The Financial Innovation and Technology for the 21st Century Act

AT A GLANCE FOR THE GUAPCOIN COMMUNITY AND OTHERS

JULY 2023

Cryptocurrencies

What is The Financial Innovation and Technology for the 21st Century Act?

The Financial Innovation and Technology for the 21st Century Act, or FinTech Act, establishes a legal framework for regulating cryptocurrencies and other digital assets in the United States. The Act gives the Commodity Futures Trading Commission (CFTC) oversight of decentralized "digital commodities" like Bitcoin, while the Securities and Exchange Commission (SEC) regulates more centralized "digital assets."

Companies can temporarily operate crypto exchanges and brokerages while regulators finalize rules. Cryptocurrencies that meet decentralization criteria can trade more freely as commodities, while those that don't yet are securities. The Act requires exchanges, brokers, dealers and other crypto firms follow regulations around disclosures, cybersecurity, conflicts of interest, customer protections, and cooperation with authorities.

Banks are expressly permitted to provide crypto custody services overseen by financial regulators. New SEC and CFTC offices will focus on supporting ethical crypto innovation. Advisory committees will monitor implementation and make recommendations.

While increasing oversight in key areas, the FinTech Act balances regulation with encouraging innovation. By providing regulatory clarity and flexibility, coordinating across agencies, and directing further study of emerging trends, the groundwork is laid for prudent blockchain technology growth in the US.

What does the FinTech Act do?

The main things the FinTech Act does are:

- Gives the Commodity Futures Trading Commission (CFTC) powers to regulate "digital commodities" like Bitcoin.
- Gives the Securities and Exchange Commission (SEC) powers to regulate "digital assets" that are considered investment securities.
- Allows companies to temporarily operate crypto exchanges and brokerages while final rules are written.
- Widely used cryptos like Bitcoin can trade freely if they meet conditions around decentralization.
- Requires exchanges, brokers and other crypto firms follow regulations around risks, capital, protecting customers, etc.
- Makes it easier for crypto companies to get feedback and guidance from regulators.
- Orders studies on trends like decentralized finance and sets new advisory groups.

So in essence, it establishes a legal framework to regulate cryptocurrencies, protect consumers, and encourage crypto innovation in the United States.

What does the Bill define as "Decentralized"

Decentralization refers to how dispersed control and decision making power is within a cryptocurrency or blockchain network. It's a key concept in the FinTech Act.

Networks like Bitcoin and Ethereum are decentralized because:

- No single person or company controls the network. It's open for anyone to participate in.
- Changes to the underlying code can only be made if there's consensus among users.
- Operations like adding new transactions are done by a dispersed network of miners and computers.

This is different from a centralized system like a traditional bank, where all the control and power sits with a central authority.

The FinTech Act says cryptocurrencies that meet a "decentralization test" can be treated as commodities. This means lighter regulation. Cryptos that don't meet the test are securities with stricter oversight.

What is the decentralization test?

For a crypto token or blockchain network to be considered "decentralized" under the FinTech Act, it must meet criteria like:

- Having its transaction history publicly verifiable.
- No person or group has unilateral power to change the network rules.
- Less than 20% of the crypto assets are owned by an issuer or affiliated group.
- The crypto has been distributed widely through mining or other means.
- The network is functional and allows transfers of value.
- No entity did special marketing of the crypto asset as an investment recently.

So Bitcoin for example would likely pass the decentralization test. But a more centralized crypto managed by a single startup likely wouldn't.

Under the FinTech Act:

- A "digital commodity" is a crypto asset like Bitcoin that passes the decentralization test.
- It also includes tokens legally deemed commodities prior to the Act.
- And any crypto that was acquired through mining or on a decentralized exchange, even before it passed the decentralization test.
- So widely used, decentralized cryptocurrencies like Bitcoin, Ether and some others would be "digital commodities."

The CFTC regulates digital commodities similarly to other commodities like gold. There are fewer disclosures and investor protections involved compared to securities.

What is a digital commodity?

What is a digital asset security?

The FinTech Act says any digital asset that doesn't qualify as a commodity is defaulted to being a security, called a "digital asset."

This includes:

- Cryptocurrencies that don't pass the decentralization criteria yet.
- Tokens issued through an investment contract like an ICO.
- Any asset sold as a security prior to the Act.

These types of more centralized, investment-based cryptocurrencies have to follow all the standard securities regulations under the SEC.

Can a crypto change from security to commodity?

Yes, an important part of the FinTech Act is that cryptocurrencies can evolve from being defined as securities to commodities.

Many crypto assets start out centralized as they are developed and owned by a startup. But over time they can decentralize and pass the FinTech Act's decentralization test.

Once a crypto token or blockchain network meets the criteria to qualify as decentralized, it would then fall under the CFTC's oversight as a digital commodity, rather than the stricter SEC securities rules.

This allows cryptos to mature over time into a commodity framework that supports innovation and mainstream adoption.

Banks & Exchanges

How does the FinTech Act affect crypto exchanges?

The FinTech Act establishes regulatory frameworks for cryptocurrency exchanges in the United States:

Exchanges trading digital commodities must register with the CFTC as "Digital Commodity Exchanges."

Exchanges trading digital asset securities must register with the SEC as "Digital Asset Trading Systems."

Exchanges can temporarily operate while regulators finalize registration rules and requirements. But even initially, exchanges must comply with guidelines around:

- Disclosing risks and trading rules
- Protecting customer funds
- Meeting capital requirements
- Cooperating with regulators
- Avoiding conflicts of interest
- Following cybersecurity standards
- Requiring registration and baseline standards helps protect consumers while still allowing crypto exchanges to innovate.

The SEC and CFTC will coordinate closely so rules don't conflict across different types of exchanges. But overall the FinTech Act puts in place guardrails without being too restrictive.

Can banks provide crypto custody services?

Yes, a key part of the FinTech Act makes it clear that banks can provide custodial services for cryptocurrencies and other digital assets.

Banks must follow existing regulations and oversight for custodial services provided by bank regulators. But cryptocurrencies held in custody for clients do not count as debts or liabilities on a bank's balance sheet. This removes a major hurdle.

Letting regulated banks provide crypto custody services makes storing and utilizing cryptocurrencies much safer for average investors and firms. It's an essential step for mainstream adoption.

How are crypto brokers and dealers regulated?

Similar to exchanges, the FinTech Act defines registration frameworks and standards for crypto brokers and dealers:

- Those handling transactions in digital commodities must register as "Digital Commodity Brokers/Dealers" under the CFTC.
- Those handling digital asset securities must register as "Digital Asset Brokers/Dealers" under the SEC.
- Brokers and dealers must join national associations to support oversight.
- There are requirements around disclosures, capital, records, conflicts of interest, segregating client assets, and other areas.

Having common sense regulations in place will protect consumers while allowing brokerages to expand into cryptocurrency markets. It sets baseline expectations without stifling innovation.

What about decentralized exchanges and DeFi?

The FinTech Act does not directly address decentralized exchanges and platforms. But regulators could still exercise some oversight, or exempt them from certain requirements deemed excessive.

Some points that allow flexibility:

- Broad definition of "trading facility" could capture some decentralized platforms.
- SEC and CFTC can exempt entities from duplicative regulations that stifle innovation.
- Directs studies on trends around decentralized finance and exchanges.
- Excludes core blockchain network functions from regulation in some cases.

So the FinTech Act empowers regulators to clarify oversight of decentralized finance judiciously to enable continued permissionless innovation.

Governance

What are the new advisory groups?

To help analyze trends and guide policy, the FinTech Act establishes two new advisory groups:

Joint SEC-CFTC Advisory Committee on Digital Assets
Provides advice on crypto rules and policies
Monitors implementation of the FinTech Act
Improves cross-agency coordination on digital assets

CFTC-SEC Joint Advisory Committee on Digital Assets
Fosters regulatory harmonization between agencies
Studies metrics for analyzing crypto decentralization
Reviews potential benefits and infrastructure improvements

Having diverse advisory groups gives critical new perspectives to regulators shaping policy on rapidly evolving crypto and digital asset markets.

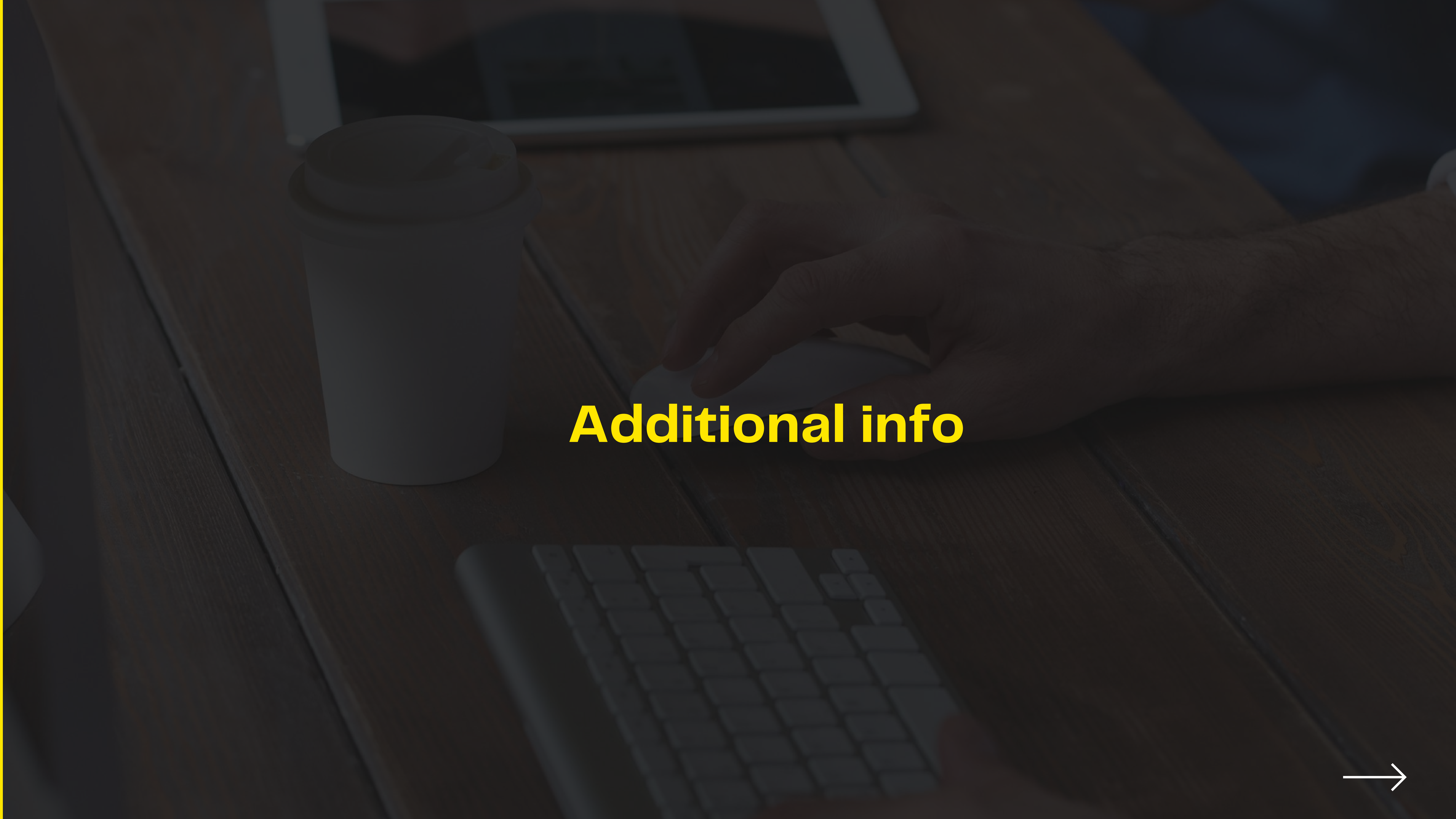
Innovation Hubs

What are the new innovation hubs about?

The FinTech Act formally creates innovation hubs at both the SEC and CFTC:

- Their purpose is to support development of fair crypto markets and responsible innovation.
- They will provide guidance to crypto startups and engage with academia.
- An important function is providing feedback to companies on reducing regulatory uncertainty.

By establishing dedicated units focused on emerging tech like crypto, regulators can keep rules aligned with market needs rather than stifling innovation.



Additional info

How does it change the SEC and CFTC missions?

Previously the core missions of the SEC and CFTC mostly centered around investor protection and enforcement.

But the FinTech Act updates both agencies' missions to also include:

- Facilitating financial innovation.
- Promoting fair competition.
- This reorientation away from only deterring bad behavior enables regulators to equally enable beneficial innovations.

The new mission better balances oversight with encouraging ethical crypto innovation to flourish in the United States.

What else is in the FinTech Act?

Some other key parts of the FinTech Act include:

- Saying stablecoins pegged to the US Dollar must follow appropriate regulations.
- Increased information sharing between crypto exchanges and regulators.
- Clarification that crypto firms can register with both the SEC and CFTC.
- Ordering further studies on trends like non-fungible tokens.
- Encouraging international coordination on crypto policy.

So in addition to the major points covered, the Act has many supplemental provisions to support ethical innovation while protecting consumers.

Conclusion

The Financial Innovation and Technology for the 21st Century Act establishes a comprehensive legal foundation for cryptocurrencies and digital assets in the United States.

While oversight is increased in areas like exchanges, the focus remains on enabling growth of this critical new technology.

By providing clarity and flexibility, promoting decentralization, setting prudent guardrails, and facilitating collaboration, the groundwork is set for blockchain innovation to thrive.

The FinTech Act fulfills the vital role of integrating cryptocurrencies into mainstream finance for the digital era while balancing risks and opportunities. With this law now in place, the promising future of crypto is primed to be built responsibly.

DISCLAIMER

The Financial Innovation and Technology for the 21st Century Act is still being updated (debate occurred and amendments were established). We will update this document as soon as we are able. If there are any discrepancies please email them to tevans@guapcoin.com