5) The covered advertisement shall be con-
24 sistent with risks that are present with respect to
25 the subject matter of the covered advertisement, in-

1 including volatility with respect to the value of digital
2 assets, the amount of potential returns, and oper-
3 ational risks for digital asset intermediaries.

4 (6) The covered advertisement shall—

5 (A) consider the nature of the audience to
6 which the covered advertisement will be di-
7 rected; and

8 (B) provide details and explanations that
9 are appropriate for the audience described in
10 subparagraph (A).

11 (7)(A) The covered advertisement may not pre-
12 dict or project performance, imply that past per-
13 formance will recur, or make any exaggerated or un-
14 warranted claim, opinion, or forecast.

15 (B) Nothing in subparagraph (A) may be con-
16 strued to prohibit the use of—

17 (i) a hypothetical illustration of mathe-
18 matical principles, if that illustration does not
19 predict or project the performance of a par-
20 ticular strategy;

21 (ii) an analysis tool, or a written report
22 produced by an analysis tool; or

23 (iii) a price target contained in a research
24 report, if the target has a reasonable basis, the
25 report discloses the valuation methods used to

1 determine the price target, and the price target
2 is accompanied by a disclosure concerning the
3 risks that may impede achievement of the price
4 target.

5 (8) Any comparison in the covered advertise-
6 ment between digital assets, digital asset inter-
7 mediaries, or digital asset-related services shall dis-
8 close key material differences between the applicable
9 items, including, as applicable, differences with re-
10 spect to return objectives, costs and expenses, liquid-
11 ity, safety, guarantees or insurance, volatility, and
12 tax features.

13 (9) The covered advertisement shall promi-
14 nently disclose the following:

15 (A) The fact that the covered advertise-
16 ment is governed by this section and is subject
17 to Federal law.

18 (B) The name of the applicable digital
19 asset intermediary.

20 (C) The name of the officer who made the
21 certification with respect to the covered adver-
22 tisement, as required under subsection (a).

23 (D) Any relationship between the applica-
24 ble digital asset intermediary and any person
25 that appears in the covered advertisement or

1 any compensation offered by that digital asset
2 intermediary to such a person.

3 (E) Registrations, licenses, or other au-
4 thorizations in good standing that are held by
5 the applicable digital asset intermediary.

6 (10)(A) In the covered advertisement, any ref-
7 erence to tax-free or tax-exempt income shall indi-
8 cate which taxes apply, or which do not, unless in-
9 come is free from all applicable taxes.

10 (B) For the purposes of subparagraph (A), the
11 covered advertisement may not characterize income
12 or returns as tax-free or exempt from income tax if
13 tax liability is merely postponed or deferred, such as
14 when taxes are payable upon redemption.

15 (C) The Commissions may, by rule, adopt fur-
16 ther standards regarding tax considerations that ap-
17 pear in covered advertisements.

18 (11) The covered advertisement shall disclose
19 the amounts of the following fees with respect to the
20 digital asset or digital asset-related services that are
21 the subject of the covered advertisement, which shall
22 be set forth prominently and, in any print advertise-
23 ment, in a prominent text box that contains only
24 such information:

25 (A) Custody fees.

1 (B) Account fees.

2 (C) Applicable bank fees.

3 (12) If any testimonial in the covered advertise-
4 ment concerns a technical aspect of purchasing or
5 otherwise entering into a transaction for digital as-
6 sets—

7 (A) the person making the testimonial
8 shall have the knowledge and experience to
9 form a valid opinion regarding the issue; and

10 (B) the testimonial, if the testimonial con-
11 cerns the advisability of purchasing digital as-
12 sets or the performance of a digital asset, shall
13 prominently disclose—

14 (i) the fact that the testimonial may
15 not be representative of the experience of
16 other customers;

17 (ii) the fact that the testimonial is no
18 guarantee of future performance or suc-
19 cess; and

20 (iii) if more than \$1,000 in value is
21 paid for the testimonial—

22 (I) the fact that the testimonial
23 is a paid testimonial; and

24 (II) the amount and type of com-
25 pensation paid, which shall include, if

1 compensation was paid in digital as-
2 sets, an identification of each specific
3 digital asset.

4 (13) If the covered advertisement includes a
5 recommendation to purchase, or otherwise transact
6 in, a digital asset, the covered advertisement shall—

7 (A) have a reasonable basis for the rec-
8 ommendation; and

9 (B) if applicable, disclose—

10 (i) that, at the time the covered adver-
11 tisement was published or distributed, the
12 applicable digital asset intermediary was
13 conducting trading activities in the digital
14 asset;

15 (ii) that the applicable digital asset
16 intermediary—

17 (I) is directly and materially in-
18 volved in the preparation of the con-
19 tent of the covered advertisement; and

20 (II) has a financial interest the
21 digital assets being recommended; and

22 (iii) the nature of any financial inter-
23 est disclosed under clause (ii), including
24 whether that financial interest consists of
25 any option, right, warrant, future, or long

1 or short position, unless the extent of that
2 financial interest is nominal.

3 (14)(A) Except as otherwise provided by sub-
4 paragraph (B), the covered advertisement may not
5 refer, directly or indirectly, to past specific rec-
6 ommendations made by the applicable digital asset
7 intermediary that were or would have been profitable
8 to any person.

9 (B) The covered advertisement may set out or
10 offer to furnish a list of all recommendations as to
11 the same type of digital assets made by the applica-
12 ble digital asset intermediary during the 1-year pe-
13 riod preceding the date on which the covered adver-
14 tisement is released, if the communication or list—

15 (i) states the name of each digital asset
16 recommended, the date and nature of each such
17 recommendation (such as whether to buy, sell,
18 or hold the digital asset), the market price (as
19 of the date of the recommendation), the price at
20 which a person was meant to act upon the rec-
21 ommendation, and the market price of each
22 such digital asset, as of the most recent prac-
23 ticable date; and

24 (ii) contains the following warning, which
25 shall appear prominently within the communica-

1 tion or list: “it should not be assumed that rec-
2 ommendations made in the future will be profit-
3 able or will equal the performance of the digital
4 assets in this list.”.

5 (d) SOURCES SUPPORTING A RECOMMENDATION.—

6 (1) IN GENERAL.—A digital asset intermediary
7 shall provide, or offer to provide upon request, avail-
8 able information or sources supporting any rec-
9 ommendation described in subsection (c)(13).

10 (2) PRICE DISCLOSURE.—When a digital asset
11 intermediary recommends a digital asset in a cov-
12 ered advertisement, as described in subsection
13 (c)(13), the digital asset intermediary shall provide
14 the price of the digital asset, as of the date on which
15 the recommendation is made.

16 (e) INFORMATION PROVIDED IN PUBLIC APPEAR-
17 ANCES.—

18 (1) IN GENERAL.—When an officer or employee
19 of a digital asset intermediary is sponsoring or par-
20 ticipating in a seminar, forum, or radio or television
21 interview, or when such an individual is otherwise
22 engaged in a public appearance or speaking activity,
23 paragraphs (1), (2), and (3) of subsection (c) shall
24 apply to that appearance to the same extent as those
25 provisions apply to a covered advertisement.

1 (2) RECOMMENDATIONS.—If an officer or em-
2 ployee of a digital asset intermediary recommends a
3 digital asset in a public appearance, that individual
4 shall—

5 (A) have a reasonable basis for the rec-
6 ommendation; and

7 (B) disclose, as applicable—

8 (i) whether the individual has a finan-
9 cial interest in the digital asset rec-
10 ommended;

11 (ii) the nature of the financial interest
12 disclosed under clause (i), including wheth-
13 er that financial interest consists of any
14 option, right, warrant, future, or long or
15 short position, unless the extent of that fi-
16 nancial interest is nominal; and

17 (iii) any other actual, material conflict
18 of interest of which the individual knows or
19 has reason to know at the time of the pub-
20 lic appearance.

21 (f) PROCEDURES FOR PUBLIC APPEARANCES.—Each
22 digital asset intermediary shall establish written proce-
23 dures that are appropriate and reasonable to the business,
24 size, structure, and customers of the digital asset inter-
25 mediary in order to supervise the public appearances of

1 the officers and employees of the digital asset inter-
2 mediary, which shall include—

3 (1) provisions for the education and training of
4 employees of the digital asset intermediary regarding
5 those procedures;

6 (2) documentation of the education and train-
7 ing required under paragraph (1); and

8 (3) surveillance and follow-up measures to en-
9 sure that the digital asset intermediary implements
10 and adheres to those procedures.

11 (g) ENFORCEMENT BY COMMISSIONS.—

12 (1) IN GENERAL.—The Securities and Ex-
13 change Commission, the Commodity Futures Trad-
14 ing Commission, or any applicable self-regulatory or-
15 ganization operating under delegated authority by
16 the appropriate commission, as applicable to a dig-
17 ital asset intermediary, shall regularly ascertain the
18 compliance with this section by the digital asset
19 intermediary (and applicable individuals) at the time
20 of each regular examination of the intermediary by
21 the applicable entity.

22 (2) INVESTIGATIONS.—The appropriate com-
23 mission or self-regulatory organization, as applica-
24 ble, may conduct an investigation into a suspected
25 violation of this section and take enforcement action

1 outside of a regular examination of a digital asset
2 intermediary, which shall be comprised of the fol-
3 lowing:

4 (A) With respect to such a violation by
5 that digital asset intermediary, the following:

6 (i) For an initial violation of this sec-
7 tion, the imposition of a civil monetary
8 penalty in an amount that is not more
9 than \$100,000.

10 (ii) For any subsequent violation of
11 this section, the imposition of a civil mone-
12 tary penalty in an amount that is not more
13 than \$1,000,000.

14 (iii) The enjoinder of future viola-
15 tions of this section by the digital asset
16 intermediary and the requirement that the
17 digital asset intermediary submit to the en-
18 forcing entity appropriate remediation
19 plans.

20 (B) For repeated, knowing violations of
21 this section by an individual, the imposition of
22 a temporary or permanent bar from the digital
23 asset industry with respect to that individual.

24 (h) APPLICABILITY TO DISCLOSURES.—A document
25 filed with the Securities and Exchange Commission, as

1 otherwise required by law or regulation, is not subject to
2 the requirements of this section.

3 (i) RULES.—The Commissions, after not less than a
4 120-day comment period, shall adopt rules to implement
5 this section.

6 (j) AUTHORIZATION OF APPROPRIATIONS.—For the
7 purposes of appointing employees to enforce the require-
8 ments of this section, and for other costs relating to the
9 enforcement of this section, there is authorized to be ap-
10 propriated, for fiscal year 2023, to remain available until
11 September 30, 2024—

12 (1) \$25,000,000 to the Securities and Ex-
13 change Commission; and

14 (2) \$25,000,000 to the Commodity Futures
15 Trading Commission.

16 **SEC. 4. OFFSETTING THE COSTS OF DIGITAL ASSET ADVER-**
17 **TISING SUPERVISION.**

18 (a) RECOVERY OF CERTAIN COSTS OF ANNUAL AP-
19 PROPRIATIONS.—

20 (1) IN GENERAL.—Beginning October 1, 2024,
21 the Securities and Exchange Commission and the
22 Commodity Futures Trading Commission may, joint-
23 ly, by rule, collect fees—

1 (A) to fund expenses relating to the super-
2 vision of advertising by digital asset inter-
3 mediaries; and

4 (B) that are designed to recover the costs
5 to the Federal Government of the annual ap-
6 propriation to each commission by Congress for
7 the cost of the supervision of advertising by dig-
8 ital asset intermediaries.

9 (2) REGISTERED ENTITIES.—A fee shall be im-
10 posed under paragraph (1) only—

11 (A) on an entity that—

12 (i) is licensed, registered, or similarly
13 authorized pursuant to a provision of law
14 described in section 2(4)(A); and

15 (ii) is engaged in activities relating to
16 digital assets, including a digital asset
17 intermediary that is registered with either
18 commission as otherwise may be provided
19 by Federal law; and

20 (B) in relation to the regulation of those
21 activities under a provision of law described in
22 section 2(4)(A).

23 (3) FEE RATES.—A fee imposed under para-
24 graph (1) shall—

1 (A) be strictly related to the cost to the
2 Commissions relating to the supervision of ad-
3 vertising by digital asset intermediaries;

4 (B) minimize negative impacts on market
5 liquidity; and

6 (C) maintain the efficiency, competitive-
7 ness, and financial integrity of digital asset
8 markets.

9 (4) COLLECTION OF FEES.—The Commissions
10 shall collect fees under this subsection in such man-
11 ner and within such time as may be specified by the
12 Commissions, by rule.

13 (b) FEE RATE ORDERS.—

14 (1) IN GENERAL.—Each fiscal year, the Com-
15 missions shall jointly adopt an order setting rates
16 for fees that are collected under subsection (a) dur-
17 ing that fiscal year.

18 (2) PUBLICATION.—The Commissions shall
19 publish in the Federal Register each order adopted
20 under paragraph (1), which shall include—

21 (A) projections on which the fees are
22 based; and

23 (B) an explanation of the method used for
24 calculating applicable fee rates.

25 (c) DEPOSIT OF FEES.—

1 (1) OFFSETTING COLLECTIONS.—Fees collected
2 under subsection (a) for any fiscal year shall—

3 (A) be split evenly between the Commis-
4 sions;

5 (B) be deposited and credited as offsetting
6 collections to the accounts providing appropria-
7 tions to each respective commission; and

8 (C) not be collected or available for obliga-
9 tion for any fiscal year except to the extent pro-
10 vided in advance in appropriation Acts.

11 (2) GENERAL REVENUES PROHIBITED.—No fee
12 collected under subsection (a) may be deposited and
13 credited as general revenue of the Treasury.

14 (d) LAPSE OF APPROPRIATIONS.—If a regular appro-
15 priation to a commission has not been enacted on the first
16 day of a fiscal year, the commission shall continue to col-
17 lect fees under this section at the rates in effect on Sep-
18 tember 30 of the preceding fiscal year until the regular
19 appropriation for the fiscal year has been enacted and the
20 commission has published fees based on the appropriation
21 under subsection (b)(2).

22 (e) LIMITATIONS.—

23 (1) LEVERAGED, MARGINED, OR FINANCED
24 TRANSACTIONS.—Nothing in this section may be
25 construed to authorize the imposition of fees on a

1 registered entity relating to leveraged, margined, or
2 financed transactions under this Act, including those
3 activities relating to digital assets.

4 (2) OTHER APPROPRIATIONS.—Notwithstanding
5 any other provision of law, a commission may use
6 appropriations otherwise made available by law to
7 fund expenses relating to the supervision of digital
8 asset advertising under section 2.

9 (f) CEILING ON FEES.—Unless otherwise provided by
10 law, the total amount of fees collected under this section
11 shall not exceed \$50,000,000.