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New Bipartisan Bill Takes Aim at Digital Asset Money Laundering and Terrorism Finance

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On December 14, Senators Elizabeth Warren (D-Mass.) and Roger Marshall (R-Kan.) introduced in the U.S. Senate a new bipartisan bill, titled "Digital Asset Anti-Money Laundering Act of 2022" (the "Bill"), intended to curb the use of digital assets for money laundering and to counter the financing of terrorism. This is a very narrow bill and is not intended to supplant previously proposed legislation on digital assets by Senators Stabenow/Boozman or Lummis/Gillibrand, and does not address the Commodity Futures Trading Commission ("CFTC")/Securities and Exchange Commission ("SEC") jurisdictional reach over digital assets.

The Bill defines the terms: digital assets, digital asset kiosk, digital asset mixer and privacy coin, and directs the Financial Crimes Enforcement Network ("FinCEN") to promulgate rules "classifying custodial and unhosted wallet providers, cryptocurrency miners, validators, or other nodes who may act to validate or secure third-party transactions, independent network participants, including MEV searchers, and other validators with control over network protocols as money service businesses."

Further, FinCEN is directed to implement rules requiring reporting of all transactions by U.S. persons in digital assets in value over $10,000 through accounts outside the United States. The Bill also requires the U.S. Treasury to promulgate rules prohibiting financial institutions from "handling, using, or transacting business with digital assets" entities using anonymity-enhancing technologies.

The Bill directs the Treasury, SEC and CFTC to establish a "risk-focused examination and review process" to assess the adequacy of anti-money laundering and anti-terrorist prevention programs, including suspicious activity reporting.

Finally, the Bill requires operators of digital assets kiosks and the ATMs to ascertain the identity of all their customers and users.

The reach of this Bill is very broad, requiring, first, existing financial institutions and, second, digital assets infrastructure providers to play a critical role in preventing domestic and international money laundering and financing of the terrorist activities through the use of digital assets, such as crypto currencies like Bitcoin, Ether, or Tether.

Many of the digital assets infrastructure providers, such as FTX, are based outside of the U.S. but offer their services to U.S. persons. If this Bill had been enacted before the collapse of FTX, most if not all of FTX's non-U.S. transactions with U.S. participants would have been reportable to and transparent for the FinCEN, Treasury, SEC, and CFTC.

This Bill is likely the first of many to be introduced (or re-introduced) in the aftermath of the FTX's collapse in November 2022.
