

FINANCIAL INNOVATION AND TECHNOLOGY FOR THE
21ST CENTURY ACT

MAY 6, 2024.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. MCHENRY, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4763]

The Committee on Financial Services, to whom was referred the bill (H.R. 4763) to provide for a system of regulation of digital assets by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Financial Innovation and Technology for the 21st Century Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; RULEMAKING; NOTICE OF INTENT TO REGISTER

Sec. 101. Definitions under the Securities Act of 1933.
Sec. 102. Definitions under the Securities Exchange Act of 1934.
Sec. 103. Definitions under the Commodity Exchange Act.
Sec. 104. Definitions under this Act.
Sec. 105. Joint rulemakings.
Sec. 106. Notice of intent to register for digital commodity exchanges, brokers, and dealers.
Sec. 107. Notice of intent to register for digital asset brokers, dealers, and trading systems.
Sec. 108. Commodity Exchange Act savings provisions.
Sec. 109. International harmonization.
Sec. 110. Implementation.

TITLE II— OFFERS AND SALES OF DIGITAL ASSETS

Sec. 201. Exempted transactions in digital assets.
Sec. 202. Requirements for offers and sales of certain digital assets.
Sec. 203. Enhanced disclosure requirements.
Sec. 204. Certification of certain digital assets.
Sec. 205. Effective date.

TITLE III—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE SECURITIES AND EXCHANGE COMMISSION

Sec. 301. Treatment of digital commodities and other digital assets.
Sec. 302. Anti-fraud authority over permitted payment stablecoins.
Sec. 303. Registration of digital asset trading systems.
Sec. 304. Requirements for digital asset trading systems.
Sec. 305. Registration of digital asset brokers and digital asset dealers.
Sec. 306. Requirements of digital asset brokers and digital asset dealers.
Sec. 307. Rules related to conflicts of interest.
Sec. 308. Treatment of certain digital assets in connection with federally regulated intermediaries.
Sec. 309. Exclusion for ancillary activities.
Sec. 310. Registration and requirements for notice-registered digital asset clearing agencies.
Sec. 311. Treatment of custody activities by banking institutions.
Sec. 312. Effective date; administration.

TITLE IV—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE COMMODITY FUTURES TRADING COMMISSION

Sec. 401. Commission jurisdiction over digital commodity transactions.
Sec. 402. Requiring futures commission merchants to use qualified digital commodity custodians.
Sec. 403. Trading certification and approval for digital commodities.
Sec. 404. Registration of digital commodity exchanges.
Sec. 405. Qualified digital commodity custodians.
Sec. 406. Registration and regulation of digital commodity brokers and dealers.
Sec. 407. Registration of associated persons.
Sec. 408. Registration of commodity pool operators and commodity trading advisors.
Sec. 409. Exclusion for ancillary activities.
Sec. 410. Effective date.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

Sec. 501. Codification of the SEC Strategic Hub for Innovation and Financial Technology.
Sec. 502. Codification of LabCFTC.
Sec. 503. CFTC-SEC Joint Advisory Committee on Digital Assets.
Sec. 504. Study on decentralized finance.
Sec. 505. Study on non-fungible digital assets.
Sec. 506. Study on expanding financial literacy amongst digital asset holders.
Sec. 507. Study on financial market infrastructure improvements.

TITLE VI—MISCELLANEOUS

Sec. 601. Findings; sense of Congress.

TITLE I—DEFINITIONS; RULEMAKING; NOTICE OF INTENT TO REGISTER

SEC. 101. DEFINITIONS UNDER THE SECURITIES ACT OF 1933.

Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

“(20) **AFFILIATED PERSON.**—The term ‘affiliated person’ means a person (including a related person) that—

“(A) with respect to a digital asset issuer—

- “(i) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such digital asset issuer; and
- “(ii) was described under clause (i) at any point in the previous 3-month period; or
- “(B) with respect to any digital asset—
 - “(i) beneficially owns 5 percent or more of the units of such digital asset that are then outstanding; and
 - “(ii) was described under clause (i) at any point in the previous 3-month period.
- “(21) BLOCKCHAIN.—The term ‘blockchain’ means any technology—
 - “(A) where data is—
 - “(i) shared across a network to create a public ledger of verified transactions or information among network participants;
 - “(ii) linked using cryptography to maintain the integrity of the public ledger and to execute other functions; and
 - “(iii) distributed among network participants in an automated fashion to concurrently update network participants on the state of the public ledger and any other functions; and
 - “(B) composed of source code that is publicly available.
- “(22) BLOCKCHAIN PROTOCOL.—The term ‘blockchain protocol’ means any executable software deployed to a blockchain composed of source code that is publicly available and accessible, including a smart contract or any network of smart contracts.
- “(23) BLOCKCHAIN SYSTEM.—The term ‘blockchain system’ means any blockchain or blockchain protocol.
- “(24) DECENTRALIZED NETWORK.—With respect to a blockchain system to which a digital asset relates, the term ‘decentralized network’ means the following conditions are met:
 - “(A) During the previous 12-month period, no person—
 - “(i) had the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality or operation of the blockchain system; or
 - “(ii) had the unilateral authority to restrict or prohibit any person who is not a digital asset issuer, related person, or an affiliated person from—
 - “(I) using, earning, or transmitting the digital asset;
 - “(II) deploying software that uses or integrates with the blockchain system;
 - “(III) participating in a decentralized governance system with respect to the blockchain system; or
 - “(IV) operating a node, validator, or other form of computational infrastructure with respect to the blockchain system.
 - “(B) During the previous 12-month period—
 - “(i) no digital asset issuer or affiliated person beneficially owned, in the aggregate, 20 percent or more of the total amount of units of such digital asset that—
 - “(I) can be created, issued, or distributed in such blockchain system; and
 - “(II) were freely transferrable or otherwise used or available to be used for the purposes of such blockchain system;
 - “(ii) no digital asset issuer or affiliated person had the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of such digital asset or related decentralized governance system; or
 - “(iii) the digital asset did not include voting power with respect to any decentralized governance system of the blockchain system.
 - “(C) During the previous 3-month period, the digital asset issuer, any affiliated person, or any related person has not implemented or contributed any intellectual property to the source code of the blockchain system that materially alters the functionality or operation of the blockchain system, unless such implementation or contribution to the source code—
 - “(i) addressed vulnerabilities, errors, regular maintenance, cybersecurity risks, or other technical changes to the blockchain system; or
 - “(ii) were adopted through the consensus or agreement of a decentralized governance system.

“(D) During the previous 3-month period, neither any digital asset issuer nor any affiliated person described under paragraph (20)(A) has marketed to the public the digital assets as an investment.

“(E) During the previous 12-month period, all issuances of units of such digital asset through the programmatic functioning of the blockchain system were end user distributions.

“(25) DECENTRALIZED GOVERNANCE SYSTEM.—

“(A) IN GENERAL.—The term ‘decentralized governance system’ means, with respect to a blockchain system, any rules-based system permitting persons using the blockchain system or the digital assets related to such blockchain system to form consensus or reach agreement in the development, provision, publication, management, or administration of such blockchain system.

“(B) RELATIONSHIP OF PERSONS TO DECENTRALIZED GOVERNANCE SYSTEMS.—Persons acting through a decentralized governance system shall be treated as separate persons unless such persons are under common control.

“(C) EXCLUSION.—The term ‘decentralized governance system’ does not include a system in which—

“(i) a person or group of persons under common control have the ability to—

“(I) unilaterally alter the rules of consensus or agreement for the blockchain system; or

“(II) determine the final outcome of decisions related to the development, provision, publication, management, or administration of such blockchain system;

“(ii) a person or group of persons is directly engaging in an activity that requires registration with the Commission or the Commodity Futures Trading Commission other than—

“(I) developing, providing, publishing, managing, or administering a blockchain system; or

“(II) an activity with respect to which the organization is exempt from such registration; or

“(iii) a person or group of persons seeking to knowingly evade the requirements imposed on a digital asset issuer, a related person, an affiliated person, or any other person registered (or required to be registered) under the securities laws, the Financial Innovation and Technology for the 21st Century Act, or the Commodity Exchange Act.

“(26) DIGITAL ASSET.—

“(A) IN GENERAL.—The term ‘digital asset’ means any fungible digital representation of value that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger.

“(B) EXCLUSIONS.—The term ‘digital asset’ does not include—

“(i) any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, or transferable share; or

“(ii) any asset, which based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

“(I) a contract of sale of a commodity (as defined under section 1a of the Commodity Exchange Act) for future delivery or an option thereon;

“(II) a security futures product;

“(III) a swap;

“(IV) an agreement, contract, or transaction described in section 2(c)(2)(C)(i) or 2(c)(2)(D)(i) of the Commodity Exchange Act;

“(V) a commodity option authorized under section 4c of the Commodity Exchange Act; or

“(VI) a leverage transaction authorized under section 19 of the Commodity Exchange Act.

“(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to create a presumption that a digital asset is a representation of any type of security not excluded from the definition of digital asset.

“(D) RELATIONSHIP TO A BLOCKCHAIN SYSTEM.—A digital asset is considered to relate to a blockchain system if the digital asset is intrinsically linked to the blockchain system, including—

“(i) where the digital asset’s value is reasonably expected to be generated by the programmatic functioning of the blockchain system;

“(ii) where the digital asset has voting rights with respect to the decentralized governance system of the blockchain system; or

“(iii) where the digital asset is issued through the programmatic functioning of the blockchain system.

“(E) TREATMENT OF CERTAIN DIGITAL ASSETS SOLD PURSUANT TO AN INVESTMENT CONTRACT.—A digital asset offered or sold or intended to be offered or sold pursuant to an investment contract is not and does not become a security as a result of being sold or otherwise transferred pursuant to that investment contract.

“(27) DIGITAL ASSET ISSUER.—

“(A) IN GENERAL.—With respect to a digital asset, the term ‘digital asset issuer’ means any person that, in exchange for any consideration—

“(i) issues or causes to be issued a unit of such digital asset to a person; or

“(ii) offers or sells a right to a future issuance of a unit of such digital asset to a person.

“(B) EXCLUSION.—The term ‘digital asset issuer’ does not include any person solely because such person deploys source code that creates or issues units of a digital asset that are only distributed in end user distributions.

“(C) PROHIBITION ON EVASION.—It shall be unlawful for any person to knowingly evade classification as a ‘digital asset issuer’ and facilitate an arrangement for the primary purpose of effecting a sale, distribution, or other issuance of a digital asset.

“(28) DIGITAL ASSET MATURITY DATE.—The term ‘digital asset maturity date’ means, with respect to any digital asset, the first date on which 20 percent or more of the total units of such digital asset that are then outstanding as of such date are—

“(A) digital commodities; or

“(B) digital assets that have been registered with the Commission.

“(29) DIGITAL COMMODITY.—The term ‘digital commodity’ has the meaning given that term under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

“(30) END USER DISTRIBUTION.—

“(A) IN GENERAL.—The term ‘end user distribution’ means an issuance of a unit of a digital asset that—

“(i) does not involve an exchange of more than a nominal value of cash, property, or other assets; and

“(ii) is distributed in a broad, equitable, and non-discretionary manner based on conditions capable of being satisfied by any participant in the blockchain system, including as incentive-based rewards—

“(I) to users of the digital asset or any blockchain system to which the digital asset relates;

“(II) for activities directly related to the operation of the blockchain system, such as mining, validating, staking, or other activity directly tied to the operation of the blockchain system; or

“(III) to the existing holders of another digital asset, in proportion to the total units of such other digital asset as are held by each person.

“(B) PROHIBITION ON EVASION.—It shall be unlawful for any person to facilitate an end user distribution to knowingly evade classification as a digital asset issuer, related person, or an affiliated person, or the requirements related to a digital asset issuance.

“(31) FUNCTIONAL NETWORK.—With respect to a blockchain system to which a digital asset relates, the term ‘functional network’ means the network allows network participants to use such digital asset for—

“(A) the transmission and storage of value on the blockchain system;

“(B) the participation in services provided by or an application running on the blockchain system; or

“(C) the participation in the decentralized governance system of the blockchain system.

“(32) PERMITTED PAYMENT STABLECOIN.—The term ‘permitted payment stablecoin’—

“(A) means a digital asset—

“(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; or

- “(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) that is subject to regulation by a Federal or State regulator with authority over entities that issue payment stablecoins; and
- “(B) 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)).
- “(33) RELATED PERSON.—With respect to a digital asset issuer, the term ‘related person’ means—
- “(A) a founder, promoter, employee, consultant, advisor, or person serving in a similar capacity;
- “(B) any person that is or was in the previous 6-month period an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity;
- “(C) any equity holder or other security holder; or
- “(D) any other person that received a unit of digital asset from such digital asset issuer through—
- “(i) an exempt offering, other than an offering made in reliance on section 4(a)(8); or
- “(ii) a distribution that is not an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934.
- “(34) RESTRICTED DIGITAL ASSET.—
- “(A) IN GENERAL.—The term ‘restricted digital asset’ means—
- “(i) any unit of a digital asset held by a person, other than the digital asset issuer, a related person, or an affiliated person, prior to the first date on which each blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934, that was—
- “(I) issued to such person through a distribution, other than an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934; or
- “(II) acquired by such person in a transaction that was not executed on a digital commodity exchange;
- “(ii) any digital asset held by a related person or an affiliated person during any period when any blockchain system to which the digital asset relates is not a functional network or not certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934; or
- “(iii) any unit of a digital asset held by the digital asset issuer.
- “(B) EXCLUSION.—The term ‘restricted digital asset’ does not include a permitted payment stablecoin.
- “(35) SECURITIES LAWS.—The term ‘securities laws’ has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).
- “(36) SOURCE CODE.—With respect to a blockchain system, the term ‘source code’ means a listing of commands to be compiled or assembled into an executable computer program.”.

SEC. 102. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

- (8) by redesignating the second paragraph (80) (relating to funding portals) as paragraph (81); and
- (9) by adding at the end the following:
- “(82) BANK SECRECY ACT.—The term ‘Bank Secrecy Act’ means—
- “(A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);
- “(B) chapter 2 of title 1 of Public Law 91–508 (12 U.S.C. 1951 et seq.); and
- “(C) subchapter II of chapter 53 of title 31, United States Code.
- “(83) DIGITAL ASSET BROKER.—The term ‘digital asset broker’—
- “(A) means any person engaged in the business of effecting transactions in restricted digital assets for the account of others; and
- “(B) does not include a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

“(84) DIGITAL ASSET CUSTODIAN.—The term ‘digital asset custodian’ means an entity in the business of providing custodial or safekeeping services for restricted digital assets.

“(85) DIGITAL ASSET DEALER.—The term ‘digital asset dealer’—

“(A) means any person engaged in the business of buying and selling restricted digital assets for such person’s own account through a broker or otherwise; and

“(B) does not include—

“(i) a person that buys or sells restricted digital assets for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

“(ii) a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

“(86) DIGITAL ASSET TRADING SYSTEM.—The term ‘digital asset trading system’—

“(A) means any organization, association, person, or group of persons, whether incorporated or unincorporated, that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of restricted digital assets or for otherwise performing with respect to digital assets the functions commonly performed by a stock exchange within the meaning of section 240.3b–16 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph; and

“(B) does not include a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

“(87) MIXED DIGITAL ASSET TRANSACTION.—The term ‘mixed digital asset transaction’ means an agreement, contract, or transaction involving a restricted digital asset and a digital commodity.

“(88) NOTICE-REGISTERED DIGITAL ASSET CLEARING AGENCY.—The term ‘notice-registered digital asset clearing agency’ means a clearing agency that has registered with the Commission pursuant to section 17A(b)(9).

“(89) ADDITIONAL DIGITAL ASSET-RELATED TERMS.—

“(A) SECURITIES ACT OF 1933.—The terms ‘affiliated person’, ‘blockchain system’, ‘decentralized governance system’, ‘decentralized network’, ‘digital asset’, ‘digital asset issuer’, ‘digital asset maturity date’, ‘end user distribution’, ‘functional network’, ‘mixed digital asset transaction’, ‘permitted payment stablecoin’, ‘related person’, ‘restricted digital asset’, and ‘source code’ have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

“(B) COMMODITY EXCHANGE ACT.—The terms ‘digital commodity’, ‘digital commodity broker’, ‘digital commodity dealer’, and ‘digital commodity exchange’ have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).”.

SEC. 103. DEFINITIONS UNDER THE COMMODITY EXCHANGE ACT.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (10)(A)—

(A) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(B) by inserting after clause (ii) the following:

“(iii) digital commodity;”;

(2) in paragraph (11)—

(A) in subparagraph (A)(i)—

(i) by redesignating subclauses (III) and (IV) as subclauses (IV) and (V), respectively; and

(ii) by inserting after subclause (II) the following:

“(III) digital commodity;”;

(B) by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following:

“(B) EXCLUSION.—The term ‘commodity pool operator’ does not include—

“(i) a decentralized governance system; or

“(ii) ancillary activities, as defined in section 4v.”;

(3) in paragraph (12)(A)(i)—

(A) in subclause (II), by adding at the end a semicolon;

(B) by redesignating subclauses (III) and (IV) as subclauses (IV) and (V), respectively; and

(C) by inserting after subclause (II) the following:

“(III) a digital commodity;”;

(4) in paragraph (40)—

(A) by striking “and” at the end of subparagraph (E);

- (B) by striking the period at the end of subparagraph (F) and inserting “, and”; and
- (C) by adding at the end the following:
- “(G) a digital commodity exchange registered under section 5i.”; and
- (5) by adding at the end the following:
- “(52) ASSOCIATED PERSON OF A DIGITAL COMMODITY BROKER.—
- “(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘associated person of a digital commodity broker’ means a person who is associated with a digital commodity broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves—
- “(i) the solicitation or acceptance of a contract for sale of a digital commodity; or
- “(ii) the supervision of any person engaged in the solicitation or acceptance of a contract for sale of a digital commodity.
- “(B) EXCLUSION.—The term ‘associated person of a digital commodity broker’ does not include any person associated with a digital commodity broker the functions of which are solely clerical or ministerial.
- “(53) ASSOCIATED PERSON OF A DIGITAL COMMODITY DEALER.—
- “(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘associated person of a digital commodity dealer’ means a person who is associated with a digital commodity dealer as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves—
- “(i) the solicitation or acceptance of a contract for sale of a digital commodity; or
- “(ii) the supervision of any person engaged in the solicitation or acceptance of a contract for sale of a digital commodity.
- “(B) EXCLUSION.—The term ‘associated person of a digital commodity dealer’ does not include any person associated with a digital commodity dealer the functions of which are solely clerical or ministerial.
- “(54) BANK SECRECY ACT.—The term ‘Bank Secrecy Act’ means—
- “(A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);
- “(B) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and
- “(C) subchapter II of chapter 53 of title 31, United States Code.
- “(55) DIGITAL COMMODITY.—
- “(A) IN GENERAL.—The term ‘digital commodity’ means—
- “(i) any unit of a digital asset held by a person, other than a digital asset issuer, a related person, or an affiliated person, before the first date on which each blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934, that was—
- “(I) issued to the person through an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934; or
- “(II) acquired by such person in a transaction that was executed on a digital commodity exchange; or
- “(ii) any unit of a digital asset held by a person, other than a digital asset issuer, a related person, or an affiliated person, after the first date on which each blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934; and
- “(iii) any unit of a digital asset held by a related person or an affiliated person during any period when any blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934.
- “(B) EXCLUSION.—The term ‘digital commodity’ does not include a permitted payment stablecoin.
- “(56) DIGITAL COMMODITY BROKER.—
- “(A) IN GENERAL.—The term ‘digital commodity broker’ means any person who, in a digital commodity cash or spot market, is—
- “(i) engaged in soliciting or accepting orders for the purchase or sale of a unit of a digital commodity from a customer that is not an eligible contract participant;
- “(ii) engaged in soliciting or accepting orders for the purchase or sale of a unit of a digital commodity from a customer on or subject to the rules of a registered entity; or

- “(iii) registered with the Commission as a digital commodity broker.
- “(B) EXCEPTIONS.—The term ‘digital commodity broker’ does not include a person solely because the person—
- “(i) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or
 - “(ii) validates a digital commodity transaction, operates a node, or engages in similar activity to participate in facilitating, operating, or securing a blockchain system.
- “(57) DIGITAL COMMODITY CUSTODIAN.—The term ‘digital commodity custodian’ means a bank or trust company in the business of holding, maintaining, or safeguarding digital commodities.
- “(58) DIGITAL COMMODITY DEALER.—
- “(A) IN GENERAL.—The term ‘digital commodity dealer’ means any person who—
 - “(i) in digital commodity cash or spot markets—
 - “(I) holds itself out as a dealer in a digital commodity;
 - “(II) makes a market in a digital commodity;
 - “(III) regularly enters into digital commodity transactions with counterparties as an ordinary course of business for its own account; or
 - “(IV) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in a digital commodity;
 - “(ii) regularly enters into any agreement, contract, or transaction described in subsection (c)(2)(D)(i) involving a digital commodity; or
 - “(iii) is registered with the Commission as a digital commodity dealer.
 - “(B) EXCEPTION.—The term ‘digital commodity dealer’ does not include a person solely because the person—
 - “(i) enters into a digital commodity transaction with an eligible contract participant;
 - “(ii) enters into a digital commodity transaction on or through a registered digital commodity exchange;
 - “(iii) enters into a digital commodity transaction for the person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business;
 - “(iv) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or
 - “(v) validates a digital commodity transaction, operates a node, or engages in similar activity to participate in facilitating, operating, or securing a blockchain system.
- “(59) DIGITAL COMMODITY EXCHANGE.—The term ‘digital commodity exchange’ means a trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity.
- “(60) DIGITAL ASSET-RELATED DEFINITIONS.—
- “(A) SECURITIES ACT OF 1933.—The terms ‘affiliated person’, ‘blockchain system’, ‘decentralized governance system’, ‘decentralized network’, ‘digital asset’, ‘digital asset issuer’, ‘end user distribution’, ‘functional network’, ‘permitted payment stablecoin’, ‘related person’, and ‘restricted digital asset’ have the meaning given the terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).
 - “(B) SECURITIES EXCHANGE ACT OF 1934.—The terms ‘digital asset broker’ and ‘digital asset dealer’ have the meaning given those terms, respectively, under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).
- “(61) MIXED DIGITAL ASSET TRANSACTION.—The term ‘mixed digital asset transaction’ has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”.

SEC. 104. DEFINITIONS UNDER THIS ACT.

In this Act:

- (1) DEFINITIONS UNDER THE COMMODITY EXCHANGE ACT.—The terms “digital commodity”, “digital commodity broker”, “digital commodity dealer”, and “digital commodity exchange” have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).
- (2) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—The terms “affiliated person”, “blockchain”, “blockchain system”, “blockchain protocol”, “decentralized network”, “digital asset”, “digital asset issuer”, “digital asset maturity date”,

“digital asset trading system”, “end user distribution”, “functional network”, “permitted payment stablecoin”, “restricted digital asset”, “securities laws”, and “source code” have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(3) DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.—The terms “Bank Secrecy Act”, “digital asset broker”, “digital asset dealer”, “digital asset trading system”, “mixed digital asset transaction”, and “self-regulatory organization” have the meaning given those terms, respectively, under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SEC. 105. JOINT RULEMAKINGS.

(a) DEFINITIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly issue rules to further define the following terms:

(1) The terms “affiliated person”, “blockchain”, “blockchain system”, “blockchain protocol”, “decentralized network”, “decentralized governance system”, “digital asset”, “digital asset issuer”, “digital asset maturity date”, “end user distribution”, “functional network”, “related person”, “restricted digital asset”, and “source code”, as defined under section 2(a) of the Securities Act of 1933.

(2) The term “mixed digital asset transaction”, as defined under section 3(a) of the Securities Exchange Act of 1934.

(3) The term “digital commodity”, as defined under section 1a of the Commodity Exchange Act.

(b) JOINT RULEMAKING FOR EXCHANGES.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly issue rules to exempt persons dually registered with the Commodity Futures Trading Commission as a digital commodity exchange and with the Securities and Exchange Commission as a digital asset trading system from duplicative, conflicting, or unduly burdensome provisions of this Act, the securities laws, and the Commodity Exchange Act and the rules thereunder, to the extent such exemption would foster the development of fair and orderly markets in digital assets, be necessary or appropriate in the public interest, and be consistent with the protection of investors.

(c) JOINT RULEMAKING FOR MIXED DIGITAL ASSET TRANSACTIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly issue rules applicable to mixed digital asset transactions under this Act and the amendments made by this Act.

(d) PROTECTION OF SELF-CUSTODY.—

(1) IN GENERAL.—The Financial Crimes Enforcement Network may not issue any rule or order that would prohibit a U.S. individual from—

(A) maintaining a hardware wallet, software wallet, or other means to facilitate such individual’s own custody of digital assets; or

(B) conducting transactions and self-custody digital assets for any lawful purpose.

(2) RULE OF CONSTRUCTION.—Paragraph (1) may not be construed to limit the ability of Financial Crimes Enforcement Network to carry out any enforcement authority.

(e) JOINT RULEMAKING, PROCEDURES, OR GUIDANCE FOR DELISTING.—Not later than 30 days after the date of the enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly issue rules, procedures, or guidance (as determined appropriate by the Commissions) regarding the process to delist an asset for trading under sections 106 and 107 of this Act if the Commissions determine that the listing is inconsistent with the Commodity Exchange Act, the securities laws (including regulations under those laws), or this Act.

SEC. 106. NOTICE OF INTENT TO REGISTER FOR DIGITAL COMMODITY EXCHANGES, BROKERS, AND DEALERS.

(a) IN GENERAL.—

(1) NOTICE OF INTENT TO REGISTER.—Any person may file a notice of intent to register with the Commodity Futures Trading Commission (in this subsection referred to as the “Commission”) as a—

(A) digital commodity exchange, for a person intending to register as a digital commodity exchange under section 5i of the Commodity Exchange Act;

(B) digital commodity broker, for a person intending to register as a digital commodity broker under section 4u of such Act; or

(C) digital commodity dealer, for a person intending to register as a digital commodity dealer under section 4u of such Act.

- (2) FILING.—A person desiring to file a notice of intent to register under paragraph (1) shall be in compliance with this section if the person submits to the Commission—
- (A) a statement of the nature of the registrations the filer intends to pursue;
 - (B) the information required by subsections (b) and (c).
- (b) DISCLOSURE OF GENERAL INFORMATION.—A person filing a notice of intent to register under subsection (a) shall disclose to the Commission the following:
- (1) Information concerning the management of the person, including information describing—
 - (A) the ownership and management of the person;
 - (B) the financial condition of the person;
 - (C) affiliated entities; and
 - (D) potential conflicts of interest.
 - (2) Information concerning the operations of the person, including—
 - (A) any rulebook or other customer order fulfillment rules;
 - (B) risk management procedures; and
 - (C) a description of the product listing process.
- (c) LISTING INFORMATION.—A person filing a notice of intent to register under subsection (a) shall provide to the Commission and the Securities and Exchange Commission a detailed description of the product listing determination made by the person for each asset listed or offered for trading by the person.
- (d) REQUIREMENTS.—A person filing a notice of intent to register under subsection (a) shall comply with the following requirements:
- (1) BOOKS AND RECORDS.—The person shall keep their books and records open to inspection and examination by the Commission.
 - (2) CUSTOMER DISCLOSURES.—The person shall disclose to consumers—
 - (A) information about the material risks and characteristics of the assets listed for trading on the person; and
 - (B) information about the material risks and characteristics of the transactions facilitated by the person.
 - (3) CUSTOMER ASSETS.—
 - (A) IN GENERAL.—The person shall—
 - (i) hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in customer access to money, assets, and property of the customer;
 - (ii) treat and deal with all money, assets, and property, including any rights associated with any such money, assets, or property, of any customer received as belonging to the customer;
 - (iii) segregate all money, assets, and property received from any customer of the person from the funds of the person, except that—
 - (I) the money, assets, and property of any customer may be commingled with that of any other customer, if separately accounted for; and
 - (II) the share of the money, assets, and property, as in the normal course of business are necessary to margin, guarantee, secure, transfer, adjust, or settle a contract of sale of a commodity asset, may be withdrawn and applied to do so, including the payment of commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with the contract of sale of a digital commodity.
 - (B) ADDITIONAL RESOURCES.—
 - (i) IN GENERAL.—This section shall not prevent or be construed to prevent the person from adding to the customer money, assets, and property required to be segregated under subparagraph (A), additional amounts of money, assets, or property from the account of the person as the person determines necessary to prevent the account of a customer from becoming under-segregated.
 - (ii) TREATMENT AS CUSTOMER FUNDS.—Any money, assets, or property deposited pursuant to clause (i) shall be considered customer property within the meaning of this subsection.
- (e) COMPLIANCE AND ENFORCEMENT.—
- (1) IN GENERAL.—A person who has filed a notice of intent to register under this section and is in compliance with this section shall not be subject to an enforcement action by the Securities and Exchange Commission for—
 - (A) listing or offering a digital asset deemed a security; or
 - (B) failing to register as a national securities exchange, broker, dealer, or clearing agency, for activities related to digital assets deemed a security.

(2) **NONCOMPLIANCE.**—Paragraph (1) shall not apply if, after notice from the Commission and a reasonable opportunity to correct the deficiency, a person who has submitted a notice of intent to register is not in compliance with this section.

(3) **ANTI-FRAUD AND ANTI-MANIPULATION.**—Paragraph (1) shall not be construed to limit any anti-manipulation, anti-fraud, or false reporting enforcement authority of the Commission or the Securities and Exchange Commission.

(4) **DELISTING.**—Paragraph (1) shall not be construed to limit the authority of the Commission or the Securities and Exchange Commission to require a person to delist an asset for trading if the Commission or the Securities and Exchange Commission determines that the listing is inconsistent with the Commodity Exchange Act, the securities laws (including regulations under those laws), or this Act.

(f) **FINAL REGISTRATION.**—

(1) **IN GENERAL.**—A person may not file a notice of intent to register with the Commission after the Commission has finalized its rules for the registration of digital commodity exchanges, digital commodity brokers, or digital commodity dealers, as appropriate.

(2) **TRANSITION TO FINAL REGISTRATION.**—

(A) **ONGOING DEFERRAL FOR ENTITIES REGISTERED WITH THE COMMISSION.**—Subsection (e)(1) shall continue to apply to a person who has submitted a notice of intent to register while the person is registered with the Commission as a digital commodity exchange, a digital commodity broker, or a digital commodity dealer, as appropriate.

(B) **END OF DEFERRAL.**—Subsection (e)(1) shall not apply to a person who has submitted a notice of intent to register if—

(i) the Commission—

(I) determines that the person has failed to comply with the requirements of this section; or

(II) denies the application of the person to register; or

(ii) the digital commodity exchange, digital commodity broker, or digital commodity dealer that filed a notice of intent to register failed to register as such with the Commission within 180 days after the Commission finalized the rules of the Commission for the registration of digital commodity exchanges, digital commodity brokers, or digital commodity dealers, as appropriate.

(g) **LIABILITY OF THE FILER.**—It shall be unlawful for any person to provide false information in support of a filing under this section if the person knowingly or reasonably should have known that the information was false.

SEC. 107. NOTICE OF INTENT TO REGISTER FOR DIGITAL ASSET BROKERS, DEALERS, AND TRADING SYSTEMS.

(a) **IN GENERAL.**—

(1) **NOTICE OF INTENT TO REGISTER.**—Any person may file a notice of intent to register with the Securities and Exchange Commission (in this section referred to as the “Commission”) as—

(A) a digital asset trading system, for a person intending to register as a digital asset trading system under section 6(m) of the Securities Exchange Act of 1934;

(B) a digital asset broker, for a person intending to register as a digital asset broker under section 15H of the Securities Exchange Act of 1934; or

(C) a digital asset dealer, for a person intending to register as a digital asset dealer under section 15H of the Securities Exchange Act of 1934.

(2) **FILING.**—A person desiring to file a notice of intent to register under paragraph (1) shall be in compliance with this section if the person submits to the Commission—

(A) a statement of the nature of the registrations the filer intends to pursue; and

(B) the information required by subsections (b) and (c).

(b) **DISCLOSURE OF GENERAL INFORMATION.**—A person filing a notice of intent to register under subsection (a) shall disclose to the Commission the following:

(1) Information concerning the management of the person, including information describing—

(A) the ownership and management of the person;

(B) the financial condition of the person;

(C) affiliated entities; and

(D) potential conflicts of interest.

(2) Information concerning the operations of the person, including—

(A) any rulebook or other customer order fulfillment rules;

(B) risk management procedures; and

- (C) a description of the product listing process.
- (c) LISTING INFORMATION.—A person filing a notice of intent to register under subsection (a) shall provide to the Commission and the Commodity Futures Trading Commission a detailed description of the product listing determination made by the person for each asset listed or offered for trading by the person.
- (d) REQUIREMENTS.—A person filing a notice of intent to register under subsection (a) shall comply with the following requirements:
- (1) NATIONAL SECURITIES ASSOCIATION.—The person shall be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3), and shall comply with the rules of the association, including the rules of the association pertaining to customer disclosures and protection of customer assets.
 - (2) BOOKS AND RECORDS.—The person shall keep their books and records open to inspection and examination by the Commission.
 - (3) CUSTOMER DISCLOSURES.—The person shall disclose to customers—
 - (A) information about the material risks and characteristics of the assets listed for trading on the person;
 - (B) information about the material risks and characteristics of the transactions facilitated by the person; and
 - (C) in their disclosure documents, offering documents, and promotional material, in a prominent manner, that they are not registered with or regulated by the Commission.
 - (4) CUSTOMER ASSETS.—
 - (A) IN GENERAL.—The person shall—
 - (i) hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in customer access to money, assets, and property of the customer;
 - (ii) treat and deal with all money, assets, and property, including any rights associated with any such money, assets, or property, of any customer received as belonging to the customer;
 - (iii) segregate all money, assets, and property received from any customer of the person from the funds of the person, except that—
 - (I) the money, assets, and property of any customer may be commingled with that of any other customer, if separately accounted for; and
 - (II) the share of the money, assets, and property, as in the normal course of business are necessary to margin, guarantee, secure, transfer, adjust, or settle a contract of sale of a digital asset, may be withdrawn and applied to do so, including the payment of commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with the contract of sale of a digital asset.
 - (B) ADDITIONAL RESOURCES.—
 - (i) IN GENERAL.—This section shall not prevent or be construed to prevent the person from adding to the customer money, assets, and property required to be segregated under subparagraph (A) additional amounts of money, assets, or property from the account of the person as the person determines necessary to hold money, assets, or property equal to or in excess of the total digital asset obligation of the person.
 - (ii) TREATMENT AS CUSTOMER FUNDS.—Any money, assets, or property deposited pursuant to clause (i) shall be considered customer property within the meaning of this subsection.
- (e) COMPLIANCE.—
- (1) IN GENERAL.—A person who has filed a notice of intent to register under this section and is in compliance with this section shall be exempt from Commission rules and regulations pertaining to registering as a national securities exchange, broker, dealer, or clearing agency, for activities related to a digital asset deemed a security.
 - (2) NONCOMPLIANCE.—Paragraph (1) shall not apply if, after notice from the Commission and a reasonable opportunity to correct the deficiency, a person who has submitted a notice of intent to register is not in compliance with this section.
 - (3) ANTI-FRAUD AND ANTI-MANIPULATION.—Paragraph (1) shall not be construed to limit any fraud, anti-manipulation, or false reporting enforcement authority of the Commission or the Commodity Futures Trading Commission.
 - (4) DELISTING.—Paragraph (1) shall not be construed to limit the authority of the Commission and the Commodity Futures Trading Commission to jointly require a person to delist an asset for trading if the Commission and the Commodity Futures Trading Commission determines that the listing is inconsistent

with the Commodity Exchange Act, the securities laws (including regulations under those laws), or this Act.

(f) FINAL REGISTRATION.—

(1) IN GENERAL.—A person may not file a notice of intent to register with the Commission after the Commission has finalized its rules for the registration of digital asset brokers, digital asset dealers, digital asset trading systems, and notice-registered clearing agencies, as appropriate.

(2) TRANSITION TO FINAL REGISTRATION.—Subsection (e)(1) shall not apply to a person who has submitted a notice of intent to register if—

(A) the Commission—

(i) determines that the person has failed to comply with the requirements of this section; or

(ii) denies the application of the person to register; or

(B) the digital asset broker, digital asset dealer, or digital asset trading system that filed a notice of intent to register failed to apply for registration as such with the Commission within 180 days after the effective date of the Commission's final rules for the registration of digital asset brokers, digital asset dealers, and digital asset trading systems, as appropriate.

(g) LIABILITY OF THE FILER.—It shall be unlawful for any person to provide false information in support of a filing under this section if the person knew or reasonably should have known that the information was false.

(h) NATIONAL SECURITIES ASSOCIATION.—A national securities association shall adopt rules for membership with such association for persons required to be members of such association under subsection (d)(1) within 180 days after the date of enactment of this Act.

SEC. 108. COMMODITY EXCHANGE ACT SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this Act shall affect or apply to, or be interpreted to affect or apply to—

(1) any agreement, contract, or transaction that is subject to regulation under the Commodity Exchange Act as—

(A) a contract of sale of a commodity for future delivery or an option on such a contract;

(B) a swap;

(C) a security futures product;

(D) an option authorized under section 4c of such Act;

(E) an agreement, contract, or transaction described in section 2(c)(2)(C)(i) of such Act; or

(F) a leverage transaction authorized under section 19 of such Act; or

(2) the activities of any person with respect to any such agreement, contract, or transaction.

(b) PROHIBITIONS ON SPOT DIGITAL COMMODITY ENTITIES.—Nothing in this Act authorizes, or shall be interpreted to authorize, a digital commodity exchange, digital commodity broker, or digital commodity dealer to engage in any activities involving any transaction, contract, or agreement described in subsection (a)(1), solely by virtue of being registered or filing notice of intent to register as a digital commodity exchange, digital commodity broker, or digital commodity dealer.

(c) DEFINITIONS.—In this section, each term shall have the meaning provided in the Commodity Exchange Act or the regulations prescribed under such Act.

SEC. 109. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of digital assets, the Commodity Futures Trading Commission and the Securities and Exchange Commission, as appropriate—

(1) shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of digital assets, restricted digital assets, and digital commodities; and

(2) may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, customers, and users of digital assets.

SEC. 110. IMPLEMENTATION.

(a) GLOBAL RULEMAKING TIMEFRAME.—Unless otherwise provided in this Act or an amendment made by this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission, or both, shall individually, and jointly where required, promulgate rules and regulations required of each Commission under this Act or an amendment made by this Act not later than 360 days after the date of enactment of this Act.

(b) RULES AND REGISTRATION BEFORE FINAL EFFECTIVE DATES.—

(1) IN GENERAL.—In order to prepare for the implementation of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, before any effective date provided in this Act—

(A) promulgate rules, regulations, or orders permitted or required by this Act;

(B) conduct studies and prepare reports and recommendations required by this Act;

(C) register persons under this Act; and

(D) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act.

(2) LIMITATION ON EFFECTIVENESS.—An action by the Commodity Futures Trading Commission or the Securities and Exchange Commission under paragraph (1) shall not become effective before the effective date otherwise applicable to the action under this Act.

TITLE II— OFFERS AND SALES OF DIGITAL ASSETS

SEC. 201. EXEMPTED TRANSACTIONS IN DIGITAL ASSETS.

(a) IN GENERAL.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 4(a), by adding at the end the following:

“(8) transactions involving the offer or sale of units of a digital asset by a digital asset issuer, if—

“(A) the aggregate amount of units of the digital asset sold by the digital asset issuer in reliance on the exemption provided under this paragraph, during the 12-month period preceding the date of such transaction, including the amount sold in such transaction, is not more than \$75,000,000 (as such amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor);

“(B) with respect to a transaction involving the purchase of units of a digital asset by a person who is not an accredited investor, the aggregate amount of all units of digital assets purchased by such person during the 12-month period preceding the date of such transaction, including the unit of a digital asset purchased in such transaction, does not exceed the greater of—

“(i) 10 percent of the person’s annual income or joint income with that person’s spouse or spousal equivalent; or

“(ii) 10 percent of the person’s net worth or joint net worth with the person’s spouse or spousal equivalent;

“(C) after the completion of the transaction, the purchaser does not own more than 10 percent of the total amount of the units of the digital asset sold in reliance on the exemption under this paragraph;

“(D) the transaction does not involve the offer or sale of any digital asset not offered as part of an investment contract;

“(E) the transaction does not involve the offer or sale of a unit of a digital asset by a digital asset issuer that—

“(i) is not organized under the laws of a State, a territory of the United States, or the District of Columbia;

“(ii) is a development stage company that either—

“(I) has no specific business plan or purpose; or

“(II) has indicated that the business plan of the company is to merge with or acquire an unidentified company;

“(iii) is an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act (15 U.S.C. 80a-3(b) or 80a-3(c));

“(iv) is issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;

“(v) is, or has been, subject to any order of the Commission entered pursuant to section 12(j) of the Securities Exchange Act of 1934 during the 5-year period before the filing of the offering statement; or

“(vi) is disqualified pursuant to section 230.262 of title 17, Code of Federal Regulations; and

“(F) the issuer meets the requirements of section 4B(a).”; and

(2) by inserting after section 4A the following:

“SEC. 4B. REQUIREMENTS WITH RESPECT TO CERTAIN DIGITAL ASSET TRANSACTIONS.**“(a) REQUIREMENTS FOR DIGITAL ASSET ISSUERS.—**

“(1) INFORMATION REQUIRED IN STATEMENT.—A digital asset issuer offering or selling a unit of digital asset in reliance on section 4(a)(8) shall file with the Commission a statement containing the following information:

“(A) The name, legal status (including the jurisdiction in which the issuer is organized and the date of organization), and website of the digital asset issuer.

“(B) The address and telephone number of the issuer or a legal representative of the issuer.

“(C) A certification that the digital asset issuer meets the relevant requirements described under section 4(a)(8).

“(D) An overview of the material aspects of the offering.

“(E) A description of the purpose and intended use of the offering proceeds.

“(F) A description of the plan of distribution of any unit of a digital asset that is to be offered.

“(G) A description of the material risks surrounding ownership of a unit of a digital asset.

“(H) A description of the material aspects of the digital asset issuer’s business.

“(I) A description of exempt offerings conducted within the past three years by the digital asset issuer.

“(J) A description of the digital asset issuer and the current number of employees of the digital asset issuer.

“(K) A description of any material transactions or relationships between the digital asset issuer and affiliated persons.

“(L) A description of exempt offerings conducted within the past three years.

“(2) INFORMATION REQUIRED FOR PURCHASERS.—A digital asset issuer shall disclose the information described under section 43 of the Securities Exchange Act of 1934 on a freely accessible public website.

“(3) ONGOING DISCLOSURE REQUIREMENTS.—A digital asset issuer that has filed a statement under paragraph (1) to offer and sell a unit of a digital asset in reliance on section 4(a)(8) shall file the following with the Commission:

“(A) ANNUAL REPORTS.—An annual report that includes any material changes to the information described under paragraph (2) for the current fiscal year and for any fiscal year thereafter, unless the issuer is no longer obligated to file such annual report pursuant to paragraph (4).

“(B) SEMIANNUAL REPORTS.—Along with each annual report required under subparagraph (A), and separately six months thereafter, a report containing—

“(i) an updated description of the current state and timeline for the development of the blockchain system to which the digital asset relates, showing how and when the blockchain system intends or intended to be considered a functional network and a decentralized network;

“(ii) the amount of money raised by the digital asset issuer in reliance on section 4(a)(8), how much of that money has been spent, and the general categories and amounts on which that money has been spent; and

“(iii) any material changes to the information in the most recent annual report.

“(C) CURRENT REPORTS.—A current report shall be filed with the Commission reflecting any material changes to the information previously reported to the Commission by the digital asset issuer.

“(4) TERMINATION OF REPORTING REQUIREMENTS.—

“(A) IN GENERAL.—The ongoing reporting requirements under paragraph (3) shall not apply to a digital asset issuer 180 days after the end of the covered fiscal year.

“(B) COVERED FISCAL YEAR DEFINED.—In this paragraph, the term ‘covered fiscal year’ means the first fiscal year of an issuer in which the blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934.

“(b) REQUIREMENTS FOR INTERMEDIARIES.—

“(1) IN GENERAL.—A person acting as an intermediary in a transaction involving the offer or sale of a unit of a digital asset in reliance on section 4(a)(8) shall—

“(A) register with the Commission as a digital asset broker; and

“(B) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

“(2) PURCHASER QUALIFICATION.—

“(A) IN GENERAL.—Each time, before accepting any commitment (including any additional commitment from the same person), an intermediary or digital asset issuer shall have a reasonable basis for believing that the purchaser satisfies the requirements of section 4(a)(8).

“(B) RELIANCE ON PURCHASER’S REPRESENTATIONS.—For purposes of subparagraph (A), an intermediary or digital asset issuer may rely on a purchaser’s representations concerning the purchaser’s annual income and net worth and the amount of the purchaser’s other investments made, unless the intermediary or digital asset issuer has reason to question the reliability of the representation.

“(C) RELIANCE ON INTERMEDIARY.—For purposes of determining whether a transaction meets the requirements described under subparagraph (A) through (C) of section 4(a)(8), a digital asset issuer may rely on the efforts of an intermediary.

“(c) ADDITIONAL PROVISIONS.—

“(1) ACCEPTANCE OF WRITTEN OFFERS; SALES.—After an issuer files a statement under paragraph (1) to offer and sell a digital asset in reliance on section 4(a)(8)—

“(A) written offers of the digital asset may be made; and

“(B) the issuer may sell the digital assets in reliance on section 4(a)(8), if such sales meet all other requirements.

“(2) SOLICITATION OF INTEREST.—

“(A) IN GENERAL.—At any time before the filing of a statement under paragraph (1), a digital asset issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering. Such communications are deemed to be an offer of a unit of a digital asset for sale for purposes of the anti-fraud provisions of the Federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the statement is filed.

“(B) CONDITIONS.—In any communication described under subparagraph (A), the digital asset issuer shall—

“(i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;

“(ii) state that no offer to buy a unit of a digital asset can be accepted and no part of the purchase price can be received until the statement is filed and then only through an intermediary; and

“(iii) state that a person’s indication of interest involves no obligation or commitment of any kind.

“(C) INDICATIONS OF INTEREST.—Any written communication described under subparagraph (A) may include a means by which a person may indicate to the digital asset issuer that such person is interested in a potential offering. A digital asset issuer may require a name, address, telephone number, or email address in any response form included with a communication described under subparagraph (A).

“(3) DISQUALIFICATION PROVISIONS.—The Commission shall issue rules to apply the disqualification provisions under section 230.262 of title 17, Code of Federal Regulations, to the exemption provided under section 4(a)(8).

“(4) DIGITAL ASSETS DEEMED RESTRICTED DIGITAL ASSET.—A unit of a digital asset acquired directly or indirectly from the digital asset issuer in reliance on the exemption provided under section 4(a)(8) is deemed a restricted digital asset.”.

(b) ADDITIONAL EXEMPTIONS.—

(1) CERTAIN REGISTRATION REQUIREMENTS.—Section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(6)) is amended by striking “under section 4(6)” and inserting “under section 4(a)(6) or 4(a)(8)”.

(2) EXEMPTION FROM STATE REGULATION.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(A) in section (B), by striking “section 4(4)” and inserting “section 4(a)(4)”;

(B) in section (C), by striking “section 4(6)” and inserting “section 4(a)(6)”;

(C) in subparagraph (F)—

(i) by striking “section 4(2)” each place such term appears and inserting “section 4(a)(2)”; and

(ii) by striking “or” at the end;

(D) in subparagraph (G), by striking the period and inserting “; or”; and

(E) by adding at the end the following:

“(H) section 4(a)(8).”.

SEC. 202. REQUIREMENTS FOR OFFERS AND SALES OF CERTAIN DIGITAL ASSETS.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

“SEC. 42. REQUIREMENTS FOR OFFERS AND SALES OF CERTAIN DIGITAL ASSETS.

“(a) OFFERS AND SALES OF CERTAIN RESTRICTED DIGITAL ASSETS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, subject to paragraph (2), a restricted digital asset may be offered and sold on a digital asset trading system by any person other than a digital asset issuer if, at the time of such offer or sale, any blockchain system to which the restricted digital asset relates is a functional network and the information described in section 43 has been certified and made publicly available for any blockchain system to which the restricted digital asset relates.

“(2) ADDITIONAL RULES FOR RELATED PERSONS AND AFFILIATED PERSONS.—Except as provided under subsection (c), a restricted digital asset owned by a related person or an affiliated person may only be offered or sold after 12 months after the later of—

“(A) the date on which such restricted digital asset was acquired; or

“(B) the digital asset maturity date.

“(b) OFFERS AND SALES OF CERTAIN DIGITAL COMMODITIES.—

“(1) IN GENERAL.—Subject to paragraph (2), a digital commodity may be offered and sold by any person.

“(2) RULES FOR RELATED AND AFFILIATED PERSONS.—Except as provided under subsection (c), a digital commodity may only be offered or sold by a related person or an affiliated person if—

“(A) the holder of the digital commodity owned the digital commodity while it was a restricted digital asset for 12 months after the later of—

“(i) the date on which such restricted digital asset was acquired; or

“(ii) the digital asset maturity date;

“(B) any blockchain system to which the digital commodity relates is certified to be a decentralized network under section 44; and

“(C) the digital commodity is offered or sold on or subject to the rules of a digital commodity exchange registered under section 5i of the Commodity Exchange Act.

“(3) NOT AN INVESTMENT CONTRACT.—For purposes of the securities laws, an offer or sale of a digital commodity that does not violate paragraph (2) shall not be a transaction in an investment contract.

“(c) SALES RESTRICTIONS FOR AFFILIATED PERSONS.—A digital asset may be offered and sold by an affiliated person under subsection (a) or (b) if—

“(1) the aggregate amount of such digital assets sold in any 3-month period by the affiliated person is not greater than one percent of the digital assets then outstanding; or

“(2) the affiliated person promptly, following the placement of an order to sell one percent or more of the digital assets then outstanding during any 3-month period, reports the sale to—

“(A) the Commodity Futures Trading Commission, in the case of an order to sell a digital commodity on or subject to the rules of a digital commodity exchange; or

“(B) the Securities and Exchange Commission, in the case of a sell order for a restricted digital asset placed with a digital asset trading system.

“(d) TREATMENT OF CERTAIN END USER DISTRIBUTIONS UNDER THE SECURITIES LAWS.—

“(1) IN GENERAL.—With respect to a digital asset, an end user distribution is described under this paragraph if—

“(A) each blockchain system to which such digital asset relates is a functional network; and

“(B) with respect to the digital asset and each blockchain system to which such digital asset relates, the information described in section 43 has been certified and made publicly available.

“(2) NOT AN INVESTMENT CONTRACT.—For purposes of the securities laws, an end user distribution described under paragraph (1) shall not be a transaction in an investment contract.

“(3) EXEMPTION.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) shall not apply to an end user distribution described under paragraph (1) or a transaction in a unit of digital asset issued in such a distribution.”.

SEC. 203. ENHANCED DISCLOSURE REQUIREMENTS.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by section 202, is further amended by adding at the end the following:

“SEC. 43. ENHANCED DISCLOSURE REQUIREMENTS WITH RESPECT TO DIGITAL ASSETS.

“(a) **DISCLOSURE INFORMATION.**—With respect to a digital asset and any blockchain system to which the digital asset relates, the information described under this section is as follows:

“(1) **SOURCE CODE.**—The source code for any blockchain system to which the digital asset relates.

“(2) **TRANSACTION HISTORY.**—A description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital asset relates.

“(3) **DIGITAL ASSET ECONOMICS.**—A description of the purpose of any blockchain system to which the digital asset relates and the operation of any such blockchain system, including—

“(A) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

“(B) information on any applicable consensus mechanism or process for validating transactions, method of generating or mining digital assets, and any process for burning or destroying digital assets on the blockchain system;

“(C) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of such digital assets; and

“(D) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

“(4) **PLAN OF DEVELOPMENT.**—The current state and timeline for the development of any blockchain system to which the digital asset relates, showing how and when the blockchain system intends or intended to be considered a functional network and decentralized network.

“(5) **DEVELOPMENT DISCLOSURES.**—A list of all persons who are related persons or affiliated persons who have been issued a unit of a digital asset by a digital asset issuer or have a right to a unit of a digital asset from a digital asset issuer.

“(6) **RISK FACTOR DISCLOSURES.**—Where appropriate, provide under the caption ‘Risk Factors’ a description of the material risks surrounding ownership of a unit of a digital asset. This discussion shall be organized logically with relevant headings and each risk factor shall be set forth under a subcaption that adequately describes the risk.

“(b) **CERTIFICATION.**—With respect to a digital asset and any blockchain system to which the digital asset relates, the information required to be made available under this section has been certified if the digital asset issuer, an affiliated person, a decentralized governance system, or a digital commodity exchange certifies on a quarterly basis to the Commodity Futures Trading Commission and the Securities and Exchange Commission that the information is true and correct.”.

SEC. 204. CERTIFICATION OF CERTAIN DIGITAL ASSETS.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by section 203, is further amended by adding at the end the following:

“SEC. 44. CERTIFICATION OF CERTAIN DIGITAL ASSETS.

“(a) **CERTIFICATION.**—Any person may certify to the Securities and Exchange Commission that the blockchain system to which a digital asset relates is a decentralized network.

“(b) **FILING REQUIREMENTS.**—A certification described under subsection (a) shall be filed with the Commission, and include—

“(1) information regarding the person making the certification;

“(2) a description of the blockchain system and the digital asset which relates to such blockchain system, including—

“(A) the operation of the blockchain system;

“(B) the functionality of the related digital asset;

“(C) any decentralized governance system which relates to the blockchain system; and

“(D) the process to develop consensus or agreement within such decentralized governance system;

“(3) a description of the development of the blockchain system and the digital asset which relates to the blockchain system, including—

- “(A) a history of the development of the blockchain system and the digital asset which relates to such blockchain system;
- “(B) a description of the issuance process for the digital asset which relates to the blockchain system;
- “(C) information identifying the digital asset issuer of the digital asset which relates to the blockchain system; and
- “(D) a list of any affiliated person related to the digital asset issuer;
- “(4) an analysis of the factors on which such person based the certification that the blockchain system is a decentralized network, including—
 - “(A) an explanation of the protections and prohibitions available during the previous 12 months against any one person being able to—
 - “(i) control or materially alter the blockchain system;
 - “(ii) exclude any other person from using or participating on the blockchain system; and
 - “(iii) exclude any other person from participating in a decentralized governance system;
 - “(B) information regarding the beneficial ownership of the digital asset which relates to such blockchain system and the distribution of voting power in any decentralized governance system during the previous 12 months;
 - “(C) information regarding the history of upgrades to the source code for such blockchain system during the previous 3 months, including—
 - “(i) a description of any consensus or agreement process utilized to process or approve changes to the source code;
 - “(ii) a list of any material changes to the source code, the purpose and effect of the changes, and the contributor of the changes, if known; and
 - “(iii) any changes to the source code made by the digital asset issuer, a related person, or an affiliated person;
 - “(D) information regarding any activities conducted to market the digital asset which relates to the blockchain system during the previous 3 months by the digital asset issuer or an affiliated person of the digital asset issuer; and
 - “(E) information regarding any issuance of a unit of the digital asset which relates to such blockchain system during the previous 12 months; and
- “(5) with respect to a blockchain system for which a certification has previously been rebutted under this section or withdrawn under section 5i(m) of the Commodity Exchange Act, specific information relating to the analysis provided in subsection (f)(2) in connection with such rebuttal or such section 5i(m)(1)(C) in connection with such withdrawal.
- “(c) REBUTTABLE PRESUMPTION.—The Commission may rebut a certification described under subsection (a) with respect to a blockchain system if the Commission, within 60 days of receiving such certification, determines that the blockchain system is not a decentralized network.
- “(d) CERTIFICATION REVIEW.—
 - “(1) IN GENERAL.—Any blockchain system that relates to a digital asset for which a certification has been made under subsection (a) shall be considered a decentralized network 60 days after the date on which the Commission receives a certification under subsection (a), unless the Commission notifies the person who made the certification within such time that the Commission is staying the certification due to—
 - “(A) an inadequate explanation by the person making the certification; or
 - “(B) any novel or complex issues which require additional time to consider.
 - “(2) PUBLIC NOTICE.—The Commission shall make the following available to the public and provide a copy to the Commodity Futures Trading Commission:
 - “(A) Each certification received under subsection (a).
 - “(B) Each stay of the Commission under this section, and the reasons therefore.
 - “(C) Any response from a person making a certification under subsection (a) to a stay of the certification by the Commission.
 - “(3) CONSOLIDATION.—The Commission may consolidate and treat as one submission multiple certifications made under subsection (a) for the same blockchain system which relates to a digital asset which are received during the review period provided under this subsection.
- “(e) STAY OF CERTIFICATION.—

“(1) IN GENERAL.—A notification by the Commission pursuant to subsection (d)(1) shall stay the certification once for up to an additional 120 days from the date of the notification.

“(2) PUBLIC COMMENT PERIOD.—Before the end of the 60-day period described under subsection (d)(1), the Commission may begin a public comment period of at least 30 days in conjunction with a stay under this section.

“(f) DISPOSITION OF CERTIFICATION.—

“(1) IN GENERAL.—A certification made under subsection (a) shall—

“(A) become effective—

“(i) upon the publication of a notification from the Commission to the person who made the certification that the Commission does not object to the certification; or

“(ii) at the expiration of the certification review period; and

“(B) not become effective upon the publication of a notification from the Commission to the person who made the certification that the Commission has rebutted the certification.

“(2) DETAILED ANALYSIS INCLUDED WITH REBUTTAL.—The Commission shall include, with each publication of a notification of rebuttal described under paragraph (1)(B), a detailed analysis of the factors on which the decision was based.

“(g) RECERTIFICATION.—With respect to a blockchain system for which a certification has been rebutted under this section, no person may make a certification under subsection (a) with respect to such blockchain system during the 90-day period beginning on the date of such rebuttal.

“(h) APPEAL OF REBUTTAL.—

“(1) IN GENERAL.—If a certification is rebutted under this section, the person making such certification may appeal the decision to the United States Court of Appeals for the District of Columbia, not later than 60 days after the notice of rebuttal is made.

“(2) REVIEW.—In an appeal under paragraph (1), the court shall have de novo review of the determination to rebut the certification.

“(i) LIABILITY FOR PROVIDING FALSE INFORMATION.—It shall be unlawful for any person to provide false information in support of a certification under this section if such person knew or reasonably should have known such information was false.”.

SEC. 205. EFFECTIVE DATE.

Unless otherwise provided in this title, this title and the amendments made by this title shall take effect 360 days after the date of enactment of this Act, except that, to the extent a provision of this title requires a rulemaking, the provision shall take effect on the later of—

(1) 360 days after the date of enactment of this Act; or

(2) 60 days after the publication in the Federal Register of the final rule implementing the provision.

TITLE III—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE SECURITIES AND EXCHANGE COMMISSION

SEC. 301. TREATMENT OF DIGITAL COMMODITIES AND OTHER DIGITAL ASSETS.

(a) SECURITIES ACT OF 1933.—Section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) is amended by adding at the end the following: “The term does not include a digital commodity or permitted payment stablecoin.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (1), by adding at the end the following: “The term ‘exchange’ does not include a digital asset trading system, blockchain protocol, or any person or group of persons solely because of their development of a blockchain protocol.”;

(2) in paragraph (2), by adding at the end the following: “A digital asset trading system is not a ‘facility’ of an exchange.”;

(3) in paragraph (4)(A), by inserting “, other than restricted digital assets,” after “securities”;

(4) in paragraph (5)(A), by inserting “restricted digital assets or” after “not including”;

(5) in paragraph (26) by inserting “(other than a notice-registered digital asset clearing agency)” after “or registered clearing agency”;

(6) in paragraph (28) by inserting “(other than a notice-registered digital asset clearing agency)” after “registered clearing agency”; and

(7) in paragraph (10), by adding at the end the following: “Subject to subsection (i), the term does not include a digital commodity or permitted payment stablecoin.”.

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended—

(1) in paragraph (18), by adding at the end the following: “The term does not include a digital commodity or permitted payment stablecoin.”;

(2) by redesignating the second paragraph (29) (relating to commodity pools) as paragraph (31);

(3) by adding at the end, the following:

“(32) DIGITAL ASSET-RELATED TERMS.—The terms ‘digital commodity’ and ‘permitted payment stablecoin’ have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).”.

(d) INVESTMENT COMPANY ACT OF 1940.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in paragraph (36), by adding at the end the following: “The term does not include a digital commodity or permitted payment stablecoin.”; and

(2) by adding at the end, the following:

“(55) DIGITAL ASSET-RELATED TERMS.—The terms ‘digital commodity’ and ‘permitted payment stablecoin’ have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).”.

SEC. 302. ANTI-FRAUD AUTHORITY OVER PERMITTED PAYMENT STABLECOINS.

(a) IN GENERAL.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended—

(1) by moving subsection (c) so as to appear after subsection (b);

(2) by designating the undesignated matter at the end of that section as subsection (d); and

(3) by adding at the end the following:

“(e)(1) Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to permitted payment stablecoins with respect to those circumstances in which the permitted payment stablecoins are brokered, traded, or custodied by a broker, dealer, digital asset broker, or digital asset dealer or through an alternative trading system or digital asset trading platform to the same extent as they apply to securities.

“(2) Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to permitted payment stablecoins with respect to those circumstances in which the permitted payment stablecoins are brokered, traded, or custodied by a digital asset broker, digital asset dealer, or digital asset trading system to the same extent as they apply to securities.

“(3) Nothing in this subsection may be construed to provide the Commission authority to make any rule, regulation, requirement, or obligation on a permitted payment stablecoin issuer regarding the operations of a permitted payment stablecoin issuer or a permitted payment stablecoin, including any aspect of the operation of a permitted payment stablecoin issuer or permitted payment stablecoin.”.

(b) TREATMENT OF PERMITTED PAYMENT STABLECOINS.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by section 304, is amended by inserting after section 6B the following

“SEC. 6C. TREATMENT OF TRANSACTIONS IN PERMITTED PAYMENT STABLECOINS.

“(a) AUTHORITY TO BROKER, TRADE, AND CUSTODY PERMITTED PAYMENT STABLECOINS.—Permitted payment stablecoins may be brokered, traded, or custodied by a broker, dealer, digital asset broker, or digital asset dealer or through an alternative trading system or digital asset trading platform.

“(b) COMMISSION JURISDICTION.—The Commission shall have jurisdiction over a transaction in a permitted payment stablecoin with respect to those circumstances in which a permitted payment stablecoin is brokered, traded, or custodied—

“(1) by a broker, dealer, digital asset broker, or digital asset dealer; or

“(2) through an alternative trading system or digital asset trading system.

“(c) LIMITATION.—Subsection (b) shall only apply to a transaction described in subsection (b) for the purposes of regulating the offer, execution, solicitation, or acceptance of a permitted payment stablecoin in those circumstances in which the permitted payment stablecoin is brokered, traded, or custodied—

“(1) by a broker, dealer, digital asset broker, or digital asset dealer; or

“(2) through an alternative trading system or digital asset trading system.”.

SEC. 303. REGISTRATION OF DIGITAL ASSET TRADING SYSTEMS.

Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(m) DIGITAL ASSET TRADING SYSTEM.—

“(1) IN GENERAL.—It shall be unlawful for any digital asset trading system to make use of the mails or any means or instrumentality of interstate commerce within or subject to the jurisdiction of the United States to effect any transaction in a restricted digital asset, unless such digital asset trading system is registered with the Commission.

“(2) APPLICATION.—A person desiring to register as a digital asset trading system shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

“(3) EXEMPTIONS.—A digital asset trading system that offers or seeks to offer at least one restricted digital asset shall not be required to register under this section (and subparagraph (A) shall not apply to such digital asset trading system) if the trading system satisfies any exemption contained on a list of exemptions prepared by the Commission to be as close as practicable to those exemptions set forth in section 240.3b–16(b) of title 17, Code of Federal Regulations, applicable to the definition of an exchange.

“(4) ADDITIONAL REGISTRATIONS.—

“(A) WITH THE COMMISSION.—

“(i) IN GENERAL.—A registered digital asset trading system shall be permitted to maintain any other registration with the Commission relating to the other activities of the registered digital asset trading system, including as a—

“(I) national securities exchange;

“(II) broker;

“(III) dealer;

“(IV) alternative trading system, pursuant to part 242 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this subsection;

“(V) digital asset broker; or

“(VI) digital asset dealer.

“(ii) RULEMAKING.—The Commission shall prescribe rules for an entity with multiple registrations described under subparagraph (A) to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

“(B) WITH THE COMMODITY FUTURES TRADING COMMISSION.—A registered digital asset trading system shall be permitted to maintain a registration with the Commodity Futures Trading Commission as a digital commodity exchange to offer contracts of sale for digital commodities.”.

SEC. 304. REQUIREMENTS FOR DIGITAL ASSET TRADING SYSTEMS.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 6 the following:

“SEC. 6A. REQUIREMENTS FOR DIGITAL ASSET TRADING SYSTEMS.

“(a) HOLDING OF CUSTOMER ASSETS.—

“(1) IN GENERAL.—A digital asset trading system shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

“(2) QUALIFIED DIGITAL ASSET CUSTODIAN REQUIRED.—A digital asset trading system shall hold customer restricted digital assets described in paragraph (1) with a qualified digital asset custodian described under section 6B.

“(3) CUSTODY PROHIBITED.—A digital asset trading system, in its capacity as such, may not hold custody of customer money, assets, or property.

“(b) RULEMAKING.—The Commission shall prescribe rules for digital asset trading systems relating to the following:

“(1) NOTICE.—Notice to the Commission of the initial operation of a digital asset trading system or any material change to the operation of the digital asset trading system.

“(2) ORDER DISPLAY.—The thresholds at which a digital asset trading system is required to display the orders of the digital asset trading system, and the manner of such display.

“(3) FAIR ACCESS.—The thresholds at which a digital asset trading system is required to have policies regarding providing fair access to the digital asset trading system.

“(4) CAPACITY, INTEGRITY, AND SECURITY OF AUTOMATED SYSTEMS.—Policies and procedures reasonably designed to ensure the capacity, integrity, and security of the digital asset trading system, taking into account the particular nature of digital asset trading systems.

“(5) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.—The examination and inspection of the premises, systems, and records of the digital asset trading system by the Commission or by a self-regulatory organization of which such digital asset trading system is a member.

“(6) RECORDKEEPING.—The making, keeping current, and preservation of records related to trading activity on the digital asset trading system.

“(7) REPORTING.—The reporting of transactions in digital assets that occur through the digital asset trading system.

“(8) PROCEDURES.—The establishment of adequate written safeguards and written procedures to protect confidential trading information.

“(c) NAME REQUIREMENT.—A digital asset trading system may not use the word ‘exchange’ in the name of the digital asset trading system, unless the digital asset trading system—

“(1) is operated by a registered national securities exchange; and

“(2) is clearly indicated as being provided outside of the system’s capacity as a national securities exchange.

“(d) TREATMENT UNDER THE BANK SECRECY ACT.—A digital asset trading system shall be treated as a financial institution for purposes of the Bank Secrecy Act.

“SEC. 6B. REQUIREMENTS FOR QUALIFIED DIGITAL ASSET CUSTODIANS.

“(a) IN GENERAL.—A digital asset custodian is a qualified digital asset custodian if the digital asset custodian complies with the requirements of this section.

“(b) SUPERVISION REQUIREMENT.—

“(1) IN GENERAL.—A digital asset custodian shall—

“(A) be subject to adequate supervision and appropriate regulation by—

“(i) the Board of Governors of the Federal Reserve System;

“(ii) the Comptroller of the Currency;

“(iii) the Federal Deposit Insurance Corporation;

“(iv) the Commodity Futures Trading Commission;

“(v) the Securities and Exchange Commission;

“(vi) a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act); or

“(vii) an appropriate foreign governmental authority in the home country of the digital asset custodian; and

“(B) not be prohibited by the applicable supervisor from engaging in an activity with respect to the custody and safekeeping of digital assets.

“(2) ADEQUATE SUPERVISION AND APPROPRIATE REGULATION.—For purposes of paragraph (1), the terms ‘adequate supervision’ and ‘appropriate regulation’ mean such minimum standards for supervision and regulation as are reasonably necessary to protect the digital assets of customers of an entity registered with the Commission, including minimum standards relating to—

“(A) accessibility of customer assets;

“(B) financial resources;

“(C) risk management requirements;

“(D) governance arrangements;

“(E) fitness standards for officers and directors;

“(F) recordkeeping;

“(G) information sharing; and

“(H) conflicts of interest.

“(3) DEEMED COMPLIANCE.—A digital asset custodian shall be deemed to be subject to adequate supervision and appropriate regulation, if—

“(A) it is supervised by an agency described under any of clauses (i) through (v) of paragraph (1)(A); or

“(B) it is a bank supervised by a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act).

“(4) RULEMAKING WITH RESPECT TO DEFINITIONS.—For purposes of this subsection, the Commission may, by rule, further define the terms ‘adequate supervision’ and ‘appropriate regulation’ as necessary in the public interest, as appropriate for the protection of investors, and consistent with the purposes of this Act.

“(c) INFORMATION SHARING.—Each digital asset custodian shall periodically share of information with the Commission, as the Commission determines by rule to be

reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.”.

SEC. 305. REGISTRATION OF DIGITAL ASSET BROKERS AND DIGITAL ASSET DEALERS.

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 OF DIGITAL ASSET BROKERS AND DIGITAL ASSET DEALERS.

“(a) REGISTRATION.—

“(1) IN GENERAL.—It shall be unlawful for any digital asset broker or digital asset dealer (other than a natural person associated with a digital asset broker or digital asset dealer, and other than such a digital asset broker or digital asset dealer whose business is exclusively intrastate and who does not make use of any facility of a digital asset trading platform) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any restricted digital asset unless such digital asset broker or digital asset dealer is registered in accordance with this section.

“(2) APPLICATION.—A person desiring to register as a digital asset broker or digital asset dealer shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

“(b) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—

“(1) IN GENERAL.—A digital asset broker or digital asset dealer may not register or maintain registration under this section unless such digital asset broker or digital asset dealer is a member of a national securities association registered under section 15A.

“(2) TREATMENT UNDER SECTION 15A.—

“(A) IN GENERAL.—For purposes of section 15A—

“(i) the term ‘broker’ includes a digital asset broker;

“(ii) the term ‘dealer’ includes a digital asset dealer; and

“(iii) the term ‘security’ includes a restricted digital asset.

“(B) CLARIFICATION.—Notwithstanding subparagraph (A), a national securities association shall only examine for and enforce against a digital asset broker and digital asset dealer rules of such national securities association written specifically for digital asset brokers and a digital asset dealers.

“(3) EXCEPTION.—A digital asset broker or digital asset dealer may register under this section without obtaining membership in a national securities association until the end of the 360-day period beginning on the date the first national securities association adopts rules to admit digital asset brokers or digital asset dealers as members.

“(c) ADDITIONAL REGISTRATIONS WITH THE COMMISSION.—

“(1) IN GENERAL.—A registered digital asset broker or registered digital asset dealer shall be permitted to maintain any other registration with the Commission relating to the other activities of the registered digital asset broker or registered digital asset dealer, including as—

“(A) a national securities exchange;

“(B) a broker;

“(C) a dealer;

“(D) an alternative trading system, pursuant to part 242 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this section;

or

“(E) a digital asset trading system.

“(2) RULEMAKING.—The Commission shall prescribe rules for an entity with multiple registrations described under paragraph (1) to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

“(3) SELF-REGULATORY ORGANIZATIONS.—The Commission shall require any self-regulatory organization with a registered digital asset broker or registered digital asset dealer as a member to provide such rules as may be necessary to further compliance with this section, protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

“(d) ADDITIONAL REGISTRATIONS WITH THE COMMODITY FUTURES TRADING COMMISSION.—A registered digital asset broker or registered digital asset dealer shall be permitted to maintain a registration with the Commodity Futures Trading Commission as a digital commodity broker or digital commodity dealer, to list or trade contracts of sale for digital commodities.”.

SEC. 306. REQUIREMENTS OF DIGITAL ASSET BROKERS AND DIGITAL ASSET DEALERS.

Section 15H of the Securities Exchange Act of 1934, as added by section 305, is amended by adding at the end the following:

“(e) ANTI-FRAUD.—No digital asset broker or digital asset dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any restricted digital asset by means of any manipulative, deceptive, or other fraudulent device or contrivance.

“(f) HOLDING OF CUSTOMER ASSETS.—

“(1) IN GENERAL.—A digital asset broker or digital asset dealer shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

“(2) QUALIFIED DIGITAL ASSET CUSTODIAN REQUIRED.—A digital asset broker or digital asset dealer shall hold customer restricted digital assets described in paragraph (1) with a qualified digital asset custodian described under section 6B.

“(3) SEGREGATION OF FUNDS.—

“(A) IN GENERAL.—A digital asset broker or digital asset dealer shall treat and deal with all money, assets, and property held for a customer of the digital asset broker or digital asset dealer, or that accrues to a customer as a result of trading in restricted digital assets, as belonging to the customer.

“(B) COMMINGLING PROHIBITED.—Money, assets, and property of a customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the digital asset broker or digital asset dealer or be used to margin, secure, or guarantee any trades of any person other than the customer of the digital asset broker or digital asset dealer for whom the same are held.

“(4) EXCEPTIONS.—

“(A) USE OF FUNDS.—

“(i) IN GENERAL.—Notwithstanding paragraph (3), money, assets, and property of customers of a digital asset broker or digital asset dealer described in paragraph (3) may be maintained and deposited in the same account or accounts with any bank, trust company, or qualified digital asset custodian described under section 6B, if the money, assets, and property remain segregated from the money, assets, and property of the digital asset broker or digital asset dealer.

“(ii) WITHDRAWAL.—Notwithstanding paragraph (3), such share of the money, assets, and property described in paragraph (3) as in the normal course of business shall be necessary to transfer, adjust, or settle a restricted digital asset transaction pursuant to a customer’s instruction (standing or otherwise) may be withdrawn and applied to such purposes, including the withdrawal and payment of commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with a restricted digital asset transaction.

“(iii) COMMISSION ACTION.—In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of a customer of a digital asset broker or digital asset dealer described in paragraph (3) may be commingled and deposited as provided in this section with any other money, assets, or property received by the digital asset broker or digital asset dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital asset broker or digital asset dealer.

“(B) PARTICIPATION IN BLOCKCHAIN SERVICES.—

“(i) IN GENERAL.—A customer shall have the right to waive the restrictions in paragraph (3) for any unit of a digital asset to be used under clause (ii), by affirmatively electing, in writing to the digital asset broker or digital asset dealer, to waive the restrictions.

“(ii) USE OF FUNDS.—Customer digital assets removed from segregation under clause (i) may be pooled and used by the digital asset broker or digital asset dealer or its designee to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation under clause (i) relates.

“(iii) LIMITATIONS.—The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this subparagraph that are reasonably necessary to protect customers.

“(iv) **BLOCKCHAIN SERVICE DEFINED.**—In this subparagraph, the term ‘blockchain service’ means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.

“(5) **FURTHER LIMITATIONS.**—No person shall treat or deal with a restricted digital asset held on behalf of any customer pursuant to paragraph (3) by utilizing any unit of such restricted digital asset to participate in a blockchain service (as defined in paragraph (4)(B)(iv) or a decentralized governance system associated with the restricted digital asset or the blockchain system to which the restricted digital asset relates in any manner other than that which is expressly directed by the customer from which such unit of a restricted digital asset was received.

“(g) **CAPITAL REQUIREMENTS.**—

“(1) **IN GENERAL.**—Each registered digital asset broker and registered digital asset dealer shall meet such minimum capital requirements as the Commission may prescribe to ensure that the digital asset broker or digital asset dealer is able to—

“(A) conduct an orderly wind-down of the activities of the digital asset broker or digital asset dealer; and

“(B) fulfill the customer obligations of the digital asset broker or digital asset dealer.

“(2) **CALCULATION.**—For purposes of any Commission rule or order adopted under this section or any interpretation thereof regulating a digital asset broker or digital asset dealer’s financial responsibility obligations and capital requirements, a registered digital asset broker or digital asset dealer that maintains control of customer digital assets in a manner that satisfies the rules issued by the Commission under subsection (f)(2) shall not be required to include the value of such digital assets as assets or liabilities of the digital asset broker or digital asset dealer.

“(3) **COORDINATION OF CAPITAL REQUIREMENTS.**—

“(A) **COMMISSION RULE.**—The Commission shall, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations, including as a broker, dealer, digital asset broker, or digital asset dealer.

“(B) **JOINT RULE.**—The Commission and the Commodity Futures Trading Commission shall jointly, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations, including as a digital asset broker, digital asset dealer, digital asset trading system, digital commodity broker, digital commodity dealer, or digital commodity exchange.

“(h) **REPORTING AND RECORDKEEPING.**—Each registered digital asset broker and digital asset dealer—

“(1) shall make such reports as are required by the Commission by rule or regulation regarding the transactions, positions, and financial condition of the digital asset broker or digital asset dealer;

“(2) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(3) shall keep the books and records open to inspection and examination by any representative of the Commission.

“(i) **TREATMENT UNDER THE BANK SECRECY ACT.**—A digital asset broker and a digital asset dealer shall be treated as a financial institution for purposes of the Bank Secrecy Act.”.

SEC. 307. RULES RELATED TO CONFLICTS OF INTEREST.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10D the following:

“SEC. 10E. CONFLICTS OF INTEREST RELATED TO DIGITAL ASSETS.

“Each registered digital asset trading system, registered digital asset broker, registered digital asset dealer, and notice-registered digital asset clearing agency shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such person’s business, to mitigate any conflicts of interest and transactions or arrangements with affiliates.”.

SEC. 308. TREATMENT OF CERTAIN DIGITAL ASSETS IN CONNECTION WITH FEDERALLY REGULATED INTERMEDIARIES.

Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)) is amended by adding at the end the following:

“(5) EXEMPTION FOR CERTAIN DIGITAL ASSETS IN CONNECTION WITH FEDERALLY REGULATED INTERMEDIARIES.—A restricted digital asset is a covered security with respect to a transaction that is exempt from registration under this Act when—

“(A) it is brokered, traded, custodied, or cleared by a digital asset broker or digital asset dealer registered under section 15H of the Securities Exchange Act of 1934; or

“(B) traded through a digital asset trading system.”.

SEC. 309. EXCLUSION FOR ANCILLARY ACTIVITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by section 305, is further amended by inserting after section 15H the following:

“SEC. 15I. EXCLUSION FOR ANCILLARY ACTIVITIES.

“(a) IN GENERAL.—Notwithstanding any other provision of this Act, a person shall not be subject to this Act and the regulations thereunder solely based on the person undertaking any ancillary activities.

“(b) EXCEPTIONS.—Subsection (a) shall not be construed to apply to the anti-fraud and anti-manipulation authorities of the Commission.

“(c) ANCILLARY ACTIVITIES DEFINED.—In this section, the term ‘ancillary activities’ means any of the following activities related to the operation of a blockchain system:

“(1) Compiling network transactions, operating or participating in a liquidity pool, relaying, searching, sequencing, validating, or acting in a similar capacity with respect to a digital asset.

“(2) Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth, or other similar incidental services with respect to a digital asset.

“(3) Providing a user-interface that enables a user to read and access data about a blockchain system, send messages, or otherwise interact with a blockchain system.

“(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system.

“(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy a hardware or software wallet or other system facilitating an individual user’s own personal ability to keep, safeguard, or custody the user’s digital assets or related private keys.”.

SEC. 310. REGISTRATION AND REQUIREMENTS FOR NOTICE-REGISTERED DIGITAL ASSET CLEARING AGENCIES.

Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(b)) is amended—

(1) in subsection (1), by inserting “(other than a notice-registered digital asset clearing agency)” after “unlawful for any clearing agency”; and

(2) by adding at the end the following:

“(9) REGISTRATION AND REQUIREMENTS FOR NOTICE-REGISTERED DIGITAL ASSET CLEARING AGENCY.—

“(A) ELIGIBILITY.—A person may register with the Commission as a notice-registered digital asset clearing agency if the person—

“(i) is otherwise registered as a digital asset broker or digital asset dealer with the Commission and is engaging in a business involving restricted digital assets, in compliance with Commission rules pursuant to section 15H(f); or

“(ii) is a bank engaging in a business involving digital assets, in compliance with applicable banking law and regulation relating to the custody and safekeeping of such assets.

“(B) REGISTRATION.—A person may register with the Commission as a notice-registered digital asset clearing agency by providing the Commission with notice of the activities of the person or planned activities in such form as the Commission determines appropriate. Such notice shall include information describing the person’s policies and procedures relating to the holding of customer assets.

“(C) RULEMAKING.—The Commission may adopt rules, which may not take effect until at least 360 days following the date of enactment of this paragraph, with regard to the activities of notice-registered digital asset clearing agencies, taking into account the nature of restricted digital assets.”.

SEC. 311. TREATMENT OF CUSTODY ACTIVITIES BY BANKING INSTITUTIONS.

(a) TREATMENT OF CUSTODY ACTIVITIES.—The appropriate Federal banking agency (as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)),

the National Credit Union Administration (in the case of a credit union), and the Securities and Exchange Commission may not require, or take supervisory action that would cause, a depository institution, national bank, Federal credit union, State credit union, or trust company, or any affiliate (as such term is defined under section 2 of the Bank Holding Company Act of 1956) thereof—

(1) to include assets held in custody or safekeeping, or the assets associated with a cryptographic key held in custody or safekeeping, as a liability on such institution's financial statement or balance sheet, except that cash held for a third party by such institution that is commingled with the general assets of such institution may be reflected as a liability on a financial statement or balance sheet;

(2) to hold additional regulatory capital against assets in custody or safekeeping, or the assets associated with a cryptographic key held in custody or safekeeping, except as necessary to mitigate against operational risks inherent with the custody or safekeeping services, as determined by—

(A) the appropriate Federal banking agency;

(B) the National Credit Union Administration (in the case of a credit union);

(C) a State bank supervisor (as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); or

(D) a State credit union supervisor (as defined under section 6003 of the Anti-Money Laundering Act of 2020);

(3) to recognize a liability for any obligations related to activities or services performed for digital assets with respect to which such institution does not have beneficial ownership if that liability would exceed the expense recognized in the income statement as a result of the corresponding obligation.

(b) DEFINITIONS.—In this section:

(1) DEPOSITORY INSTITUTION.—The term “depository institution” has the meaning given that term under section 3 of the Federal Deposit Insurance Act.

(2) CREDIT UNION TERMS.—The terms “Federal credit union” and “State credit union” have the meaning given those terms, respectively, under section 101 of the Federal Credit Union Act.

SEC. 312. EFFECTIVE DATE; ADMINISTRATION.

(a) IN GENERAL.—Except as otherwise provided under this title, this title and the amendments made by this title shall take effect 360 days after the date of enactment of this Act, except that, to the extent a provision of this title requires a rulemaking, the provision shall take effect on the later of—

(1) 360 days after the date of enactment of this Act; or

(2) 60 days after the publication in the Federal Register of the final rule implementing the provision.

(b) LIMITATION.—During fiscal years 2024, 2025, and 2026, registration fees collected by the Securities and Exchange Commission shall not be deposited in the Securities and Exchange Commission Reserve Fund.

TITLE IV—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE COMMODITY FUTURES TRADING COMMISSION

SEC. 401. COMMISSION JURISDICTION OVER DIGITAL COMMODITY TRANSACTIONS.

(a) IN GENERAL.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

“(J) Except as expressly provided in this Act, nothing in the Financial Innovation and Technology for the 21st Century Act shall affect or apply to, or be interpreted to affect or apply to—

“(i) any agreement, contract, or transaction that is subject to regulation under this Act as—

“(I) a contract of sale of a commodity for future delivery or an option on such a contract;

“(II) a swap;

“(III) a security futures product;

“(IV) an option authorized under section 4c of this Act;

“(V) an agreement, contract, or transaction described in subparagraph (C)(i) or (D)(i) of subsection (c)(2) of this section; or

“(VI) a leverage transaction authorized under section 19 of this Act; or

- “(ii) the activities of any person with respect to any such an agreement, contract, or transaction.”.
- (b) IN GENERAL.—Section 2(c)(1) of the Commodity Exchange Act (7 U.S.C. 2(c)(1)) is amended—
- (1) in subparagraph (F), by striking “or” at the end;
 - (2) in subparagraph (G), by striking the period and inserting “; or”; and
 - (3) by adding at the end the following:

“(H) permitted payment stablecoins.”.
- (c) IN GENERAL.—Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) is amended—
- (1) in subparagraph (D)(ii)—
 - (A) in subclause (III), in the matter that precedes item (aa), by inserting “of a commodity, other than a digital commodity,” before “that”; and
 - (B) by redesignating subclauses (IV) and (V) as subclauses (V) and (VI) and inserting after subclause (III) the following:

“(IV) a contract of sale of a digital commodity that—

 - “(aa) results in actual delivery, as the Commission shall by rule determine, within 2 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the digital commodity involved; or
 - “(bb) is executed with a registered digital commodity dealer—
 - “(AA) directly;
 - “(BB) through a registered digital commodity broker; or
 - “(CC) on or subject to the rules of a registered digital commodity exchange;”; and
 - (2) by adding at the end the following:

“(F) COMMISSION JURISDICTION WITH RESPECT TO DIGITAL COMMODITY TRANSACTIONS.—

“(i) IN GENERAL.—Subject to sections 6d and 12(e), the Commission shall have exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity in interstate commerce, including in a digital commodity cash or spot market, that is offered, solicited, traded, facilitated, executed, cleared, reported, or otherwise dealt in—

 - “(I) on or subject to the rules of a registered entity or an entity that is required to be registered as a registered entity; or
 - “(II) by any other entity registered, or required to be registered, with the Commission.

“(ii) LIMITATIONS.—Clause (i) shall not apply with respect to custodial or depository activities for a digital commodity, or custodial or depository activities for any promise or right to a future digital commodity, of an entity regulated by an appropriate Federal banking agency or a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act).

“(iii) MIXED DIGITAL ASSET TRANSACTIONS.—

 - “(I) IN GENERAL.—Clause (i) shall not apply to a mixed digital asset transaction.
 - “(II) OVERSIGHT OF MIXED DIGITAL ASSET TRANSACTIONS.—
 - “(aa) ON A CFTC REGULATED PLATFORM.—A mixed digital asset transaction that occurs on or subject to the rules of a registered entity or by any other entity registered with the Commission—
 - “(AA) shall not occur except on or subject to the rules of a registered entity or by any other entity that is dually registered with the Commission and the Securities and Exchange Commission; and
 - “(BB) shall be subject to the jurisdiction of the Commission and the Securities and Exchange Commission.
 - “(bb) OFF EXCHANGE.—A mixed digital asset transaction that does not occur on or subject to the rules of a registered entity or by any other entity registered with the Commission shall be subject to the exclusive jurisdiction of the Securities and Exchange Commission.
 - “(III) REPORTS ON MIXED DIGITAL ASSET TRANSACTIONS.—A digital asset issuer, related person, affiliated person, or other person registered with the Securities and Exchange Commission that engages in a mixed digital asset transaction, shall, on request, open to inspection and examination by the Commodity Futures Trading Commission all books and records relating to the mixed digital asset transaction, subject to the confidentiality and disclosure requirements of section 8.
- “(G) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN STABLECOINS.—

“(i) TREATMENT OF PERMITTED PAYMENT STABLECOINS ON COMMISSION-REGISTERED ENTITIES.—Except as provided in clauses (ii) and (iii), the Commission shall only have jurisdiction over a cash or spot agreement, contract, or transaction in a permitted payment stablecoin that is offered, offered to enter into, entered into, executed, confirmed the execution of, solicited, or accepted—

“(I) on or subject to the rules of a registered entity; or

“(II) by any other entity registered by the Commission.

“(ii) PERMITTED PAYMENT STABLECOIN TRANSACTION RULES.—This Act shall only apply to a transaction described in clause (i) for the purposes of regulating the offer, execution, solicitation, or acceptance of a cash or spot permitted payment stablecoin transaction on a registered entity or other entity registered by the Commission with respect to requirements imposed with respect to—

“(I) recordkeeping;

“(II) custody;

“(III) segregation;

“(IV) reporting;

“(V) trading procedures and trade processing requirements;

“(VI) information sharing;

“(VII) conflicts of interest;

“(VIII) antifraud, antimanipulation, or false reporting; or

“(IX) any other transaction level requirement imposed on the registered entity or other entity registered by the Commission that the Commission by rule determines would foster the development of fair and orderly cash or spot markets in digital commodities, be necessary or appropriate in the public interest, and be consistent with the protection of customers.

“(iii) NO AUTHORITY OVER PERMITTED PAYMENT STABLECOINS.—Notwithstanding clause (ii), the Commission shall not make a rule or regulation, impose a requirement or obligation on a registered entity or other entity registered by the Commission, or impose a requirement or obligation on a permitted payment stablecoin issuer, regarding the operation of a permitted payment stablecoin issuer or a permitted payment stablecoin, including a requirement or obligation regarding—

“(I) design;

“(II) structure;

“(III) issuance;

“(IV) redemption;

“(V) financial resources;

“(VI) collateral; or

“(VII) any other aspect of such an operation or such a stablecoin.”.

(d) CONFORMING AMENDMENT.—Section 2(a)(1)(A) of such Act (7 U.S.C. 2(a)(1)(A)) is amended in the 1st sentence by inserting “subsection (c)(2)(F) of this section or” before “section 19”.

SEC. 402. REQUIRING FUTURES COMMISSION MERCHANTS TO USE QUALIFIED DIGITAL COMMODITY CUSTODIANS.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) in subsection (a)(2)—

(A) in the 1st proviso, by striking “any bank or trust company” and inserting “any bank, trust company, or qualified digital commodity custodian”; and

(B) by inserting “: *Provided further*, That any such property that is a digital commodity shall be held in a qualified digital commodity custodian” before the period at the end; and

(2) in subsection (f)(3)(A)(i), by striking “any bank or trust company” and inserting “any bank, trust company, or qualified digital commodity custodian”.

SEC. 403. TRADING CERTIFICATION AND APPROVAL FOR DIGITAL COMMODITIES.

Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended—

(1) in subsection (a), by striking “5(d) and 5b(c)(2)” and inserting “5(d), 5b(c)(2), and 5i(c)”;

(2) in subsection (b)—

(A) in each of paragraphs (1) and (2), by inserting “digital commodity exchange,” before “derivatives”; and

(B) in paragraph (3), by inserting “digital commodity exchange,” before “derivatives” each place it appears;

(3) in subsection (c)—

(A) in paragraph (2), by inserting “or participants” before “(in”;

(B) in paragraph (4)(B), by striking “1a(10)” and inserting “1a(9)”; and

(C) in paragraph (5), by adding at the end the following:

“(D) SPECIAL RULES FOR DIGITAL COMMODITY CONTRACTS.—In certifying any new rule or rule amendment, or listing any new contract or instrument, in connection with a contract of sale of a commodity for future delivery, option, swap, or other agreement, contract, or transaction, that is based on or references a digital commodity, a registered entity shall make or rely on a certification under subsection (d) for the digital commodity.”; and

(4) by inserting after subsection (c) the following:

“(d) CERTIFICATIONS FOR DIGITAL COMMODITY TRADING.—

“(1) IN GENERAL.—Notwithstanding subsection (c), for the purposes of listing or offering a digital commodity for trading in a digital commodity cash or spot market, an eligible entity shall issue a written certification that the digital commodity meets the requirements of this Act (including regulations thereunder).

“(2) CONTENTS OF THE CERTIFICATION.—

“(A) IN GENERAL.—In making a written certification under this paragraph, the eligible entity shall furnish to the Commission—

“(i) an analysis of how the digital commodity meets the requirements of section 5i(c)(3);

“(ii) information about the digital commodity regarding—

“(I) its purpose and use;

“(II) its unit creation or release process;

“(III) its consensus mechanism;

“(IV) its governance structure;

“(V) its participation and distribution; and

“(VI) its current and proposed functionality; and

“(iii) any other information, analysis, or documentation the Commission may, by rule, require.

“(B) RELIANCE ON PRIOR DISCLOSURES.—In making a certification under this subsection, an eligible entity may rely on the records and disclosures of any relevant person registered with the Securities and Exchange Commission or other State or Federal agency.

“(3) MODIFICATIONS.—

“(A) IN GENERAL.—An eligible entity shall modify a certification made under paragraph (1) to—

“(i) account for significant changes in any information provided to the Commission under paragraph (2)(A)(ii); or

“(ii) permit or restrict trading in units of a digital commodity asset held by a related person or an affiliated person.

“(B) RECERTIFICATION.—Modifications required by this subsection shall be subject to the same disapproval and review process as a new certification under paragraphs (4) and (5).

“(4) DISAPPROVAL.—

“(A) IN GENERAL.—The written certification described in paragraph (1) shall become effective unless the Commission finds that the digital asset does not meet the requirements of this Act or the rules and regulations thereunder.

“(B) ANALYSIS REQUIRED.—The Commission shall include, with any findings referred to in subparagraph (A), a detailed analysis of the factors on which the decision was based.

“(C) PUBLIC FINDINGS.—The Commission shall make public any disapproval decision, and any related findings and analysis, made under this paragraph.

“(5) REVIEW.—

“(A) IN GENERAL.—Unless the Commission makes a disapproval decision under paragraph (4), the written certification described in paragraph (1) shall become effective, pursuant to the certification by the eligible entity and notice of the certification to the public (in a manner determined by the Commission) on the date that is—

“(i) 20 business days after the date the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation), in the case of a digital commodity that has not been certified under this section or for which a certification is being modified under paragraph (3); or

“(ii) 2 business days after the date the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) for any digital commodity that has been certified under this section.

“(B) EXTENSIONS.—The time for consideration under subparagraph (A) may be extended through notice to the eligible entity that there are novel or complex issues that require additional time to analyze, that the expla-

nation by the submitting eligible entity is inadequate, or of a potential inconsistency with this Act—

“(i) once, for 30 business days, through written notice to the eligible entity by the Chairman; and

“(ii) once, for an additional 30 business days, through written notice to the digital commodity exchange from the Commission that includes a description of any deficiencies with the certification, including any—

“(I) novel or complex issues which require additional time to analyze;

“(II) missing information or inadequate explanations; or

“(III) potential inconsistencies with this Act.

“(6) CERTIFICATION REQUIRED.—Notwithstanding any other requirement of this Act, a registered entity or other entity registered with the Commission shall not list for trading, accept for clearing, offer to enter into, enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a digital asset, unless a certification has been made under this section for the digital asset.

“(7) ELIGIBLE ENTITY DEFINED.—In this subsection, the term ‘eligible entity’ means a registered entity or group of registered entities acting jointly.”

SEC. 404. REGISTRATION OF DIGITAL COMMODITY EXCHANGES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5h the following:

“SEC. 5i. REGISTRATION OF DIGITAL COMMODITY EXCHANGES.

“(a) IN GENERAL.—

“(1) REGISTRATION.—

“(A) IN GENERAL.—A trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity shall register with the Commission as a digital commodity exchange.

“(B) APPLICATION.—A person desiring to register as a digital commodity exchange shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

“(C) EXEMPTIONS.—A trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity shall not be required to register under this section if the trading facility—

“(i) permits no more than a de minimis amount of trading activity;

or

“(ii) serves only customers in a single State or territory.

“(2) ADDITIONAL REGISTRATIONS.—

“(A) WITH THE COMMISSION.—

“(i) IN GENERAL.—A registered digital commodity exchange may also register as—

“(I) a designated contract market; or

“(II) a swap execution facility.

“(ii) RULES.—For an entity with multiple registrations under clause (i), the Commission—

“(I) shall prescribe rules to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would foster the development of fair and orderly cash or spot markets in digital commodities, be necessary or appropriate in the public interest, and be consistent with the protection of customers; and

“(II) may, after an analysis of the risks and benefits, prescribe rules to provide for portfolio margining, as may be necessary to protect market participants, promote fair and equitable trading in digital commodity markets, and promote responsible economic or financial innovation.

“(B) WITH THE SECURITIES AND EXCHANGE COMMISSION.—A registered digital commodity exchange may register with the Securities and Exchange Commission as a digital asset trading system to list or trade contracts of sale for digital assets deemed securities.

“(C) WITH A REGISTERED FUTURES ASSOCIATION.—

“(i) IN GENERAL.—A registered digital commodity exchange shall also be a member of a registered futures association and comply with rules related to such activity, if the registered digital commodity exchange accepts customer funds required to be segregated under subsection (d).

“(ii) RULEMAKING REQUIRED.—The Commission shall require any registered futures association with a digital commodity exchange as a member to provide such rules as may be necessary to further compliance with subsection (d), protect customers, and promote the public interest.

“(D) REGISTRATION REQUIRED.—A person required to be registered as a digital commodity exchange under this section shall register with the Commission as such regardless of whether the person is registered as such with another State or Federal regulator.

“(b) TRADING.—

“(1) PROHIBITION ON CERTAIN TRADING PRACTICES.—

“(A) Section 4b shall apply to any agreement, contract, or transaction in a digital commodity as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(B) Section 4c shall apply to any agreement, contract, or transaction in a digital commodity as if the agreement, contract, or transaction were a transaction involving the purchase or sale of a commodity for future delivery.

“(2) PROHIBITION ON ACTING AS A COUNTERPARTY.—A registered digital commodity exchange or any affiliate of such an exchange shall not act as counterparty to any transaction executed on or subject to the rules of the registered digital commodity exchange.

“(3) TRADING SECURITIES.—A registered digital commodity exchange that is also registered with the Securities and Exchange Commission may offer a contract of sale of a digital asset deemed a security.

“(4) RULES FOR CERTAIN DIGITAL ASSET SALES.—The digital commodity exchange shall have in place such rules as may be necessary to reasonably ensure the orderly sale of any unit of a digital commodity sold by a related person or an affiliated person.

“(c) CORE PRINCIPLES FOR DIGITAL COMMODITY EXCHANGES.—

“(1) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a digital commodity exchange, a digital commodity exchange shall comply with—

“(i) the core principles described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) REASONABLE DISCRETION OF A DIGITAL COMMODITY EXCHANGE.—Unless otherwise determined by the Commission by rule or regulation, a digital commodity exchange described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the digital commodity exchange complies with the core principles described in this subsection.

“(2) COMPLIANCE WITH RULES.—A digital commodity exchange shall—

“(A) establish and enforce compliance with any rule of the digital commodity exchange, including—

“(i) the terms and conditions of the trades traded or processed on or through the digital commodity exchange; and

“(ii) any limitation on access to the digital commodity exchange;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

“(i) to provide market participants with impartial access to the market; and

“(ii) to capture information that may be used in establishing whether rule violations have occurred; and

“(C) establish rules governing the operation of the exchange, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility.

“(3) LISTING STANDARDS FOR DIGITAL COMMODITIES.—

“(A) IN GENERAL.—A digital commodity exchange shall permit trading only in a digital commodity that is not readily susceptible to manipulation.

“(B) PUBLIC INFORMATION REQUIREMENTS.—

“(i) IN GENERAL.—A digital commodity exchange shall permit trading only in a digital commodity if the information required in clause (ii) is correct, current, and available to the public.

“(ii) REQUIRED INFORMATION.—With respect to a digital commodity and each blockchain system to which the digital commodity relates for which the digital commodity exchange will make the digital commodity available to the customers of the digital commodity exchange, the information required in this clause is as follows:

“(I) SOURCE CODE.—The source code for any blockchain system to which the digital commodity relates.

“(II) TRANSACTION HISTORY.—A narrative description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital commodity relates.

“(III) DIGITAL ASSET ECONOMICS.—A narrative description of the purpose of any blockchain system to which the digital asset relates and the operation of any such blockchain system, including—

“(aa) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

“(bb) information detailing any applicable consensus mechanism or process for validating transactions, method of generating or mining digital assets, and any process for burning or destroying digital assets on the blockchain system;

“(cc) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of the digital assets; and

“(dd) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

“(IV) ADDITIONAL INFORMATION.—Such additional information as the Commission may, by rule, determine to be necessary for a customer to understand the financial and operational risks of a digital commodity, and to be in the public interest or in furtherance of the requirements of this Act.

“(C) ADDITIONAL LISTING CONSIDERATIONS.—In addition to the requirements of subparagraphs (A) and (B), a digital commodity exchange shall consider—

“(i) if a sufficient percentage of the units of the digital asset are units of a digital commodity to permit robust price discovery;

“(ii) if it is reasonably unlikely that the transaction history can be fraudulently altered by any person or group of persons acting collectively;

“(iii) if the operating structure and system of the digital commodity is secure from cybersecurity threats;

“(iv) if the functionality of the digital commodity will protect holders from operational failures;

“(v) if sufficient public information about the operation, functionality, and use of the digital commodity is available; and

“(vi) any other factor which the Commission has, by rule, determined to be in the public interest or in furtherance of the requirements of this Act.

“(D) RESTRICTED DIGITAL ASSETS.—A digital commodity exchange shall not permit the trading of a unit of a digital asset that is a restricted digital asset.

“(4) TREATMENT OF CUSTOMER ASSETS.—A digital commodity exchange shall establish standards and procedures that are designed to protect and ensure the safety of customer money, assets, and property.

“(5) MONITORING OF TRADING AND TRADE PROCESSING.—

“(A) IN GENERAL.—A digital commodity exchange shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading on the exchange.

“(B) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—A digital commodity exchange shall establish and enforce rules—

“(i) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

“(ii) to promote fair and equitable trading on the exchange.

“(C) TRADING PROCEDURES.—A digital commodity exchange shall—

“(i) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(I) trading procedures to be used in entering and executing orders traded on or through the facilities of the digital commodity exchange; and

“(II) procedures for trade processing of digital commodities on or through the facilities of the digital commodity exchange; and

- “(ii) monitor trading in digital commodities to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.
- “(6) ABILITY TO OBTAIN INFORMATION.—A digital commodity exchange shall—
- “(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;
- “(B) provide the information to the Commission on request; and
- “(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.
- “(7) EMERGENCY AUTHORITY.—A digital commodity exchange shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission or a registered entity, as is necessary and appropriate, including the authority to facilitate the liquidation or transfer of open positions in any digital commodity or to suspend or curtail trading in a digital commodity.
- “(8) TIMELY PUBLICATION OF TRADING INFORMATION.—
- “(A) IN GENERAL.—A digital commodity exchange shall make public timely information on price, trading volume, and other trading data on digital commodities to the extent prescribed by the Commission.
- “(B) CAPACITY OF DIGITAL COMMODITY EXCHANGE.—A digital commodity exchange shall have the capacity to electronically capture and transmit trade information with respect to transactions executed on the exchange.
- “(9) RECORDKEEPING AND REPORTING.—
- “(A) IN GENERAL.—A digital commodity exchange shall—
- “(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;
- “(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act; and
- “(iii) keep any such records of digital commodities which relate to a security open to inspection and examination by the Securities and Exchange Commission.
- “(B) INFORMATION SHARING.—Subject to section 8, and on request, the Commission shall share information collected under subparagraph (A) with—
- “(i) the Board;
- “(ii) the Securities and Exchange Commission;
- “(iii) each appropriate Federal banking agency;
- “(iv) each appropriate State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act);
- “(v) the Financial Stability Oversight Council;
- “(vi) the Department of Justice; and
- “(vii) any other person that the Commission determines to be appropriate, including—
- “(I) foreign financial supervisors (including foreign futures authorities);
- “(II) foreign central banks; and
- “(III) foreign ministries.
- “(C) CONFIDENTIALITY AGREEMENT.—Before the Commission may share information with any entity described in subparagraph (B), the Commission shall receive a written agreement from the entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on digital commodities that is provided.
- “(D) PROVIDING INFORMATION.—A digital commodity exchange shall provide to the Commission (including any designee of the Commission) information under subparagraph (A) in such form and at such frequency as is required by the Commission.
- “(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a digital commodity exchange shall not—
- “(A) adopt any rules or take any actions that result in any unreasonable restraint of trade; or
- “(B) impose any material anticompetitive burden on trading.
- “(11) CONFLICTS OF INTEREST.—A registered digital commodity exchange shall implement conflict-of-interest systems and procedures that—

- “(A) establish structural and institutional safeguards—
- “(i) to minimize conflicts of interest that might potentially bias the judgment or supervision of the digital commodity exchange and contravene the principles of fair and equitable trading and the business conduct standards described in this Act, including conflicts arising out of transactions or arrangements with affiliates (including affiliates engaging in digital commodity activities) which may include information partitions and the legal separation of different persons or entities involved in digital commodity activities; and
 - “(ii) to ensure that the activities of any person within the digital commodity exchange or any affiliated entity relating to research or analysis of the price or market for any digital commodity or acting in a role of providing dealing, brokering, or advising activities are separated by appropriate informational partitions within the digital commodity exchange or any affiliated entity from the review, pressure, or oversight of persons whose involvement in pricing, trading, exchange, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and
- “(B) address such other issues as the Commission determines to be appropriate.
- “(12) FINANCIAL RESOURCES.—
- “(A) IN GENERAL.—A digital commodity exchange shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the digital commodity exchange.
 - “(B) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—A digital commodity exchange shall possess financial resources that, at a minimum, exceed the total amount that would enable the digital commodity exchange to conduct an orderly wind-down of its activities.
- “(13) DISCIPLINARY PROCEDURES.—A digital commodity exchange shall establish and enforce disciplinary procedures that authorize the digital commodity exchange to discipline, suspend, or expel members or market participants that violate the rules of the digital commodity exchange, or similar methods for performing the same functions, including delegation of the functions to third parties.
- “(14) GOVERNANCE FITNESS STANDARDS.—
- “(A) GOVERNANCE ARRANGEMENTS.—A digital commodity exchange shall establish governance arrangements that are transparent to fulfill public interest requirements.
 - “(B) FITNESS STANDARDS.—A digital commodity exchange shall establish and enforce appropriate fitness standards for—
 - “(i) directors; and
 - “(ii) any individual or entity with direct access to, or control of, customer assets.
- “(15) SYSTEM SAFEGUARDS.—A digital commodity exchange shall—
- “(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational and security risks, through the development of appropriate controls and procedures, and automated systems, that—
 - “(i) are reliable and secure; and
 - “(ii) have adequate scalable capacity;
 - “(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—
 - “(i) the timely recovery and resumption of operations; and
 - “(ii) the fulfillment of the responsibilities and obligations of the digital commodity exchange; and
 - “(C) periodically conduct tests to verify that the backup resources of the digital commodity exchange are sufficient to ensure continued—
 - “(i) order processing and trade matching;
 - “(ii) price reporting;
 - “(iii) market surveillance; and
 - “(iv) maintenance of a comprehensive and accurate audit trail.
- “(d) HOLDING OF CUSTOMER ASSETS.—
- “(1) IN GENERAL.—A digital commodity exchange shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.
 - “(A) SEGREGATION OF FUNDS.—

“(i) IN GENERAL.—A digital commodity exchange shall treat and deal with all money, assets, and property that is received by the digital commodity exchange, or accrues to a customer as the result of trading in digital commodities, as belonging to the customer.

“(ii) COMMINGLING PROHIBITED.—Money, assets, and property of a customer described in clause (i) shall be separately accounted for and shall not be commingled with the funds of the digital commodity exchange or be used to margin, secure, or guarantee any trades or accounts of any customer or person other than the person for whom the same are held.

“(B) EXCEPTIONS.—

“(i) USE OF FUNDS.—

“(I) IN GENERAL.—Notwithstanding subparagraph (A), money, assets, and property of customers of a digital commodity exchange described in subparagraph (A) may, for convenience, be commingled and deposited in the same account or accounts with any bank, trust company, derivatives clearing organization, or qualified digital commodity custodian.

“(II) WITHDRAWAL.—Notwithstanding subparagraph (A), such share of the money, assets, and property described in item (aa) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a contract of sale of a digital commodity with a registered entity may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the contract of sale of a digital commodity.

“(ii) COMMISSION ACTION.—Notwithstanding subparagraph (A), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of the customers of a digital commodity exchange described in subparagraph (A) may be commingled and deposited in customer accounts with any other money, assets, or property received by the digital commodity exchange and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital commodity exchange.

“(2) PERMITTED INVESTMENTS.—Money described in subparagraph (A) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

“(3) CUSTOMER PROTECTION DURING BANKRUPTCY.—

“(A) CUSTOMER PROPERTY.—All assets held on behalf of a customer by a digital commodity exchange, and all money, assets, and property of any customer received by a digital commodity exchange registered under section 5i of this Act for trading or custody, or to facilitate, margin, guarantee, or secure contracts of sale of a digital commodity (including money, assets, or property accruing to the customer as the result of the transactions), shall be considered customer property for purposes of section 761 of title 11, United States Code.

“(B) TRANSACTIONS.—A transaction involving a unit of a digital commodity occurring on or subject to the rules of a digital commodity exchange shall be considered a ‘contract for the purchase or sale of a commodity for future delivery, on or subject to the rules of, a contract market or board of trade’ for the purposes of the definition of a ‘commodity contract’ in section 761 of title 11, United States Code.

“(C) EXCHANGES.—A digital commodity exchange shall be considered a futures commission merchant for purposes of section 761 of title 11, United States Code.

“(4) MISUSE OF CUSTOMER PROPERTY.—

“(A) IN GENERAL.—It shall be unlawful—

“(i) for any digital commodity exchange that has received any customer money, assets, or property for custody to dispose of, or use any such money, assets, or property as belonging to the digital commodity exchange; or

“(ii) for any other person, including any depository, other digital commodity exchange, or digital commodity custodian that has received any

customer money, assets, or property for deposit, to hold, dispose of, or use any such money, assets, or property, or property, as belonging to the depositing digital commodity exchange or any person other than the customers of the digital commodity exchange.

“(B) USE FURTHER DEFINED.—For purposes of this section, ‘use’ of a digital commodity includes utilizing any unit of a digital asset to participate in a blockchain service defined in paragraph (5) or a decentralized governance system associated with the digital commodity or the blockchain system to which the digital commodity relates in any manner other than that expressly directed by the customer from whom the unit of a digital commodity was received.

“(5) PARTICIPATION IN BLOCKCHAIN SERVICES.—

“(A) IN GENERAL.—A customer shall have the right to waive the restrictions in paragraph (1) for any unit of a digital commodity, by affirmatively electing, in writing to the digital commodity exchange, to waive the restrictions.

“(B) USE OF FUNDS.—Customer digital commodities removed from segregation under subparagraph (A) may be pooled and used by the digital commodity exchange or its designee to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation in subparagraph (A) relates.

“(C) LIMITATIONS.—The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this paragraph that are reasonably necessary to protect customers, including eligible contract participants, non-eligible contract participants, or any other class of customers.

“(D) BLOCKCHAIN SERVICE DEFINED.—In this subparagraph, the term ‘blockchain service’ means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.

“(e) MARKET ACCESS REQUIREMENTS.—

“(1) IN GENERAL.—A digital commodity exchange shall require any person who is not an eligible contract participant to access trading on the exchange through a digital commodity broker.

“(2) AFFILIATED COMMODITY BROKERS.—A registered digital commodity exchange may maintain an affiliated digital commodity broker to facilitate access to the digital commodity exchange, if—

“(A) no other digital commodity brokers are permitted to facilitate access to the exchange;

“(B) the affiliated digital commodity broker limits its activities only to providing customer access to the digital commodity exchange; and

“(C) the affiliated digital commodity broker is not also registered as a digital commodity dealer.

“(3) DIRECT ACCESS FOR ELIGIBLE CONTRACT PARTICIPANTS.—Nothing in this section shall prohibit a digital commodity exchange in compliance with this section from permitting direct access for eligible contract participants.

“(4) ADDITIONAL REQUIREMENTS.—

“(A) IN GENERAL.—The Commission may, by rule, impose any additional requirements related to the operations and activities of the digital commodity exchange and the affiliated digital commodity broker necessary to protect market participants, promote fair and equitable trading on the digital commodity exchange, and promote responsible economic or financial innovation.

“(B) DELEGATION OF AUTHORITY.—The Commission may delegate to a registered futures association such oversight and regulatory requirements as the Commission determines are necessary to—

“(i) supervise the activities of the digital commodity exchange and an affiliated digital commodity broker; and

“(ii) protect market participants, promote fair and equitable trading on the digital commodity exchange, and promote responsible economic or financial innovation.

“(f) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—A digital commodity exchange shall designate an individual to serve as a chief compliance officer.

“(2) DUTIES.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the exchange;

“(B) review compliance with the core principles in this subsection;

“(C) in consultation with the board of the exchange, a body performing a function similar to that of a board, or the senior officer of the exchange, resolve any conflicts of interest that may arise;

“(D) establish and administer the policies and procedures required to be established pursuant to this section;

“(E) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

“(F) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

“(3) REQUIREMENTS FOR PROCEDURES.—In establishing procedures under paragraph (2)(F), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(4) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(i) the compliance of the digital commodity exchange with this Act; and

“(ii) the policies and procedures, including the code of ethics and conflict of interest policies, of the digital commodity exchange.

“(B) REQUIREMENTS.—The chief compliance officer shall—

“(i) submit each report described in subparagraph (A) with the appropriate financial report of the digital commodity exchange that is required to be submitted to the Commission pursuant to this section; and

“(ii) include in the report a certification that, under penalty of law, the report is accurate and complete.

“(g) APPOINTMENT OF TRUSTEE.—

“(1) IN GENERAL.—If a proceeding under section 5e results in the suspension or revocation of the registration of a digital commodity exchange, or if a digital commodity exchange withdraws from registration, the Commission, on notice to the digital commodity exchange, may apply to the appropriate United States district court where the digital commodity exchange is located for the appointment of a trustee.

“(2) ASSUMPTION OF JURISDICTION.—If the Commission applies for appointment of a trustee under paragraph (1)—

“(A) the court may take exclusive jurisdiction over the digital commodity exchange and the records and assets of the digital commodity exchange, wherever located; and

“(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the digital commodity exchange in an orderly manner for the protection of customers subject to such terms and conditions as the court may prescribe.

“(h) QUALIFIED DIGITAL COMMODITY CUSTODIAN.—A digital commodity exchange shall hold in a qualified digital commodity custodian each unit of a digital commodity that is—

“(1) the property of a customer of the digital commodity exchange;

“(2) required to be held by the digital commodity exchange under subsection (c)(12) of this section; or

“(3) otherwise so required by the Commission to reasonably protect customers or promote the public interest.

“(i) EXEMPTIONS.—In order to promote responsible economic or financial innovation and fair competition, or protect customers, the Commission may (on its own initiative or on application of the registered digital commodity exchange) exempt, either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, a registered digital commodity exchange from the requirements of this section, if the Commission determines that—

“(1)(A) the exemption would be consistent with the public interest and the purposes of this Act; and

“(B) the exemption will not have a material adverse effect on the ability of the Commission or the digital commodity exchange to discharge regulatory or self-regulatory duties under this Act; or

“(2) the digital commodity exchange is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the exchange.

“(j) CUSTOMER DEFINED.—In this section, the term ‘customer’ means any person that maintains an account for the trading of digital commodities directly with a digital commodity exchange (other than a person that is owned or controlled, directly or indirectly, by the digital commodity exchange) for its own behalf or on behalf of other any person.

“(k) FEDERAL PREEMPTION.—Notwithstanding any other provision of law, the Commission shall have exclusive jurisdiction over any digital commodity exchange registered under this section.

“(l) TREATMENT UNDER THE BANK SECRECY ACT.—A registered digital commodity exchange shall be treated as a financial institution for purposes of the Bank Secrecy Act.”

SEC. 405. QUALIFIED DIGITAL COMMODITY CUSTODIANS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended by the preceding provisions of this Act, is amended by inserting after section 5i the following:

“SEC. 5j. QUALIFIED DIGITAL COMMODITY CUSTODIANS.

“(a) IN GENERAL.—For purposes of this Act, a qualified digital commodity custodian is a digital commodity custodian who meets the following conditions:

“(1) SUPERVISION.—The digital commodity custodian is subject to adequate supervision and appropriate regulation.

“(2) NO PROHIBITION.—The digital commodity custodian is—

“(A) subject to the supervision of—

“(i) an appropriate Federal banking agency;

“(ii) a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act); or

“(iii) an appropriate foreign governmental authority in the home country of the digital commodity custodian; and

“(B) not prohibited by the applicable supervisor referred to in subparagraph (A) from engaging in any activity with respect to the holding of digital commodities.

“(3) INFORMATION SHARING.—

“(A) IN GENERAL.—The digital commodity custodian agrees to such periodic sharing of information regarding customer accounts the digital commodity custodian holds on behalf of an entity registered with the Commission, as the Commission determines by rule shall be reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.

“(B) PROVISION OF INFORMATION.—Any person that is subject to regulation and examination by a prudential regulator may satisfy any information request described in subparagraph (A), by providing the Commission with a detailed listing, in writing, of the digital commodities of a customer within the custody or use of the person.

“(b) ADEQUATE SUPERVISION AND APPROPRIATE REGULATION FURTHER DEFINED.—

“(1) IN GENERAL.—In subsection (a), the terms ‘adequate supervision’ and ‘appropriate regulation’ mean such minimum standards for supervision and regulation as are reasonably necessary to protect the digital commodities of customers of an entity registered with the Commission, including minimum standards relating to—

“(A) accessibility of customer assets;

“(B) financial resources;

“(C) risk management requirements;

“(D) governance arrangements;

“(E) fitness standards;

“(F) recordkeeping;

“(G) information sharing; and

“(H) conflicts of interest.

“(2) DEEMED COMPLIANCE.—For purposes of subsection (a), a bank subject to the supervision of an appropriate Federal banking agency or a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act) is deemed to be subject to adequate supervision and appropriate regulation.

“(3) RULEMAKING AUTHORITY.—For purposes of subsection (a), the Commission, by rule or order, may further define the terms ‘adequate supervision’ and ‘appropriate regulation’ as necessary in the public interest, as appropriate for the protection of customers, and consistent with the purposes of this Act.

“(c) AUTHORITY TO TEMPORARILY SUSPEND STANDARDS.—The Commission may, by rule or order, temporarily suspend, in whole or in part, any requirement imposed under, or any standard referred to in, this section if the Commission determines that the suspension would be consistent with the public interest and the purposes of this Act.”

SEC. 406. REGISTRATION AND REGULATION OF DIGITAL COMMODITY BROKERS AND DEALERS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended by the preceding provisions of this Act, is amended by inserting after section 4t the following:

“SEC. 4u. REGISTRATION AND REGULATION OF DIGITAL COMMODITY BROKERS AND DEALERS.

“(a) **REGISTRATION.**—It shall be unlawful for any person to act as a digital commodity broker or digital commodity dealer unless the person is registered as such with the Commission.

“(b) **REQUIREMENTS.**—

“(1) **IN GENERAL.**—A person shall register as a digital commodity broker or digital commodity dealer by filing a registration application with the Commission.

“(2) **CONTENTS.**—

“(A) **IN GENERAL.**—The application shall be made in such form and manner as is prescribed by the Commission, and shall contain such information as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) **CONTINUAL REPORTING.**—A person that is registered as a digital commodity broker or digital commodity dealer shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

“(3) **TRANSITION.**—Within 180 days after the date of the enactment of this section, the Commission shall prescribe rules providing for the registration of digital commodity brokers and digital commodity dealers under this section.

“(4) **STATUTORY DISQUALIFICATION.**—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a digital commodity broker or digital commodity dealer to permit any person who is associated with a digital commodity broker or a digital commodity dealer and who is subject to a statutory disqualification to effect or be involved in effecting a contract for sale of a digital commodity on behalf of the digital commodity broker or the digital commodity dealer, respectively, if the digital commodity broker or digital commodity dealer, respectively, knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(5) **LIMITATIONS ON CERTAIN ASSETS.**—A registered digital commodity broker or registered digital commodity dealer shall not offer, offer to enter into, enter into, or facilitate any contract for sale of a digital commodity that has not been certified under section 5c(d).

“(c) **ADDITIONAL REGISTRATIONS.**—

“(1) **WITH THE COMMISSION.**—Any person required to be registered as a digital commodity broker or digital commodity dealer may also be registered as a futures commission merchant, introducing broker, or swap dealer.

“(2) **WITH THE SECURITIES AND EXCHANGE COMMISSION.**—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section may register with the Securities and Exchange Commission as a digital asset broker or digital asset dealer, pursuant to section 15(b) of the Securities Exchange Act of 1934, as applicable, if the digital asset broker or digital asset dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contract of sale of digital assets.

“(3) **WITH MEMBERSHIP IN A REGISTERED FUTURES ASSOCIATION.**—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section shall be a member of a registered futures association.

“(4) **REGISTRATION REQUIRED.**—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section shall register with the Commission as such regardless of whether the person is registered as such with another State or Federal regulator.

“(d) **RULEMAKING.**—

“(1) **IN GENERAL.**—The Commission shall prescribe such rules applicable to registered digital commodity brokers and registered digital commodity dealers as are appropriate to carry out this section, including rules in the public interest that limit the activities of digital commodity brokers and digital commodity dealers.

“(2) **MULTIPLE REGISTRANTS.**—The Commission shall prescribe rules or regulations permitting, or may otherwise authorize, exemptions or additional requirements applicable to persons with multiple registrations under this Act, including as futures commission merchants, introducing brokers, digital commodity brokers, digital commodity dealers, or swap dealers, as may be in the public interest to reduce compliance costs and promote customer protection.

“(e) CAPITAL REQUIREMENTS.—

“(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall meet such minimum capital requirements as the Commission may prescribe to ensure that the digital commodity broker or digital commodity dealer, respectively, is able to—

“(A) meet, and continue to meet, at all times, the obligations of such a registrant;

“(B) conduct an orderly wind-down of the activities of the digital commodity broker or digital commodity dealer, respectively; and

“(C) in the case of a digital commodity dealer, fulfill the customer obligations of the digital commodity dealer for any margined, leveraged, or financed transactions.

“(2) RULE OF CONSTRUCTION.—Nothing in this section shall limit, or be construed to limit, the authority of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of such Act (15 U.S.C. 78o(b)(11))) in accordance with section 15(c)(3) of such Act (15 U.S.C. 78o(c)(3)).

“(3) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—

“(A) IN GENERAL.—Each futures commission merchant, introducing broker, digital commodity broker, digital commodity dealer, broker, and dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which the futures commission merchant, introducing broker, digital commodity broker, digital commodity dealer, broker, or dealer, respectively, is subject under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(B) COORDINATION OF CAPITAL REQUIREMENTS.—

“(i) COMMISSION RULE.—The Commission shall, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations as a digital commodity dealer, digital commodity broker, futures commission merchant, or introducing broker.

“(ii) JOINT RULE.—The Commission and the Securities and Exchange Commission shall jointly, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations as a digital commodity dealer, digital commodity broker, futures commission merchant, introducing broker, broker, or dealer.

“(f) REPORTING AND RECORDKEEPING.—Each registered digital commodity broker and registered digital commodity dealer—

“(1) shall make such reports as are required by the Commission by rule or regulation regarding the transactions, positions, and financial condition of the digital commodity broker or digital commodity dealer, respectively;

“(2) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(3) shall keep the books and records open to inspection and examination by any representative of the Commission.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall maintain daily trading records of the transactions of the digital commodity broker or digital commodity dealer, respectively, and all related records (including related forward or derivatives transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as the Commission may require by rule or regulation.

“(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

“(3) COUNTERPARTY RECORDS.—Each registered digital commodity broker and registered digital commodity dealer shall maintain daily trading records for each customer or counterparty in a manner and form that is identifiable with each digital commodity transaction.

“(4) AUDIT TRAIL.—Each registered digital commodity broker and registered digital commodity dealer shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(h) BUSINESS CONDUCT STANDARDS.—

“(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall conform with such business conduct standards as the Commission, by rule or regulation, prescribes related to—

“(A) fraud, manipulation, and other abusive practices involving spot or margined, leveraged, or financed digital commodity transactions (including transactions that are offered but not entered into);

“(B) diligent supervision of the business of the registered digital commodity broker or digital commodity dealer, respectively; and

“(C) such other matters as the Commission deems appropriate.

“(2) BUSINESS CONDUCT REQUIREMENTS.—The Commission shall, by rule, prescribe business conduct requirements which—

“(A) require disclosure by a registered digital commodity broker and registered digital commodity dealer to any counterparty to the transaction (other than an eligible contract participant) of—

“(i) information about the material risks and characteristics of the digital commodity; and

“(ii) information about the material risks and characteristics of the transaction;

“(B) establish a duty for such a digital commodity broker and such a digital commodity dealer to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

“(C) establish standards governing digital commodity platform marketing and advertising, including testimonials and endorsements; and

“(D) establish such other standards and requirements as the Commission may determine are—

“(i) in the public interest;

“(ii) appropriate for the protection of customers; or

“(iii) otherwise in furtherance of the purposes of this Act.

“(3) PROHIBITION ON FRAUDULENT PRACTICES.—It shall be unlawful for a registered digital commodity broker or registered digital commodity dealer to—

“(A) employ any device, scheme, or artifice to defraud any customer or counterparty;

“(B) engage in any transaction, practice, or course of business that operates as a fraud or deceit on any customer or counterparty; or

“(C) engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

“(i) DUTIES.—

“(1) RISK MANAGEMENT PROCEDURES.—Each registered digital commodity broker and registered digital commodity dealer shall establish robust and professional risk management systems adequate for managing the day-to-day business of the digital commodity broker or digital commodity dealer, respectively.

“(2) DISCLOSURE OF GENERAL INFORMATION.—Each registered digital commodity broker and registered digital commodity dealer shall disclose to the Commission information concerning—

“(A) the terms and conditions of the transactions of the digital commodity broker or digital commodity dealer, respectively;

“(B) the trading operations, mechanisms, and practices of the digital commodity broker or digital commodity dealer, respectively;

“(C) financial integrity protections relating to the activities of the digital commodity broker or digital commodity dealer, respectively; and

“(D) other information relevant to trading in digital commodities by the digital commodity broker or digital commodity dealer, respectively.

“(3) ABILITY TO OBTAIN INFORMATION.—Each registered digital commodity broker and registered digital commodity dealer shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission, on request.

“(4) CONFLICTS OF INTEREST.—Each registered digital commodity broker and digital commodity dealer shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards—

“(i) to minimize conflicts of interest that might potentially bias the judgment or supervision of the digital commodity broker or digital commodity dealer, respectively, and contravene the principles of fair and equitable trading and the business conduct standards described in this Act, including conflicts arising out of transactions or arrangements with affiliates (including affiliates acting as digital asset issuers, digital commodity dealers, or qualified digital commodity custodians), which may include information partitions and the legal separation of different digital commodity transaction intermediaries; and

“(ii) to ensure that the activities of any person within the digital commodity broker or digital commodity dealer relating to research or analysis of the price or market for any digital commodity or acting in a role of providing exchange activities or making determinations as to accept-

- ing exchange customers are separated by appropriate informational partitions within the digital commodity broker or digital commodity dealer from the review, pressure, or oversight of persons whose involvement in pricing, trading, exchange, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and
- “(B) address such other issues as the Commission determines to be appropriate.
- “(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a digital commodity broker or digital commodity dealer shall not—
- “(A) adopt any process or take any action that results in any unreasonable restraint of trade; or
- “(B) impose any material anticompetitive burden on trading or clearing.
- “(j) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—
- “(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall designate an individual to serve as a chief compliance officer.
- “(2) DUTIES.—The chief compliance officer shall—
- “(A) report directly to the board or to the senior officer of the registered digital commodity broker or registered digital commodity dealer;
- “(B) review the compliance of the registered digital commodity broker or registered digital commodity dealer with respect to the registered digital commodity broker and registered digital commodity dealer requirements described in this section;
- “(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;
- “(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;
- “(E) ensure compliance with this Act (including regulations), including each rule prescribed by the Commission under this section;
- “(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—
- “(i) compliance office review;
- “(ii) look-back;
- “(iii) internal or external audit finding;
- “(iv) self-reported error; or
- “(v) validated complaint; and
- “(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.
- “(3) ANNUAL REPORTS.—
- “(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—
- “(i) the compliance of the registered digital commodity broker or registered digital commodity dealer with respect to this Act (including regulations); and
- “(ii) each policy and procedure of the registered digital commodity broker or registered digital commodity dealer of the chief compliance officer (including the code of ethics and conflict of interest policies).
- “(B) REQUIREMENTS.—The chief compliance officer shall ensure that a compliance report under subparagraph (A)—
- “(i) accompanies each appropriate financial report of the registered digital commodity broker or registered digital commodity dealer that is required to be furnished to the Commission pursuant to this section; and
- “(ii) includes a certification that, under penalty of law, the compliance report is accurate and complete.
- “(k) SEGREGATION OF DIGITAL COMMODITIES.—
- “(1) HOLDING OF CUSTOMER ASSETS.—
- “(A) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in customer access to the money, assets, and property of the customer.

“(B) QUALIFIED DIGITAL COMMODITY CUSTODIAN.—Each registered digital commodity broker and registered digital commodity dealer shall hold in a qualified digital commodity custodian each unit of a digital commodity that is—

“(i) the property of a customer or counterparty of the digital commodity broker or digital commodity dealer, respectively; or

“(ii) otherwise so required by the Commission to reasonably protect customers or promote the public interest.

“(2) SEGREGATION OF FUNDS.—

“(A) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall treat and deal with all money, assets, and property that is received by the registered digital commodity broker or registered digital commodity dealer, or accrues to a customer as the result of trading in digital commodities, as belonging to the customer.

“(B) COMMINGLING PROHIBITED.—

“(i) IN GENERAL.—Except as provided in clause (ii), each registered digital commodity broker and registered digital commodity dealer shall separately account for money, assets, and property of a digital commodity customer, and shall not commingle any such money, assets, or property with the funds of the digital commodity broker or digital commodity dealer, respectively, or use any such money, assets, or property to margin, secure, or guarantee any trades or accounts of any customer or person other than the person for whom the money, assets, or property are held.

“(ii) EXCEPTIONS.—

“(I) USE OF FUNDS.—

“(aa) IN GENERAL.—A registered digital commodity broker or registered digital commodity dealer may, for convenience, commingle and deposit in the same account or accounts with any bank, trust company, derivatives clearing organization, or qualified digital commodity custodian money, assets, and property of customers.

“(bb) WITHDRAWAL.—The share of the money, assets, and property described in item (aa) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a contract for sale of a digital commodity with a registered entity may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the contract.

“(II) COMMISSION ACTION.—In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of the customers of a registered digital commodity broker or registered digital commodity dealer may be commingled and deposited in customer accounts with any other money, assets, or property received by the digital commodity broker or digital commodity dealer, respectively, and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital commodity broker or digital commodity dealer, respectively.

“(3) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation allow.

“(4) CUSTOMER PROTECTION DURING BANKRUPTCY.—

“(A) CUSTOMER PROPERTY.—All money, assets, or property described in paragraph (2) shall be considered customer property for purposes of section 761 of title 11, United States Code.

“(B) TRANSACTIONS.—A transaction involving a unit of a digital commodity occurring with a digital commodity dealer shall be considered a ‘contract for the purchase or sale of a commodity for future delivery, on or subject to the rules of, a contract market or board of trade’ for purposes of the definition of a ‘commodity contract’ in section 761 of title 11, United States Code.

“(C) BROKERS AND DEALERS.—A registered digital commodity dealer and a registered digital commodity broker shall be considered a futures commission merchant for purposes of section 761 of title 11, United States Code.

“(D) ASSETS REMOVED FROM SEGREGATION.—Assets removed from segregation due to a customer election under paragraph (5) shall not be considered customer property for purposes of section 761 of title 11, United States Code.

“(5) MISUSE OF CUSTOMER PROPERTY.—

“(A) IN GENERAL.—It shall be unlawful—

“(i) for any digital commodity broker or digital commodity dealer that has received any customer money, assets, or property for custody to dispose of, or use any such money, assets, or property as belonging to the digital commodity broker or digital commodity dealer, respectively; or

“(ii) for any other person, including any depository, digital commodity exchange, other digital commodity broker, other digital commodity dealer, or digital commodity custodian that has received any customer money, assets, or property for deposit, to hold, dispose of, or use any such money, assets, or property, as belonging to the depositing digital commodity broker or digital commodity dealer or any person other than the customers of the digital commodity broker or digital commodity dealer, respectively.

“(B) USE FURTHER DEFINED.—For purposes of this section, ‘use’ of a digital commodity includes utilizing any unit of a digital asset to participate in a blockchain service defined in paragraph (5) or a decentralized governance system associated with the digital commodity or the blockchain system to which the digital commodity relates in any manner other than that expressly directed by the customer from whom the unit of a digital commodity was received.

“(6) PARTICIPATION IN BLOCKCHAIN SERVICES.—

“(A) IN GENERAL.—A customer shall have the right to waive the restrictions in paragraph (1) for any unit of a digital commodity, by affirmatively electing, in writing to the digital commodity broker or digital commodity dealer, to waive the restrictions.

“(B) USE OF FUNDS.—Customer digital commodities removed from segregation under subparagraph (A) may be pooled and used by the digital commodity broker or digital commodity dealer, or one of their designees, to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation in subparagraph (A) relates.

“(C) LIMITATIONS.—The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this paragraph that are reasonably necessary to protect customers, including eligible contract participants, non-eligible contract participants, or any other class of customers.

“(D) BLOCKCHAIN SERVICE DEFINED.—In this subparagraph, the term ‘blockchain service’ means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.

“(1) FEDERAL PREEMPTION.—Notwithstanding any other provision of law, the Commission shall have exclusive jurisdiction over any digital commodity broker or digital commodity dealer registered under this section.

“(m) EXEMPTIONS.—In order to promote responsible economic or financial innovation and fair competition, or protect customers, the Commission may (on its own initiative or on application of the registered digital commodity broker or registered digital commodity dealer) exempt, unconditionally or on stated terms or conditions, or for stated periods, and retroactively or prospectively, or both, a registered digital commodity broker or registered digital commodity dealer from the requirements of this section, if the Commission determines that—

“(1)(A) the exemption would be consistent with the public interest and the purposes of this Act; and

“(B) the exemption will not have a material adverse effect on the ability of the Commission or the digital commodity broker or digital commodity dealer to discharge regulatory duties under this Act; or

“(2) the registered digital commodity broker or registered digital commodity dealer is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the registered digital commodity broker or registered digital commodity dealer, respectively.

“(n) TREATMENT UNDER THE BANK SECRECY ACT.—A registered digital commodity broker and a registered digital commodity dealer shall be treated as a financial institution for purposes of the Bank Secrecy Act.”

SEC. 407. REGISTRATION OF ASSOCIATED PERSONS.

(a) IN GENERAL.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended—

(1) by redesignating subsections (4) through (6) as subsections (5) through (7), respectively; and

(2) by inserting after subsection (3) the following:

“(4) It shall be unlawful for any person to act as an associated person of a digital commodity broker or an associated person of a digital commodity dealer unless the person is registered with the Commission under this Act and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a digital commodity broker or a digital commodity dealer to permit such a person to become or remain associated with the digital commodity broker or digital commodity dealer if the digital commodity broker or digital commodity dealer knew or should have known that the person was not so registered or that the registration had expired, been suspended (and the period of suspension has not expired), or been revoked.”; and

(3) in subsection (5) (as so redesignated), by striking “or of a commodity trading advisor” and inserting “of a commodity trading advisor, of a digital commodity broker, or of a digital commodity dealer”.

(b) CONFORMING AMENDMENTS.—The Commodity Exchange Act (7 U.S.C. 1a et seq.) is amended by striking “section 4k(6)” each place it appears and inserting “section 4k(7)”.

SEC. 408. REGISTRATION OF COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS.

Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended—

(1) in subparagraph (A)—

(A) by striking “any commodity trading advisor” and inserting “a commodity pool operator or commodity trading advisor”; and

(B) by striking “acting as a commodity trading advisor” and inserting “acting as a commodity pool operator or commodity trading advisor”; and

(2) in subparagraph (C), by inserting “digital commodities,” after “physical commodities.”.

SEC. 409. EXCLUSION FOR ANCILLARY ACTIVITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended by the preceding provisions of this Act, is amended by inserting after section 4u the following:

“SEC. 4v. EXCLUSION FOR ANCILLARY ACTIVITIES.

“(a) IN GENERAL.—Notwithstanding any other provision of this Act, a person shall not be subject to this Act and the regulations promulgated under this Act solely based on the person undertaking any ancillary activities.

“(b) EXCEPTIONS.—Subsection (a) shall not be construed to apply to the antimanipulation, antifraud, or false reporting enforcement authorities of the Commission.

“(c) ANCILLARY ACTIVITIES DEFINED.—In this section, the term ‘ancillary activities’ means any of the following activities related to the operation of a blockchain system:

“(1) Compiling network transactions, operating a pool, relaying, searching, sequencing, validating, or acting in a similar capacity with respect to a digital commodity transaction.

“(2) Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth, or other similar incidental services with respect to a digital commodity transaction.

“(3) Providing a user interface that enables a user to read, and access data about a blockchain system, send messages, or otherwise interact with a blockchain system.

“(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system.

“(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy hardware or software, including wallets or other systems, facilitating an individual user’s own personal ability to keep, safeguard, or custody a user’s digital commodities or related private keys.”.

SEC. 410. EFFECTIVE DATE.

Unless otherwise provided in this title, this title and the amendments made by this title shall take effect 360 days after the date of enactment of this Act, except that, to the extent a provision of this title requires a rulemaking, the provision shall take effect on the later of—

(1) 360 days after the date of enactment of this Act; or

(2) 60 days after the publication in the Federal Register of the final rule implementing the provision.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

SEC. 501. CODIFICATION OF THE SEC STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(1) STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.—

“(1) OFFICE ESTABLISHED.—There is established within the Commission the Strategic Hub for Innovation and Financial Technology (referred to in this section as the ‘FinHub’).

“(2) PURPOSES.—The purposes of FinHub are as follows:

“(A) To assist in shaping the approach of the Commission to technological advancements in the financial industry.

“(B) To examine financial technology innovations within capital markets, market participants, and investors.

“(C) To coordinate the response of the Commission to emerging technologies in financial, regulatory, and supervisory systems.

“(3) DIRECTOR OF FINHUB.—FinHub shall have a Director who shall be appointed by the Commission, from among individuals having experience in both emerging technologies and Federal securities law and serve at the pleasure of the Commission. The Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

“(4) RESPONSIBILITIES.—FinHub shall—

“(A) foster responsible technological innovation and fair competition within the Commission, including around financial technology, regulatory technology, and supervisory technology;

“(B) provide internal education and training to the Commission regarding financial technology;

“(C) advise the Commission regarding financial technology that would serve the Commission’s oversight functions;

“(D) analyze technological advancements and the impact of regulatory requirements on financial technology companies;

“(E) advise the Commission with respect to rulemakings or other agency or staff action regarding financial technology;

“(F) provide businesses working in emerging financial technology fields with information on the Commission, its rules and regulations; and

“(G) encourage firms working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

“(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that FinHub has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of FinHub.

“(6) REPORT TO CONGRESS.—

“(A) IN GENERAL.—Not later than October 31 of each year after 2024, FinHub shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of FinHub during the immediately preceding fiscal year.

“(B) CONTENTS.—Each report required under subparagraph (A) shall include—

“(i) the total number of persons that met with FinHub;

“(ii) the total number of market participants FinHub met with, including the classification of those participants;

“(iii) a summary of general issues discussed during meetings with persons;

“(iv) information on steps FinHub has taken to improve Commission services, including responsiveness to the concerns of persons;

“(v) recommendations—

“(I) with respect to the regulations of the Commission and the guidance and orders of the Commission; and

“(II) for such legislative actions as the FinHub determines appropriate; and

“(vi) any other information, as determined appropriate by the Director of FinHub.

“(C) CONFIDENTIALITY.—A report under subparagraph (A) may not contain confidential information.

“(7) SYSTEMS OF RECORDS.—

“(A) IN GENERAL.—The Commission shall establish a detailed system of records (as defined under section 552a of title 5, United States Code) to assist FinHub in communicating with interested parties.

“(B) ENTITIES COVERED BY THE SYSTEM.—Entities covered by the system required under subparagraph (A) include entities or persons submitting requests or inquiries and other information to Commission through FinHub.

“(C) SECURITY AND STORAGE OF RECORDS.—FinHub shall store—

“(i) electronic records—

“(I) in the system required under subparagraph (A); or

“(II) on the secure network or other electronic medium, such as encrypted hard drives or back-up media, of the Commission; and

“(ii) paper records in secure facilities.

“(8) EFFECTIVE DATE.—This subsection shall take effect on the date that is 180 days after the date of the enactment of this subsection.”.

SEC. 502. CODIFICATION OF LABCFTC.

(a) IN GENERAL.—Section 18 of the Commodity Exchange Act (7 U.S.C. 22) is amended by adding at the end the following:

“(c) LABCFTC.—

“(1) ESTABLISHMENT.—There is established in the Commission LabCFTC.

“(2) PURPOSE.—The purposes of LabCFTC are to—

“(A) promote responsible financial technology innovation and fair competition for the benefit of the American public;

“(B) serve as an information platform to inform the Commission about new financial technology innovation; and

“(C) provide outreach to financial technology innovators to discuss their innovations and the regulatory framework established by this Act and the regulations promulgated thereunder.

“(3) DIRECTOR.—LabCFTC shall have a Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. Notwithstanding section 2(a)(6)(A), the Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

“(4) DUTIES.—LabCFTC shall—

“(A) advise the Commission with respect to rulemakings or other agency or staff action regarding financial technology;

“(B) provide internal education and training to the Commission regarding financial technology;

“(C) advise the Commission regarding financial technology that would bolster the Commission’s oversight functions;

“(D) engage with academia, students, and professionals on financial technology issues, ideas, and technology relevant to activities under this Act;

“(E) provide persons working in emerging technology fields with information on the Commission, its rules and regulations, and the role of a registered futures association; and

“(F) encourage persons working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

“(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that LabCFTC has full access to the documents and information of the Commission and any self-regulatory organization or registered futures association, as necessary to carry out the functions of LabCFTC.

“(6) REPORT TO CONGRESS.—

“(A) IN GENERAL.—Not later than October 31 of each year after 2024, LabCFTC shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on its activities.

“(B) CONTENTS.—Each report required under paragraph (1) shall include—

“(i) the total number of persons that met with LabCFTC;

“(ii) a summary of general issues discussed during meetings with the person;

“(iii) information on steps LabCFTC has taken to improve Commission services, including responsiveness to the concerns of persons;

“(iv) recommendations made to the Commission with respect to the regulations, guidance, and orders of the Commission and such legislative actions as may be appropriate; and

“(v) any other information determined appropriate by the Director of LabCFTC.

“(C) CONFIDENTIALITY.—A report under paragraph (A) shall abide by the confidentiality requirements in section 8.

“(7) SYSTEMS OF RECORDS.—

“(A) IN GENERAL.—The Commission shall establish a detailed system of records (as defined in section 552a of title 5, United States Code) to assist LabCFTC in communicating with interested parties.

“(B) PERSONS COVERED BY THE SYSTEM.—The persons covered by the system of records shall include persons submitting requests or inquiries and other information to the Commission through LabCFTC.

“(C) SECURITY AND STORAGE OF RECORDS.—The system of records shall store records electronically or on paper in secure facilities, and shall store electronic records on the secure network of the Commission and on other electronic media, such as encrypted hard drives and back-up media, as needed.”

(b) CONFORMING AMENDMENTS.—Section 2(a)(6)(A) of such Act (7 U.S.C. 2(a)(6)(A)) is amended—

(1) by striking “paragraph and in” and inserting “paragraph,”; and

(2) by inserting “and section 18(c)(3),” before “the executive”.

(c) EFFECTIVE DATE.—The Commodity Futures Trading Commission shall implement the amendments made by this section (including complying with section 18(c)(7) of the Commodity Exchange Act) within 180 days after the date of the enactment of this Act.

SEC. 503. CFTC-SEC JOINT ADVISORY COMMITTEE ON DIGITAL ASSETS.

(a) ESTABLISHMENT.—The Commodity Futures Trading Commission and the Securities and Exchange Commission (in this section referred to as the “Commissions”) shall jointly establish the Joint Advisory Committee on Digital Assets (in this section referred to as the “Committee”).

(b) PURPOSE.—

(1) IN GENERAL.—The Committee shall—

(A) provide the Commissions with advice on the rules, regulations, and policies of the Commissions related to digital assets;

(B) further the regulatory harmonization of digital asset policy between the Commissions;

(C) examine and disseminate methods for describing, measuring, and quantifying digital asset—

(i) decentralization;

(ii) functionality;

(iii) information asymmetries; and

(iv) transaction and network security;

(D) examine the potential for digital assets, blockchain systems, and distributed ledger technology to improve efficiency in the operation of financial market infrastructure and better protect financial market participants, including services and systems which provide—

(i) improved customer protections;

(ii) public availability of information;

(iii) greater transparency regarding customer funds;

(iv) reduced transaction cost; and

(v) increased access to financial market services; and

(E) discuss the implementation by the Commissions of this Act and the amendments made by this Act.

(2) REVIEW BY AGENCIES.—Each Commission shall—

(A) review the findings and recommendations of the Committee;

(B) promptly issue a public statement each time the Committee submits a finding or recommendation to a Commission—

(i) assessing the finding or recommendation of the Committee;

(ii) disclosing the action or decision not to take action made by the Commission in response to a finding or recommendation; and

(iii) explaining the reasons for the action or decision not to take action; and

(C) each time the Committee submits a finding or recommendation to a Commission, provide the Committee with a formal response to the finding or recommendation not later than 3 months after the date of the submission of the finding or recommendation.

- (c) **MEMBERSHIP AND LEADERSHIP.**—
- (1) **NON-FEDERAL MEMBERS.**—
- (A) **IN GENERAL.**—The Commissions shall appoint at least 20 nongovernmental stakeholders with a wide diversity of opinion and who represent a broad spectrum of interests representing the digital asset ecosystem, equally divided between the Commissions, to serve as members of the Committee. The appointees shall include—
- (i) digital asset issuers;
 - (ii) persons registered with the Commissions and engaged in digital asset related activities;
 - (iii) individuals engaged in academic research relating to digital assets; and
 - (iv) digital asset users.
- (B) **MEMBERS NOT COMMISSION EMPLOYEES.**—Members appointed under subparagraph (A) shall not be deemed to be employees or agents of a Commission solely by reason of membership on the Committee.
- (2) **CO-DESIGNATED FEDERAL OFFICERS.**—
- (A) **NUMBER; APPOINTMENT.**—There shall be 2 co-designated Federal officers of the Committee, as follows:
- (i) The Director of LabCFTC of the Commodity Futures Trading Commission.
 - (ii) The Director of the Strategic Hub for Innovation and Financial Technology of the Securities and Exchange Commission.
- (B) **DUTIES.**—The duties required by chapter 10 of title 5, United States Code, to be carried out by a designated Federal officer with respect to the Committee shall be shared by the co-designated Federal officers of the Committee.
- (3) **COMMITTEE LEADERSHIP.**—
- (A) **COMPOSITION; ELECTION.**—The Committee members shall elect, from among the Committee members—
- (i) a chair;
 - (ii) a vice chair;
 - (iii) a secretary; and
 - (iv) an assistant secretary.
- (B) **TERM OF OFFICE.**—Each member elected under subparagraph (A) in a 2-year period referred to in section 1013(b)(2) of title 5, United States Code, shall serve in the capacity for which the member was so elected, until the end of the 2-year period.
- (d) **NO COMPENSATION FOR COMMITTEE MEMBERS.**—
- (1) **NON-FEDERAL MEMBERS.**—All Committee members appointed under subsection (c)(1) shall—
- (A) serve without compensation; and
 - (B) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.
- (2) **NO COMPENSATION FOR CO-DESIGNATED FEDERAL OFFICERS.**—The co-designated Federal officers shall serve without compensation in addition to that received for their services as officers or employees of the United States.
- (e) **FREQUENCY OF MEETINGS.**—The Committee shall meet—
- (1) not less frequently than twice annually; and
 - (2) at such other times as either Commission may request.
- (f) **DURATION.**—Section 1013(a)(2) of title 5, United States Code, shall not apply to the Committee.
- (g) **TIME LIMITS.**—The Commissions shall—
- (1) adopt a joint charter for the Committee within 90 days after the date of the enactment of this section;
 - (2) appoint members to the Committee within 120 days after such date of enactment; and
 - (3) hold the initial meeting of the Committee within 180 days after such date of enactment.
- (h) **FUNDING.**—The Commissions shall jointly fund the Committee.
- SEC. 504. STUDY ON DECENTRALIZED FINANCE.**
- (a) **IN GENERAL.**—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly carry out a study on decentralized finance that analyzes—

- (1) the nature, size, role, and use of decentralized finance blockchain protocols;
 - (2) the operation of blockchain protocols that comprise decentralized finance;
 - (3) the interoperability of blockchain protocols and blockchain systems;
 - (4) the interoperability of blockchain protocols and software-based systems, including websites and wallets;
 - (5) the decentralized governance systems through which blockchain protocols may be developed, published, constituted, administered, maintained, or otherwise distributed, including—
 - (A) whether the systems enhance or detract from—
 - (i) the decentralization of the decentralized finance; and
 - (ii) the inherent risks of the decentralized governance system; and
 - (B) any procedures or requirements that would mitigate the risks identified in subparagraph (A)(ii);
 - (6) the benefits of decentralized finance, including—
 - (A) operational resilience and interoperability of blockchain-based systems;
 - (B) market competition and innovation;
 - (C) transaction efficiency;
 - (D) transparency and traceability of transactions; and
 - (E) disintermediation;
 - (7) the risks of decentralized finance, including—
 - (A) pseudonymity of users and transactions;
 - (B) disintermediation; and
 - (C) cybersecurity vulnerabilities;
 - (8) the extent to which decentralized finance has integrated with the traditional financial markets and any potential risks to stability of the markets;
 - (9) how the levels of illicit activity in decentralized finance compare with the levels of illicit activity in traditional financial markets;
 - (10) how decentralized finance may increase the accessibility of cross-border transactions; and
 - (11) the feasibility of embedding self-executing compliance and risk controls into decentralized finance.
- (b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly submit to the relevant congressional committees a report that includes the results of the study required by subsection (a).
- (c) GAO STUDY.—The Comptroller General of the United States shall—
- (1) carry out a study on decentralized finance that analyzes the information described under paragraphs (1) through (11) of subsection (a); and
 - (2) not later than 1 year after the date of enactment of this Act, submit to the relevant congressional committees a report that includes the results of the study required by paragraph (1).
- (d) DEFINITIONS.—In this section:
- (1) DECENTRALIZED FINANCE.—
 - (A) IN GENERAL.—The term “decentralized finance” means blockchain protocols that allow users to engage in financial transactions in a self-directed manner so that a third-party intermediary does not effectuate the transactions or take custody of digital assets of a user during any part of the transactions.
 - (B) RELATIONSHIP TO ANCILLARY ACTIVITIES.—The term “decentralized finance” shall not be interpreted to limit or exclude any activity from the meaning of “ancillary activities”, as defined in section 15H(c) of the Securities Exchange Act of 1934 or section 4v(c) of the Commodity Exchange Act.
 - (2) RELEVANT CONGRESSIONAL COMMITTEES.—The term “relevant congressional committees” means—
 - (A) the Committees on Financial Services and Agriculture of the House of Representatives; and
 - (B) the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate.

SEC. 505. STUDY ON NON-FUNGIBLE DIGITAL ASSETS.

- (a) The Comptroller General of the United States shall carry out a study of non-fungible digital assets that analyzes—
 - (1) the nature, size, role, purpose, and use of non-fungible digital assets;
 - (2) the similarities and differences between non-fungible digital assets and other digital assets, including digital commodities and payment stablecoins, and how the markets for those digital assets intersect with each other;

- (3) how non-fungible digital assets are minted by issuers and subsequently administered to purchasers;
- (4) how non-fungible digital assets are stored after being purchased by a consumer;
- (5) the interoperability of non-fungible digital assets between different blockchain systems;
- (6) the scalability of different non-fungible digital asset marketplaces;
- (7) the benefits of non-fungible digital assets, including verifiable digital ownership;
- (8) the risks of non-fungible tokens, including—
 - (A) intellectual property rights;
 - (B) cybersecurity risks; and
 - (C) market risks;
- (9) whether and how non-fungible digital assets have integrated with traditional marketplaces, including those for music, real estate, gaming, events, and travel;
- (10) whether non-fungible tokens can be used to facilitate commerce or other activities through the representation of documents, identification, contracts, licenses, and other commercial, government, or personal records;
- (11) any potential risks to traditional markets from such integration; and
- (12) the levels and types of illicit activity in non-fungible digital asset markets.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Commerce, shall make publicly available a report that includes the results of the study required by subsection (a).

SEC. 506. STUDY ON EXPANDING FINANCIAL LITERACY AMONGST DIGITAL ASSET HOLDERS.

(a) IN GENERAL.—The Commodity Futures Trading Commission with the Securities and Exchange Commission shall jointly conduct a study to identify—

- (1) the existing level of financial literacy among retail digital asset holders, including subgroups of investors identified by the Commodity Futures Trading Commission with the Securities and Exchange Commission;
- (2) methods to improve the timing, content, and format of financial literacy materials regarding digital assets provided by the Commodity Futures Trading Commission and the Securities and Exchange Commission;
- (3) methods to improve coordination between the Securities and Exchange Commission and the Commodity Futures Trading Commission with other agencies, including the Financial Literacy and Education Commission as well as nonprofit organizations and State and local jurisdictions, to better disseminate financial literacy materials;
- (4) the efficacy of current financial literacy efforts with a focus on rural communities and communities with majority minority populations;
- (5) the most useful and understandable relevant information that retail digital asset holders need to make informed financial decisions before engaging with or purchasing a digital asset or service that is typically sold to retail investors of digital assets;
- (6) the most effective public-private partnerships in providing financial literacy regarding digital assets to consumers;
- (7) the most relevant metrics to measure successful improvement of the financial literacy of an individual after engaging with financial literacy efforts; and
- (8) in consultation with the Financial Literacy and Education Commission, a strategy (including to the extent practicable, measurable goals and objectives) to increase financial literacy of investors regarding digital assets.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly submit a written report on the study required by subsection (a) to the Committees on Financial Services and on Agriculture of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 507. STUDY ON FINANCIAL MARKET INFRASTRUCTURE IMPROVEMENTS.

(a) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study to assess whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products, and 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 Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly 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 Committees on Financial Services and on Agriculture of the House of Representatives; and

(B) the Committees on Banking, Housing, and Urban Affairs and on Agriculture, Nutrition, and Forestry of the Senate.

TITLE VI—MISCELLANEOUS

SEC. 601. FINDINGS; SENSE OF CONGRESS.

(a) **FINDINGS.**—Congress finds the following:

(1) Entrepreneurs and innovators are building and deploying this next generation of the internet.

(2) Digital asset networks represent a new way for people to join together and cooperate with one another to undertake certain activities.

(3) Digital assets have the potential to be the foundational building blocks of these networks, aligning the economic incentive for individuals to cooperate with one another to achieve a common purpose.

(4) The digital asset ecosystem has the potential to grow our economy and improve everyday lives of Americans by facilitating collaboration through the use of technology to manage activities, allocate resources, and facilitate decision making.

(5) Blockchain networks and the digital assets they empower provide creator control, enhance transparency, reduce transaction costs, and increase efficiency if proper protections are put in place for investors, consumers, our financial system, and our national security.

(6) Blockchain technology facilitates new types of network participation which businesses in the United States may utilize in innovative ways.

(7) Other digital asset companies are setting up their operations outside of the United States, where countries are establishing frameworks to embrace the potential of blockchain technology and digital assets and provide safeguards for consumers.

(8) Digital assets, despite the purported anonymity, provide law enforcement with an exceptional tracing tool to identify illicit activity and bring criminals to justice.

(9) The Financial Services Committee of the House of Representatives has held multiple hearings highlighting various risks that digital assets can pose to the financial markets, consumers, and investors that must be addressed as we seek to harness the benefits of these innovations.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the United States should seek to prioritize understanding the potential opportunities of the next generation of the internet;

(2) the United States should seek to foster advances in technology that have robust evidence indicating they can improve our financial system and create more fair and equitable access to financial services for everyday Americans while protecting our financial system, investors, and consumers;

(3) the United States must support the responsible development of digital assets and the underlying technology in the United States or risk the shifting of the development of such assets and technology outside of the United States, to less regulated countries;

(4) Congress should consult with public and private sector stakeholders to understand how to enact a functional framework tailored to the specific risks and unique benefits of different digital asset-related activities, distributed ledger technology, distributed networks, and decentralized systems; and

(5) enact a functional framework tailored to the specific risks of different digital asset-related activities and unique benefits of distributed ledger technology, distributed networks, and decentralized systems; and

(6) consumers and market participants will benefit from a framework for digital assets consistent with longstanding investor protections in securities and commodities markets, yet tailored to the unique benefits and risks of the digital asset ecosystem.

PURPOSE AND SUMMARY

Introduced on July 20, 2023, by Representative Glenn “GT” Thompson with Representatives French Hill, Dusty Johnson, Tom Emmer, and Warren Davidson as original cosponsors, H.R. 4763, the *Financial Innovation and Technology for the 21st Century Act*, provides the Commodity Futures Trading Commission (CFTC) with new jurisdiction over digital commodities and clarifies the Securities and Exchange Commission’s (SEC) jurisdiction over digital assets offered as part of an investment contract. Additionally, the Act establishes a process to permit the secondary market trading of digital commodities if they were initially offered as part of an investment contract. Finally, the Act imposes robust customer protections on all entities required to be registered with the CFTC and the SEC. Additional cosponsors include Representatives Marcus Molinaro, Henry Cuellar, Wiley Nickel, John Curtis, Jim Banks, Patrick McHenry, and Ritchie Torres.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4763, as marked up, establishes a digital asset market structure framework that is consistent with existing regulatory financial market requirements, but recognizes the unique characteristics of digital assets. This functional framework provides digital asset firms with regulatory certainty and reduces the regulatory turbulence created by jurisdictional infighting and regulation-by-enforcement. The reported legislation will ensure the next generation of financial innovation develops in the United States.

Innovation

Digital assets have the potential to make our financial system more efficient and accessible to consumers. At a June 6, 2023, hearing before the Committee on Agriculture (June 2023 HAC Hearing), former CFTC Chairman Chris Giancarlo characterized the existing financial architecture, which stores value on the balance sheets of proprietary commercial firms, as slow, expensive, unstable, and exclusive. He testified that blockchain technology and digital assets provide a new architecture of value, finance, banking, and money that is more reliable and inclusive. At the same hearing, Coinbase Global, Inc. Chief Legal Officer Paul Grewal testified that “digital assets are creating new ways to store and transfer value while making existing systems—like the financial system—better,” including providing a means for “cheaper, faster, and more reliable international payments.” Former CFTC Commissioner Dan Berkovitz also testified that “[d]igital assets and the associated blockchain technologies have the potential to transform the availability, scope, and efficiency of financial services to American consumers and businesses and across the globe.”

As the House Committee on Financial Services (HFSC) and House Committee on Agriculture (HAC) heard in testimony across multiple hearings, digital assets are changing the way we conduct business globally. Digital assets serve as the foundation for developments in blockchain systems that can in turn facilitate improvements in supply chain management, identity verification, file storage, and numerous other industries.

In testimony before HFSC on June 13, 2023 (June 2023 HFSC Hearing), Dr. Emin G. Gün Sirer underscored the stakes of failing to allow digital assets to flourish in the United States, stating:

As we move towards a more digitally-native world, aided by AI, virtual reality, and a work-from-home society, we will have to rely increasingly on digitally-native transfer and programmability of value.

He further testified:

Blockchains are the clear technological answer to these needs and are definitively synergistic with the global economy. The addressable market for digitizing the world's assets and transferring value safely across the internet is greater than the sum of all the value of all existing assets. Failure to see the power of blockchain technology—whether due to a lack of understanding or misplaced fears of the technology—will have disastrous consequences. Failure to rapidly provide sensible regulatory frameworks will not only undermine economic growth but also make it easier for bad actors to conduct illicit activities.

Further, when Dr. Tonya Evans, a professor at Penn State Dickinson Law, testified before the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion on March 9, 2023, she underscored how far the United States is from “a sensible regulatory framework.” Dr. Evans explained:

It remains unclear how responsible builders and market participants in the future of money, work, and creativity can operate confidently, efficiently, and with clarity. Without such a foundation, private industry development will be left in a holding pattern or will simply move valuable tax dollars and opportunities to jurisdictions with clearer rules and policies that encourage, rather than stifle, innovation.

At an April 27, 2023, hearing before the Committee on Agriculture's Subcommittee on Commodity Markets, Digital Assets, and Rural Development (April 2023 HAC Hearing), Hedera Head of Global Policy Nilmini Rubin testified:

[T]he ability of blockchains to provide immutable, auditable, and order-based records enables businesses and organizations to store, track and monitor data in new and powerful ways.

Ms. Rubin testified further that blockchains can provide new tools to more effectively and efficiently “store, track, and monitor data to reduce waste, fraud, and abuse, and provide economic, social, and environmental benefits.” She described examples of these initiatives, including data storage and provenance verification to support human rights reporting, value exchange supporting rural development, transparent platforms supporting the environment, supply chain traceability supporting waste reduction, supply chain monitoring supporting vaccine safety, and supply chain tracking supporting pharmaceutical safety.

At a May 10, 2023, joint hearing of the Financial Services Committee's Subcommittee on Digital Assets, Financial Technology and

Inclusion and the Committee on Agriculture's Subcommittee on Commodity Markets, Digital Assets, and Rural Development (May 2023 Joint Hearing), Kraken Chief Legal Officer Marco Santori testified:

[T]his discussion is not just about people using tokens or people using digital assets. This discussion is about people using the product of those digital assets, the functional use cases that exist today, and this Congress has heard from witnesses who have laid bare some of those uses.

I can add a couple to that pile, but maybe one in particular that I think illustrates that distinction between the use case and the coin. Today, when you watch a video on your phone, and we all probably watch videos on our phone from time to time, those videos are recorded in far-off places using different standards, resolutions, color schemes, et cetera. Transforming that into a version that fits on your phone takes computing and processing power. It takes time and effort. And it is expensive. There are blockchain-based networks now that coordinate and incentivize that process, it is called transcoding, so that end-users can see that video that is being recorded in a different resolution on their phone, on their screen, on a big screen, on IMAX, right?

People are using that technology today to view videos of all kinds, mundane use cases that have nothing to do with blockchain technology. But those use cases are being provisioned and delivered because of functional networks in digital assets.

Economic Impact

The lack of a comprehensive federal regulatory framework for digital assets has led to many digital asset innovators moving offshore to pursue development overseas, at the expense of U.S. economic growth. Other countries are rushing to build frameworks and become developmental hubs for the digital asset ecosystem. Currently, the largest trading platform and the largest stablecoin issuer are based outside of the United States. Many entrepreneurs are warning against doing business in the United States and advocating for digital asset companies to move offshore.

Many jurisdictions are successfully building digital asset regulatory frameworks and incorporating distributed ledger technology into their economies. For example, the European Union recently approved its Markets in Crypto-Assets (MiCA) regulation, and the United Kingdom will soon finalize its own digital asset regulatory proposal. To emphasize this impact, Coy Garrison, former counsel to SEC Commissioner Hester Peirce, testified at the June 2023 HFSC Hearing about the economic impact resulting from other countries regulating digital assets while the U.S. remains inactive:

The status quo puts the U.S. at a competitive disadvantage. The European Union, Canada, Dubai, and Hong Kong are examples of jurisdictions that in recent months have implemented new legislation or regulations for digital assets, which create attractive destinations for entities that are made to feel increasingly unwelcome by regulators

here in the U.S. This is not empty rhetoric: I have travelled to two of these jurisdictions in the past six months to explore business opportunities under these new foreign regulatory regimes, and I have regular conversations with industry participants in the U.S. actively considering moving to new jurisdictions.

At the June 2023 HAC Hearing, Robinhood Markets, Inc. Chief Legal, Compliance and Corporate Affairs Officer Daniel M. Gallagher testified:

The current environment is bad for American consumers who want greater access to digital assets, bad for innovation in the blockchain and digital asset industries, and bad for the already-eroding competitive position of the U.S. with regard to digital asset markets. Regulatory clarity for digital assets is, therefore, critical: it would allow token issuers, exchanges, intermediaries, and other market participants to provide products and services their customers want without the constant threat of crippling enforcement actions, and would help ensure that the U.S. remains the global leader in responsible blockchain and digital asset innovation, as well as vibrant, appropriately regulated digital asset markets.

Customer Risk

The current regulatory framework for digital assets fails to provide adequate consumer protection. At the June 2023 HFSC Hearing, Mr. Garrison, testified that:

The status quo fails to protect people who trade or hold digital assets on centralized exchanges. [. . .] The status quo also creates a business environment where responsible actors in the digital asset industry are hindered in their potential to innovate, add jobs to the economy, and realize the benefits of their technology. They are also limited in their ability to compete against traditional institutions.

Digital commodities account for approximately 70% of the digital assets traded today. Because there is no federal oversight of the digital commodity marketplace, there are no federally mandated customer protections for at least 70% of the digital asset market today, including requirements pertaining to customer disclosures, segregation of customer funds, and conflicts of interest. Additionally, without registration and oversight of digital commodity intermediaries and trading platforms, customers are unable to discern reputable entities from the disreputable ones. Consequently, customers face significant risks with respect to the digital commodities they purchase, how they purchase those commodities, how an intermediary or trading platform custodies their commodities, and their ability to access those commodities, especially if the intermediary or trading platform holding their commodities dissolves. At the May 2023 Joint Hearing, Former CFTC Chairman Timothy Massad testified that:

[I]nvestor protection on crypto trading and lending platforms is woefully inadequate. These platforms do not observe standards common in our financial markets that en-

sure protection of customer assets, prohibition of conflicts of interest, prevention of fraud and manipulation, and adequate transparency, among other things. That was made painfully obvious last year by the failures of trading platform FTX, crypto lender Celsius, the Terra/Luna stablecoin and others, resulting in hundreds of thousands of investors suffering losses.

At the June 2023 HAC Hearing, CFTC Chairman Rostin Behnam testified:

The bankruptcy of several large digital asset platforms erased billions of dollars in customer funds. Multiple large market participants allegedly engaged in manipulative and abusive trading activity, including through opaque arrangements with affiliated trading platforms, undermining confidence in these nascent markets. Cybersecurity vulnerabilities continue to be exploited in weekly hacks, resulting in billions of dollars in lost funds.

These customer protection failures highlight the urgent need for legislation to provide robust customer protections for U.S. citizens trading digital commodities. At the June 2023 HAC Hearing, Mr. Gallagher testified:

[M]illions of Americans—including millions of Robinhood customers—want to participate and are participating responsibly in the digital asset economy, and they will continue to do so whether in the U.S. or through foreign platforms. We believe policymakers should support policy solutions that encourage Americans to engage in digital asset markets through responsible, appropriately regulated U.S. firms, rather than incentivizing people to participate through often unregulated or lightly regulated foreign platforms.

Regulatory Gap

Currently, there is no comprehensive federal regulatory regime for the cash or spot digital commodity markets. The Commodity Exchange Act (CEA) and the CFTC regulations promulgated thereunder provide a comprehensive regulatory regime for the trading of commodity derivatives, including digital commodity derivatives (e.g., buying or selling Bitcoin futures contracts). This includes registration and regulatory requirements for exchanges and intermediaries. Under the CEA, the CFTC also has “after-the-fact” enforcement jurisdiction over fraud and manipulation in the cash or spot commodity markets (e.g., buying or selling a commodity, including digital commodities, like Bitcoin). However, the CFTC has no power to impose registration and regulatory requirements for exchanges or intermediaries, or on market participants in the cash or spot digital commodity markets. This lack of a comprehensive federal regulatory framework for digital commodity cash or spot transactions is referred to as the “spot market regulatory gap.”

Daniel Gorfine, former Chief Innovation Officer at the CFTC, testified at the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion’s hearing on April 27, 2023 (April 27 HFSC Hearing), stating:

The overall regulatory landscape for digital assets has not changed significantly since Bitcoin first traded in 2009—which means that there is no comprehensive market oversight framework.”

At the May 2023 Joint Hearing, Former CFTC Chair Massad testified:

Four years ago, I wrote a paper published by the Brookings Institute that began with the following sentence: “There is a gap in the regulation of crypto assets that Congress needs to fix.”

The gap I talked about then was the absence of a federal regulator for the spot market in crypto tokens that are not securities, such as bitcoin. It still exists, and it is made more complicated by the ongoing debate we have had about how to classify digital assets: are they securities or commodities, or something else?

At the June 2023 HAC Hearing, CFTC Chairman Behnam testified about the need for legislation to fill the regulatory gap. Chair Behnam testified:

I have consistently highlighted the need for Congressional action to address the lack of federal regulation over the digital commodity market.

Chair Behnam added that the Financial Stability Oversight Council’s (FSOC) Report on Digital Asset Financial Stability Risks and Regulation (Oct. 2022) (FSOC Report) called on Congress to enact legislation to fill the clear regulatory gap over the spot market for digital assets that are not securities.

The FSOC Report succinctly summarized the spot-market gap:

U.S. law provides for limited direct federal oversight of spot markets for crypto-assets that are not securities . . . As a result, those markets may not feature robust rules and regulations designed to ensure orderly and transparent trading, to prevent conflicts of interest and market manipulation, and to protect investors and the economy more broadly. Indeed, U.S. regulators have found possible sources of fraud and manipulation in the spot Bitcoin market.

The spot markets for crypto-assets that are not securities provide relatively fewer protections for retail investors compared to other financial markets that have significant retail participation. In addition, crypto-asset platforms in the spot market for non-security crypto-assets engage in practices that are commonly subjected to greater regulation in other financial markets. In similarly structured financial markets, trading rules apply related to practices of trade execution and settlement to ensure fairness and transparency and to limit abusive trading practices more generally.

* * * * *

Significant market integrity and investor protection issues may persist because of the limited direct federal oversight of these spot markets, due to abusive trading

practices, inadequate protections for custodied assets, or other practices. Increased interconnections between this market and traditional financial institutions could pose financial stability vulnerabilities. In addition, if the scale of crypto-asset activities were to increase rapidly, these issues could pose financial stability issues regardless of interconnections with the traditional financial system.

In the light of these gaps, the FSOC Report recommended that Congress pass legislation to address their concerns:

To address this regulatory gap, the Council recommends that Congress pass legislation that provides for explicit rulemaking authority for federal financial regulators over the spot market for crypto-assets that are not securities. The Council recommends that this rulemaking authority should not interfere with or weaken market regulators' current jurisdictional remits. The rulemaking authority should cover a range of subjects, including but not limited to conflicts of interest; abusive trading practices; public trade reporting requirements; recordkeeping; governance standards; cybersecurity requirements; customer asset segregation; capital and margin; custody, settlement, and clearing; orderly trading; transparency; any further anti-fraud authorities that may be necessary; investor protection; dispute resolution; operating norms; and a general authority to address unanticipated additional issues that may arise. Legislation should provide for enforcement and examination authority to ensure compliance with these rules.

Commodity v. Security

SEC Chair Gary Gensler has opined on numerous occasions that the “test to determine whether a crypto asset is a security is clear.” However, SEC Commissioner Hester Peirce and former SEC Commissioner Elad Roisman disagree, citing requests the SEC receives for clarity and the consistent outreach to the Commission staff for no-action and other relief. Commissioner Peirce has repeatedly emphasized her concerns with the SEC’s enforcement-centric approach and highlighted the importance of regulatory clarity for the digital asset markets.

Under the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), the SEC has full regulatory authority over the offer, sale, and the trading of securities, including investment contracts, and security derivatives. Under the federal securities laws, every offer and sale of securities must be either registered with the SEC or conducted pursuant to an exemption to registration.

Both the term “security” and the term “commodity” are defined in statute in ways that are broader than one might expect:

- The federal securities laws define the term “security” to include not only specific types of financial instruments such as stocks and bonds, but also several undefined terms, notably “investment contract.” The term “investment contract” captures unique or novel instruments and arrangements including many utilized by digital asset projects which raised funds.

- The Commodity Exchange Act (CEA) defines “commodity” broadly to include all “goods and articles and all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in.” In 2015, the CFTC clarified that bitcoin and certain other virtual currencies are commodities under the CEA.

Because of these broad definitions, the line between a security and a commodity can be somewhat blurred. At a very basic level securities *are* commodities. That is to say “securities” are a “good, article, service, right, or interest” in which contracts for future delivery are presently dealt, so they meet the definition of a “commodity.” This would imply that the CFTC would have regulatory authority over security derivatives and enforcement authority over security spot market transactions. However, the CEA does not grant the CFTC any authority which would supersede or limit the jurisdiction of the SEC or restrict the SEC from carrying out their duties and responsibilities. Since the SEC is provided with jurisdiction over transactions in securities, in the instances in which an asset, transaction, or arrangement is determined to be a security, CFTC jurisdiction does not apply.

It is difficult to determine whether a digital asset is offered as part of an investment contract or falls under the definition of commodity in the CEA. Until there is a consistent, clear framework in place, market participants, consumers, and investors will continue to seek regulatory clarity given the requirements that stem from the classification of a particular digital asset.

Witnesses who have testified before both HFSC and HAC have further asserted that there is no legal clarity or bright line test to ascertain whether a digital asset is a commodity or a security. At the April 2023 HFSC Hearing, Zachary Zweihorn, a partner at Davis Polk & Wardwell LLP, testified:

Most digital assets are not simply the digital equivalent of conventional stocks or bonds, but something different in kind—an instrument with both functional and speculative uses. Indeed, the Commission staff’s “framework” for analyzing the security-status of a digital asset consists of a non-exclusive list of over 60 characteristics to be considered and weighed to analyze how likely a digital asset is to be a security. This is not a formula that results in any level of certainty.

Regulation by Enforcement

Rather than develop comprehensive regulations to address how digital asset intermediaries and trading platforms can register and comply with SEC regulations, the SEC has instead sought to “regulate” the digital asset marketplace by pursuing enforcement actions against these entities.

At the April 2023 HFSC Hearing, Mr. Zweihorn summarized the quandary that exists for market participants when he testified:

The result is a Catch-22: It is unlawful for a firm to intermediate trading in a digital asset that is a security unless the firm is appropriately registered. But if registered, it is unlawful for the firm to facilitate trading in a digital asset security, unless the purported issuer of the security

has taken some other action to register or otherwise make information available. A firm is required to register to facilitate trading, but if registered, it is prohibited from facilitating trading—unless the issuer of the security takes steps that are entirely outside the control of the intermediary.

Incompatibility of Securities Laws

The SEC has failed to provide a viable path for the registration of digital asset intermediaries and the offering of securities. Moreover, the SEC's regulations are heavily dependent on the roles of intermediaries and therefore directly at odds with transactions based on decentralized blockchain technology.

At the April 2023 HAC Hearing, FalconX Deputy General Counsel Purvi Maniar testified that:

[T]he securities regulatory architecture . . . is ill-suited for most digital assets. Securities have no independent utility other than profit participation. As a result, securities regulations focus on robust disclosure of facts affecting the profit movement, such as earnings, cash flow, or material events affecting earnings. However, most securities law-mandated financial disclosures have little applicability to digital assets. Moreover, the requirement under the securities laws that spot securities must be traded on regulated exchange[s] [sic] using third-party intermediaries eliminates the benefits of peer-to-peer transactions. The ability to transfer spot assets instantly and safely on a peer-to-peer basis, one of the key benefits of digital assets, does not exist if one is required to place an order with a broker-dealer intermediary on a third-party exchange subject to a multi-day settlement cycle. As a result, few digital asset companies have sought registration or exemption under the securities laws; presumably, it is why few of those applications have been granted, given the difficulties of shoehorning digital assets into the securities law framework.

At the May 2023 Joint Hearing, Kraken Chief Legal Officer Marco Santori testified that:

A fundamental goal of the U.S. securities laws is to provide the public with truthful disclosure about material risks that may impact their investment, thereby empowering citizens to make their own decisions. The disclosure requirements and standards for traditional securities under the Securities Act of 1933 do not work well for digital assets. For example, what is “material” information related to a publicly traded company is likely to be very different than what is material for a decentralized, blockchain-based asset. The value of a digital asset—unlike the value of stocks and bonds—is often not dependent on the issuer's operations or financial condition. Forcing digital assets into the existing corporate disclosure regime deprives consumers of the most valuable information while overwhelming them with the least valuable.

Mr. Santori further testified that:

Extensive evidence in the public record that illustrates the practical barriers to NSE registration for digital asset platforms, including:

- Digital asset trading platforms interact directly with retail clients. NSEs, by contrast, permit only broker-dealers to participate.
- Securities exchanges are not set up for global, 24x7 trading. Stocks listed on NSEs trade only during regular market hours. Digital assets trade 24x7, with no pressures on price or volume created by opening and closing times. Digital asset prices and volumes are subject to market forces at all times.
- U.S. securities exchanges form part of a National Market System (NMS) and they trade exclusively NMS securities. Digital asset trading platforms trade a variety of assets that will fall under the CFTC's jurisdiction, such as Bitcoin (BTC), Ethereum (ETH), and other digital asset commodities.

SEC-Registered ATSS function like exchanges, but are regulated by FINRA and the SEC as broker-dealers. Currently, there are very few broker-dealers, and even fewer ATSS that are registered with FINRA to trade digital assets. These ATSS are currently only permitted to trade digital assets that are securities. ATSS cannot trade non-securities such as BTC, ETH, or stablecoins.

Today, any digital asset trading platform that is registered as an ATSS would have to immediately stop trading all digital assets they currently trade, either on the SEC's theory that such assets are unregistered securities, or because such assets are non-securities. This would create significant market disruption. For example, BTC and ETH, which are commodities, account for more than 60% of the digital asset market capitalization.

Mr. Santori recommended:

To resolve these gaps, Congress can create a new registration category for centralized digital asset markets that:

- Remains open to direct retail participation, as ATSS are, and not be limited to requirements that customers are registered broker-dealers (as with NSEs).
- Reduce friction by being open to the trading of non-security digital assets (such as BTC, ETH or stablecoins) side-by-side with digital assets that are determined to be securities.
- Have in place a rulebook that has been reviewed and approved by the SEC or CFTC.

The Committee-Reported Legislation

The Committees have worked towards establishing a workable framework for digital assets over several Congresses by introducing bills, sending letters to regulators, and holding hearings and roundtables. The Committees worked together throughout the 118th Congress to establish a common approach for digital asset regulation, given the issues that digital assets raise implicate the jurisdictions of both the SEC and CFTC. This work includes two hearings in the Agriculture Committee and three hearings in the Financial Services Committee on digital assets market structure,

as well as a historic joint hearing of both Committees to examine the regulatory gaps with respect to digital assets.

The Committees have heard testimony regarding digital asset market structure from SEC Chair Gensler, CFTC Chairman Benham, the Chief Executive Officer of the National Futures Association, the Chief Operating Officer of the New York Stock Exchange, legal experts in securities and commodities law, and various digital asset market participants, including trading platforms, broker-dealers, digital asset projects, and blockchain developers. Almost all witnesses testified that there is a regulatory gap for digital assets between the SEC's jurisdiction over securities and the CFTC's jurisdiction over commodity derivatives that must be addressed through legislation. Indeed, rather than shun regulation, the market participants are calling on Congress to resolve the regulatory gap.

At the May 2023 Joint Hearing, Kraken Chief Legal Officer Marco Santori proposed a legislative framework similar in nature to that established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that provided the CFTC with jurisdiction over the swaps markets and the SEC with jurisdiction over the security-based swaps markets:

With clear jurisdictional lines drawn, regulated digital asset platforms should have a clear path to registration at the CFTC and SEC. Each agency, where appropriate, should have inspection and examination authority over platforms that make digital assets available to trade. This is consistent with the approach adopted for swaps regulation.

At the June 2023 HAC Hearing, CFTC Chairman Behnam called upon the Committee to follow the path it took to enact the Dodd-Frank Act:

Following the 2008 financial crisis, this Committee—working on a bipartisan basis—responded with reforms to the previously unregulated swaps market that were anchored in core principles of sound market regulation: transparency, reporting, and registration, to name just a few.

The work of both Committees culminated in the release of draft legislation on digital asset market structure in June 2023. The Committees revised the bill to respond to feedback from federal agencies, market participants, and members from both sides of the aisle and introduced the bill on July 20, 2023. Finally, changes were made to the bill through amendments, including comprehensive amendments in the nature of a substitute, during each markup, which are reflected in this Report.

The Committee-reported bill seeks to resolve the issues that have plagued the digital asset market and answer the calls for regulation from FSOC, the CFTC, and stakeholders by establishing a comprehensive regulatory framework for the United States' digital asset markets.

TITLE I—DEFINITIONS; RULEMAKING; NOTICE OF INTENT TO REGISTER

Title I provides definitions for new entities, products, and assets specific to the digital asset marketplace. The definitions are similar to and build on existing definitions of products, processes, and registration categories in the commodities and securities markets but are tailored for the digital asset marketplace. The most significant definitions include those for “digital asset,” which excludes commodity derivatives, securities, and securities derivatives products, and “decentralized network,” which is the primary threshold that must be met before a restricted digital asset can be traded as a digital commodity.

Title I also requires the SEC and CFTC to engage in joint rulemakings to further define many of the key terms in the Act including “digital asset,” “decentralized network,” and “digital commodity.” The agencies will also be required to issue a joint rulemaking to address the oversight of dually registered digital commodity exchanges (with the CFTC) and digital asset trading systems (with the SEC). Section 712 of the Dodd-Frank Act required similar joint rulemakings over definitions and other cooperative oversight activities.

Title I also prohibits the Financial Crimes Enforcement Network (FinCEN) from rulemaking with respect to an individual’s ability to self-custody digital assets.

This Title also seeks to address the gap in oversight that will occur between enactment and effective date. Before the SEC and CFTC can register and regulate entities and activities under the Act, they will need to engage in rulemakings. In the interim, there will be no comprehensive federal oversight of the digital asset markets, leaving consumers at risk of suffering losses due to mismanagement or fraud. Additionally, before the effective date of the Act and the regulations it requires, the SEC may seek to aggressively regulate the digital commodity marketplace in a manner inconsistent with the Act’s intent, which could exacerbate the flight of digital asset innovation and growth out of the United States.

At the May 2023 Joint Hearing, Kraken Chief Legal Officer Marco Santori testified:

[T]he creation of new, regulated trading platforms, the allocation of jurisdiction, and the establishment of inter-agency mechanisms for cooperation will take time. Until these new mechanisms can be firmly established, transitional arrangements should be put in place to allow digital asset markets to continue to operate with minimal disruption, and as little harm as possible to retail investors.

In addition to bringing necessary customer protections to customers as soon as possible through interim measures, the Committees want to ensure that the SEC does not act contrary to the intent of the reported bill’s digital asset market structure framework during the period from the bill’s enactment to its effective date.

To address these issues, Title I provides entities with the ability to file a notice of intent to register and comply with certain conditions including making their books and records available for inspection, making certain customer disclosures, and protecting customer assets. Without these requirements, regulators would remain in the dark as to the operations of these entities until they were reg-

istered, which may not occur until several years after enactment. These noticed entities would also be required to become members of a federally registered self-regulatory organization (SRO) and comply with that organization’s rules. SROs have historically brought regulation and oversight to markets before federal regulations can be finalized.

At the May 2023 Joint Hearing, Matthew Kulkin, former Director of the CFTC’s Division of Swap Dealer and Intermediary Oversight (DSIO), testified:

[F]or several decades, [the CFTC SRO for the derivatives markets, the National Futures Association (NFA)], has exercised its authority to protect customers, particularly retail customers, from fraud, abuse, and misconduct.

By requiring membership with a federally registered SRO and requiring compliance with its rules during the notice period, the reported legislation can bring customer protections to the digital asset marketplace in a much more expeditious manner than the SEC and CFTC’s joint rulemaking efforts.

In exchange for compliance with these requirements, the noticed entities will be exempt from certain current SEC registration requirements. These provisions do not impact the agencies’ anti-fraud or anti-manipulation authorities or preclude the agencies from jointly requiring a noticed entity to delist an asset that is inconsistent with the securities or commodities laws. Section 712(f) of the Dodd-Frank Act provided similar authority to the CFTC and SEC to exempt persons from the Act’s requirements while rulemakings were being finalized.

Title I directs the SEC and CFTC to consult with foreign regulatory agencies on international standards on digital assets. Section 752 of the Dodd-Frank Act provided similar authority to encourage cooperation with foreign regulators.

Finally, this Title requires rulemakings under the Act to be issued within one year from the date of enactment. Section 712(e) and (f) of the Dodd-Frank Act provided similar implantation and transition authorities to the SEC and CFTC.

TITLE II—OFFERS AND SALES OF DIGITAL ASSETS

Title II provides a new exemption for digital asset issuers to issue digital assets. The new exemption incorporates requirements from existing exemptions that are used by start-ups and entrepreneurs, including the SEC’s Regulation A and Regulation Crowdfunding. Under the new exemption, innovators will be able to raise up to \$75 million in a 12-month period through the sale of digital assets if they comply with certain conditions. Digital assets issued under this exemption are restricted digital assets.

The Title establishes the framework through which certain persons are permitted to engage in restricted digital asset transactions. Generally, restricted digital assets are permitted to be offered or sold on a digital asset trading system (DATS) under the supervision of the SEC. Persons closely related to the digital asset issuer (“related persons” and “affiliated persons”) are subject to additional restrictions on their sale of those digital assets. This Title also exempts end user distributions, broad, non-discretionary distributions issued for no more than nominal consideration (e.g., air

drops and validation rewards), from being considered transactions in a security.

Title II provides a new disclosure framework specific to the new exemption for the issuance of restricted digital assets. The new, enhanced disclosure mandated under Title II ensures that disclosures for digital assets provide investors with information that is relevant to this unique asset class. The enhanced disclosures include the digital asset's source code, transaction history, network specifications, launch and supply process, governance regime, development plan, and material risks.

This Title also provides the process by which a restricted digital asset is no longer restricted and can be traded as a digital commodity if the associated blockchain network has been certified as decentralized. The certification process builds in several controls that prevent the SEC from abusing its position as a gatekeeper. The SEC is provided with an opportunity to rebut the assertion that the network meets the decentralization test within a certain period of time. The rebuttal may be appealed to the U.S. Court of Appeals for the D.C. Circuit.

TITLE III—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE SECURITIES AND EXCHANGE COMMISSION

The Title provides the SEC with jurisdiction over restricted digital asset transactions and limited authority over permitted payment stablecoin transactions, to the extent such transactions occur on, with, or through a person or entity registered with the SEC.

Title III creates a framework for DATS, digital asset brokers (DAB), and digital asset dealers (DAD). The registration and compliance frameworks for these entities were drawn from existing structures for brokers, dealers, and alternative trading systems.

Under Title III, intermediaries must follow longstanding segregation requirements, including prohibiting the commingling of customer funds with the funds of the intermediary. The Title provides customers with the right to opt out of the segregation provisions to allow the DAB or DAD to pool and use their funds for blockchain services.

Title III specifies that a DATS must hold customer digital assets in a qualified digital asset custodian (QDAC), which would be an entity regulated by a Federal banking agency, a State bank supervisor, the CFTC, the SEC, or a foreign banking regulator. The SEC is responsible for establishing minimum standards for supervision and regulation that regulators must implement for an entity to be deemed "qualified." The QDAC must share information with the SEC regarding customer accounts. The Title also sets forth registration and requirements for digital asset clearing agencies (DACA). Under this Title, digital asset intermediaries and exchanges would be required to implement policies to mitigate conflicts of interest.

To ensure that market participants are eligible to trade restricted digital assets and digital commodities on the same platform, Title III allows a DATS, DAB, and DAD to register with the CFTC as a digital commodity exchange, digital commodity broker, and a digital commodity dealer, respectively, and thereafter, list digital commodities for trading.

Title III exempts certain “ancillary activities” from direct regulation by the SEC. Ancillary activities are defined as validating or providing incidental services with respect to a digital commodity, providing user-interfaces for a blockchain network, publishing and updating software, and developing wallets for blockchain networks. This exemption does not impact the SEC’s anti-fraud and anti-manipulation authority over these activities.

This Title also reverses the SEC’s Staff Accounting Bulletin 121, which alters the way custodians treat digital assets on their balance sheets.

Lastly, the Title prohibits fees collected by the SEC to be deposited in the SEC Reserve Fund for three years. The effective date of the Title is the later of 360 days from enactment or 60 days after publication of the final rule implementing this Title.

TITLE IV—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE COMMODITY FUTURES TRADING COMMISSION

Title IV provides the CFTC with exclusive jurisdiction over cash or spot digital commodity transactions and limited authority over permitted payment stablecoin transactions, to the extent such transactions occur on, with, or through a person or entity registered with the CFTC. The CFTC is granted limited authority over the trading of permitted payment stablecoins to ensure there is no duplication of oversight between the CFTC and prudential regulators pertaining to off-exchange transactions.

Title IV establishes three new registration categories at the CFTC: digital commodity exchange (DCE), digital commodity broker (DCB), and digital commodity dealer (DCD). The registration and compliance frameworks for these entities were drawn from existing structures in the CEA for derivatives exchanges, introducing brokers, futures commission merchants (FCMs), and swap dealers.

Title IV’s compliance framework for DCEs is largely drawn from the core principle requirements imposed on derivatives exchanges under the CEA. Under the Title, a registered DCE would be required to comply with longstanding CEA core principles, including the monitoring of trading activity, prohibition of abusive trading practices, minimum capital requirements, public reporting of trading information, conflicts of interest, governance standards, and cybersecurity.

Title IV requires registered DCBs and DCDs to become members of a registered futures association, comply with its rules, and comply with several prescriptive requirements similar to those imposed on derivatives intermediaries under the CEA. These include minimum capital, fair dealing, risk disclosures, advertising limitations, conflicts of interest, recordkeeping and reporting, daily trading records, and employee fitness standards. The Title also provides similar customer segregation requirements and customer asset protections for DCBs and DCDs as are provided for DCEs. Title IV specifies that a registered DCE, DCB, and DCD must hold customer digital commodities in a qualified digital commodity custodian (QDCC) to ensure that customer assets deposited with a CFTC-registered entity are held in a safe and appropriate manner, separate from the independent control of the DCE, DCB, or DCD. This approach is consistent with Section 4d of the CEA which pro-

vides that an FCM shall hold all customer money, securities, and property in a bank, trust company, or clearinghouse organization.

A QDCC must be regulated by a Federal banking agency, a State bank supervisor, the CFTC, the SEC, or foreign banking regulator in the home country of the QDCC. The CFTC is permitted to establish minimum standards for supervision and regulation for an entity to be deemed “qualified.” The QDCC must share information with the CFTC regarding customer accounts. Additionally, Title IV requires DCEs, DCBs, and DCDs to follow longstanding CEA segregation requirements imposed on CFTC regulated entities, including prohibiting the commingling of customer funds with firm funds but allowing the comingling of multiple customers’ funds in an omnibus customer account.

Title IV also extends the bankruptcy protections provided to customers of FCMs to customers of DCEs, DCBs, and DCDs. As with FCMs under the CEA, customer funds in segregation have a bankruptcy preference in the event of a DCE, DCB, or DCD insolvency. Identical to the bankruptcy protections under the CEA for customers of FCMs, to the extent that DCE, DCB or DCD customer funds are insufficient to pay customer claims, the remainder of what customers are owed will participate pro rata in the distributions to unsecured creditors of the bankrupt DCE, DCB, or DCD.

To provide market participants with the flexibility to trade restricted digital assets and digital commodities on the same exchange, Title IV allows a DCE, DCB, and DCD to register with the SEC as a DATS, DAB, and DAD, respectively, and thereafter, offer restricted digital assets for trading.

Similar to Title III, Title IV exempts certain “ancillary activities” from direct regulation by the CFTC. Ancillary activities are defined as validating or providing incidental services with respect to a digital commodity, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks. This exemption does not impact the CFTC’s anti-fraud, anti-manipulation, or false reporting authority over these activities.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

Title V consists of a variety of provisions intended to improve the CFTC’s and SEC’s approach to innovation and digital asset regulation and study sectors of the digital asset marketplace not addressed in the legislation. Specifically, Title V codifies both the CFTC’s LabCFTC and the SEC’s Strategic Hub for Innovation and Financial Technology (FinHub), and structures both as an independent office that reports to their respective full Commission.

This change ensures that both offices will assist their respective agencies with their approach to technological advancements, examine the impact that financial technology innovations have on market participants, and coordinate the CFTC and SEC’s response to emerging technologies in financial, regulatory, and supervisory systems. This legislation also requires LabCFTC and FinHub to each separately report annually to Congress on their activities.

The Title also requires the SEC and CFTC to form a Joint Advisory Committee on Digital Assets comprised of digital asset market participants. This Committee will be tasked with providing recommendations to the SEC and CFTC regarding the promulgation

of rules required by this Act. This approach is similar to the joint CFTC SEC Advisory Committee on Emerging Regulatory Issues that was established by the CFTC and SEC in response to the 2010 Flash Crash. That joint advisory committee met five times in 2010 and 2011 and published a report and recommendations. It has been dormant since 2014.

Title V also requires studies on decentralized finance (DeFi), non-fungible digital assets, tokenized securities and derivative products, and financial literacy among digital asset holders.

The study on DeFi is required to be conducted by the CFTC and the SEC. The agencies must study the size, scope, role, nature, and use of DeFi protocols, the benefits and risks of DeFi, how DeFi has integrated into the traditional financial markets (including the risks of DeFi integration), and the levels and types of illicit activities in DeFi compared to traditional financial markets.

GAO is required to conduct a study on non-fungible digital assets. This study must include an analysis of the size, scope, role, nature, and use of non-fungible digital assets, the similarities and differences between non-fungible digital assets and other digital assets, the benefits and risks of non-fungible digital assets, how non-fungible digital assets have integrated into traditional marketplaces, including the risks of such integration, and the levels and types of illicit activities in non-fungible digital asset markets.

CFTC and SEC are jointly required to study whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products. The study will also examine if further rules would foster the development of fair and orderly financial markets, be appropriate for the public interest, and provide further investor protections.

TITLE VI—MISCELLANEOUS

Title VI includes findings related to the benefits of digital assets and expresses Congress' support for blockchain technology and digital assets.

RELATED HEARINGS

118TH CONGRESS

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop H.R. 4763: The Committee on Financial Services held a hearing on June 13, 2023, titled "The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem."

The Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services and the Subcommittee on Commodity Markets, Digital Assets, and Rural Development of the Committee on Agriculture held a joint hearing on May 10, 2023, titled "The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets."

The Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services held a hearing on April 27, 2023, titled "The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure."

The Committee on Financial Services held a hearing on April 18, 2023, titled "Oversight of the Securities and Exchange Commission."

The Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services held a hearing on March 9, 2023, titled “Coincidence or Coordinated? The Administration’s Attack on the Digital Asset Ecosystem.”

117TH CONGRESS

Pursuant to clause 3(c)(6) of rule XIII, the following hearings were used to develop H.R. 4763: The Committee on Financial Services held a hearing on December 13, 2022, titled “Investigating the Collapse of FTX.”

The Committee on Financial Services held a hearing on December 8, 2021, titled “Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.”

The Committee on Financial Services held a hearing on October 5, 2021, titled “Oversight of the U.S. Securities and Exchange Commission: Wall Street’s Cop Is Finally Back on the Beat.”

The Subcommittee on Oversight and Investigations held a hearing on June 30, 2021, titled “Will the Crypto Frenzy Lead to Financial Independence and Early Retirement or Financial Ruin?”

115TH CONGRESS

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 4763: The Subcommittee on Capital Markets held a hearing on March 14, 2018, titled “Examining the Cryptocurrencies and ICO Markets;”

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 26, 2023, and ordered H.R. 4763 to be reported favorably to the House as amended by a recorded vote of 35 ayes to 15 nays (Record vote no. FC–76), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Hill by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 4763 was ordered reported favorably to the House as amended by a recorded vote of 35 ayes to 15 nays (Record vote no. FC–76), a quorum being present.

An amendment offered by Mr. Foster, no. 1, was not agreed to by voice vote, a quorum being present.

An amendment offered by Mr. Sherman, no. 2, was not agreed to by voice vote, a quorum being present.

An en bloc vote for amendments offered by Ms. Waters, no. 3, Mr. Lynch, no. 11, and Mr. Lynch, no. 13, was not agreed to by a recorded vote of 19 ayes to 29 nays, a quorum being present (Record vote no. FC–75).

An amendment by Mr. Gottheimer, no. 4, was agreed to by voice vote, a quorum being present.

An amendment by Mr. Lynch, no. 6, was agreed to by voice vote, a quorum being present.

An amendment by Mr. Himes, no. 7, was agreed to by voice vote, a quorum being present.

An amendment by Mr. Nickel, no. 8, was agreed to by voice vote, a quorum being present.

An amendment by Mr. Horsford, no. 9, was agreed to by voice vote, a quorum being present.

An amendment by Mr. Lynch, no. 12, was not agreed to by voice vote, a quorum being present.

Record vote no. FC- 76

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	—	X	—
Mr. Hill	X	—	—	Mrs. Velázquez	—	—	—
Mr. Lucas	X	—	—	Mr. Sherman	—	X	—
Mr. Sessions	X	—	—	Mr. Meeks	—	X	—
Mr. Posey	X	—	—	Mr. Scott	—	X	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	—	X	—
Mr. Huizenga	X	—	—	Mr. Green	—	X	—
Mrs. Wagner	X	—	—	Mr. Cleaver	—	—	—
Mr. Barr	X	—	—	Mr. Himes	X	—	—
Mr. Williams (TX)	X	—	—	Mr. Foster	—	X	—
Mr. Emmer	X	—	—	Mrs. Beatty	—	X	—
Mr. Loudermilk	X	—	—	Mr. Vargas	—	X	—
Mr. Mooney	X	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	X	—	—	Mr. Gonzalez	—	X	—
Mr. Rose	X	—	—	Mr. Casten	—	X	—
Mr. Steil	X	—	—	Ms. Pressley	—	X	—
Mr. Timmons	X	—	—	Mr. Horsford	X	—	—
Mr. Norman	X	—	—	Ms. Tlaib	—	X	—
Mr. Meuser	X	—	—	Mr. Torres	X	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	—	X	—
Mr. Garbarino	X	—	—	Ms. Williams (GA)	—	X	—
Mrs. Kim	X	—	—	Mr. Nickel	X	—	—
Mr. Donalds	X	—	—	Ms. Pettersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	X	—	—				

Record vote no. FC- 75

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velázquez	—	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	X	—	—
Mr. Posey	—	X	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	—	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Tlaib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	—	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	—	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 4763 is to ensure that the Commodity Futures Trading Commission (CFTC) has jurisdiction over digital commodities and clarifies the Securities and Exchange Commission's (SEC) jurisdiction over digital assets offered as part of an investment contract, including imposing robust customer protections on all entities required to be registered with the CFTC and the SEC.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has requested but not received an estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, once an estimate has been prepared by the Director of the Congressional Budget Office, as required by section 402 of the Congressional Budget Act of 1973, the Committee will adopt as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate.

FEDERAL MANDATES STATEMENT

The Committee has requested but not received an estimate from the Director of the Congressional Budget Office of the Federal mandates pursuant to section 423 of the Unfunded Mandates Reform Act. The Committee will adopt the estimate once it has been prepared by the Director.

ADVISORY COMMITTEE STATEMENT

Pursuant to 5 U.S.C. 1004(b), H.R. 4763 requires the CFTC and the SEC to form a Joint Advisory Committee on Digital Assets comprised of digital asset marketplace stakeholders. The functions of the proposed Joint Advisory Committee on Digital Assets could not be performed by an agency or advisory committee already in existence.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

TITLE I—DEFINITIONS; RULEMAKING; NOTICE OF INTENT TO REGISTER

Sec. 101. Definitions under the Securities Act of 1933

Section 101 provides for definitions under the Securities Act of 1933.

Sec. 102. Definitions under the Securities Exchange Act of 1934

Section 102 provides for definitions under the Securities Exchange Act of 1934.

Sec. 103. Definitions under the Commodity Exchange Act

Section 103 is within the House Committee on Agriculture’s jurisdiction pursuant to rule X. The House Committee on Agriculture’s Report of H.R. 4763 includes a summary of this section.

Sec. 104. Definitions under this Act

Section 104 provides for definitions under this Act.

Sec. 105. Joint rulemakings

Section 105 provides for joint rulemakings between the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), including joint rulemakings related to defining key terms in the Act, the oversight of dually registered exchanges, and the oversight of mixed digital asset transactions. Section 105 requires a joint rulemaking related to mixed digital asset transactions and prohibits the Financial Crimes Enforcement Network from issuing any rule that would limit self-custody by an individual. Additionally, Section 105 requires the SEC and CFTC to jointly issue rulemakings regarding the process to delist an asset for trading under the notice of intent to register period.

Sec. 106. Notice of intent to register for CFTC intermediaries

Section 106 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 107. Notice of intent to register for SEC intermediaries

Section 107 permits a digital asset broker (DAB), digital asset dealer (DAD), or digital asset trading system (DATS) to file a notice of intent to register with the SEC. The filer must submit information regarding its operations to the Commission, submit to inspection by the Commission, and be a member of FINRA. As a member of FINRA, it must also apply with all applicable membership requirements, including risk disclosures for customers and segregation of customer assets. Filing a notice provides the filer with an exemption from registration as an intermediary with the SEC with respect to digital asset transactions, until such time as the rules are written and permanent registration commences. It does not limit the authority of the CFTC or SEC to bring anti-fraud or anti-manipulation enforcement actions or to require a filer to delist a digital asset. Finally, Section 107 provides that it is unlawful for a filer to knowingly provide a false statement to the SEC.

Sec. 108. Commodity Exchange Act savings provisions

Section 108 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 109. International harmonization

Section 109 requires the CFTC and the SEC to work with foreign regulators to establish consistent international standards for the regulation of digital asset markets.

Sec. 110. Implementation

Section 110 requires the CFTC and the SEC to promulgate all rules required by the Act no later than 360 days after enactment of the Act.

TITLE II—OFFERS AND SALES OF DIGITAL ASSETS

Sec. 201. Exempted transactions in digital assets

Section 201 establishes an exemption from the securities laws for a digital asset issuer's sale of digital assets that meet the following conditions: (1) the issuer's total sales of the digital asset over the prior 12 months does not exceed \$75 million; (2) a non-accredited investor's purchases of the digital asset from the issuer over the prior 12 months are less than the greater of 10% of the purchaser's annual income or 10% of their net worth; (3) the purchaser does not own more than 10% of the units of the digital asset after the completion of the transaction; and (4) the transaction involves the sale of a digital asset as part of an investment contract.

The digital asset issuer must file information with the Commission as prescribed by the Act. The digital asset issuer must file annual and semiannual reports until a defined period after the blockchain system is certified as decentralized. Any intermediaries involved in the offer or sale of a unit of a digital asset under this

exemption must be registered with the SEC. A unit of a digital asset acquired from the digital asset issuer in reliance on this exemption is a restricted digital asset.

Sec. 202. Requirements for offers and sales of certain digital assets

Section 202 sets out the conditions under which certain persons are permitted to engage in restricted digital asset transactions and digital commodity transactions. Generally, restricted digital assets are permitted to trade on a DATS under the supervision of the SEC and digital commodities are permitted to trade on a DCE under the supervision of the CFTC. Related and affiliated persons are subject to more restrictions on when they may sell digital assets that they hold. This section also exempts end user distributions—broad, non-discretionary distributions issued for no more than nominal consideration—from the securities laws.

Sec. 203. Enhanced disclosure requirements

Section 203 provides for a new disclosure regime for digital assets. The information required to be disclosed is focused on the nature of the risks surrounding digital assets, including source code, project economics, development plan, related and affiliated persons, and material risk factors.

Sec. 204. Certification of certain digital assets

Section 204 provides for a process for a blockchain relating to a digital asset to be certified as decentralized. The certification process permits any person to certify to the SEC that the blockchain network meets the requirements of the Act. As part of this process, an individual will submit general information pertaining to the blockchain network and an analysis of the factors on which decentralization is based. The certification is considered automatically approved after 60 days unless the Commission issues a stay. The SEC may rebut the certification, which may be appealed by the party making the certification to the U.S. Court of Appeals for the D.C. Circuit.

Sec. 205. Effective date

Section 205 provides that the provisions under this Title will take effect one year after enactment or, in the case of rulemakings under the Title, not less than 60 days after publication of the final rule.

TITLE III—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE SECURITIES AND EXCHANGE COMMISSION

Sec. 301. Treatment of digital commodities and other digital assets

Section 301 excludes digital commodities and permitted payment stablecoins from the definition of a security under the securities laws. It also specifies that DATS shall not be deemed a “facility” of an exchange.

Sec. 302. Antifraud authority over payment stablecoins

Section 302 provides the SEC with anti-fraud and anti-manipulation authority over transactions with or involving permitted payment stablecoins that occur on or with a SEC registered entity. It

also provides the SEC with limited authority to transactions in permitted payment stablecoins, when transacted by or through an entity registered with the Commission. Finally, section 302 specifies that the SEC shall have no authority over the design, structure, issuance, redemption, financial resources, collateral, or any other aspect of a payment stablecoin's operation.

Sec. 303. Registration of Digital Asset Trading Systems

Section 303 establishes a registration framework for DATS. It also provides for the dual registration of a DATS as a DCE registered with the CFTC.

Section 304. Requirements for Digital Asset Trading Systems

Section 304 establishes the requirements for DATS. The SEC is instructed to prescribe rules in various areas including order display, fair access, security of automated systems, examinations, and reporting. DATS may not act as custodians and are required to hold customer restricted digital assets in a qualified digital asset custodian.

Section 304 also sets out the rules for qualified digital asset custodians, including requirements that it be adequately supervised and appropriately regulated by a federal, state, or foreign banking regulator.

Section 305. Registration of Digital Asset Brokers and Digital Asset Dealers

Section 305 establishes a registration framework for DAB and DAD. It requires digital asset brokers and dealers to be members of FINRA. Digital asset brokers and dealers may register with the CFTC as digital commodity brokers and dealers.

Section 306. Requirements of Digital Asset Brokers and Digital Asset Dealers

Section 306 subjects digital asset brokers and dealers to the same antifraud authorities that currently exist within securities laws. The section also requires digital asset brokers and dealers to comply with requirements including capital, recordkeeping, segregation of customer funds, and use of a qualified digital asset custodian. Customers may waive customer segregation requirements so that digital asset brokers and dealers may use their digital assets to participate in a blockchain service. Digital asset brokers and digital asset dealers under this section are treated as financial institutions, requiring their compliance with the Bank Secrecy Act.

Sec. 307. Rules related to conflicts of interest

Section 307 amends securities laws to ensure that each digital asset trading system, digital asset broker, digital asset dealer, and notice-registered digital asset clearing agency reasonably implement policies that mitigate any conflicts of interest and transactions or arrangements with affiliates.

Sec. 308. Treatment of certain digital assets in connection with federally regulated intermediaries

Section 308 adds digital assets to "covered securities" which are exempt from state blue sky law registration requirements.

Sec. 309. Exclusion for ancillary activities

Section 309 exempts certain ancillary activities related to the operation and maintenance of blockchain networks from SEC regulation, although not from the Commission's anti-fraud or anti-manipulation enforcement authorities.

Ancillary activities include validating or providing incidental services with respect to a restricted digital asset, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks.

Sec. 310. Registration and requirements for notice-registered digital asset clearing agencies

Section 310 permits digital asset brokers and dealers whose operations do not involve digital commodities and banks providing custody of digital assets to register as a notice-registered digital asset clearing agency. SEC rules regarding this section shall not take effect until at least a year after enactment.

Sec. 311. Treatment of custody activities by banking institutions

Section 311 prevents federal regulators from imposing requirements on financial institutions to include customers' assets as liabilities on their balance sheets or from holding additional capital against these assets, except as necessary to mitigate against operational risks as determined by the appropriate federal banking agency.

Section 312. Effective date; administration

Section 312 provides that the provisions under this Title will take effect one year after enactment or, in the case of rulemakings under the Title, not less than 60 days after publication of the final rule. Further, it limits, for three years, the deposit of registration fees in the SEC's Reserve Fund.

TITLE IV—REGISTRATION FOR DIGITAL ASSET INTERMEDIARIES AT THE COMMODITY FUTURES TRADING COMMISSION

Sec. 401. Commission jurisdiction over digital commodity transactions

Section 401 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 402. Requiring futures commission merchants to use qualified digital commodity custodians

Section 402 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 403. Trading certification and approval for digital commodities

Section 403 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 404. Registration of digital commodity exchanges

Section 404 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 405. Qualified digital commodity custodians

Section 405 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 406. Registration and regulation of digital commodity brokers and dealers

Section 406 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 407. Registration of associated persons

Section 407 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 408. Registration of commodity pool operators and commodity trading advisors

Section 408 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 409. Exclusion for ancillary activities

Section 409 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

Sec. 410. Effective date

Section 410 is within the House Committee on Agriculture's jurisdiction pursuant to rule X. The House Committee on Agriculture's Report of H.R. 4763 includes a summary of this section.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

Sec. 501. Codification of the SEC Strategic Hub for Innovation and Financial Technology (FinHub)

Section 501 establishes the SEC Strategic Hub for Innovation and Financial Technology (FinHub), which will assist the SEC with its approach to technological advancements, examine the impact that FinTech innovations have on capital markets, market participants, and investors, and coordinate the SEC's response to emerging technologies in financial, regulatory, and supervisory systems. FinHub will be managed and overseen by a Director who will be appointed by the Commission. The Director will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office. FinHub shall submit an annual report to Congress on its activity.

Sec. 502. Codification of LabCFTC

Section 502 is within the House Committee on Agriculture’s jurisdiction pursuant to rule X. The House Committee on Agriculture’s Report of H.R. 4763 includes a summary of this section.

Sec. 503. CFTC SEC Joint Advisory Committee on Digital Assets

Section 503 establishes a Joint CFTC–SEC Advisory Committee on Digital Assets composed of digital asset marketplace stakeholders. Among its many duties, the Joint Advisory Committee will provide recommendations to the CFTC and the SEC regarding their respective promulgation of rules under the Act. The section also requires the CFTC and the SEC to publicly respond to any recommendations made by the Joint Advisory Committee.

Sec. 504. Study on decentralized finance

Section 504 requires the CFTC and the SEC to conduct a study on DeFi, which will include an analysis of the size, scope, role, nature, and use of DeFi protocols, the benefits and risks of DeFi, how DeFi has integrated into the traditional financial markets (including the risks of DeFi integration), and the levels and types of illicit activities in DeFi compared to traditional financial markets. The agencies must submit a report to Congress one year after enactment. GAO shall also conduct a report on DeFi and submit it to Congress one year after enactment.

DeFi is defined as a system of software applications that: (1) are created through smart contracts deployed to permissionless blockchain technology; and (2) allow users to engage in financial transactions in a self-directed manner such that no third-party intermediary effectuates such transactions or takes custody of a user’s digital assets during any part of such transaction.

Sec. 505. Study on non-fungible digital assets

Section 506 requires the Government Accountability Office (GAO) to conduct a study on non-fungible digital assets (NFT), which will include an analysis of the size, scope, role, nature, and use of NFTs, the similarities and differences between NFTs and other digital assets, the benefits and risks of NFTs, how NFTs have integrated into traditional marketplaces, including the risks of such integration, and the levels and types of illicit activities in NFT markets. GAO must make the report publicly available one year after enactment.

Sec. 506. Study on expanding financial literacy amongst digital asset holders

Section 506 requires the CFTC and SEC to conduct a study on the level of financial literacy among retail digital asset holders; methods to improve coordination between the SEC and CFTC to better disseminate financial literacy materials; and effective public-private partnerships in providing financial literacy regarding digital assets; and a strategy to increase financial literacy regarding digital assets.

Sec. 507. Study on financial market infrastructure improvements

Section 507 requires the CFTC and the SEC to conduct a study on whether additional guidance or rules are necessary to facilitate

the development of tokenized securities and derivatives products. The study will also examine if further rules would foster the development of fair and orderly financial markets, be appropriate for the public interest, and provide further investor protections. The agencies must submit the report to Congress one year after enactment.

TITLE VI—MISCELLANEOUS

Section 601. Findings; sense of Congress

Section 601 expresses support for digital asset markets and blockchain technology. It also highlights both Committee’s work to bridge the gap between the CFTC and SEC and establish a functional framework for digital asset markets in the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933

* * * * *

TITLE I—

* * * * *

DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *The term does not include a digital commodity or permitted payment stablecoin.*

(2) The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term “trust”

shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term “research report” means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term “issuer” means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term “issuer” means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term “issuer” means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term “Commission” means the Securities and Exchange Commission.

(6) The term “Territory” means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term “interstate commerce” means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term “registration statement” means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term “write” or “written” shall include printed, lithographed, or any means of graphic communication.

(10) The term “prospectus” means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting

the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term “underwriter” means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commission. As used in this paragraph the term “issuer” shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term “dealer” means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term “insurance company” means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term “separate account” means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term “accredited investor” shall mean—

- (i) a bank as defined in section 3(a)(2) whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fidu-

ciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms “security future”, “narrow-based security index”, and “security futures product” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(17) The terms “swap” and “security-based swap” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a “large accelerated filer”, as defined in section 240.12b-2 of title 17, Code of Federal Regulations, or any successor thereto.

(20) *AFFILIATED PERSON.*—The term “affiliated person” means a person (including a related person) that—

(A) with respect to a digital asset issuer—

(i) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such digital asset issuer; and

- (ii) was described under clause (i) at any point in the previous 3-month period; or
 - (B) with respect to any digital asset—
 - (i) beneficially owns 5 percent or more of the units of such digital asset that are then outstanding; and
 - (ii) was described under clause (i) at any point in the previous 3-month period.
- (21) **BLOCKCHAIN.**—The term “blockchain” means any technology—
- (A) where data is—
 - (i) shared across a network to create a public ledger of verified transactions or information among network participants;
 - (ii) linked using cryptography to maintain the integrity of the public ledger and to execute other functions; and
 - (iii) distributed among network participants in an automated fashion to concurrently update network participants on the state of the public ledger and any other functions; and
 - (B) composed of source code that is publicly available.
- (22) **BLOCKCHAIN PROTOCOL.**—The term “blockchain protocol” means any executable software deployed to a blockchain composed of source code that is publicly available and accessible, including a smart contract or any network of smart contracts.
- (23) **BLOCKCHAIN SYSTEM.**—The term “blockchain system” means any blockchain or blockchain protocol.
- (24) **DECENTRALIZED NETWORK.**—With respect to a blockchain system to which a digital asset relates, the term “decentralized network” means the following conditions are met:
- (A) During the previous 12-month period, no person—
 - (i) had the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality or operation of the blockchain system; or
 - (ii) had the unilateral authority to restrict or prohibit any person who is not a digital asset issuer, related person, or an affiliated person from—
 - (I) using, earning, or transmitting the digital asset;
 - (II) deploying software that uses or integrates with the blockchain system;
 - (III) participating in a decentralized governance system with respect to the blockchain system; or
 - (IV) operating a node, validator, or other form of computational infrastructure with respect to the blockchain system.
 - (B) During the previous 12-month period—
 - (i) no digital asset issuer or affiliated person beneficially owned, in the aggregate, 20 percent or more of the total amount of units of such digital asset that—
 - (I) can be created, issued, or distributed in such blockchain system; and

(II) were freely transferrable or otherwise used or available to be used for the purposes of such blockchain system;

(ii) no digital asset issuer or affiliated person had the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of such digital asset or related decentralized governance system; or

(iii) the digital asset did not include voting power with respect to any decentralized governance system of the blockchain system.

(C) During the previous 3-month period, the digital asset issuer, any affiliated person, or any related person has not implemented or contributed any intellectual property to the source code of the blockchain system that materially alters the functionality or operation of the blockchain system, unless such implementation or contribution to the source code—

(i) addressed vulnerabilities, errors, regular maintenance, cybersecurity risks, or other technical changes to the blockchain system; or

(ii) were adopted through the consensus or agreement of a decentralized governance system.

(D) During the previous 3-month period, neither any digital asset issuer nor any affiliated person described under paragraph (20)(A) has marketed to the public the digital assets as an investment.

(E) During the previous 12-month period, all issuances of units of such digital asset through the programmatic functioning of the blockchain system were end user distributions.

(25) **DECENTRALIZED GOVERNANCE SYSTEM.**—

(A) **IN GENERAL.**—The term “decentralized governance system” means, with respect to a blockchain system, any rules-based system permitting persons using the blockchain system or the digital assets related to such blockchain system to form consensus or reach agreement in the development, provision, publication, management, or administration of such blockchain system.

(B) **RELATIONSHIP OF PERSONS TO DECENTRALIZED GOVERNANCE SYSTEMS.**—Persons acting through a decentralized governance system shall be treated as separate persons unless such persons are under common control.

(C) **EXCLUSION.**—The term “decentralized governance system” does not include a system in which—

(i) a person or group of persons under common control have the ability to—

(I) unilaterally alter the rules of consensus or agreement for the blockchain system; or

(II) determine the final outcome of decisions related to the development, provision, publication, management, or administration of such blockchain system;

(ii) a person or group of persons is directly engaging in an activity that requires registration with the Com-

mission or the Commodity Futures Trading Commission other than—

(I) developing, providing, publishing, managing, or administering a blockchain system; or

(II) an activity with respect to which the organization is exempt from such registration; or

(iii) a person or group of persons seeking to knowingly evade the requirements imposed on a digital asset issuer, a related person, an affiliated person, or any other person registered (or required to be registered) under the securities laws, the Financial Innovation and Technology for the 21st Century Act, or the Commodity Exchange Act.

(26) DIGITAL ASSET.—

(A) IN GENERAL.—The term “digital asset” means any fungible digital representation of value that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger.

(B) EXCLUSIONS.—The term “digital asset” does not include—

(i) any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, or transferable share; or

(ii) any asset, which based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

(I) a contract of sale of a commodity (as defined under section 1a of the Commodity Exchange Act) for future delivery or an option thereon;

(II) a security futures product;

(III) a swap;

(IV) an agreement, contract, or transaction described in section 2(c)(2)(C)(i) or 2(c)(2)(D)(i) of the Commodity Exchange Act;

(V) a commodity option authorized under section 4c of the Commodity Exchange Act; or

(VI) a leverage transaction authorized under section 19 of the Commodity Exchange Act.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to create a presumption that a digital asset is a representation of any type of security not excluded from the definition of digital asset.

(D) RELATIONSHIP TO A BLOCKCHAIN SYSTEM.—A digital asset is considered to relate to a blockchain system if the digital asset is intrinsically linked to the blockchain system, including—

(i) where the digital asset’s value is reasonably expected to be generated by the programmatic functioning of the blockchain system;

(ii) where the digital asset has voting rights with respect to the decentralized governance system of the blockchain system; or

(iii) where the digital asset is issued through the programmatic functioning of the blockchain system.

(E) TREATMENT OF CERTAIN DIGITAL ASSETS SOLD PURSUANT TO AN INVESTMENT CONTRACT.—A digital asset offered or sold or intended to be offered or sold pursuant to an investment contract is not and does not become a security as a result of being sold or otherwise transferred pursuant to that investment contract.

(27) DIGITAL ASSET ISSUER.—

(A) IN GENERAL.—With respect to a digital asset, the term “digital asset issuer” means any person that, in exchange for any consideration—

(i) issues or causes to be issued a unit of such digital asset to a person; or

(ii) offers or sells a right to a future issuance of a unit of such digital asset to a person.

(B) EXCLUSION.—The term “digital asset issuer” does not include any person solely because such person deploys source code that creates or issues units of a digital asset that are only distributed in end user distributions.

(C) PROHIBITION ON EVASION.—It shall be unlawful for any person to knowingly evade classification as a “digital asset issuer” and facilitate an arrangement for the primary purpose of effecting a sale, distribution, or other issuance of a digital asset.

(28) DIGITAL ASSET MATURITY DATE.—The term “digital asset maturity date” means, with respect to any digital asset, the first date on which 20 percent or more of the total units of such digital asset that are then outstanding as of such date are—

(A) digital commodities; or

(B) digital assets that have been registered with the Commission.

(29) DIGITAL COMMODITY.—The term “digital commodity” has the meaning given that term under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(30) END USER DISTRIBUTION.—

(A) IN GENERAL.—The term “end user distribution” means an issuance of a unit of a digital asset that—

(i) does not involve an exchange of more than a nominal value of cash, property, or other assets; and

(ii) is distributed in a broad, equitable, and non-discretionary manner based on conditions capable of being satisfied by any participant in the blockchain system, including as incentive-based rewards—

(I) to users of the digital asset or any blockchain system to which the digital asset relates;

(II) for activities directly related to the operation of the blockchain system, such as mining, validating, staking, or other activity directly tied to the operation of the blockchain system; or

(III) to the existing holders of another digital asset, in proportion to the total units of such other digital asset as are held by each person.

(B) *PROHIBITION ON EVASION.*—It shall be unlawful for any person to facilitate an end user distribution to knowingly evade classification as a digital asset issuer, related person, or an affiliated person, or the requirements related to a digital asset issuance.

(31) *FUNCTIONAL NETWORK.*—With respect to a blockchain system to which a digital asset relates, the term “functional network” means the network allows network participants to use such digital asset for—

(A) the transmission and storage of value on the blockchain system;

(B) the participation in services provided by or an application running on the blockchain system; or

(C) the participation in the decentralized governance system of the blockchain system.

(32) *PERMITTED PAYMENT STABLECOIN.*—The term “permitted payment stablecoin”—

(A) means a digital asset—

(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; or

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

(B) 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)).

(33) *RELATED PERSON.*—With respect to a digital asset issuer, the term “related person” means—

(A) a founder, promoter, employee, consultant, advisor, or person serving in a similar capacity;

(B) any person that is or was in the previous 6-month period an executive officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity;

(C) any equity holder or other security holder; or

(D) any other person that received a unit of digital asset from such digital asset issuer through—

(i) an exempt offering, other than an offering made in reliance on section 4(a)(8); or

(ii) a distribution that is not an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934.

(34) *RESTRICTED DIGITAL ASSET.*—

(A) *IN GENERAL.*—The term “restricted digital asset” means—

(i) any unit of a digital asset held by a person, other than the digital asset issuer, a related person, or an affiliated person, prior to the first date on which each blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934, that was—

(I) issued to such person through a distribution, other than an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934; or

(II) acquired by such person in a transaction that was not executed on a digital commodity exchange;

(ii) any digital asset held by a related person or an affiliated person during any period when any blockchain system to which the digital asset relates is not a functional network or not certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934; or

(iii) any unit of a digital asset held by the digital asset issuer.

(B) *EXCLUSION.*—The term “restricted digital asset” does not include a permitted payment stablecoin.

(35) *SECURITIES LAWS.*—The term “securities laws” has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(36) *SOURCE CODE.*—With respect to a blockchain system, the term “source code” means a listing of commands to be compiled or assembled into an executable computer program.

(b) *CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.*—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

* * * * *

EXEMPTED TRANSACTIONS

SEC. 4. (a) The provisions of section 5 shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

(D) the issuer complies with the requirements of section 4A(b).

(7) transactions meeting the requirements of subsection (d).

(8) *transactions involving the offer or sale of units of a digital asset by a digital asset issuer, if—*

(A) the aggregate amount of units of the digital asset sold by the digital asset issuer in reliance on the exemption provided under this paragraph, during the 12-month period preceding the date of such transaction, including the amount sold in such transaction, is not more than \$75,000,000 (as such amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor);

(B) with respect to a transaction involving the purchase of units of a digital asset by a person who is not an accredited investor, the aggregate amount of all units of digital assets purchased by such person during the 12-month period preceding the date of such transaction, including the unit of a digital asset purchased in such transaction, does not exceed the greater of—

(i) 10 percent of the person's annual income or joint income with that person's spouse or spousal equivalent;
or

(ii) 10 percent of the person's net worth or joint net worth with the person's spouse or spousal equivalent;

(C) after the completion of the transaction, the purchaser does not own more than 10 percent of the total amount of the units of the digital asset sold in reliance on the exemption under this paragraph;

(D) the transaction does not involve the offer or sale of any digital asset not offered as part of an investment contract;

(E) the transaction does not involve the offer or sale of a unit of a digital asset by a digital asset issuer that—

(i) is not organized under the laws of a State, a territory of the United States, or the District of Columbia;

(ii) is a development stage company that either—

(I) has no specific business plan or purpose; or

(II) has indicated that the business plan of the company is to merge with or acquire an unidentified company;

(iii) is an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act (15 U.S.C. 80a-3(b) or 80a-3(c));

(iv) is issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;

(v) is, or has been, subject to any order of the Commission entered pursuant to section 12(j) of the Securi-

ties Exchange Act of 1934 during the 5-year period before the filing of the offering statement; or

(vi) is disqualified pursuant to section 230.262 of title 17, Code of Federal Regulations; and

(F) the issuer meets the requirements of section 4B(a).

(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(c)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 3(a)(39) of this title and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term “ancillary services” means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(d) CERTAIN ACCREDITED INVESTOR TRANSACTIONS.—The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

(1) ACCREDITED INVESTOR REQUIREMENT.—Each purchaser is an accredited investor, as that term is defined in section

230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.—Neither the seller, nor any person acting on the seller's behalf, offers or sells securities by any form of general solicitation or general advertising.

(3) INFORMATION REQUIREMENT.—In the case of a transaction involving the securities of an issuer that is neither subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)), nor exempt from reporting pursuant to section 240.12g3-2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

(A) The exact name of the issuer and the issuer's predecessor (if any).

(B) The address of the issuer's principal executive offices.

(C) The exact title and class of the security.

(D) The par or stated value of the security.

(E) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year.

(F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.

(G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.

(H) The names of the officers and directors of the issuer.

(I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person's participation in the offer or sale of the securities.

(J) The issuer's most recent balance sheet and profit and loss statement and similar financial statements, which shall—

(i) be for such part of the 2 preceding fiscal years as the issuer has been in operation;

(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

(iii) be presumed reasonably current if—

(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer's balance sheet; and
 (iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

(4) ISSUERS DISQUALIFIED.—The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.

(5) BAD ACTOR PROHIBITION.—Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 CFR 230.506(d)(1)) or is subject to a statutory disqualification described under section 3(a)(39) of the Securities Exchange Act of 1934.

(6) BUSINESS REQUIREMENT.—The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer's primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(7) UNDERWRITER PROHIBITION.—The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

(8) OUTSTANDING CLASS REQUIREMENT.—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

(e) ADDITIONAL REQUIREMENTS.—

(1) IN GENERAL.—With respect to an exempted transaction described under subsection (a)(7):

(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

(B) Such transaction shall be deemed not to be a distribution for purposes of section 2(a)(11).

(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 CFR 230.144).

(2) RULE OF CONSTRUCTION.—The exemption provided by subsection (a)(7) shall not be the exclusive means for estab-

lishing an exemption from the registration requirements of section 5.

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SEC. 4B. REQUIREMENTS WITH RESPECT TO CERTAIN DIGITAL ASSET TRANSACTIONS.

(a) **REQUIREMENTS FOR DIGITAL ASSET ISSUERS.**—

(1) **INFORMATION REQUIRED IN STATEMENT.**—A digital asset issuer offering or selling a unit of digital asset in reliance on section 4(a)(8) shall file with the Commission a statement containing the following information:

(A) The name, legal status (including the jurisdiction in which the issuer is organized and the date of organization), and website of the digital asset issuer.

(B) The address and telephone number of the issuer or a legal representative of the issuer.

(C) A certification that the digital asset issuer meets the relevant requirements described under section 4(a)(8).

(D) An overview of the material aspects of the offering.

(E) A description of the purpose and intended use of the offering proceeds.

(F) A description of the plan of distribution of any unit of a digital asset that is to be offered.

(G) A description of the material risks surrounding ownership of a unit of a digital asset.

(H) A description of the material aspects of the digital asset issuer's business.

(I) A description of exempt offerings conducted within the past three years by the digital asset issuer.

(J) A description of the digital asset issuer and the current number of employees of the digital asset issuer.

(K) A description of any material transactions or relationships between the digital asset issuer and affiliated persons.

(L) A description of exempt offerings conducted within the past three years.

(2) **INFORMATION REQUIRED FOR PURCHASERS.**—A digital asset issuer shall disclose the information described under section 43 of the Securities Exchange Act of 1934 on a freely accessible public website.

(3) **ONGOING DISCLOSURE REQUIREMENTS.**—A digital asset issuer that has filed a statement under paragraph (1) to offer and sell a unit of a digital asset in reliance on section 4(a)(8) shall file the following with the Commission:

(A) **ANNUAL REPORTS.**—An annual report that includes any material changes to the information described under paragraph (2) for the current fiscal year and for any fiscal year thereafter, unless the issuer is no longer obligated to file such annual report pursuant to paragraph (4).

(B) **SEMIANNUAL REPORTS.**—Along with each annual report required under subparagraph (A), and separately six months thereafter, a report containing—

(i) an updated description of the current state and timeline for the development of the blockchain system to which the digital asset relates, showing how and

when the blockchain system intends or intended to be considered a functional network and a decentralized network;

(ii) the amount of money raised by the digital asset issuer in reliance on section 4(a)(8), how much of that money has been spent, and the general categories and amounts on which that money has been spent; and

(iii) any material changes to the information in the most recent annual report.

(C) *CURRENT REPORTS.*—A current report shall be filed with the Commission reflecting any material changes to the information previously reported to the Commission by the digital asset issuer.

(4) *TERMINATION OF REPORTING REQUIREMENTS.*—

(A) *IN GENERAL.*—The ongoing reporting requirements under paragraph (3) shall not apply to a digital asset issuer 180 days after the end of the covered fiscal year.

(B) *COVERED FISCAL YEAR DEFINED.*—In this paragraph, the term “covered fiscal year” means the first fiscal year of an issuer in which the blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934.

(b) *REQUIREMENTS FOR INTERMEDIARIES.*—

(1) *IN GENERAL.*—A person acting as an intermediary in a transaction involving the offer or sale of a unit of a digital asset in reliance on section 4(a)(8) shall—

(A) register with the Commission as a digital asset broker; and

(B) be a member of a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(2) *PURCHASER QUALIFICATION.*—

(A) *IN GENERAL.*—Each time, before accepting any commitment (including any additional commitment from the same person), an intermediary or digital asset issuer shall have a reasonable basis for believing that the purchaser satisfies the requirements of section 4(a)(8).

(B) *RELIANCE ON PURCHASER’S REPRESENTATIONS.*—For purposes of subparagraph (A), an intermediary or digital asset issuer may rely on a purchaser’s representations concerning the purchaser’s annual income and net worth and the amount of the purchaser’s other investments made, unless the intermediary or digital asset issuer has reason to question the reliability of the representation.

(C) *RELIANCE ON INTERMEDIARY.*—For purposes of determining whether a transaction meets the requirements described under subparagraph (A) through (C) of section 4(a)(8), a digital asset issuer may rely on the efforts of an intermediary.

(c) *ADDITIONAL PROVISIONS.*—

(1) *ACCEPTANCE OF WRITTEN OFFERS; SALES.*—After an issuer files a statement under paragraph (1) to offer and sell a digital asset in reliance on section 4(a)(8)—

(A) written offers of the digital asset may be made; and

(B) *the issuer may sell the digital assets in reliance on section 4(a)(8), if such sales meet all other requirements.*

(2) **SOLICITATION OF INTEREST.**—

(A) **IN GENERAL.**—*At any time before the filing of a statement under paragraph (1), a digital asset issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering. Such communications are deemed to be an offer of a unit of a digital asset for sale for purposes of the anti-fraud provisions of the Federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the statement is filed.*

(B) **CONDITIONS.**—*In any communication described under subparagraph (A), the digital asset issuer shall—*

(i) *state that no money or other consideration is being solicited, and if sent in response, will not be accepted;*

(ii) *state that no offer to buy a unit of a digital asset can be accepted and no part of the purchase price can be received until the statement is filed and then only through an intermediary; and*

(iii) *state that a person’s indication of interest involves no obligation or commitment of any kind.*

(C) **INDICATIONS OF INTEREST.**—*Any written communication described under subparagraph (A) may include a means by which a person may indicate to the digital asset issuer that such person is interested in a potential offering. A digital asset issuer may require a name, address, telephone number, or email address in any response form included with a communication described under subparagraph (A).*

(3) **DISQUALIFICATION PROVISIONS.**—*The Commission shall issue rules to apply the disqualification provisions under section 230.262 of title 17, Code of Federal Regulations, to the exemption provided under section 4(a)(8).*

(4) **DIGITAL ASSETS DEEMED RESTRICTED DIGITAL ASSET.**—*A unit of a digital asset acquired directly or indirectly from the digital asset issuer in reliance on the exemption provided under section 4(a)(8) is deemed a restricted digital asset.*

* * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) **SCOPE OF EXEMPTION.**—*Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—*

(1) *requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—*

(A) *is a covered security; or*

(B) *will be a covered security upon completion of the transaction;*

(2) *shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—*

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 11A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(a)(2)) that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) SALES TO QUALIFIED PURCHASERS.—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) **[section 4(4)]** *section 4(a)(4)*;

(C) **[section 4(6)]** *section 4(a)(6)*;

(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

(i) offered or sold on a national securities exchange;

or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under [section 4(2)] *section 4(a)(2)*, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under [section 4(2)] *section 4(a)(2)* that are in effect on September 1, 1996; [or]

(G) section 4(a)(7)[.]; or

(H) *section 4(a)(8)*.

(5) *EXEMPTION FOR CERTAIN DIGITAL ASSETS IN CONNECTION WITH FEDERALLY REGULATED INTERMEDIARIES.—A restricted digital asset is a covered security with respect to a transaction that is exempt from registration under this Act when—*

(A) it is brokered, traded, custodied, or cleared by a digital asset broker or digital asset dealer registered under section 15H of the Securities Exchange Act of 1934; or

(B) traded through a digital asset trading system.

(c) *PRESERVATION OF AUTHORITY.—*

(1) *FRAUD AUTHORITY.—*Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker or dealer; and

(B) in connection to a transaction described under section 4(6), with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) *PRESERVATION OF FILING REQUIREMENTS.—*

(A) *NOTICE FILINGS PERMITTED.—*Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) *PRESERVATION OF FEES.—*

(i) *IN GENERAL.—*Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof,

adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term “State” includes the District of Columbia and the territories of the United States.

(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) OFFERING DOCUMENT.—The term “offering document”—

(A) has the meaning given the term “prospectus” in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996, the Commission shall, by rule, define the term “prepared by or on behalf of the issuer” for purposes of this section.

(3) STATE.—The term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) SENIOR SECURITY.—The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

* * * * *

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) The term “exchange” means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange. *The term “exchange” does not include a digital asset trading system, blockchain protocol, or any person or group of persons solely because of their development of a blockchain protocol.*

(2) The term “facility” when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. *A digital asset trading system is not a “facility” of an exchange.*

(3)(A) The term “member” when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any

registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term “member” when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 6(f) of this title.

(B) The term “member” when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term “broker” means any person engaged in the business of effecting transactions in securities, *other than restricted digital assets*, for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including

scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the

issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Gramm-Leach-Bliley Act; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(5) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after the date of the enactment of the Gramm-Leach-Bliley Act, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term “fiduciary capacity” means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term “broker” does not include a bank that—

(i) was, on the day before the date of enactment of the Gramm-Leach-Bliley Act, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term “dealer” means any person engaged in the business of buying and selling securities (not including *restricted digital assets* or security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person’s own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term “dealer” does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations

thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term “bank” means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners’ Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners’ Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term “director” means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term “issuer” means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or col-

lateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term “issuer” means the person by whom the equipment or property is, or is to be, used.

(9) The term “person” means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited. *Subject to subsection (i), the term does not include a digital commodity or permitted payment stablecoin.*

(11) The term “equity security” means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12)(A) The term “exempted security” or “exempted securities” includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term “investment company” under section 3(c)(3) of the Investment Company Act of 1940;

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an “exempted security” or to “exempted securities”.

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be “exempted securities” for the purposes of section 17A of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be “exempted securities” for the purposes of sections 15 and 17A of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term “qualified plan” means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer’s contribution under section 404(a)(2) of such Code, (iii) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.

(13) The terms “buy” and “purchase” each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(14) The terms “sale” and “sell” each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(15) The term “Commission” means the Securities and Exchange Commission established by section 4 of this title.

(16) The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(17) The term “interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term “person associated with a broker or dealer” or “associated person of a broker or dealer” means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

(19) The terms “investment company,” “affiliated person,” “insurance company,” “separate account,” and “company” have the same meanings as in the Investment Company Act of 1940.

(20) The terms “investment adviser” and “underwriter” have the same meanings as in the Investment Advisers Act of 1940.

(21) The term “persons associated with a member” or “associated person of a member” when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term “securities information processor” means any person engaged in the business of (i) collecting, processing,

or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term “securities information processor” does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 3 of the Communications Act of 1934, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 3 of that Act, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term “exclusive processor” means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term “clearing agency” means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term “clearing agency” does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land

bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

(24) The term “participant” when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term “transfer agent” means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term “transfer agent” does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term “self-regulatory organization” means any national securities exchange, registered securities association, or registered clearing agency (*other than a notice-registered digital asset clearing agency*), or (solely for purposes of sections

19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

(27) The term “rules of an exchange”, “rules of an association”, or “rules of a clearing agency” means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term “rules of a self-regulatory organization” means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency (*other than a notice-registered digital asset clearing agency*), or the rules of the Municipal Securities Rulemaking Board.

(29) The term “municipal securities” means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

(30) The term “municipal securities dealer” means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise; *Provided, however,* That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 15B(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term “municipal securities broker” means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term “person associated with a municipal securities dealer” when used with respect to a municipal securities dealer

which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph, a subsidiary or a department or division of such subsidiary, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and when the appropriate regulatory agency for such clearing agency is not the Commission;

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insur-

ance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the

Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms “bank holding company” and “subsidiary of a bank holding company” have the meanings given them in section 2 of the Bank Holding Company Act of 1956. As used in this paragraph, the term “savings and loan holding company” has the same meaning as in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)).

(35) A person exercises “investment discretion” with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation

of the provisions of this title and rules and regulations thereunder.

(36) A class of persons or markets is subject to “equal regulation” if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this title which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this title.

(37) The term “records” means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term “market maker” means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a “statutory disqualification” with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration

under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time,

and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(40) The term “financial responsibility rules” means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term “mortgage related security” means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgage approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 2 of the National Housing Act; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term “promissory note”, when used in connection with a manufactured home, shall also

include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

(42) The term “government securities” means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.

(43) The term “government securities broker” means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market’s affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person’s futures-related business.

(44) The term “government securities dealer” means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 15 or 15B of this title, except that in paragraph (3) of this subsection and sections 6 and 15A the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of this title.

(49) The terms "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, super-

vision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940;

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders, the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either—

- (i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or
 - (ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).
- (B) For purposes of this paragraph—
- (i) an “interest in a promissory note or a lease of personal property” includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;
 - (ii) the term “small business concern” means a business that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act;
 - (iii) the term “insured depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act; and
 - (iv) the term “insured credit union” has the same meaning as in section 101 of the Federal Credit Union Act.
- (54) QUALIFIED INVESTOR.—
- (A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this title, the term “qualified investor” means—

- (i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;
- (ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;
- (iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);
- (iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;
- (v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary,

as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than \$50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of section 3(a)(5)(C)(iii) of this title and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term “qualified investor” has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting “\$10,000,000” for “\$25,000,000”.

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a “qualified investor” as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term “security future” means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of this title as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of the enactment of the Futures Trading Act of 1982). The term “security future” does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

(B) The term “narrow-based security index” means an index—

(i) that has 9 or fewer component securities;

- (ii) in which a component security comprises more than 30 percent of the index's weighting;
 - (iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or
 - (iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.
- (C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—
- (i)(I) it has at least nine component securities;
 - (II) no component security comprises more than 30 percent of the index's weighting; and
 - (III) each component security is—
 - (aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;
 - (bb) one of 750 securities with the largest market capitalization; and
 - (cc) one of 675 securities with the largest dollar value of average daily trading volume;
 - (ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of the enactment of the Commodity Futures Modernization Act of 2000;
 - (iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and
 - (II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;
 - (iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;
 - (v) no more than 18 months have passed since the date of the enactment of the Commodity Futures Modernization Act of 2000 and—
 - (I) it is traded on or subject to the rules of a foreign board of trade;
 - (II) the offer and sale in the United States of a contract of sale for future delivery on the index was au-

thorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term “security futures product” means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term “margin”, when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms “margin level” and “level of margin”, when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms “higher margin level” and “higher level of margin”, when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established and in effect pursuant to section 7(c)(2)(B).

(58) AUDIT COMMITTEE.—The term “audit committee” means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting proc-

esses of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term “registered public accounting firm” has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.

(60) CREDIT RATING.—The term “credit rating” means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term “credit rating agency” means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term “nationally recognized statistical rating organization” means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 15E.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term “person associated with” a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

(64) QUALIFIED INSTITUTIONAL BUYER.—The term “qualified institutional buyer” has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.

(79) ASSET-BACKED SECURITY.—The term “asset-backed security”—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

- (i) a collateralized mortgage obligation;
- (ii) a collateralized debt obligation;
- (iii) a collateralized bond obligation;
- (iv) a collateralized debt obligation of asset-backed securities;
- (v) a collateralized debt obligation of collateralized debt obligations; and
- (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(65) ELIGIBLE CONTRACT PARTICIPANT.—The term “eligible contract participant” has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(66) MAJOR SWAP PARTICIPANT.—The term “major swap participant” has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term “major security-based swap participant” means any person—

- (i) who is not a security-based swap dealer; and
- (ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;
- (II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or
- (III) that is a financial entity that—

(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term “substantial position” at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person’s relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “security-based swap” means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term “security-based swap” shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term “security-based swap” does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is

based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term “security-based swap” includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term “index” means an index or group of securities, including any interest therein or based on the value thereof.

(69) SWAP.—The term “swap” has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term “person associated with a security-based swap dealer or major security-based swap participant” or “associated person of a security-based swap dealer or major security-based swap participant” means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 15F(1)(2), the term “person associated with a security-based swap dealer or major security-based swap participant” or “associated person of a security-based swap dealer or major security-based swap participant” does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term “security-based swap dealer” means any person who—

(i) holds themselves out as a dealer in security-based swaps;

- (ii) makes a market in security-based swaps;
- (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or
- (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term “security-based swap dealer” does not include a person that enters into security-based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term “prudential regulator” has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term “security-based swap data repository” means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term “swap dealer” has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term “security-based swap execution facility” means a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of security-based swaps between persons; and

(B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term “security-based swap agreement” means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term “security-based swap agreement” does not include any security-based swap.

(80) EMERGING GROWTH COMPANY.—The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a “large accelerated filer”, as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

[(80)] (81) FUNDING PORTAL.—The term “funding portal” means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(82) *BANK SECRECY ACT.*—The term “Bank Secrecy Act” means—

(A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

(B) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and

(C) subchapter II of chapter 53 of title 31, United States Code.

(83) *DIGITAL ASSET BROKER.*—The term “digital asset broker”—

(A) means any person engaged in the business of effecting transactions in restricted digital assets for the account of others; and

(B) does not include a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

(84) *DIGITAL ASSET CUSTODIAN.*—The term “digital asset custodian” means an entity in the business of providing custodial or safekeeping services for restricted digital assets.

(85) *DIGITAL ASSET DEALER.*—The term “digital asset dealer”—

(A) means any person engaged in the business of buying and selling restricted digital assets for such person’s own account through a broker or otherwise; and

(B) does not include—

(i) a person that buys or sells restricted digital assets for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business; or

(ii) a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

(86) *DIGITAL ASSET TRADING SYSTEM.*—The term “digital asset trading system”—

(A) means any organization, association, person, or group of persons, whether incorporated or unincorporated, that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of restricted digital assets or for otherwise performing with respect to digital assets the functions commonly performed by a stock exchange within the meaning of section 240.3b–16 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph; and

(B) does not include a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

(87) *MIXED DIGITAL ASSET TRANSACTION.*—The term “mixed digital asset transaction” means an agreement, contract, or transaction involving a restricted digital asset and a digital commodity.

(88) *NOTICE-REGISTERED DIGITAL ASSET CLEARING AGENCY.*—The term “notice-registered digital asset clearing agency” means a clearing agency that has registered with the Commission pursuant to section 17A(b)(9).

(89) *ADDITIONAL DIGITAL ASSET-RELATED TERMS.*—

(A) *SECURITIES ACT OF 1933.*—The terms “affiliated person”, “blockchain system”, “decentralized governance system”, “decentralized network”, “digital asset”, “digital asset issuer”, “digital asset maturity date”, “end user distribution”, “functional network”, “mixed digital asset transaction”, “permitted payment stablecoin”, “related person”, “restricted digital asset”, and “source code” have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(B) *COMMODITY EXCHANGE ACT.*—The terms “digital commodity”, “digital commodity broker”, “digital commodity dealer”, and “digital commodity exchange” have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(b) The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title.

(c) No provision of this title shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a “broker”, “dealer”, or “municipal securities dealer” solely by reason of buying, selling, or effecting transactions in the issuer’s securities.

(e) *CHARITABLE ORGANIZATIONS.*—

(1) *EXEMPTION.*—Notwithstanding any other provision of this title, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person’s employment or duties with such organization, shall not be deemed to be a “broker”, “dealer”, “municipal securities broker”, “municipal securities dealer”, “government securities broker”, or “government securities dealer” for purposes of this title solely because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

(A) such a charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

(2) LIMITATION ON COMPENSATION.—The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after the date of enactment of this subsection, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

(f) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(g) CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this title—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.

(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 15A; and

(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term “broker or dealer” includes a funding portal and the term “registered broker or dealer” includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.

* * * * *

SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the “Commission”) to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain com-

parability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Notwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

- (i) report directly to the Chairman; and
- (ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having

experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this title; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) REPORT ON ACTIVITIES.—

(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed

under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the “Securities and Exchange Commission Reserve Fund” (referred to in this subsection as the “Reserve Fund”).

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed \$50,000,000; and

(ii) the balance in the Fund may not exceed \$100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the “Office”).

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) **FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.**—The Advocate for Small Business Capital Formation shall—

(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;

(D) analyze the potential impact on small businesses and small business investors of—

(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) **ACCESS TO DOCUMENTS.**—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) **ANNUAL REPORT ON ACTIVITIES.**—

(A) **IN GENERAL.**—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

(B) **CONTENTS.**—Each report required under subparagraph (A) shall include—

(i) appropriate statistical information and full and substantive analysis;

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(II) the length of time that each item has remained on such inventory; and

(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

(k) OPEN DATA PUBLICATION.—All public data assets published by the Commission under the securities laws and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203; 124 Stat. 1376) shall be—

(1) made available as an open Government data asset (as defined in section 3502 of title 44, United States Code);

(2) freely available for download;

(3) rendered in a human-readable format; and

(4) accessible via application programming interface where appropriate.

(l) STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.—

(1) OFFICE ESTABLISHED.—*There is established within the Commission the Strategic Hub for Innovation and Financial Technology (referred to in this section as the “FinHub”).*

(2) PURPOSES.—*The purposes of FinHub are as follows:*

(A) *To assist in shaping the approach of the Commission to technological advancements in the financial industry.*

(B) *To examine financial technology innovations within capital markets, market participants, and investors.*

(C) *To coordinate the response of the Commission to emerging technologies in financial, regulatory, and supervisory systems.*

(3) DIRECTOR OF FINHUB.—*FinHub shall have a Director who shall be appointed by the Commission, from among individuals having experience in both emerging technologies and Federal securities law and serve at the pleasure of the Commission. The Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.*

(4) RESPONSIBILITIES.—*FinHub shall—*

(A) *foster responsible technological innovation and fair competition within the Commission, including around financial technology, regulatory technology, and supervisory technology;*

(B) *provide internal education and training to the Commission regarding financial technology;*

(C) *advise the Commission regarding financial technology that would serve the Commission’s oversight functions;*

(D) *analyze technological advancements and the impact of regulatory requirements on financial technology companies;*

(E) *advise the Commission with respect to rulemakings or other agency or staff action regarding financial technology;*

(F) provide businesses working in emerging financial technology fields with information on the Commission, its rules and regulations; and

(G) encourage firms working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that FinHub has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of FinHub.

(6) REPORT TO CONGRESS.—

(A) IN GENERAL.—Not later than October 31 of each year after 2024, FinHub shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of FinHub during the immediately preceding fiscal year.

(B) CONTENTS.—Each report required under subparagraph (A) shall include—

(i) the total number of persons that met with FinHub;

(ii) the total number of market participants FinHub met with, including the classification of those participants;

(iii) a summary of general issues discussed during meetings with persons;

(iv) information on steps FinHub has taken to improve Commission services, including responsiveness to the concerns of persons;

(v) recommendations—

(I) with respect to the regulations of the Commission and the guidance and orders of the Commission; and

(II) for such legislative actions as the FinHub determines appropriate; and

(vi) any other information, as determined appropriate by the Director of FinHub.

(C) CONFIDENTIALITY.—A report under subparagraph (A) may not contain confidential information.

(7) SYSTEMS OF RECORDS.—

(A) IN GENERAL.—The Commission shall establish a detailed system of records (as defined under section 552a of title 5, United States Code) to assist FinHub in communicating with interested parties.

(B) ENTITIES COVERED BY THE SYSTEM.—Entities covered by the system required under subparagraph (A) include entities or persons submitting requests or inquiries and other information to Commission through FinHub.

(C) SECURITY AND STORAGE OF RECORDS.—FinHub shall store—

(i) electronic records—

(I) in the system required under subparagraph (A); or

(II) on the secure network or other electronic medium, such as encrypted hard drives or back-up media, of the Commission; and

(ii) paper records in secure facilities.

(8) *EFFECTIVE DATE.*—This subsection shall take effect on the date that is 180 days after the date of the enactment of this subsection.

* * * * *

NATIONAL SECURITIES EXCHANGES

SEC. 6. (a) An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(9)(A) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 14(h)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(i) the right of dissenting limited partners to one of the following:

(I) an appraisal and compensation;

(II) retention of a security under substantially the same terms and conditions as the original issue;

(III) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(IV) the use of a committee of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(V) other comparable rights that are prescribed by rule by the exchange and that are designed to protect dissenting limited partners;

(ii) the right not to have their voting power unfairly reduced or abridged;

(iii) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(iv) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

(B) As used in this paragraph, the term “dissenting limited partner” means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

(c)(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may pre-

scribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided, however,* That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further,* That the Commission, in accordance with the provisions of section 19(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting

as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(d)(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this title, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist sole-

ly of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e)(1) On and after the date of enactment of the Securities Acts Amendments of 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided, however,* That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further,* That the Commission, in accordance with the provisions of section 19(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this title.

(2) Notwithstanding the provisions of section 19(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this title.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in subsection 25(a), a reviewing Court may set aside an order of the Commission under section 19(b) approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(g) NOTICE REGISTRATION OF SECURITY FUTURES PRODUCT EXCHANGES.—

(1) REGISTRATION REQUIRED.—An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act.

(2) REGISTRATION BY NOTICE FILING.—

(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under section 6(a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

(C) TERMINATION.—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) PUBLIC AVAILABILITY.—The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

(4) EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.—

(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely

with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this title and the rules thereunder:

- (i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.
- (ii) Section 8.
- (iii) Section 11.
- (iv) Subsections (d), (f), and (k) of section 17.
- (v) Subsections (a), (f), and (h) of section 19.

(B) **RULE CHANGE EXEMPTIONS.**—An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

- (i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 19(b)(7);
- (ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and
- (iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

(5) **TRADING IN SECURITY FUTURES PRODUCTS.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

- (i) 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000; or
- (ii) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(B) **PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.**—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

- (i) the transaction is entered into—
 - (I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(18)(B)(ii) of the Commodity Exchange Act; and
 - (II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(18)) at the time at which the persons enter into the agreement, contract, or transaction; and
- (ii) the transaction is entered into on or after the later of—

(I) 8 months after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(h) TRADING IN SECURITY FUTURES PRODUCTS.—

(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

(2) LISTING STANDARDS REQUIRED.—Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 19(b) and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 15A(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the

Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B), except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(4) **AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.—**

(A) **AUTHORITY TO MODIFY.—**The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(B) **AUTHORITY TO GRANT EXEMPTIONS.—**The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a) or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

(6) DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of the enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act.

(7) DEFERRAL OF LINKED AND COORDINATED CLEARING.—

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 15A(a) may trade a security futures product that does not—

(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act.

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term “compliance date” means the later of—

(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 15A(a), and all other persons equals or exceeds 10 percent of the aver-

age aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

(ii) 2 years after the date on which trading in any security futures product commences under this title.

(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(c)(3)(B) involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.

(j) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.

(k)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

(l) SECURITY-BASED SWAPS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

(m) DIGITAL ASSET TRADING SYSTEM.—

(1) IN GENERAL.—*It shall be unlawful for any digital asset trading system to make use of the mails or any means or instrumentality of interstate commerce within or subject to the jurisdiction of the United States to effect any transaction in a restricted digital asset, unless such digital asset trading system is registered with the Commission.*

(2) APPLICATION.—*A person desiring to register as a digital asset trading system shall submit to the Commission an appli-*

cation in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

(3) **EXEMPTIONS.**—A digital asset trading system that offers or seeks to offer at least one restricted digital asset shall not be required to register under this section (and subparagraph (A) shall not apply to such digital asset trading system) if the trading system satisfies any exemption contained on a list of exemptions prepared by the Commission to be as close as practicable to those exemptions set forth in section 240.3b-16(b) of title 17, Code of Federal Regulations, applicable to the definition of an exchange.

(4) **ADDITIONAL REGISTRATIONS.**—

(A) **WITH THE COMMISSION.**—

(i) **IN GENERAL.**—A registered digital asset trading system shall be permitted to maintain any other registration with the Commission relating to the other activities of the registered digital asset trading system, including as a—

(I) national securities exchange;

(II) broker;

(III) dealer;

(IV) alternative trading system, pursuant to part 242 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this subsection;

(V) digital asset broker; or

(VI) digital asset dealer.

(ii) **RULEMAKING.**—The Commission shall prescribe rules for an entity with multiple registrations described under subparagraph (A) to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(B) **WITH THE COMMODITY FUTURES TRADING COMMISSION.**—A registered digital asset trading system shall be permitted to maintain a registration with the Commodity Futures Trading Commission as a digital commodity exchange to offer contracts of sale for digital commodities.

SEC. 6A. REQUIREMENTS FOR DIGITAL ASSET TRADING SYSTEMS.

(a) **HOLDING OF CUSTOMER ASSETS.**—

(1) **IN GENERAL.**—A digital asset trading system shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

(2) **QUALIFIED DIGITAL ASSET CUSTODIAN REQUIRED.**—A digital asset trading system shall hold customer restricted digital assets described in paragraph (1) with a qualified digital asset custodian described under section 6B.

(3) **CUSTODY PROHIBITED.**—A digital asset trading system, in its capacity as such, may not hold custody of customer money, assets, or property.

(b) **RULEMAKING.**—The Commission shall prescribe rules for digital asset trading systems relating to the following:

(1) *NOTICE.*—Notice to the Commission of the initial operation of a digital asset trading system or any material change to the operation of the digital asset trading system.

(2) *ORDER DISPLAY.*—The thresholds at which a digital asset trading system is required to display the orders of the digital asset trading system, and the manner of such display.

(3) *FAIR ACCESS.*—The thresholds at which a digital asset trading system is required to have policies regarding providing fair access to the digital asset trading system.

(4) *CAPACITY, INTEGRITY, AND SECURITY OF AUTOMATED SYSTEMS.*—Policies and procedures reasonably designed to ensure the capacity, integrity, and security of the digital asset trading system, taking into account the particular nature of digital asset trading systems.

(5) *EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.*—The examination and inspection of the premises, systems, and records of the digital asset trading system by the Commission or by a self-regulatory organization of which such digital asset trading system is a member.

(6) *RECORDKEEPING.*—The making, keeping current, and preservation of records related to trading activity on the digital asset trading system.

(7) *REPORTING.*—The reporting of transactions in digital assets that occur through the digital asset trading system.

(8) *PROCEDURES.*—The establishment of adequate written safeguards and written procedures to protect confidential trading information.

(c) *NAME REQUIREMENT.*—A digital asset trading system may not use the word “exchange” in the name of the digital asset trading system, unless the digital asset trading system—

(1) is operated by a registered national securities exchange; and

(2) is clearly indicated as being provided outside of the system’s capacity as a national securities exchange.

(d) *TREATMENT UNDER THE BANK SECRECY ACT.*—A digital asset trading system shall be treated as a financial institution for purposes of the Bank Secrecy Act.

SEC. 6B. REQUIREMENTS FOR QUALIFIED DIGITAL ASSET CUSTODIANS.

(a) *IN GENERAL.*—A digital asset custodian is a qualified digital asset custodian if the digital asset custodian complies with the requirements of this section.

(b) *SUPERVISION REQUIREMENT.*—

(1) *IN GENERAL.*—A digital asset custodian shall—

(A) be subject to adequate supervision and appropriate regulation by—

(i) the Board of Governors of the Federal Reserve System;

(ii) the Comptroller of the Currency;

(iii) the Federal Deposit Insurance Corporation;

(iv) the Commodity Futures Trading Commission;

(v) the Securities and Exchange Commission;

(vi) a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act); or

(vii) an appropriate foreign governmental authority in the home country of the digital asset custodian; and
 (B) not be prohibited by the applicable supervisor from engaging in an activity with respect to the custody and safekeeping of digital assets.

(2) **ADEQUATE SUPERVISION AND APPROPRIATE REGULATION.**—For purposes of paragraph (1), the terms “adequate supervision” and “appropriate regulation” mean such minimum standards for supervision and regulation as are reasonably necessary to protect the digital assets of customers of an entity registered with the Commission, including minimum standards relating to—

- (A) accessibility of customer assets;
- (B) financial resources;
- (C) risk management requirements;
- (D) governance arrangements;
- (E) fitness standards for officers and directors;
- (F) recordkeeping;
- (G) information sharing; and
- (H) conflicts of interest.

(3) **DEEMED COMPLIANCE.**—A digital asset custodian shall be deemed to be subject to adequate supervision and appropriate regulation, if—

(A) it is supervised by an agency described under any of clauses (i) through (v) of paragraph (1)(A); or

(B) it is a bank supervised by a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act).

(4) **RULEMAKING WITH RESPECT TO DEFINITIONS.**—For purposes of this subsection, the Commission may, by rule, further define the terms “adequate supervision” and “appropriate regulation” as necessary in the public interest, as appropriate for the protection of investors, and consistent with the purposes of this Act.

(c) **INFORMATION SHARING.**—Each digital asset custodian shall periodically share of information with the Commission, as the Commission determines by rule to be reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.

SEC. 6C. TREATMENT OF TRANSACTIONS IN PERMITTED PAYMENT STABLECOINS.

(a) **AUTHORITY TO BROKER, TRADE, AND CUSTODY PERMITTED PAYMENT STABLECOINS.**—Permitted payment stablecoins may be brokered, traded, or custodied by a broker, dealer, digital asset broker, or digital asset dealer or through an alternative trading system or digital asset trading platform.

(b) **COMMISSION JURISDICTION.**—The Commission shall have jurisdiction over a transaction in a permitted payment stablecoin with respect to those circumstances in which a permitted payment stablecoin is brokered, traded, or custodied—

(1) by a broker, dealer, digital asset broker, or digital asset dealer; or

(2) through an alternative trading system or digital asset trading system.

(c) *LIMITATION.*—Subsection (b) shall only apply to a transaction described in subsection (b) for the purposes of regulating the offer, execution, solicitation, or acceptance of a permitted payment stablecoin in those circumstances in which the permitted payment stablecoin is brokered, traded, or custodied—

- (1) by a broker, dealer, digital asset broker, or digital asset dealer; or
- (2) through an alternative trading system or digital asset trading system.

* * * * *

REGULATION OF THE USE OF MANIPULATIVE AND DECEPTIVE DEVICES

SEC. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

- (a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
- (2) Paragraph (1) of this subsection shall not apply to security futures products.
- (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
- (c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
- (2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.
- (d) Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as

they apply to securities. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

(e)(1) Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to permitted payment stablecoins with respect to those circumstances in which the permitted payment stablecoins are brokered, traded, or custodied by a broker, dealer, digital asset broker, or digital asset dealer or through an alternative trading system or digital asset trading platform to the same extent as they apply to securities.

(2) Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to permitted payment stablecoins with respect to those circumstances in which the permitted payment stablecoins are brokered, traded, or custodied by a digital asset broker, digital asset dealer, or digital asset trading system to the same extent as they apply to securities.

(3) Nothing in this subsection may be construed to provide the Commission authority to make any rule, regulation, requirement, or obligation on a permitted payment stablecoin issuer regarding the operations of a permitted payment stablecoin issuer or a permitted payment stablecoin, including any aspect of the operation of a permitted payment stablecoin issuer or permitted payment stablecoin.

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SEC. 10E. CONFLICTS OF INTEREST RELATED TO DIGITAL ASSETS.

Each registered digital asset trading system, registered digital asset broker, registered digital asset dealer, and notice-registered digital asset clearing agency shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such person's business, to mitigate any conflicts of interest and transactions or arrangements with affiliates.

* * * * *

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations there-

under. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structures, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding \$20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar docu-

ments of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 13 of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f)(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2), subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public

offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that secu-

urity, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph—

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 25 of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5, United States Code. Upon such suspension—

(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title; and

(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).

(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—

(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that

has been made toward the development of a national market system; and

(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this title. The powers and duties of the Commission under this title shall be applicable to the rules of an exchange in respect to any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 13, 14, or 16 of this title.

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding

\$10,000,000 and a class of equity security (other than an exempted security) held of record by either—

- (i) 2,000 persons, or
- (ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

(B) in the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons. The

Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term “class” shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms “total assets” and “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of “held of record” shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.

(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.— The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made **[under section 4(6)]** *under section 4(a)(6) or 4(a)(8)* of the Securities Act of 1933 from the provisions of this subsection.

(h) The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

(i) In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act, the powers, functions, and duties vested in the Commission to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which

are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(2) EMERGENCY ORDERS.—

(A) IN GENERAL.—The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—

(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

(B) EFFECTIVE PERIOD.—An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

(C) EXTENSION.—An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

(D) SECURITY FUTURES.—If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(E) EXEMPTION.—In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

(i) section 19(c); or

(ii) section 553 of title 5, United States Code.

(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

(4) COMPLIANCE WITH ORDERS.—No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission

under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

(5) LIMITATIONS ON REVIEW OF ORDERS.—An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission’s action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

(7) DEFINITION.—For purposes of this subsection, the term “emergency” means—

(A) a major market disturbance characterized by or constituting—

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

(1) It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

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SEC. 15H. REGISTRATION OF DIGITAL ASSET BROKERS AND DIGITAL ASSET DEALERS.

(a) REGISTRATION.—

(1) *IN GENERAL.*—It shall be unlawful for any digital asset broker or digital asset dealer (other than a natural person associated with a digital asset broker or digital asset dealer, and other than such a digital asset broker or digital asset dealer whose business is exclusively intrastate and who does not make use of any facility of a digital asset trading platform) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any restricted digital asset unless such digital asset broker or digital asset dealer is registered in accordance with this section.

(2) *APPLICATION.*—A person desiring to register as a digital asset broker or digital asset dealer shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

(b) *NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.*—

(1) *IN GENERAL.*—A digital asset broker or digital asset dealer may not register or maintain registration under this section unless such digital asset broker or digital asset dealer is a member of a national securities association registered under section 15A.

(2) *TREATMENT UNDER SECTION 15A.*—

(A) *IN GENERAL.*—For purposes of section 15A—

- (i) the term “broker” includes a digital asset broker;
- (ii) the term “dealer” includes a digital asset dealer;
- and
- (iii) the term “security” includes a restricted digital asset.

(B) *CLARIFICATION.*—Notwithstanding subparagraph (A), a national securities association shall only examine for and enforce against a digital asset broker and digital asset dealer rules of such national securities association written specifically for digital asset brokers and a digital asset dealers.

(3) *EXCEPTION.*—A digital asset broker or digital asset dealer may register under this section without obtaining membership in a national securities association until the end of the 360-day period beginning on the date the first national securities association adopts rules to admit digital asset brokers or digital asset dealers as members.

(c) *ADDITIONAL REGISTRATIONS WITH THE COMMISSION.*—

(1) *IN GENERAL.*—A registered digital asset broker or registered digital asset dealer shall be permitted to maintain any other registration with the Commission relating to the other activities of the registered digital asset broker or registered digital asset dealer, including as—

- (A) a national securities exchange;
- (B) a broker;
- (C) a dealer;
- (D) an alternative trading system, pursuant to part 242 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this section; or
- (E) a digital asset trading system.

(2) *RULEMAKING.*—The Commission shall prescribe rules for an entity with multiple registrations described under paragraph (1) to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(3) *SELF-REGULATORY ORGANIZATIONS.*—The Commission shall require any self-regulatory organization with a registered digital asset broker or registered digital asset dealer as a member to provide such rules as may be necessary to further compliance with this section, protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(d) *ADDITIONAL REGISTRATIONS WITH THE COMMODITY FUTURES TRADING COMMISSION.*—A registered digital asset broker or registered digital asset dealer shall be permitted to maintain a registration with the Commodity Futures Trading Commission as a digital commodity broker or digital commodity dealer, to list or trade contracts of sale for digital commodities.

(e) *ANTI-FRAUD.*—No digital asset broker or digital asset dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any restricted digital asset by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(f) *HOLDING OF CUSTOMER ASSETS.*—

(1) *IN GENERAL.*—A digital asset broker or digital asset dealer shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

(2) *QUALIFIED DIGITAL ASSET CUSTODIAN REQUIRED.*—A digital asset broker or digital asset dealer shall hold customer restricted digital assets described in paragraph (1) with a qualified digital asset custodian described under section 6B.

(3) *SEGREGATION OF FUNDS.*—

(A) *IN GENERAL.*—A digital asset broker or digital asset dealer shall treat and deal with all money, assets, and property held for a customer of the digital asset broker or digital asset dealer, or that accrues to a customer as a result of trading in restricted digital assets, as belonging to the customer.

(B) *COMMINGLING PROHIBITED.*—Money, assets, and property of a customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the digital asset broker or digital asset dealer or be used to margin, secure, or guarantee any trades of any person other than the customer of the digital asset broker or digital asset dealer for whom the same are held.

(4) *EXCEPTIONS.*—

(A) *USE OF FUNDS.*—

(i) *IN GENERAL.*—Notwithstanding paragraph (3), money, assets, and property of customers of a digital asset broker or digital asset dealer described in paragraph (3) may be maintained and deposited in the

same account or accounts with any bank, trust company, or qualified digital asset custodian described under section 6B, if the money, assets, and property remain segregated from the money, assets, and property of the digital asset broker or digital asset dealer.

(ii) **WITHDRAWAL.**—Notwithstanding paragraph (3), such share of the money, assets, and property described in paragraph (3) as in the normal course of business shall be necessary to transfer, adjust, or settle a restricted digital asset transaction pursuant to a customer's instruction (standing or otherwise) may be withdrawn and applied to such purposes, including the withdrawal and payment of commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with a restricted digital asset transaction.

(iii) **COMMISSION ACTION.**—In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of a customer of a digital asset broker or digital asset dealer described in paragraph (3) may be commingled and deposited as provided in this section with any other money, assets, or property received by the digital asset broker or digital asset dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital asset broker or digital asset dealer.

(B) PARTICIPATION IN BLOCKCHAIN SERVICES.—

(i) **IN GENERAL.**—A customer shall have the right to waive the restrictions in paragraph (3) for any unit of a digital asset to be used under clause (ii), by affirmatively electing, in writing to the digital asset broker or digital asset dealer, to waive the restrictions.

(ii) **USE OF FUNDS.**—Customer digital assets removed from segregation under clause (i) may be pooled and used by the digital asset broker or digital asset dealer or its designee to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation under clause (i) relates.

(iii) **LIMITATIONS.**—The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this subparagraph that are reasonably necessary to protect customers.

(iv) **BLOCKCHAIN SERVICE DEFINED.**—In this subparagraph, the term “blockchain service” means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.

(5) **FURTHER LIMITATIONS.**—No person shall treat or deal with a restricted digital asset held on behalf of any customer pursuant to paragraph (3) by utilizing any unit of such restricted digital asset to participate in a blockchain service (as defined in paragraph (4)(B)(iv)) or a decentralized governance

system associated with the restricted digital asset or the blockchain system to which the restricted digital asset relates in any manner other than that which is expressly directed by the customer from which such unit of a restricted digital asset was received.

(g) **CAPITAL REQUIREMENTS.**—

(1) **IN GENERAL.**—Each registered digital asset broker and registered digital asset dealer shall meet such minimum capital requirements as the Commission may prescribe to ensure that the digital asset broker or digital asset dealer is able to—

(A) conduct an orderly wind-down of the activities of the digital asset broker or digital asset dealer; and

(B) fulfill the customer obligations of the digital asset broker or digital asset dealer.

(2) **CALCULATION.**—For purposes of any Commission rule or order adopted under this section or any interpretation thereof regulating a digital asset broker or digital asset dealer's financial responsibility obligations and capital requirements, a registered digital asset broker or digital asset dealer that maintains control of customer digital assets in a manner that satisfies the rules issued by the Commission under subsection (f)(2) shall not be required to include the value of such digital assets as assets or liabilities of the digital asset broker or digital asset dealer.

(3) **COORDINATION OF CAPITAL REQUIREMENTS.**—

(A) **COMMISSION RULE.**—The Commission shall, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations, including as a broker, dealer, digital asset broker, or digital asset dealer.

(B) **JOINT RULE.**—The Commission and the Commodity Futures Trading Commission shall jointly, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations, including as a digital asset broker, digital asset dealer, digital asset trading system, digital commodity broker, digital commodity dealer, or digital commodity exchange.

(h) **REPORTING AND RECORDKEEPING.**—Each registered digital asset broker and digital asset dealer—

(1) shall make such reports as are required by the Commission by rule or regulation regarding the transactions, positions, and financial condition of the digital asset broker or digital asset dealer;

(2) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(3) shall keep the books and records open to inspection and examination by any representative of the Commission.

(i) **TREATMENT UNDER THE BANK SECRECY ACT.**—A digital asset broker and a digital asset dealer shall be treated as a financial institution for purposes of the Bank Secrecy Act.

SEC. 15I. EXCLUSION FOR ANCILLARY ACTIVITIES.

(a) **IN GENERAL.**—Notwithstanding any other provision of this Act, a person shall not be subject to this Act and the regulations

thereunder solely based on the person undertaking any ancillary activities.

(b) *EXCEPTIONS.*—Subsection (a) shall not be construed to apply to the anti-fraud and anti-manipulation authorities of the Commission.

(c) *ANCILLARY ACTIVITIES DEFINED.*—In this section, the term “ancillary activities” means any of the following activities related to the operation of a blockchain system:

(1) *Compiling network transactions, operating or participating in a liquidity pool, relaying, searching, sequencing, validating, or acting in a similar capacity with respect to a digital asset.*

(2) *Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth, or other similar incidental services with respect to a digital asset.*

(3) *Providing a user-interface that enables a user to read and access data about a blockchain system, send messages, or otherwise interact with a blockchain system.*

(4) *Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system.*

(5) *Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy a hardware or software wallet or other system facilitating an individual user’s own personal ability to keep, safeguard, or custody the user’s digital assets or related private keys.*

* * * * *

NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT OF SECURITIES TRANSACTIONS

SEC. 17A. (a)(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2)(A) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this title—

(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

(B) The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System.

(b)(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency (*other than a notice-registered digital asset clearing agency*), unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) compliance by its participants

with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system or the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any persons seeking participation therein, and the prohibition or limitation by

the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(4)(A) A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person to participation, if the clearing agency knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

(5)(A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth—

(i) any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

(ii) the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

(B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

(C) A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency

determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and protection of investors.

(6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

(7)(A) A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security futures products that is a national securities exchange registered pursuant to section 6(g), and that would be required to register pursuant to paragraph (1) of this subsection only because it performs the functions of a clearing agency with respect to security futures products effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that if such a clearing agency performs the functions of a clearing agency with respect to a security futures product that is not cash settled, it must have arrangements in place with a registered clearing agency to effect the payment and delivery of the securities underlying the security futures product.

(B) Any clearing agency that performs the functions of a clearing agency with respect to security futures products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security futures products, in order to permit, as of the compliance date (as defined in section 6(h)(6)(C)), security futures products to be purchased on one market and offset on another market that trades such products.

(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

(9) *REGISTRATION AND REQUIREMENTS FOR NOTICE-REGISTERED DIGITAL ASSET CLEARING AGENCY.—*

(A) *ELIGIBILITY.—A person may register with the Commission as a notice-registered digital asset clearing agency if the person—*

(i) is otherwise registered as a digital asset broker or digital asset dealer with the Commission and is engaging in a business involving restricted digital assets, in

compliance with Commission rules pursuant to section 15H(f); or

(ii) is a bank engaging in a business involving digital assets, in compliance with applicable banking law and regulation relating to the custody and safekeeping of such assets.

(B) REGISTRATION.—A person may register with the Commission as a notice-registered digital asset clearing agency by providing the Commission with notice of the activities of the person or planned activities in such form as the Commission determines appropriate. Such notice shall include information describing the person’s policies and procedures relating to the holding of customer assets.

(C) RULEMAKING.—The Commission may adopt rules, which may not take effect until at least 360 days following the date of enactment of this paragraph, with regard to the activities of notice-registered digital asset clearing agencies, taking into account the nature of restricted digital assets.

(c)(1) Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 12 of this title or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

(2) A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent and any persons associated with the transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective 45 days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

(3) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent

to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

(B) is subject to an order entered pursuant to subparagraph (C) of paragraph (4) of this subsection barring or suspending the right of such person to be associated with a transfer agent.

(4)(A) Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

(B) A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding 12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization, if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commence-

ment of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.

(d)(1) No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

(2) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 17 and 19 of this title, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 8(b) or 8(c) of the Federal Deposit Insurance Act, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be “depositors” as that term is used in section 8(c) of that Act.

(3)(A) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective—

(i) the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule

or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

(ii) such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 17 and 19 of this title.

(B) Nothing in the preceding subparagraph or elsewhere in this title shall be construed to impair or limit (other than by the requirement of notification) the Commission's authority to make rules under any provision of this title or to enforce compliance pursuant to any provision of this title by any clearing agency, transfer agent, or person associated with a transfer agent with the provisions of this title and the rules and regulations thereunder.

(4) Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a clearing agency, transfer agent, or person associated with a transfer agent, to make and enforce rules governing such person which are not inconsistent with this title and the rules and regulations thereunder.

(5) A registered transfer agent may not, directly or indirectly, engage in any activity in connection with the guarantee of a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, to facilitate the equitable treatment of financial institutions which issue such guarantees, or otherwise in furtherance of the purposes of this title.

(e) The Commission shall use its authority under this title to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce.

(f)(1) Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning—

(A) the transfer of certificated or uncertificated securities (other than government securities issued pursuant to chapter 31 of title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book-entry regulation) or limited interests (including security interests) therein; and

(B) rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

(2)(A) The findings described in this paragraph are findings by the Commission that—

(i) such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

(ii) in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

(iii) to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

(B) In making the findings described in subparagraph (A), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

(3) Any State may, prior to the expiration of 2 years after the Commission adopts a rule under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

(4)(A) Within 90 days after the date of enactment of this subsection, the Commission shall (and at such times thereafter as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under chapter 10 of title 5, United States Code. The Advisory Committee shall be directed to consider and report to the Commission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related Federal laws concerning the transfer of certificated or uncertificated securities, limited interests (including security interests) in such securities, or the creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers, owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

(B) The Advisory Committee shall consist of 15 members, of which—

(i) 11 shall be designated by the Commission in accordance with chapter 10 of title 5, United States Code; and

(ii) 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

(C) The Advisory Committee shall conduct its activities in accordance with chapter 10 of title 5, United States Code. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the

Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System.

(g) DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.—

(1) REVISION OF RULES REQUIRED.—The Commission shall revise its regulations in section 240.17Ad-17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than \$25.

(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

(D) For purposes of such revised regulations—

(i) a security holder shall be considered a “missing security holder” if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

(ii) the term “paying agent” includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

(2) RULEMAKING.—The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.

(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.

(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this title may register with the Commission as a clearing agency.

(i) STANDARDS FOR CLEARING AGENCIES CLEARING SECURITY-BASED SWAP TRANSACTIONS.—To be registered and to maintain reg-

istration as a clearing agency that clears security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

(j) RULES.—The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this title.

(k) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.

(l) EXISTING DEPOSITORY INSTITUTIONS AND DERIVATIVE CLEARING ORGANIZATIONS.—

(1) IN GENERAL.—A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before the date of enactment of this subsection—

(A) the depository institution cleared swaps as a multilateral clearing organization; or

(B) the derivative clearing organization cleared swaps pursuant to an exemption from registration as a clearing agency.

(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) SHARING OF INFORMATION.—The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).

(m) MODIFICATION OF CORE PRINCIPLES.—The Commission may conform the core principles established in this section to reflect evolving United States and international standards.

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SEC. 42. REQUIREMENTS FOR OFFERS AND SALES OF CERTAIN DIGITAL ASSETS.

(a) OFFERS AND SALES OF CERTAIN RESTRICTED DIGITAL ASSETS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, subject to paragraph (2), a restricted digital asset may be offered and sold on a digital asset trading system by any person other than a digital asset issuer if, at the time of such offer or sale, any blockchain system to which the restricted digital asset relates is a functional network and the information described in section 43 has been certified and made publicly available for any blockchain system to which the restricted digital asset relates.

(2) ADDITIONAL RULES FOR RELATED PERSONS AND AFFILIATED PERSONS.—Except as provided under subsection (c), a restricted digital asset owned by a related person or an affiliated person may only be offered or sold after 12 months after the later of—

(A) the date on which such restricted digital asset was acquired; or

(B) the digital asset maturity date.

(b) OFFERS AND SALES OF CERTAIN DIGITAL COMMODITIES.—

(1) IN GENERAL.—Subject to paragraph (2), a digital commodity may be offered and sold by any person.

(2) RULES FOR RELATED AND AFFILIATED PERSONS.—Except as provided under subsection (c), a digital commodity may only be offered or sold by a related person or an affiliated person if—

(A) the holder of the digital commodity owned the digital commodity while it was a restricted digital asset for 12 months after the later of—

(i) the date on which such restricted digital asset was acquired; or

(ii) the digital asset maturity date;

(B) any blockchain system to which the digital commodity relates is certified to be a decentralized network under section 44; and

(C) the digital commodity is offered or sold on or subject to the rules of a digital commodity exchange registered under section 5i of the Commodity Exchange Act.

(3) NOT AN INVESTMENT CONTRACT.—For purposes of the securities laws, an offer or sale of a digital commodity that does not violate paragraph (2) shall not be a transaction in an investment contract.

(c) SALES RESTRICTIONS FOR AFFILIATED PERSONS.—A digital asset may be offered and sold by an affiliated person under subsection (a) or (b) if—

(1) the aggregate amount of such digital assets sold in any 3-month period by the affiliated person is not greater than one percent of the digital assets then outstanding; or

(2) the affiliated person promptly, following the placement of an order to sell one percent or more of the digital assets then outstanding during any 3-month period, reports the sale to—

(A) the Commodity Futures Trading Commission, in the case of an order to sell a digital commodity on or subject to the rules of a digital commodity exchange; or

(B) the Securities and Exchange Commission, in the case of a sell order for a restricted digital asset placed with a digital asset trading system.

(d) **TREATMENT OF CERTAIN END USER DISTRIBUTIONS UNDER THE SECURITIES LAWS.**—

(1) **IN GENERAL.**—With respect to a digital asset, an end user distribution is described under this paragraph if—

(A) each blockchain system to which such digital asset relates is a functional network; and

(B) with respect to the digital asset and each blockchain system to which such digital asset relates, the information described in section 43 has been certified and made publicly available.

(2) **NOT AN INVESTMENT CONTRACT.**—For purposes of the securities laws, an end user distribution described under paragraph (1) shall not be a transaction in an investment contract.

(3) **EXEMPTION.**—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) shall not apply to an end user distribution described under paragraph (1) or a transaction in a unit of digital asset issued in such a distribution.

SEC. 43. ENHANCED DISCLOSURE REQUIREMENTS WITH RESPECT TO DIGITAL ASSETS.

(a) **DISCLOSURE INFORMATION.**—With respect to a digital asset and any blockchain system to which the digital asset relates, the information described under this section is as follows:

(1) **SOURCE CODE.**—The source code for any blockchain system to which the digital asset relates.

(2) **TRANSACTION HISTORY.**—A description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital asset relates.

(3) **DIGITAL ASSET ECONOMICS.**—A description of the purpose of any blockchain system to which the digital asset relates and the operation of any such blockchain system, including—

(A) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

(B) information on any applicable consensus mechanism or process for validating transactions, method of generating or mining digital assets, and any process for burning or destroying digital assets on the blockchain system;

(C) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of such digital assets; and

(D) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

(4) **PLAN OF DEVELOPMENT.**—The current state and timeline for the development of any blockchain system to which the digital asset relates, showing how and when the blockchain system intends or intended to be considered a functional network and decentralized network.

(5) **DEVELOPMENT DISCLOSURES.**—A list of all persons who are related persons or affiliated persons who have been issued

a unit of a digital asset by a digital asset issuer or have a right to a unit of a digital asset from a digital asset issuer.

(6) *RISK FACTOR DISCLOSURES.*—Where appropriate, provide under the caption “Risk Factors” a description of the material risks surrounding ownership of a unit of a digital asset. This discussion shall be organized logically with relevant headings and each risk factor shall be set forth under a subcaption that adequately describes the risk.

(b) *CERTIFICATION.*—With respect to a digital asset and any blockchain system to which the digital asset relates, the information required to be made available under this section has been certified if the digital asset issuer, an affiliated person, a decentralized governance system, or a digital commodity exchange certifies on a quarterly basis to the Commodity Futures Trading Commission and the Securities and Exchange Commission that the information is true and correct.

SEC. 44. CERTIFICATION OF CERTAIN DIGITAL ASSETS.

(a) *CERTIFICATION.*—Any person may certify to the Securities and Exchange Commission that the blockchain system to which a digital asset relates is a decentralized network.

(b) *FILING REQUIREMENTS.*—A certification described under subsection (a) shall be filed with the Commission, and include—

(1) *information regarding the person making the certification;*

(2) *a description of the blockchain system and the digital asset which relates to such blockchain system, including—*

(A) *the operation of the blockchain system;*

(B) *the functionality of the related digital asset;*

(C) *any decentralized governance system which relates to the blockchain system; and*

(D) *the process to develop consensus or agreement within such decentralized governance system;*

(3) *a description of the development of the blockchain system and the digital asset which relates to the blockchain system, including—*

(A) *a history of the development of the blockchain system and the digital asset which relates to such blockchain system;*

(B) *a description of the issuance process for the digital asset which relates to the blockchain system;*

(C) *information identifying the digital asset issuer of the digital asset which relates to the blockchain system; and*

(D) *a list of any affiliated person related to the digital asset issuer;*

(4) *an analysis of the factors on which such person based the certification that the blockchain system is a decentralized network, including—*

(A) *an explanation of the protections and prohibitions available during the previous 12 months against any one person being able to—*

(i) *control or materially alter the blockchain system;*

(ii) *exclude any other person from using or participating on the blockchain system; and*

(iii) *exclude any other person from participating in a decentralized governance system;*

(B) information regarding the beneficial ownership of the digital asset which relates to such blockchain system and the distribution of voting power in any decentralized governance system during the previous 12 months;

(C) information regarding the history of upgrades to the source code for such blockchain system during the previous 3 months, including—

(i) a description of any consensus or agreement process utilized to process or approve changes to the source code;

(ii) a list of any material changes to the source code, the purpose and effect of the changes, and the contributor of the changes, if known; and

(iii) any changes to the source code made by the digital asset issuer, a related person, or an affiliated person;

(D) information regarding any activities conducted to market the digital asset which relates to the blockchain system during the previous 3 months by the digital asset issuer or an affiliated person of the digital asset issuer; and

(E) information regarding any issuance of a unit of the digital asset which relates to such blockchain system during the previous 12 months; and

(5) with respect to a blockchain system for which a certification has previously been rebutted under this section or withdrawn under section 5i(m) of the Commodity Exchange Act, specific information relating to the analysis provided in subsection (f)(2) in connection with such rebuttal or such section 5i(m)(1)(C) in connection with such withdrawal.

(c) **REBUTTABLE PRESUMPTION.**—The Commission may rebut a certification described under subsection (a) with respect to a blockchain system if the Commission, within 60 days of receiving such certification, determines that the blockchain system is not a decentralized network.

(d) **CERTIFICATION REVIEW.**—

(1) **IN GENERAL.**—Any blockchain system that relates to a digital asset for which a certification has been made under subsection (a) shall be considered a decentralized network 60 days after the date on which the Commission receives a certification under subsection (a), unless the Commission notifies the person who made the certification within such time that the Commission is staying the certification due to—

(A) an inadequate explanation by the person making the certification; or

(B) any novel or complex issues which require additional time to consider.

(2) **PUBLIC NOTICE.**—The Commission shall make the following available to the public and provide a copy to the Commodity Futures Trading Commission:

(A) Each certification received under subsection (a).

(B) Each stay of the Commission under this section, and the reasons therefore.

(C) Any response from a person making a certification under subsection (a) to a stay of the certification by the Commission.

(3) *CONSOLIDATION.*—The Commission may consolidate and treat as one submission multiple certifications made under subsection (a) for the same blockchain system which relates to a digital asset which are received during the review period provided under this subsection.

(e) *STAY OF CERTIFICATION.*—

(1) *IN GENERAL.*—A notification by the Commission pursuant to subsection (d)(1) shall stay the certification once for up to an additional 120 days from the date of the notification.

(2) *PUBLIC COMMENT PERIOD.*—Before the end of the 60-day period described under subsection (d)(1), the Commission may begin a public comment period of at least 30 days in conjunction with a stay under this section.

(f) *DISPOSITION OF CERTIFICATION.*—

(1) *IN GENERAL.*—A certification made under subsection (a) shall—

(A) become effective—

(i) upon the publication of a notification from the Commission to the person who made the certification that the Commission does not object to the certification; or

(ii) at the expiration of the certification review period; and

(B) not become effective upon the publication of a notification from the Commission to the person who made the certification that the Commission has rebutted the certification.

(2) *DETAILED ANALYSIS INCLUDED WITH REBUTTAL.*—The Commission shall include, with each publication of a notification of rebuttal described under paragraph (1)(B), a detailed analysis of the factors on which the decision was based.

(g) *RECERTIFICATION.*—With respect to a blockchain system for which a certification has been rebutted under this section, no person may make a certification under subsection (a) with respect to such blockchain system during the 90-day period beginning on the date of such rebuttal.

(h) *APPEAL OF REBUTTAL.*—

(1) *IN GENERAL.*—If a certification is rebutted under this section, the person making such certification may appeal the decision to the United States Court of Appeals for the District of Columbia, not later than 60 days after the notice of rebuttal is made.

(2) *REVIEW.*—In an appeal under paragraph (1), the court shall have de novo review of the determination to rebut the certification.

(i) *LIABILITY FOR PROVIDING FALSE INFORMATION.*—It shall be unlawful for any person to provide false information in support of a certification under this section if such person knew or reasonably should have known such information was false.

* * * * *

COMMODITY EXCHANGE ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Exchange Act".

SEC. 1a. DEFINITIONS.

As used in this Act:

(1) **ALTERNATIVE TRADING SYSTEM.**—The term “alternative trading system” means an organization, association, or group of persons that—

(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof);

(B) performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of the Securities Exchange Act of 1934);

(C) does not—

(i) set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on the alternative trading system; or

(ii) discipline subscribers other than by exclusion from trading; and

(D) is exempt from the definition of the term “exchange” under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.

(2) **APPROPRIATE FEDERAL BANKING AGENCY.**—The term “appropriate Federal banking agency”—

(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) means the Board in the case of a noninsured State bank; and

(C) is the Farm Credit Administration for farm credit system institutions.

(3) **ASSOCIATED PERSON OF A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.**—The term “associated person of a security-based swap dealer or major security-based swap participant” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(4) **ASSOCIATED PERSON OF A SWAP DEALER OR MAJOR SWAP PARTICIPANT.**—

(A) **IN GENERAL.**—The term “associated person of a swap dealer or major swap participant” means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

(i) the solicitation or acceptance of swaps; or

(ii) the supervision of any person or persons so engaged.

(B) **EXCLUSION.**—Other than for purposes of section 4s(b)(6), the term “associated person of a swap dealer or major swap participant” does not include any person asso-

ciated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

(5) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(6) BOARD OF TRADE.—The term “board of trade” means any organized exchange or other trading facility.

(7) CLEARED SWAP.—The term “cleared swap” means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.

(8) COMMISSION.—The term “Commission” means the Commodity Futures Trading Commission established under section 2(a)(2).

(9) COMMODITY.—The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by the first section of Public Law 85–839 (7 U.S.C. 13–1)) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.

(10) COMMODITY POOL.—

(A) IN GENERAL.—The term “commodity pool” means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

(i) commodity for future delivery, security futures product, or swap;

(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(iii) *digital commodity*;

[(iii)] (iv) commodity option authorized under section 4c; or

[(iv)] (v) leverage transaction authorized under section 19.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term “commodity pool” any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(11) COMMODITY POOL OPERATOR.—

(A) IN GENERAL.—The term “commodity pool operator” means any person—

(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds,

securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

(I) commodity for future delivery, security futures product, or swap;

(II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(III) digital commodity;

[(III)] (IV) commodity option authorized under section 4c; or

[(IV)] (V) leverage transaction authorized under section 19; or

(ii) who is registered with the Commission as a commodity pool operator.

(B) EXCLUSION.—*The term “commodity pool operator” does not include—*

(i) a decentralized governance system; or

(ii) ancillary activities, as defined in section 4v.

[(B)] (C) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term “commodity pool operator” any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(12) COMMODITY TRADING ADVISOR.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term “commodity trading advisor” means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery, security futures product, or swap;

(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(III) a digital commodity;

[(III)] (IV) any commodity option authorized under section 4c; or

[(IV)] (V) any leverage transaction authorized under section 19;

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i);

(iii) is registered with the Commission as a commodity trading advisor; or

(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(B) EXCLUSIONS.—Subject to subparagraph (C), the term “commodity trading advisor” does not include—

- (i) any bank or trust company or any person acting as an employee thereof;
- (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher;
- (iii) any floor broker or futures commission merchant;
- (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;
- (v) the fiduciary of any defined benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);
- (vi) any contract market or derivatives transaction execution facility; and
- (vii) such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.

(C) INCIDENTAL SERVICES.—Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

(D) ADVISORS.—The Commission, by rule or regulation, may include within the term “commodity trading advisor”, any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.

(13) CONTRACT OF SALE.—The term “contract of sale” includes sales, agreements of sale, and agreements to sell.

(14) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term “cooperative association of producers” means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with the Act of February 18, 1922 (42 Stat. 388, chapter 57; 7 U.S.C. 291 and 292), including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with this Act.

(15) DERIVATIVES CLEARING ORGANIZATION.—

(A) IN GENERAL.—The term “derivatives clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

- (i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(B) EXCLUSIONS.—The term “derivatives clearing organization” does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(16) ELECTRONIC TRADING FACILITY.—The term “electronic trading facility” means a trading facility that—

(A) operates by means of an electronic or telecommunications network; and

(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

(17) ELIGIBLE COMMERCIAL ENTITY.—The term “eligible commercial entity” means, with respect to an agreement, contract or transaction in a commodity—

(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (18)(A) that, in connection with its business—

(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;

(ii) incurs risks, in addition to price risk, related to the commodity; or

(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

(ii) either—

(I) in the case of a collective investment vehicle whose participants include persons other than—

(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 CFR 4.7(a));

(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 (17 CFR 230.501(a)), with total assets of \$2,000,000; or

(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940;

in each case as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, \$1,000,000,000 in total assets; or

(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, \$100,000,000 in total assets; or

(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

(18) ELIGIBLE CONTRACT PARTICIPANT.—The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80

(iv) a-1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(v) a commodity pool that—

(I) has total assets exceeding \$5,000,000; and

(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term “eligible contract participant” shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(vi) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding \$10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding \$1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vii) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding \$5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or this Act;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(viii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii);

(ix)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et

seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));

(x) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(xi) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xii) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) \$10,000,000; or

(II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker

or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

(19) EXCLUDED COMMODITY.—The term “excluded commodity” means—

(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;

(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or

(II) based solely on one or more commodities that have no cash market;

(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

(II) associated with a financial, commercial, or economic consequence.

(20) EXEMPT COMMODITY.—The term “exempt commodity” means a commodity that is not an excluded commodity or an agricultural commodity.

(21) FINANCIAL INSTITUTION.—The term “financial institution” means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as “an agreement corporation”;

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an “Edge Act corporation”;

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

(G) any financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

(H) a trust company; or

(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).

(22) FLOOR BROKER.—

(A) IN GENERAL.—The term “floor broker” means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

(I) any commodity for future delivery, security futures product, or swap; or

(II) any commodity option authorized under section 4c; or

(ii) who is registered with the Commission as a floor broker.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term “floor broker” any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(23) FLOOR TRADER.—

(A) IN GENERAL.—The term “floor trader” means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account—

(I) any commodity for future delivery, security futures product, or swap; or

(II) any commodity option authorized under section 4c; or

(ii) who is registered with the Commission as a floor trader.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term “floor trader” any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person’s own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(24) FOREIGN EXCHANGE FORWARD.—The term “foreign exchange forward” means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

(25) FOREIGN EXCHANGE SWAP.—The term “foreign exchange swap” means a transaction that solely involves—

(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.

(26) FOREIGN FUTURES AUTHORITY.—The term “foreign futures authority” means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

(27) FUTURE DELIVERY.—The term “future delivery” does not include any sale of any cash commodity for deferred shipment or delivery.

(28) FUTURES COMMISSION MERCHANT.—

(A) IN GENERAL.—The term “futures commission merchant” means an individual, association, partnership, corporation, or trust—

(i) that—

(I) is—

(aa) engaged in soliciting or in accepting orders for—

(AA) the purchase or sale of a commodity for future delivery;

(BB) a security futures product;

(CC) a swap;

(DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(EE) any commodity option authorized under section 4c; or

(FF) any leverage transaction authorized under section 19; or

(bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and

(II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) that is registered with the Commission as a futures commission merchant.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term “futures commission merchant” any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities,

or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(29) HYBRID INSTRUMENT.—The term “hybrid instrument” means a security having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities.

(30) INTERSTATE COMMERCE.—The term “interstate commerce” means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

(31) INTRODUCING BROKER.—

(A) IN GENERAL.—The term “introducing broker” means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

(i) who—

(I) is engaged in soliciting or in accepting orders for—

(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(cc) any commodity option authorized under section 4c; or

(dd) any leverage transaction authorized under section 19; and

(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) who is registered with the Commission as an introducing broker.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term “introducing broker” any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this Act, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(32) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term “major security-based swap participant” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(33) MAJOR SWAP PARTICIPANT.—

(A) IN GENERAL.—The term “major swap participant” means any person who is not a swap dealer, and—

(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

(I) positions held for hedging or mitigating commercial risk; and

(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term “substantial position” at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

(D) EXCLUSIONS.—The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(34) MEMBER OF A REGISTERED ENTITY; MEMBER OF A DERIVATIVES TRANSACTION EXECUTION FACILITY.—The term “member” means, with respect to a registered entity or derivatives trans-

action execution facility, an individual, association, partnership, corporation, or trust—

(A) owning or holding membership in, or admitted to membership representation on, the registered entity or derivatives transaction execution facility; or

(B) having trading privileges on the registered entity or derivatives transaction execution facility.

A participant in an alternative trading system that is designated as a contract market pursuant to section 5f is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

(35) NARROW-BASED SECURITY INDEX.—

(A) The term “narrow-based security index” means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index’s weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index’s weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(B) Notwithstanding subparagraph (A), an index is not a narrow-based security index if—

(i)(I) it has at least 9 component securities;

(II) no component security comprises more than 30 percent of the index’s weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of the enactment of the Commodity Futures Modernization Act of 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery

on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

(v) no more than 18 months have passed since the date of the enactment of the Commodity Futures Modernization Act of 2000 and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

(C) Within 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

(E) For purposes of subparagraphs (A) and (B)—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(36) OPTION.—The term “option” means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”.

(37) ORGANIZED EXCHANGE.—The term “organized exchange” means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

(38) PERSON.—The term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(39) PRUDENTIAL REGULATOR.—The term “prudential regulator” means—

(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a State-chartered bank that is a member of the Federal Reserve System;

(ii) a State-chartered branch or agency of a foreign bank;

(iii) any foreign bank which does not operate an insured branch;

(iv) any organization operating under section 25A of the Federal Reserve Act or having an agreement with the Board under section 225 of the Federal Reserve Act;

(v) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1965 (12 U.S.C. 1841)), any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)) that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered with the Commission as a swap dealer or major swap participant under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant);

(vi) after the transfer date (as defined in section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), any savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)) and any subsidiary of such company (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered as a swap dealer or major swap participant with the Commission under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant); or

(vii) any organization operating under section 25A of the Federal Reserve Act (12U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- (i) a national bank;
- (ii) a federally chartered branch or agency of a foreign bank; or
- (iii) any Federal savings association;

(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

- (i) a State-chartered bank that is not a member of the Federal Reserve System; or
- (ii) any State savings association;

(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

(40) REGISTERED ENTITY.—The term “registered entity” means—

- (A) a board of trade designated as a contract market under section 5;
- (B) a derivatives clearing organization registered under section 5b;
- (C) a board of trade designated as a contract market under section 5f;
- (D) a swap execution facility registered under section 5h;
- (E) a swap data repository registered under section 21;

[and]

(F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded~~].~~; and

(G) a digital commodity exchange registered under section 5i.

(41) SECURITY.—The term “security” means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(42) SECURITY-BASED SWAP.—The term “security-based swap” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(43) SECURITY-BASED SWAP DEALER.—The term “security-based swap dealer” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(44) SECURITY FUTURE.—The term “security future” means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982). The term “security future” does not include any agreement, contract, or transaction excluded from this Act under section 2(c), 2(d), 2(f), or 2(g) of this Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

(45) SECURITY FUTURES PRODUCT.—The term “security futures product” means a security future or any put, call, straddle, option, or privilege on any security future.

(46) SIGNIFICANT PRICE DISCOVERY CONTRACT.—The term “significant price discovery contract” means an agreement, contract, or transaction subject to section 2(h)(5).

(47) SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “swap” means any agreement, contract, or transaction—

(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred,

including any agreement, contract, or transaction commonly known as—

- (I) an interest rate swap;
- (II) a rate floor;
- (III) a rate cap;
- (IV) a rate collar;
- (V) a cross-currency rate swap;
- (VI) a basis swap;
- (VII) a currency swap;
- (VIII) a foreign exchange swap;
- (IX) a total return swap;
- (X) an equity index swap;
- (XI) an equity swap;
- (XII) a debt index swap;
- (XIII) a debt swap;
- (XIV) a credit spread;
- (XV) a credit default swap;
- (XVI) a credit swap;
- (XVII) a weather swap;
- (XVIII) an energy swap;
- (XIX) a metal swap;
- (XX) an agricultural swap;
- (XXI) an emissions swap; and
- (XXII) a commodity swap;

(iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;

(v) including any security-based swap agreement which meets the definition of “swap agreement” as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

(B) EXCLUSIONS.—The term “swap” does not include—

(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

(viii) any agreement, contract, or transaction that is—

(I) based on a security; and

(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

(i) IN GENERAL.—Except as provided in clause (ii), the term “swap” includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or trans-

action covered by the master agreement that is a swap pursuant to subparagraph (A).

(D) MIXED SWAP.—The term “security-based swap” includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination under section 1b that either foreign exchange swaps or foreign exchange forwards or both—

(I) should be not be regulated as swaps under this Act; and

(II) are not structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of that Act.

(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

(iv) BUSINESS STANDARDS.—Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

(v) SECRETARY.—For purposes of this subparagraph, the term “Secretary” means the Secretary of the Treasury.

(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

(48) SWAP DATA REPOSITORY.—The term “swap data repository” means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

(49) SWAP DEALER.—

(A) IN GENERAL.—The term “swap dealer” means any person who—

- (i) holds itself out as a dealer in swaps;
- (ii) makes a market in swaps;
- (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or
- (iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

(C) EXCEPTION.—The term “swap dealer” does not include a person that enters into swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

(50) SWAP EXECUTION FACILITY.—The term “swap execution facility” means a trading system or platform in which multiple

participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of swaps between persons; and

(B) is not a designated contract market.

(51) TRADING FACILITY.—

(A) IN GENERAL.—The term “trading facility” means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—

(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

(ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.

(B) EXCLUSIONS.—The term “trading facility” does not include—

(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms “government securities dealer”, “government securities broker”, and “government securities” are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term “trading facility” for the purposes of this Act without any prior specific approval, certification, or other action by the Commission.

(C) SPECIAL RULE.—A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of

- transactions executed on or through the person or group of persons.
- (52) ASSOCIATED PERSON OF A DIGITAL COMMODITY BROKER.—
- (A) IN GENERAL.—Except as provided in subparagraph (B), the term “associated person of a digital commodity broker” means a person who is associated with a digital commodity broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves—
- (i) the solicitation or acceptance of a contract for sale of a digital commodity; or
- (ii) the supervision of any person engaged in the solicitation or acceptance of a contract for sale of a digital commodity.
- (B) EXCLUSION.—The term “associated person of a digital commodity broker” does not include any person associated with a digital commodity broker the functions of which are solely clerical or ministerial.
- (53) ASSOCIATED PERSON OF A DIGITAL COMMODITY DEALER.—
- (A) IN GENERAL.—Except as provided in subparagraph (B), the term “associated person of a digital commodity dealer” means a person who is associated with a digital commodity dealer as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves—
- (i) the solicitation or acceptance of a contract for sale of a digital commodity; or
- (ii) the supervision of any person engaged in the solicitation or acceptance of a contract for sale of a digital commodity.
- (B) EXCLUSION.—The term “associated person of a digital commodity dealer” does not include any person associated with a digital commodity dealer the functions of which are solely clerical or ministerial.
- (54) BANK SECRECY ACT.—The term “Bank Secrecy Act” means—
- (A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);
- (B) chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951 et seq.); and
- (C) subchapter II of chapter 53 of title 31, United States Code.
- (55) DIGITAL COMMODITY.—
- (A) IN GENERAL.—The term “digital commodity” means—
- (i) any unit of a digital asset held by a person, other than a digital asset issuer, a related person, or an affiliated person, before the first date on which each blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934, that was—
- (I) issued to the person through an end user distribution described under section 42(d)(1) of the Securities Exchange Act of 1934; or

(II) acquired by such person in a transaction that was executed on a digital commodity exchange; or

(ii) any unit of a digital asset held by a person, other than a digital asset issuer, a related person, or an affiliated person, after the first date on which each blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934; and

(iii) any unit of a digital asset held by a related person or an affiliated person during any period when any blockchain system to which the digital asset relates is a functional network and certified to be a decentralized network under section 44 of the Securities Exchange Act of 1934.

(B) *EXCLUSION.*—The term “digital commodity” does not include a permitted payment stablecoin.

(56) *DIGITAL COMMODITY BROKER.*—

(A) *IN GENERAL.*—The term “digital commodity broker” means any person who, in a digital commodity cash or spot market, is—

(i) engaged in soliciting or accepting orders for the purchase or sale of a unit of a digital commodity from a customer that is not an eligible contract participant;

(ii) engaged in soliciting or accepting orders for the purchase or sale of a unit of a digital commodity from a customer on or subject to the rules of a registered entity; or

(iii) registered with the Commission as a digital commodity broker.

(B) *EXCEPTIONS.*—The term “digital commodity broker” does not include a person solely because the person—

(i) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or

(ii) validates a digital commodity transaction, operates a node, or engages in similar activity to participate in facilitating, operating, or securing a blockchain system.

(57) *DIGITAL COMMODITY CUSTODIAN.*—The term “digital commodity custodian” means a bank or trust company in the business of holding, maintaining, or safeguarding digital commodities.

(58) *DIGITAL COMMODITY DEALER.*—

(A) *IN GENERAL.*—The term “digital commodity dealer” means any person who—

(i) in digital commodity cash or spot markets—

(I) holds itself out as a dealer in a digital commodity;

(II) makes a market in a digital commodity;

(III) regularly enters into digital commodity transactions with counterparties as an ordinary course of business for its own account; or

(IV) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in a digital commodity;

(ii) regularly enters into any agreement, contract, or transaction described in subsection (c)(2)(D)(i) involving a digital commodity; or

(iii) is registered with the Commission as a digital commodity dealer.

(B) **EXCEPTION.**—The term “digital commodity dealer” does not include a person solely because the person—

(i) enters into a digital commodity transaction with an eligible contract participant;

(ii) enters into a digital commodity transaction on or through a registered digital commodity exchange;

(iii) enters into a digital commodity transaction for the person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business;

(iv) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or

(v) validates a digital commodity transaction, operates a node, or engages in similar activity to participate in facilitating, operating, or securing a blockchain system.

(59) **DIGITAL COMMODITY EXCHANGE.**—The term “digital commodity exchange” means a trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity.

(60) **DIGITAL ASSET-RELATED DEFINITIONS.**—

(A) **SECURITIES ACT OF 1933.**—The terms “affiliated person”, “blockchain system”, “decentralized governance system”, “decentralized network”, “digital asset”, “digital asset issuer”, “end user distribution”, “functional network”, “permitted payment stablecoin”, “related person”, and “restricted digital asset” have the meaning given the terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(B) **SECURITIES EXCHANGE ACT OF 1934.**—The terms “digital asset broker” and “digital asset dealer” have the meaning given those terms, respectively, under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(61) **MIXED DIGITAL ASSET TRANSACTION.**—The term “mixed digital asset transaction” has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

* * * * *

SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

(a) **JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.**—

(1) **JURISDICTION OF COMMISSION.**—

(A) **IN GENERAL.**—The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in the

Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and subparagraphs (C), (D), and (I) of this paragraph and subsections (c) and (f), with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 5 or a swap execution facility pursuant to section 5h or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to *subsection (c)(2)(F) of this section* or section 19 of this Act. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

(B) LIABILITY OF PRINCIPAL FOR ACT OF AGENT.—The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(C) Notwithstanding any other provision of law—

(i)(I) Except as provided in subclause (II), this Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

(II) This Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 5c(c) of, a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 with the condition that the

Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.

(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however*, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 and section 1a of this Act subject to all rules and regulations applicable to security futures products under this Act and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934.

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such con-

tract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III, under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States

Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(D)(i) Notwithstanding any other provision of this Act, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934, section 2(a)(16) of the Securities Act of 1933, section 2(a)(52) of the Investment Company Act of 1940, and section 202(a)(27) of the Investment Advisers Act of 1940, options on security futures, and persons effecting transactions in security futures and options thereon, and this Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), contracts, and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this Act: *Provided, however,* That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934.

(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product.

(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to

section 15A(a) of the Securities Exchange Act of 1934 and off-set on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

(VI) The security futures product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has in place such procedures.

(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.

(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national secu-

rities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.

(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

(I) the transaction is conducted on or subject to the rules of a board of trade that—

(aa) has been designated by the Commission as a contract market in such security futures product; or

(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934.

(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to [section 4k(6)] *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ~~section 4k(6)~~ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ~~section 4k(6)~~ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ~~section 4k(6)~~ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such ex-

emption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(III) For purposes of this clause, the term “compliance date” means the later of—

(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and any national securities associations registered pursuant to section 15A(a) of such Act; or

(bb) 2 years after the date on which trading in any security futures product commences under this Act.

(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).

(E)(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.

(F)(i) Nothing in this Act is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

(ii) Nothing in this Act is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures prod-

ucts is traded principally on, by, or through any exchange or market located outside the United States.

(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements as defined pursuant to section 3(a)(78) of the Securities Exchange Act of 1934, and security-based swaps.

(ii) In addition to the authority of the Securities and Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

(H) Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to, any security other than a security-based swap.

(I)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

(I) not executed, traded, or cleared on a registered entity or trading facility; or

(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).

(J) *Except as expressly provided in this Act, nothing in the Financial Innovation and Technology for the 21st Century Act shall affect or apply to, or be interpreted to affect or apply to—*

(i) any agreement, contract, or transaction that is subject to regulation under this Act as—

(I) a contract of sale of a commodity for future delivery or an option on such a contract;

(II) a swap;

(III) a security futures product;

(IV) an option authorized under section 4c of this Act;

(V) an agreement, contract, or transaction described in subparagraph (C)(i) or (D)(i) of subsection (c)(2) of this section; or

(VI) a leverage transaction authorized under section 19 of this Act; or

(ii) the activities of any person with respect to any such an agreement, contract, or transaction.

(2)(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this Act; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.

Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6)(A) Except as otherwise provided in this [paragraph and in] *paragraph*, paragraphs (4) and (5) of this subsection, and *section 18(c)(3)*, the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7) APPOINTMENT AND COMPENSATION.—

(A) IN GENERAL.—The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out the functions of the Commission under this Act.

(B) RATES OF PAY.—Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(C) COMPARABILITY.—

(i) IN GENERAL.—The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are provided by any agency referred to in section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) or could be provided by such an agency under applicable provisions of law (including rules and regulations).

(ii) CONSULTATION.—In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to in section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)).

(8) No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this Act during his term of office, nor shall he participate, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the Commission.

(9)(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation or registration as a contract market or derivatives transaction execution facility involving transactions for future delivery of any secu-

rity issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate or register a board of trade as a contract market or derivatives transaction execution facility based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9)) with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, registration, suspension, revocation, or action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(10)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any Commis-

sioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.

(11) The Commission shall have an official seal, which shall be judicially noticed.

(12) The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(13) PUBLIC AVAILABILITY OF SWAP TRANSACTION DATA.—

(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—In this paragraph, the term “real-time public reporting” means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

(B) PURPOSE.—The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) GENERAL RULE.—The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

(i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(1) (including those swaps that are excepted from the requirement pursuant to subsection (h)(7)), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(1), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to swaps that are determined to be required to be cleared under subsection (h)(2) but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) TIMELINESS OF REPORTING.—Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) REPORTING OF SWAPS TO REGISTERED SWAP DATA REPOSITORIES.—Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.

(14) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semi-annual and annual basis to make available to the public information relating to—

(i) the trading and clearing in the major swap categories; and

(ii) the market participants and developments in new products.

(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

(i) use information from swap data repositories and derivatives clearing organizations; and

(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) AUTHORITY OF THE COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(15) ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—An Energy and Environmental Markets Advisory Committee is hereby established.

(ii) MEMBERSHIP.—The Committee shall have 9 members.

(iii) ACTIVITIES.—The Committee's objectives and scope of activities shall be—

(I) to conduct public meetings;

(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and

(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

(B) REQUIREMENTS.—

(i) IN GENERAL.—The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

(ii) MEMBERS.—Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

(C) APPOINTMENT.—The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

(D) REIMBURSEMENT.—Members shall be entitled to per diem and travel expense reimbursement by the Commission.

(E) CHAPTER 10 OF TITLE 5, UNITED STATES CODE.—The Committee shall not be subject to chapter 10 of title 5, United States Code.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word “State” includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act (other than section, 5b, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—

(A) foreign currency;

(B) government securities;

(C) security warrants;

(D) security rights;

(E) resales of installment loan contracts;

(F) repurchase transactions in an excluded commodity;

[or]

(G) mortgages or mortgage purchase commitments[.]; or

(H) *permitted payment stablecoins*.

(2) COMMISSION JURISDICTION.—

(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

(i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange;

(ii) a swap; or

(iii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.

(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—

(i) This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

(I) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); and

(II) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

(aa) a United States financial institution;

(bb)(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5); or

(BB) an associated person of a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) concerning the financial or securities activities of which the broker or dealer makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

(cc)(AA) a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this Act, is registered under this Act, is not a person described in item (bb) of this subclause, and maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph; or

(BB) an affiliated person of a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this Act, is registered under this Act, and is not a person described in item (bb) of this subclause, if the affiliated person maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is not a person described in such item (bb), and the futures commission merchant makes and keeps records under section 4f(c)(2)(B) of this Act concerning the futures and other financial activities of the affiliated person;

(dd) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

(ff) a retail foreign exchange dealer that maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is registered in such capacity with the Commission, subject to such terms and conditions as the Commission shall prescribe, and is a member of a futures association registered under section 17.

(ii) The dollar amount that applies for purposes of this clause is—

(I) \$10,000,000, beginning 120 days after the date of the enactment of this clause;

(II) \$15,000,000, beginning 240 days after such date of enactment; and

(III) \$20,000,000, beginning 360 days after such date of enactment.

(iii) Notwithstanding items (cc) and (gg) of clause (i)(II) of this subparagraph, agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vi), shall be subject to subsection (a)(1)(B) of this section and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b) if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or retail foreign exchange dealer, or an affiliated person of a futures commission merchant registered under this Act that is not also a person described in any of item (aa), (bb), (ee), or (ff) of clause (i)(II) of this subparagraph.

(iv)(I) Notwithstanding items (cc) and (gg) of clause (i)(II), a person, unless registered in such capacity as

the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of clause (i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of clause (i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of clause (i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee), or (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in any of item (aa) through (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(v) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of

the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with agreements, contracts, or transactions described in clause (i) which are offered, or entered into, by a person described in item (cc) or (gg) of clause (i)(II).

(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—

(aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II)); and

(bb) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(II) Subclause (I) of this clause shall not apply to—

(aa) a security that is not a security futures product;

or

(bb) a contract of sale that—

(AA) results in actual delivery within 2 days; or

(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(ii)(I) Agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vii), shall be subject to subsection (a)(1)(B) of this section and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II); or

(bb) any such person's associated persons.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of or to accomplish any of the purposes of this Act in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph if the agreements, contracts, or transactions are offered, or

entered into, by a person that is not described in item (aa) through (ff) of subparagraph (B)(i)(II).

(iii)(I) A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in item (aa) through (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(iv) Sections 4(b) and 4b shall apply to any agreement, contract, or transaction described in clause (i) of this sub-

paragraph as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

(vi) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this Act with respect to security futures products and persons effecting transactions in security futures products.

(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(D) RETAIL COMMODITY TRANSACTIONS.—

(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(ii) EXCEPTIONS.—This subparagraph shall not apply to—

(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

(II) any security;

(III) a contract of sale of a commodity, other than a digital commodity, that—

(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

(IV) a contract of sale of a digital commodity that—

(aa) results in actual delivery, as the Commission shall by rule determine, within 2 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the digital commodity involved; or
 (bb) is executed with a registered digital commodity dealer—

(AA) directly;

(BB) through a registered digital commodity broker; or

(CC) on or subject to the rules of a registered digital commodity exchange;

[(IV)] (V) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

[(V)] (VI) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C.27(b)).

(iii) ENFORCEMENT.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

(iv) ELIGIBLE COMMERCIAL ENTITY.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.

(E) PROHIBITION.—

(i) DEFINITION OF FEDERAL REGULATORY AGENCY.—In this subparagraph, the term “Federal regulatory agency” means—

(I) the Commission;

(II) the Securities and Exchange Commission;

(III) an appropriate Federal banking agency;

(IV) the National Credit Union Association; and

(V) the Farm Credit Administration.

(ii) PROHIBITION.—

(I) IN GENERAL.—Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

(II) EFFECTIVE DATE.—With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to the date of enactment of this subclause, subclause (I) shall take effect 90 days after the date of enactment of this subclause.

(iii) REQUIREMENTS OF RULES AND REGULATIONS.—

(I) IN GENERAL.—The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

- (aa) disclosure;
- (bb) recordkeeping;
- (cc) capital and margin;
- (dd) reporting;
- (ee) business conduct;
- (ff) documentation; and
- (gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

(II) TREATMENT.—The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.

(F) COMMISSION JURISDICTION WITH RESPECT TO DIGITAL COMMODITY TRANSACTIONS.—

(i) IN GENERAL.—*Subject to sections 6d and 12(e), the Commission shall have exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity in interstate commerce, including in a digital commodity cash or spot market, that is offered, solicited, traded, facilitated, executed, cleared, reported, or otherwise dealt in—*

(I) on or subject to the rules of a registered entity or an entity that is required to be registered as a registered entity;

or

(II) by any other entity registered, or required to be registered, with the Commission.

(ii) LIMITATIONS.—*Clause (i) shall not apply with respect to custodial or depository activities for a digital commodity, or custodial or depository activities for any promise or right to a future digital commodity, of an entity regulated by an appropriate Federal banking agency or a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act).*

(iii) MIXED DIGITAL ASSET TRANSACTIONS.—

(I) IN GENERAL.—*Clause (i) shall not apply to a mixed digital asset transaction.*

(II) OVERSIGHT OF MIXED DIGITAL ASSET TRANSACTIONS.—

(aa) *ON A CFTC REGULATED PLATFORM.*—A mixed digital asset transaction that occurs on or subject to the rules of a registered entity or by any other entity registered with the Commission—

(AA) shall not occur except on or subject to the rules of a registered entity or by any other entity that is dually registered with the Commission and the Securities and Exchange Commission; and

(BB) shall be subject to the jurisdiction of the Commission and the Securities and Exchange Commission.

(bb) *OFF EXCHANGE.*—A mixed digital asset transaction that does not occur on or subject to the rules of a registered entity or by any other entity registered with the Commission shall be subject to the exclusive jurisdiction of the Securities and Exchange Commission.

(III) *REPORTS ON MIXED DIGITAL ASSET TRANSACTIONS.*—

A digital asset issuer, related person, affiliated person, or other person registered with the Securities and Exchange Commission that engages in a mixed digital asset transaction, shall, on request, open to inspection and examination by the Commodity Futures Trading Commission all books and records relating to the mixed digital asset transaction, subject to the confidentiality and disclosure requirements of section 8.

(G) *AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN STABLECOINS.*—

(i) *TREATMENT OF PERMITTED PAYMENT STABLECOINS ON COMMISSION-REGISTERED ENTITIES.*—Except as provided in clauses (ii) and (iii), the Commission shall only have jurisdiction over a cash or spot agreement, contract, or transaction in a permitted payment stablecoin that is offered, offered to enter into, entered into, executed, confirmed the execution of, solicited, or accepted—

(I) on or subject to the rules of a registered entity; or

(II) by any other entity registered by the Commission.

(ii) *PERMITTED PAYMENT STABLECOIN TRANSACTION RULES.*—This Act shall only apply to a transaction described in clause (i) for the purposes of regulating the offer, execution, solicitation, or acceptance of a cash or spot permitted payment stablecoin transaction on a registered entity or other entity registered by the Commission with respect to requirements imposed with respect to—

(I) recordkeeping;

(II) custody;

(III) segregation;

(IV) reporting;

(V) trading procedures and trade processing requirements;

(VI) information sharing;

(VII) conflicts of interest;

(VIII) antifraud, antimanipulation, or false reporting; or

(IX) any other transaction level requirement imposed on the registered entity or other entity registered by the Com-

mission that the Commission by rule determines would foster the development of fair and orderly cash or spot markets in digital commodities, be necessary or appropriate in the public interest, and be consistent with the protection of customers.

(iii) **NO AUTHORITY OVER PERMITTED PAYMENT STABLECOINS.**—*Notwithstanding clause (ii), the Commission shall not make a rule or regulation, impose a requirement or obligation on a registered entity or other entity registered by the Commission, or impose a requirement or obligation on a permitted payment stablecoin issuer, regarding the operation of a permitted payment stablecoin issuer or a permitted payment stablecoin, including a requirement or obligation regarding—*

- (I) design;*
- (II) structure;*
- (III) issuance;*
- (IV) redemption;*
- (V) financial resources;*
- (VI) collateral; or*
- (VII) any other aspect of such an operation or such a stablecoin.*

(d) **SWAPS.**—Nothing in this Act (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and (h) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities or Commission registrants) governs or applies to a swap.

(e) **LIMITATION ON PARTICIPATION.**—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.

(f) **EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.**—

(1) **IN GENERAL.**—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security.

(2) **PREDOMINANCE.**—A hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

- (D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this Act.
- (3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.
- (g) APPLICATION OF COMMODITY FUTURES LAWS.—
- (1) No provision of this Act shall be construed as implying or creating any presumption that—
- (A) any agreement, contract, or transaction that is excluded from this Act under section 2(c), 2(d), 2(e), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act; or
- (B) any agreement, contract, or transaction, not otherwise subject to this Act, that is not so excluded or exempted,
- is or would otherwise be subject to this Act.
- (2) No provision of, or amendment made by, the Commodity Futures Modernization Act of 2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 5b of this Act.
- (h) CLEARING REQUIREMENT.—
- (1) IN GENERAL.—
- (A) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.
- (B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—
- (i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and
- (ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.
- (2) COMMISSION REVIEW.—
- (A) COMMISSION-INITIATED REVIEW.—
- (i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the

swap or group, category, type, or class of swaps should be required to be cleared.

(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

(B) SWAP SUBMISSIONS.—

(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

(iii) The Commission shall—

(I) make available to the public submissions received under clauses (i) and (ii);

(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

(D) DETERMINATION.—

(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

(IV) The effect on competition, including appropriate fees and charges applied to clearing.

(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(E) RULES.—Not later than 1 year after the date of the enactment of this subsection, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

(3) STAY OF CLEARING REQUIREMENT.—

(A) IN GENERAL.—After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

(D) RULES.—Not later than 1 year after the date of the enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

(4) PREVENTION OF EVASION.—

- (A) IN GENERAL.—The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.
- (B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—
- (i) investigate the relevant facts and circumstances;
 - (ii) within 30 days issue a public report containing the results of the investigation; and
 - (iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.
- (C) EFFECT ON AUTHORITY.—Nothing in this paragraph—
- (i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and
 - (ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.
- (5) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:
- (A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.
 - (B) Swaps entered into on or after such date of enactment shall be reported to a registered swap data repository or the Commission no later than the later of—
 - (i) 90 days after such effective date; or
 - (ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.
- (6) CLEARING TRANSITION RULES.—
- (A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).
 - (B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).
- (7) EXCEPTIONS.—

(A) IN GENERAL.—The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

- (i) is not a financial entity;
- (ii) is using swaps to hedge or mitigate commercial risk; and
- (iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

(B) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

(C) FINANCIAL ENTITY DEFINITION.—

(i) IN GENERAL.—For the purposes of this paragraph, the term “financial entity” means—

- (I) a swap dealer;
- (II) a security-based swap dealer;
- (III) a major swap participant;
- (IV) a major security-based swap participant;
- (V) a commodity pool;
- (VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));
- (VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
- (VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

(ii) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

- (I) depository institutions with total assets of \$10,000,000,000 or less;
- (II) farm credit system institutions with total assets of \$10,000,000,000 or less; or
- (III) credit unions with total assets of \$10,000,000,000 or less.

(iii) LIMITATION.—Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(D) TREATMENT OF AFFILIATES.—

(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

(I) enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;

(II) is directly and wholly-owned by another affiliate qualified for the exception under this subparagraph or an entity that is not a financial entity;

(III) is not indirectly majority-owned by a financial entity;

(IV) is not ultimately owned by a parent company that is a financial entity; and

(V) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010).

(ii) LIMITATION ON QUALIFYING AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

(I) a swap dealer;

(II) a security-based swap dealer;

(III) a major swap participant;

(IV) a major security-based swap participant;

(V) a commodity pool;

(VI) a bank holding company;

(VII) a private fund, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

(VIII) an employee benefit plan or government plan, as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(IX) an insured depository institution;

(X) a farm credit system institution;

(XI) a credit union;

(XII) a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010); or

(XIII) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

(iii) **LIMITATION ON AFFILIATES' AFFILIATES.**—Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in clause (i) shall not apply with respect to an affiliate if the affiliate is itself affiliated with—

- (I) a major security-based swap participant;
- (II) a security-based swap dealer;
- (III) a major swap participant; or
- (IV) a swap dealer.

(iv) **CONDITIONS ON TRANSACTIONS.**—With respect to an affiliate that qualifies for the exception in clause (i)—

(I) the affiliate may not enter into any swap other than for the purpose of hedging or mitigating commercial risk; and

(II) neither the affiliate nor any person affiliated with the affiliate that is not a financial entity may enter into a swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under clause (i).

(v) **TRANSITION RULE FOR AFFILIATES.**—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this clause.

(vi) **RISK MANAGEMENT PROGRAM.**—Any swap entered into by an affiliate that qualifies for the exception in clause (i) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the swap and to identify each of the affiliates on whose behalf a swap was entered into.

(E) **ELECTION OF COUNTERPARTY.**—

(i) **SWAPS REQUIRED TO BE CLEARED.**—With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(ii) **SWAPS NOT REQUIRED TO BE CLEARED.**—With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap partici-

pant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

(I) may elect to require clearing of the swap; and

(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

(8) TRADE EXECUTION.—

(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

(i) execute the transaction on a board of trade designated as a contract market under section 5; or

(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).

(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.

(j) COMMITTEE APPROVAL BY BOARD.—Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.

* * * * *

SEC. 4d. (a) It shall be unlawful for any person to be a futures commission merchant unless—

(1) such person shall have registered, under this Act, with the Commission as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with [any bank or trust company] *any bank, trust company, or qualified digital commodity custodian* or with the clearing house organization of such contract market or derivatives transaction execution facility, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearing-house organization of such contract market or derivatives transaction execution facility or with any member of such contract market or derivatives transaction execution facility, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further,* That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further,* That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe : *Provided further,* That any such property that is a digital commodity shall be held in a qualified digital commodity custodian.

(b) It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any

money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

(2) address such other issues as the Commission determines to be appropriate.

(d) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 17.

(e) Consistent with this Act, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act (except paragraph (11) thereof), involving the application of—

(1) section 8, section 15(c)(3), and section 17 of the Securities Exchange Act of 1934 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 3(a)(40) of the Securities Exchange Act of 1934), involving security futures products; and

(2) similar provisions of this Act and the rules and regulations thereunder involving security futures products.

(f) SWAPS.—

(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

(2) CLEARED SWAPS.—

(A) SEGREGATION REQUIRED.—A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

(3) EXCEPTIONS.—

(A) USE OF FUNDS.—

(i) IN GENERAL.—Notwithstanding paragraph (2), money, securities, and property of swap customers of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same account or accounts with [any bank or trust company] *any bank, trust company, or qualified digital commodity custodian* or with a derivatives clearing organization.

(ii) WITHDRAWAL.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

(4) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(5) COMMODITY CONTRACT.—A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

(6) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.

(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.

(h) Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 4(c) of this Act or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section 4f(a)(1) of this Act and also registered as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934, hold in a portfolio margining account carried as a securities account subject to section 15(c)(3) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.

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SEC. 4k. (1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a per-

son to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection.

(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this subsection. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this subsection. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

(4) *It shall be unlawful for any person to act as an associated person of a digital commodity broker or an associated person of a digital commodity dealer unless the person is registered with the Commission under this Act and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a digital commodity broker or a digital commodity dealer to permit such a person to become or remain associated with the digital commodity broker or digital commodity dealer if the digital commodity broker or digital commodity dealer knew or should have known that the person was not so registered or that the registration had expired, been suspended (and the period of suspension has not expired), or been revoked.*

[(4)] (5) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, **[or of a commodity trading advisor]** *of a commodity trading advisor, of a digital commodity broker, or of a digital commodity dealer* shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

[(5)] (6) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this Act and the rules thereunder:

- (A) Subsections (b), (d), (e), and (g) of section 4c.
- (B) Sections 4d, 4e, and 4h.
- (C) Subsections (b) and (c) of section 4f.
- (D) Section 4j.
- (E) Paragraph (1) of this section.
- (F) Section 4p.
- (G) Section 6d.
- (H) Subsections (d) and (g) of section 8.
- (I) Section 16.

[(6)] (7) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

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SEC. 4m. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the

provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 14 of this Act.

(2) Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

(3) EXCEPTION.—

(A) IN GENERAL.—Paragraph (1) shall not apply to [any commodity trading advisor] *a commodity pool operator or commodity trading advisor* that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of [acting as a commodity trading advisor] *acting as a commodity pool operator or commodity trading advisor*, as defined in section 1a, and that does not act as a commodity trading advisor to any commodity pool that is engaged primarily in trading commodity interests.

(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be “engaged primarily” in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, *digital commodities*, and any monies held in an account used for trading commodity interests.

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SEC. 4u. REGISTRATION AND REGULATION OF DIGITAL COMMODITY BROKERS AND DEALERS.

(a) *REGISTRATION.*—It shall be unlawful for any person to act as a digital commodity broker or digital commodity dealer unless the person is registered as such with the Commission.

(b) *REQUIREMENTS.*—

(1) *IN GENERAL.*—A person shall register as a digital commodity broker or digital commodity dealer by filing a registration application with the Commission.

(2) *CONTENTS.*—

(A) *IN GENERAL.*—The application shall be made in such form and manner as is prescribed by the Commission, and shall contain such information as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) *CONTINUAL REPORTING.*—A person that is registered as a digital commodity broker or digital commodity dealer shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) *TRANSITION.*—Within 180 days after the date of the enactment of this section, the Commission shall prescribe rules providing for the registration of digital commodity brokers and digital commodity dealers under this section.

(4) *STATUTORY DISQUALIFICATION.*—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a digital commodity broker or digital commodity dealer to permit any person who is associated with a digital commodity broker or a digital commodity dealer and who is subject to a statutory disqualification to effect or be involved in effecting a contract for sale of a digital commodity on behalf of the digital commodity broker or the digital commodity dealer, respectively, if the digital commodity broker or digital commodity dealer, respectively, knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(5) *LIMITATIONS ON CERTAIN ASSETS.*—A registered digital commodity broker or registered digital commodity dealer shall not offer, offer to enter into, enter into, or facilitate any contract for sale of a digital commodity that has not been certified under section 5c(d).

(c) *ADDITIONAL REGISTRATIONS.*—

(1) *WITH THE COMMISSION.*—Any person required to be registered as a digital commodity broker or digital commodity dealer may also be registered as a futures commission merchant, introducing broker, or swap dealer.

(2) *WITH THE SECURITIES AND EXCHANGE COMMISSION.*—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section may register with the Securities and Exchange Commission as a digital asset broker or digital asset dealer, pursuant to section 15(b) of the Securities Exchange Act of 1934, as applicable, if the digital asset broker or digital asset dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of

orders on behalf of others involving any contract of sale of digital assets.

(3) *WITH MEMBERSHIP IN A REGISTERED FUTURES ASSOCIATION.*—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section shall be a member of a registered futures association.

(4) *REGISTRATION REQUIRED.*—Any person required to be registered as a digital commodity broker or digital commodity dealer under this section shall register with the Commission as such regardless of whether the person is registered as such with another State or Federal regulator.

(d) *RULEMAKING.*—

(1) *IN GENERAL.*—The Commission shall prescribe such rules applicable to registered digital commodity brokers and registered digital commodity dealers as are appropriate to carry out this section, including rules in the public interest that limit the activities of digital commodity brokers and digital commodity dealers.

(2) *MULTIPLE REGISTRANTS.*—The Commission shall prescribe rules or regulations permitting, or may otherwise authorize, exemptions or additional requirements applicable to persons with multiple registrations under this Act, including as futures commission merchants, introducing brokers, digital commodity brokers, digital commodity dealers, or swap dealers, as may be in the public interest to reduce compliance costs and promote customer protection.

(e) *CAPITAL REQUIREMENTS.*—

(1) *IN GENERAL.*—Each registered digital commodity broker and registered digital commodity dealer shall meet such minimum capital requirements as the Commission may prescribe to ensure that the digital commodity broker or digital commodity dealer, respectively, is able to—

(A) meet, and continue to meet, at all times, the obligations of such a registrant;

(B) conduct an orderly wind-down of the activities of the digital commodity broker or digital commodity dealer, respectively; and

(C) in the case of a digital commodity dealer, fulfill the customer obligations of the digital commodity dealer for any margined, leveraged, or financed transactions.

(2) *RULE OF CONSTRUCTION.*—Nothing in this section shall limit, or be construed to limit, the authority of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of such Act (15 U.S.C. 78o(b)(11)) in accordance with section 15(c)(3) of such Act (15 U.S.C. 78o(c)(3)).

(3) *FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.*—

(A) *IN GENERAL.*—Each futures commission merchant, introducing broker, digital commodity broker, digital commodity dealer, broker, and dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which the futures commission merchant, introducing broker, digital commodity broker, digital commodity dealer, broker, or dealer, respectively, is subject

under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) COORDINATION OF CAPITAL REQUIREMENTS.—

(i) COMMISSION RULE.—The Commission shall, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations as a digital commodity dealer, digital commodity broker, futures commission merchant, or introducing broker.

(ii) JOINT RULE.—The Commission and the Securities and Exchange Commission shall jointly, by rule, provide appropriate offsets to any applicable capital requirement for a person with multiple registrations as a digital commodity dealer, digital commodity broker, futures commission merchant, introducing broker, broker, or dealer.

(f) REPORTING AND RECORDKEEPING.—Each registered digital commodity broker and registered digital commodity dealer—

(1) shall make such reports as are required by the Commission by rule or regulation regarding the transactions, positions, and financial condition of the digital commodity broker or digital commodity dealer, respectively;

(2) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(3) shall keep the books and records open to inspection and examination by any representative of the Commission.

(g) DAILY TRADING RECORDS.—

(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall maintain daily trading records of the transactions of the digital commodity broker or digital commodity dealer, respectively, and all related records (including related forward or derivatives transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as the Commission may require by rule or regulation.

(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) COUNTERPARTY RECORDS.—Each registered digital commodity broker and registered digital commodity dealer shall maintain daily trading records for each customer or counterparty in a manner and form that is identifiable with each digital commodity transaction.

(4) AUDIT TRAIL.—Each registered digital commodity broker and registered digital commodity dealer shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(h) BUSINESS CONDUCT STANDARDS.—

(1) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall conform with such business conduct standards as the Commission, by rule or regulation, prescribes related to—

(A) fraud, manipulation, and other abusive practices involving spot or margined, leveraged, or financed digital

commodity transactions (including transactions that are offered but not entered into);

(B) diligent supervision of the business of the registered digital commodity broker or digital commodity dealer, respectively; and

(C) such other matters as the Commission deems appropriate.

(2) **BUSINESS CONDUCT REQUIREMENTS.**—The Commission shall, by rule, prescribe business conduct requirements which—

(A) require disclosure by a registered digital commodity broker and registered digital commodity dealer to any counterparty to the transaction (other than an eligible contract participant) of—

(i) information about the material risks and characteristics of the digital commodity; and

(ii) information about the material risks and characteristics of the transaction;

(B) establish a duty for such a digital commodity broker and such a digital commodity dealer to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

(C) establish standards governing digital commodity platform marketing and advertising, including testimonials and endorsements; and

(D) establish such other standards and requirements as the Commission may determine are—

(i) in the public interest;

(ii) appropriate for the protection of customers; or

(iii) otherwise in furtherance of the purposes of this Act.

(3) **PROHIBITION ON FRAUDULENT PRACTICES.**—It shall be unlawful for a registered digital commodity broker or registered digital commodity dealer to—

(A) employ any device, scheme, or artifice to defraud any customer or counterparty;

(B) engage in any transaction, practice, or course of business that operates as a fraud or deceit on any customer or counterparty; or

(C) engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(i) **DUTIES.**—

(1) **RISK MANAGEMENT PROCEDURES.**—Each registered digital commodity broker and registered digital commodity dealer shall establish robust and professional risk management systems adequate for managing the day-to-day business of the digital commodity broker or digital commodity dealer, respectively.

(2) **DISCLOSURE OF GENERAL INFORMATION.**—Each registered digital commodity broker and registered digital commodity dealer shall disclose to the Commission information concerning—

(A) the terms and conditions of the transactions of the digital commodity broker or digital commodity dealer, respectively;

(B) the trading operations, mechanisms, and practices of the digital commodity broker or digital commodity dealer, respectively;

(C) financial integrity protections relating to the activities of the digital commodity broker or digital commodity dealer, respectively; and

(D) other information relevant to trading in digital commodities by the digital commodity broker or digital commodity dealer, respectively.

(3) *ABILITY TO OBTAIN INFORMATION.*—Each registered digital commodity broker and registered digital commodity dealer shall—

(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

(B) provide the information to the Commission, on request.

(4) *CONFLICTS OF INTEREST.*—Each registered digital commodity broker and digital commodity dealer shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards—

(i) to minimize conflicts of interest that might potentially bias the judgment or supervision of the digital commodity broker or digital commodity dealer, respectively, and contravene the principles of fair and equitable trading and the business conduct standards described in this Act, including conflicts arising out of transactions or arrangements with affiliates (including affiliates acting as digital asset issuers, digital commodity dealers, or qualified digital commodity custodians), which may include information partitions and the legal separation of different digital commodity transaction intermediaries; and

(ii) to ensure that the activities of any person within the digital commodity broker or digital commodity dealer relating to research or analysis of the price or market for any digital commodity or acting in a role of providing exchange activities or making determinations as to accepting exchange customers are separated by appropriate informational partitions within the digital commodity broker or digital commodity dealer from the review, pressure, or oversight of persons whose involvement in pricing, trading, exchange, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

(B) address such other issues as the Commission determines to be appropriate.

(5) *ANTITRUST CONSIDERATIONS.*—Unless necessary or appropriate to achieve the purposes of this Act, a digital commodity broker or digital commodity dealer shall not—

(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

- (B) impose any material anticompetitive burden on trading or clearing.
- (j) **DESIGNATION OF CHIEF COMPLIANCE OFFICER.**—
- (1) **IN GENERAL.**—Each registered digital commodity broker and registered digital commodity dealer shall designate an individual to serve as a chief compliance officer.
- (2) **DUTIES.**—The chief compliance officer shall—
- (A) report directly to the board or to the senior officer of the registered digital commodity broker or registered digital commodity dealer;
- (B) review the compliance of the registered digital commodity broker or registered digital commodity dealer with respect to the registered digital commodity broker and registered digital commodity dealer requirements described in this section;
- (C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;
- (D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;
- (E) ensure compliance with this Act (including regulations), including each rule prescribed by the Commission under this section;
- (F) establish procedures for the remediation of non-compliance issues identified by the chief compliance officer through any—
- (i) compliance office review;
 - (ii) look-back;
 - (iii) internal or external audit finding;
 - (iv) self-reported error; or
 - (v) validated complaint; and
- (G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.
- (3) **ANNUAL REPORTS.**—
- (A) **IN GENERAL.**—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—
- (i) the compliance of the registered digital commodity broker or registered digital commodity dealer with respect to this Act (including regulations); and
 - (ii) each policy and procedure of the registered digital commodity broker or registered digital commodity dealer of the chief compliance officer (including the code of ethics and conflict of interest policies).
- (B) **REQUIREMENTS.**—The chief compliance officer shall ensure that a compliance report under subparagraph (A)—
- (i) accompanies each appropriate financial report of the registered digital commodity broker or registered digital commodity dealer that is required to be furnished to the Commission pursuant to this section; and
 - (ii) includes a certification that, under penalty of law, the compliance report is accurate and complete.

*(k) SEGREGATION OF DIGITAL COMMODITIES.—**(1) HOLDING OF CUSTOMER ASSETS.—*

(A) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in customer access to the money, assets, and property of the customer.

(B) QUALIFIED DIGITAL COMMODITY CUSTODIAN.—Each registered digital commodity broker and registered digital commodity dealer shall hold in a qualified digital commodity custodian each unit of a digital commodity that is—

(i) the property of a customer or counterparty of the digital commodity broker or digital commodity dealer, respectively; or

(ii) otherwise so required by the Commission to reasonably protect customers or promote the public interest.

(2) SEGREGATION OF FUNDS.—

(A) IN GENERAL.—Each registered digital commodity broker and registered digital commodity dealer shall treat and deal with all money, assets, and property that is received by the registered digital commodity broker or registered digital commodity dealer, or accrues to a customer as the result of trading in digital commodities, as belonging to the customer.

(B) COMMINGLING PROHIBITED.—

(i) IN GENERAL.—Except as provided in clause (ii), each registered digital commodity broker and registered digital commodity dealer shall separately account for money, assets, and property of a digital commodity customer, and shall not commingle any such money, assets, or property with the funds of the digital commodity broker or digital commodity dealer, respectively, or use any such money, assets, or property to margin, secure, or guarantee any trades or accounts of any customer or person other than the person for whom the money, assets, or property are held.

*(ii) EXCEPTIONS.—**(I) USE OF FUNDS.—*

(aa) IN GENERAL.—A registered digital commodity broker or registered digital commodity dealer may, for convenience, commingle and deposit in the same account or accounts with any bank, trust company, derivatives clearing organization, or qualified digital commodity custodian money, assets, and property of customers.

(bb) WITHDRAWAL.—The share of the money, assets, and property described in item (aa) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a contract for sale of a digital commodity with a registered entity may be withdrawn and applied to such purposes, in-

cluding the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the contract.

(II) COMMISSION ACTION.—In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of the customers of a registered digital commodity broker or registered digital commodity dealer may be commingled and deposited in customer accounts with any other money, assets, or property received by the digital commodity broker or digital commodity dealer, respectively, and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital commodity broker or digital commodity dealer, respectively.

(3) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation allow.

(4) CUSTOMER PROTECTION DURING BANKRUPTCY.—

(A) CUSTOMER PROPERTY.—All money, assets, or property described in paragraph (2) shall be considered customer property for purposes of section 761 of title 11, United States Code.

(B) TRANSACTIONS.—A transaction involving a unit of a digital commodity occurring with a digital commodity dealer shall be considered a “contract for the purchase or sale of a commodity for future delivery, on or subject to the rules of, a contract market or board of trade” for purposes of the definition of a “commodity contract” in section 761 of title 11, United States Code.

(C) BROKERS AND DEALERS.—A registered digital commodity dealer and a registered digital commodity broker shall be considered a futures commission merchant for purposes of section 761 of title 11, United States Code.

(D) ASSETS REMOVED FROM SEGREGATION.—Assets removed from segregation due to a customer election under paragraph (5) shall not be considered customer property for purposes of section 761 of title 11, United States Code.

(5) MISUSE OF CUSTOMER PROPERTY.—

(A) IN GENERAL.—It shall be unlawful—

(i) for any digital commodity broker or digital commodity dealer that has received any customer money, assets, or property for custody to dispose of, or use any such money, assets, or property as belonging to the digital commodity broker or digital commodity dealer, respectively; or

(ii) for any other person, including any depository, digital commodity exchange, other digital commodity broker, other digital commodity dealer, or digital commodity custodian that has received any customer

money, assets, or property for deposit, to hold, dispose of, or use any such money, assets, or property, as belonging to the depositing digital commodity broker or digital commodity dealer or any person other than the customers of the digital commodity broker or digital commodity dealer, respectively.

(B) *USE FURTHER DEFINED.*—For purposes of this section, “use” of a digital commodity includes utilizing any unit of a digital asset to participate in a blockchain service defined in paragraph (5) or a decentralized governance system associated with the digital commodity or the blockchain system to which the digital commodity relates in any manner other than that expressly directed by the customer from whom the unit of a digital commodity was received.

(6) *PARTICIPATION IN BLOCKCHAIN SERVICES.*—

(A) *IN GENERAL.*—A customer shall have the right to waive the restrictions in paragraph (1) for any unit of a digital commodity, by affirmatively electing, in writing to the digital commodity broker or digital commodity dealer, to waive the restrictions.

(B) *USE OF FUNDS.*—Customer digital commodities removed from segregation under subparagraph (A) may be pooled and used by the digital commodity broker or digital commodity dealer, or one of their designees, to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation in subparagraph (A) relates.

(C) *LIMITATIONS.*—The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this paragraph that are reasonably necessary to protect customers, including eligible contract participants, non-eligible contract participants, or any other class of customers.

(D) *BLOCKCHAIN SERVICE DEFINED.*—In this subparagraph, the term “blockchain service” means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.

(l) *FEDERAL PREEMPTION.*—Notwithstanding any other provision of law, the Commission shall have exclusive jurisdiction over any digital commodity broker or digital commodity dealer registered under this section.

(m) *EXEMPTIONS.*—In order to promote responsible economic or financial innovation and fair competition, or protect customers, the Commission may (on its own initiative or on application of the registered digital commodity broker or registered digital commodity dealer) exempt, unconditionally or on stated terms or conditions, or for stated periods, and retroactively or prospectively, or both, a registered digital commodity broker or registered digital commodity dealer from the requirements of this section, if the Commission determines that—

(1)(A) the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the exemption will not have a material adverse effect on the ability of the Commission or the digital commodity broker or digital commodity dealer to discharge regulatory duties under this Act; or

(2) the registered digital commodity broker or registered digital commodity dealer is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the registered digital commodity broker or registered digital commodity dealer, respectively.

(n) TREATMENT UNDER THE BANK SECRECY ACT.—A registered digital commodity broker and a registered digital commodity dealer shall be treated as a financial institution for purposes of the Bank Secrecy Act.

SEC. 4v. EXCLUSION FOR ANCILLARY ACTIVITIES.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, a person shall not be subject to this Act and the regulations promulgated under this Act solely based on the person undertaking any ancillary activities.

(b) EXCEPTIONS.—Subsection (a) shall not be construed to apply to the antimanipulation, antifraud, or false reporting enforcement authorities of the Commission.

(c) ANCILLARY ACTIVITIES DEFINED.—In this section, the term “ancillary activities” means any of the following activities related to the operation of a blockchain system:

(1) Compiling network transactions, operating a pool, relaying, searching, sequencing, validating, or acting in a similar capacity with respect to a digital commodity transaction.

(2) Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth, or other similar incidental services with respect to a digital commodity transaction.

(3) Providing a user interface that enables a user to read, and access data about a blockchain system, send messages, or otherwise interact with a blockchain system.

(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system.

(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy hardware or software, including wallets or other systems, facilitating an individual user’s own personal ability to keep, safeguard, or custody a user’s digital commodities or related private keys.

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SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

(a) ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.—

(1) IN GENERAL.—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections **5(d)** and **5b(c)(2)** *5(d)*, *5b(c)(2)*, and *5i(c)*, to describe what would constitute an acceptable business practice under such sections.

- (2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).
- (b) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—
- (1) IN GENERAL.—A contract market, *digital commodity exchange*, derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.
- (2) RESPONSIBILITY.—A contract market, *digital commodity exchange*, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.
- (3) NONCOMPLIANCE.—If a contract market, *digital commodity exchange*, derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this Act, the contract market, *digital commodity exchange*, derivatives transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.
- (c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—
- (1) IN GENERAL.—A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).
- (2) RULE REVIEW.—The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members *or participants* (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).
- (3) STAY OF CERTIFICATION FOR RULES.—
- (A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

- (i) withdraws the stay prior to that time; or
- (ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this Act (including regulations under this Act).

(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

(4) PRIOR APPROVAL.—

(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section **1a(10)** *1a(9)* (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(5) APPROVAL.—

(A) RULES.—The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this subtitle (including regulations).

(B) CONTRACTS AND INSTRUMENTS.—The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this Act (including regulations).

(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

- (i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section *1a(2)(i)*), by a designated contract market or swap execution facility, the Commission may determine that such agreements,

contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

- (I) activity that is unlawful under any Federal or State law;
- (II) terrorism;
- (III) assassination;
- (IV) war;
- (V) gaming; or
- (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

(iii) SWAPS CONTRACTS.—

(I) IN GENERAL.—In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

(II) REQUIREMENTS.—Any such criteria, conditions, or rules shall consider—

- (aa) the financial integrity of the derivatives clearing organization; and
- (bb) any other factors which the Commission determines may be appropriate.

(iv) DEADLINE.—The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.

(D) SPECIAL RULES FOR DIGITAL COMMODITY CONTRACTS.—In certifying any new rule or rule amendment, or listing any new contract or instrument, in connection with a contract of sale of a commodity for future delivery, option, swap, or other agreement, contract, or transaction, that is based on or references a digital commodity, a registered entity shall make or rely on a certification under subsection (d) for the digital commodity.

(d) CERTIFICATIONS FOR DIGITAL COMMODITY TRADING.—

(1) IN GENERAL.—Notwithstanding subsection (c), for the purposes of listing or offering a digital commodity for trading in a digital commodity cash or spot market, an eligible entity shall issue a written certification that the digital commodity meets the requirements of this Act (including regulations thereunder).

(2) CONTENTS OF THE CERTIFICATION.—

(A) IN GENERAL.—In making a written certification under this paragraph, the eligible entity shall furnish to the Commission—

(i) an analysis of how the digital commodity meets the requirements of section 5i(c)(3);

(ii) information about the digital commodity regarding—

(I) its purpose and use;

(II) its unit creation or release process;

(III) its consensus mechanism;

(IV) its governance structure;

(V) its participation and distribution; and

(VI) its current and proposed functionality; and

(iii) any other information, analysis, or documentation the Commission may, by rule, require.

(B) *RELIANCE ON PRIOR DISCLOSURES.*—In making a certification under this subsection, an eligible entity may rely on the records and disclosures of any relevant person registered with the Securities and Exchange Commission or other State or Federal agency.

(3) *MODIFICATIONS.*—

(A) *IN GENERAL.*—An eligible entity shall modify a certification made under paragraph (1) to—

(i) account for significant changes in any information provided to the Commission under paragraph (2)(A)(ii); or

(ii) permit or restrict trading in units of a digital commodity asset held by a related person or an affiliated person.

(B) *RECERTIFICATION.*—Modifications required by this subsection shall be subject to the same disapproval and review process as a new certification under paragraphs (4) and (5).

(4) *DISAPPROVAL.*—

(A) *IN GENERAL.*—The written certification described in paragraph (1) shall become effective unless the Commission finds that the digital asset does not meet the requirements of this Act or the rules and regulations thereunder.

(B) *ANALYSIS REQUIRED.*—The Commission shall include, with any findings referred to in subparagraph (A), a detailed analysis of the factors on which the decision was based.

(C) *PUBLIC FINDINGS.*—The Commission shall make public any disapproval decision, and any related findings and analysis, made under this paragraph.

(5) *REVIEW.*—

(A) *IN GENERAL.*—Unless the Commission makes a disapproval decision under paragraph (4), the written certification described in paragraph (1) shall become effective, pursuant to the certification by the eligible entity and notice of the certification to the public (in a manner determined by the Commission) on the date that is—

(i) 20 business days after the date the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation), in the case of a digital commodity that has not been certified under this section or for which a certification is being modified under paragraph (3); or

(ii) 2 business days after the date the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) for any digital commodity that has been certified under this section.

(B) *EXTENSIONS.*—The time for consideration under subparagraph (A) may be extended through notice to the eligible entity that there are novel or complex issues that require additional time to analyze, that the explanation by the submitting eligible entity is inadequate, or of a potential inconsistency with this Act—

(i) once, for 30 business days, through written notice to the eligible entity by the Chairman; and

(ii) once, for an additional 30 business days, through written notice to the digital commodity exchange from the Commission that includes a description of any deficiencies with the certification, including any—

(I) novel or complex issues which require additional time to analyze;

(II) missing information or inadequate explanations; or

(III) potential inconsistencies with this Act.

(6) *CERTIFICATION REQUIRED.*—Notwithstanding any other requirement of this Act, a registered entity or other entity registered with the Commission shall not list for trading, accept for clearing, offer to enter into, enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a digital asset, unless a certification has been made under this section for the digital asset.

(7) *ELIGIBLE ENTITY DEFINED.*—In this subsection, the term “eligible entity” means a registered entity or group of registered entities acting jointly.

(e) *RESERVATION OF EMERGENCY AUTHORITY.*—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9).

(f) Consistent with this Act, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof) with respect to the application of—

(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 4d(e) involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and national securities exchanges registered pursuant to section 6(g) of such Act involving security futures products.

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SEC. 5i. REGISTRATION OF DIGITAL COMMODITY EXCHANGES.**(a) IN GENERAL.—****(1) REGISTRATION.—**

(A) IN GENERAL.—A trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity shall register with the Commission as a digital commodity exchange.

(B) APPLICATION.—A person desiring to register as a digital commodity exchange shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

(C) EXEMPTIONS.—A trading facility that offers or seeks to offer a cash or spot market in at least 1 digital commodity shall not be required to register under this section if the trading facility—

(i) permits no more than a de minimis amount of trading activity; or

(ii) serves only customers in a single State or territory.

(2) ADDITIONAL REGISTRATIONS.—**(A) WITH THE COMMISSION.—**

(i) **IN GENERAL.—**A registered digital commodity exchange may also register as—

(I) a designated contract market; or

(II) a swap execution facility.

(ii) **RULES.—**For an entity with multiple registrations under clause (i), the Commission—

(I) shall prescribe rules to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would foster the development of fair and orderly cash or spot markets in digital commodities, be necessary or appropriate in the public interest, and be consistent with the protection of customers; and

(II) may, after an analysis of the risks and benefits, prescribe rules to provide for portfolio margining, as may be necessary to protect market participants, promote fair and equitable trading in digital commodity markets, and promote responsible economic or financial innovation.

(B) WITH THE SECURITIES AND EXCHANGE COMMISSION.—A registered digital commodity exchange may register with the Securities and Exchange Commission as a digital asset trading system to list or trade contracts of sale for digital assets deemed securities.

(C) WITH A REGISTERED FUTURES ASSOCIATION.—

(i) **IN GENERAL.—**A registered digital commodity exchange shall also be a member of a registered futures association and comply with rules related to such activity, if the registered digital commodity exchange accepts customer funds required to be segregated under subsection (d).

(ii) *RULEMAKING REQUIRED.*—The Commission shall require any registered futures association with a digital commodity exchange as a member to provide such rules as may be necessary to further compliance with subsection (d), protect customers, and promote the public interest.

(D) *REGISTRATION REQUIRED.*—A person required to be registered as a digital commodity exchange under this section shall register with the Commission as such regardless of whether the person is registered as such with another State or Federal regulator.

(b) *TRADING.*—

(1) *PROHIBITION ON CERTAIN TRADING PRACTICES.*—

(A) Section 4b shall apply to any agreement, contract, or transaction in a digital commodity as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

(B) Section 4c shall apply to any agreement, contract, or transaction in a digital commodity as if the agreement, contract, or transaction were a transaction involving the purchase or sale of a commodity for future delivery.

(2) *PROHIBITION ON ACTING AS A COUNTERPARTY.*—A registered digital commodity exchange or any affiliate of such an exchange shall not act as counterparty to any transaction executed on or subject to the rules of the registered digital commodity exchange.

(3) *TRADING SECURITIES.*—A registered digital commodity exchange that is also registered with the Securities and Exchange Commission may offer a contract of sale of a digital asset deemed a security.

(4) *RULES FOR CERTAIN DIGITAL ASSET SALES.*—The digital commodity exchange shall have in place such rules as may be necessary to reasonably ensure the orderly sale of any unit of a digital commodity sold by a related person or an affiliated person.

(c) *CORE PRINCIPLES FOR DIGITAL COMMODITY EXCHANGES.*—

(1) *COMPLIANCE WITH CORE PRINCIPLES.*—

(A) *IN GENERAL.*—To be registered, and maintain registration, as a digital commodity exchange, a digital commodity exchange shall comply with—

(i) the core principles described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

(B) *REASONABLE DISCRETION OF A DIGITAL COMMODITY EXCHANGE.*—Unless otherwise determined by the Commission by rule or regulation, a digital commodity exchange described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the digital commodity exchange complies with the core principles described in this subsection.

(2) *COMPLIANCE WITH RULES.*—A digital commodity exchange shall—

(A) establish and enforce compliance with any rule of the digital commodity exchange, including—

(i) the terms and conditions of the trades traded or processed on or through the digital commodity exchange; and

(ii) any limitation on access to the digital commodity exchange;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

(i) to provide market participants with impartial access to the market; and

(ii) to capture information that may be used in establishing whether rule violations have occurred; and

(C) establish rules governing the operation of the exchange, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility.

(3) LISTING STANDARDS FOR DIGITAL COMMODITIES.—

(A) IN GENERAL.—A digital commodity exchange shall permit trading only in a digital commodity that is not readily susceptible to manipulation.

(B) PUBLIC INFORMATION REQUIREMENTS.—

(i) IN GENERAL.—A digital commodity exchange shall permit trading only in a digital commodity if the information required in clause (ii) is correct, current, and available to the public.

(ii) REQUIRED INFORMATION.—With respect to a digital commodity and each blockchain system to which the digital commodity relates for which the digital commodity exchange will make the digital commodity available to the customers of the digital commodity exchange, the information required in this clause is as follows:

(I) SOURCE CODE.—The source code for any blockchain system to which the digital commodity relates.

(II) TRANSACTION HISTORY.—A narrative description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital commodity relates.

(III) DIGITAL ASSET ECONOMICS.—A narrative description of the purpose of any blockchain system to which the digital asset relates and the operation of any such blockchain system, including—

(aa) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

(bb) information detailing any applicable consensus mechanism or process for validating transactions, method of generating or mining

digital assets, and any process for burning or destroying digital assets on the blockchain system;

(cc) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of the digital assets; and

(dd) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

(IV) ADDITIONAL INFORMATION.—Such additional information as the Commission may, by rule, determine to be necessary for a customer to understand the financial and operational risks of a digital commodity, and to be in the public interest or in furtherance of the requirements of this Act.

(C) ADDITIONAL LISTING CONSIDERATIONS.—In addition to the requirements of subparagraphs (A) and (B), a digital commodity exchange shall consider—

(i) if a sufficient percentage of the units of the digital asset are units of a digital commodity to permit robust price discovery;

(ii) if it is reasonably unlikely that the transaction history can be fraudulently altered by any person or group of persons acting collectively;

(iii) if the operating structure and system of the digital commodity is secure from cybersecurity threats;

(iv) if the functionality of the digital commodity will protect holders from operational failures;

(v) if sufficient public information about the operation, functionality, and use of the digital commodity is available; and

(vi) any other factor which the Commission has, by rule, determined to be in the public interest or in furtherance of the requirements of this Act.

(D) RESTRICTED DIGITAL ASSETS.—A digital commodity exchange shall not permit the trading of a unit of a digital asset that is a restricted digital asset.

(4) TREATMENT OF CUSTOMER ASSETS.—A digital commodity exchange shall establish standards and procedures that are designed to protect and ensure the safety of customer money, assets, and property.

(5) MONITORING OF TRADING AND TRADE PROCESSING.—

(A) IN GENERAL.—A digital commodity exchange shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading on the exchange.

(B) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—A digital commodity exchange shall establish and enforce rules—

(i) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

(ii) to promote fair and equitable trading on the exchange.

(C) **TRADING PROCEDURES.**—A digital commodity exchange shall—

(i) establish and enforce rules or terms and conditions defining, or specifications detailing—

(I) trading procedures to be used in entering and executing orders traded on or through the facilities of the digital commodity exchange; and

(II) procedures for trade processing of digital commodities on or through the facilities of the digital commodity exchange; and

(ii) monitor trading in digital commodities to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(6) **ABILITY TO OBTAIN INFORMATION.**—A digital commodity exchange shall—

(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

(B) provide the information to the Commission on request; and

(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(7) **EMERGENCY AUTHORITY.**—A digital commodity exchange shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission or a registered entity, as is necessary and appropriate, including the authority to facilitate the liquidation or transfer of open positions in any digital commodity or to suspend or curtail trading in a digital commodity.

(8) **TIMELY PUBLICATION OF TRADING INFORMATION.**—

(A) **IN GENERAL.**—A digital commodity exchange shall make public timely information on price, trading volume, and other trading data on digital commodities to the extent prescribed by the Commission.

(B) **CAPACITY OF DIGITAL COMMODITY EXCHANGE.**—A digital commodity exchange shall have the capacity to electronically capture and transmit trade information with respect to transactions executed on the exchange.

(9) **RECORDKEEPING AND REPORTING.**—

(A) **IN GENERAL.**—A digital commodity exchange shall—

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate

for the Commission to perform the duties of the Commission under this Act; and

(iii) keep any such records of digital commodities which relate to a security open to inspection and examination by the Securities and Exchange Commission.

(B) *INFORMATION SHARING.*—Subject to section 8, and on request, the Commission shall share information collected under subparagraph (A) with—

- (i) the Board;
- (ii) the Securities and Exchange Commission;
- (iii) each appropriate Federal banking agency;
- (iv) each appropriate State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act);
- (v) the Financial Stability Oversight Council;
- (vi) the Department of Justice; and
- (vii) any other person that the Commission determines to be appropriate, including—
 - (I) foreign financial supervisors (including foreign futures authorities);
 - (II) foreign central banks; and
 - (III) foreign ministries.

(C) *CONFIDENTIALITY AGREEMENT.*—Before the Commission may share information with any entity described in subparagraph (B), the Commission shall receive a written agreement from the entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on digital commodities that is provided.

(D) *PROVIDING INFORMATION.*—A digital commodity exchange shall provide to the Commission (including any designee of the Commission) information under subparagraph (A) in such form and at such frequency as is required by the Commission.

(10) *ANTITRUST CONSIDERATIONS.*—Unless necessary or appropriate to achieve the purposes of this Act, a digital commodity exchange shall not—

- (A) adopt any rules or take any actions that result in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading.

(11) *CONFLICTS OF INTEREST.*—A registered digital commodity exchange shall implement conflict-of-interest systems and procedures that—

- (A) establish structural and institutional safeguards—
 - (i) to minimize conflicts of interest that might potentially bias the judgment or supervision of the digital commodity exchange and contravene the principles of fair and equitable trading and the business conduct standards described in this Act, including conflicts arising out of transactions or arrangements with affiliates (including affiliates engaging in digital commodity activities) which may include information partitions and the legal separation of different persons or entities involved in digital commodity activities; and

(ii) to ensure that the activities of any person within the digital commodity exchange or any affiliated entity relating to research or analysis of the price or market for any digital commodity or acting in a role of providing dealing, brokering, or advising activities are separated by appropriate informational partitions within the digital commodity exchange or any affiliated entity from the review, pressure, or oversight of persons whose involvement in pricing, trading, exchange, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

(B) address such other issues as the Commission determines to be appropriate.

(12) FINANCIAL RESOURCES.—

(A) IN GENERAL.—A digital commodity exchange shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the digital commodity exchange.

(B) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—A digital commodity exchange shall possess financial resources that, at a minimum, exceed the total amount that would enable the digital commodity exchange to conduct an orderly wind-down of its activities.

(13) DISCIPLINARY PROCEDURES.—A digital commodity exchange shall establish and enforce disciplinary procedures that authorize the digital commodity exchange to discipline, suspend, or expel members or market participants that violate the rules of the digital commodity exchange, or similar methods for performing the same functions, including delegation of the functions to third parties.

(14) GOVERNANCE FITNESS STANDARDS.—

(A) GOVERNANCE ARRANGEMENTS.—A digital commodity exchange shall establish governance arrangements that are transparent to fulfill public interest requirements.

(B) FITNESS STANDARDS.—A digital commodity exchange shall establish and enforce appropriate fitness standards for—

(i) directors; and

(ii) any individual or entity with direct access to, or control of, customer assets.

(15) SYSTEM SAFEGUARDS.—A digital commodity exchange shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational and security risks, through the development of appropriate controls and procedures, and automated systems, that—

(i) are reliable and secure; and

(ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

(i) the timely recovery and resumption of operations;
and

(ii) the fulfillment of the responsibilities and obligations of the digital commodity exchange; and

(C) periodically conduct tests to verify that the backup resources of the digital commodity exchange are sufficient to ensure continued—

(i) order processing and trade matching;

(ii) price reporting;

(iii) market surveillance; and

(iv) maintenance of a comprehensive and accurate audit trail.

(d) *HOLDING OF CUSTOMER ASSETS.*—

(1) *IN GENERAL.*—A digital commodity exchange shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

(A) *SEGREGATION OF FUNDS.*—

(i) *IN GENERAL.*—A digital commodity exchange shall treat and deal with all money, assets, and property that is received by the digital commodity exchange, or accrues to a customer as the result of trading in digital commodities, as belonging to the customer.

(ii) *COMMINGLING PROHIBITED.*—Money, assets, and property of a customer described in clause (i) shall be separately accounted for and shall not be commingled with the funds of the digital commodity exchange or be used to margin, secure, or guarantee any trades or accounts of any customer or person other than the person for whom the same are held.

(B) *EXCEPTIONS.*—

(i) *USE OF FUNDS.*—

(I) *IN GENERAL.*—Notwithstanding subparagraph (A), money, assets, and property of customers of a digital commodity exchange described in subparagraph (A) may, for convenience, be commingled and deposited in the same account or accounts with any bank, trust company, derivatives clearing organization, or qualified digital commodity custodian.

(II) *WITHDRAWAL.*—Notwithstanding subparagraph (A), such share of the money, assets, and property described in item (aa) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a contract of sale of a digital commodity with a registered entity may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the contract of sale of a digital commodity.

(ii) *COMMISSION ACTION.*—Notwithstanding subparagraph (A), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of the cus-

tomers of a digital commodity exchange described in subparagraph (A) may be commingled and deposited in customer accounts with any other money, assets, or property received by the digital commodity exchange and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital commodity exchange.

(2) **PERMITTED INVESTMENTS.**—Money described in subparagraph (A) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(3) **CUSTOMER PROTECTION DURING BANKRUPTCY.**—

(A) **CUSTOMER PROPERTY.**—All assets held on behalf of a customer by a digital commodity exchange, and all money, assets, and property of any customer received by a digital commodity exchange registered under section 5i of this Act for trading or custody, or to facilitate, margin, guarantee, or secure contracts of sale of a digital commodity (including money, assets, or property accruing to the customer as the result of the transactions), shall be considered customer property for purposes of section 761 of title 11, United States Code.

(B) **TRANSACTIONS.**—A transaction involving a unit of a digital commodity occurring on or subject to the rules of a digital commodity exchange shall be considered a “contract for the purchase or sale of a commodity for future delivery, on or subject to the rules of, a contract market or board of trade” for the purposes of the definition of a “commodity contract” in section 761 of title 11, United States Code.

(C) **EXCHANGES.**—A digital commodity exchange shall be considered a futures commission merchant for purposes of section 761 of title 11, United States Code.

(4) **MISUSE OF CUSTOMER PROPERTY.**—

(A) **IN GENERAL.**—It shall be unlawful—

(i) for any digital commodity exchange that has received any customer money, assets, or property for custody to dispose of, or use any such money, assets, or property as belonging to the digital commodity exchange; or

(ii) for any other person, including any depository, other digital commodity exchange, or digital commodity custodian that has received any customer money, assets, or property for deposit, to hold, dispose of, or use any such money, assets, or property, or property, as belonging to the depositing digital commodity exchange or any person other than the customers of the digital commodity exchange.

(B) **USE FURTHER DEFINED.**—For purposes of this section, “use” of a digital commodity includes utilizing any unit of a digital asset to participate in a blockchain service defined

in paragraph (5) or a decentralized governance system associated with the digital commodity or the blockchain system to which the digital commodity relates in any manner other than that expressly directed by the customer from whom the unit of a digital commodity was received.

(5) **PARTICIPATION IN BLOCKCHAIN SERVICES.**—

(A) **IN GENERAL.**—*A customer shall have the right to waive the restrictions in paragraph (1) for any unit of a digital commodity, by affirmatively electing, in writing to the digital commodity exchange, to waive the restrictions.*

(B) **USE OF FUNDS.**—*Customer digital commodities removed from segregation under subparagraph (A) may be pooled and used by the digital commodity exchange or its designee to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation in subparagraph (A) relates.*

(C) **LIMITATIONS.**—*The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this paragraph that are reasonably necessary to protect customers, including eligible contract participants, non-eligible contract participants, or any other class of customers.*

(D) **BLOCKCHAIN SERVICE DEFINED.**—*In this subparagraph, the term “blockchain service” means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.*

(e) **MARKET ACCESS REQUIREMENTS.**—

(1) **IN GENERAL.**—*A digital commodity exchange shall require any person who is not an eligible contract participant to access trading on the exchange through a digital commodity broker.*

(2) **AFFILIATED COMMODITY BROKERS.**—*A registered digital commodity exchange may maintain an affiliated digital commodity broker to facilitate access to the digital commodity exchange, if—*

(A) *no other digital commodity brokers are permitted to facilitate access to the exchange;*

(B) *the affiliated digital commodity broker limits its activities only to providing customer access to the digital commodity exchange; and*

(C) *the affiliated digital commodity broker is not also registered as a digital commodity dealer.*

(3) **DIRECT ACCESS FOR ELIGIBLE CONTRACT PARTICIPANTS.**—*Nothing in this section shall prohibit a digital commodity exchange in compliance with this section from permitting direct access for eligible contract participants.*

(4) **ADDITIONAL REQUIREMENTS.**—

(A) **IN GENERAL.**—*The Commission may, by rule, impose any additional requirements related to the operations and activities of the digital commodity exchange and the affiliated digital commodity broker necessary to protect market participants, promote fair and equitable trading on the dig-*

ital commodity exchange, and promote responsible economic or financial innovation.

(B) *DELEGATION OF AUTHORITY.*—The Commission may delegate to a registered futures association such oversight and regulatory requirements as the Commission determines are necessary to—

(i) supervise the activities of the digital commodity exchange and an affiliated digital commodity broker; and

(ii) protect market participants, promote fair and equitable trading on the digital commodity exchange, and promote responsible economic or financial innovation.

(f) *DESIGNATION OF CHIEF COMPLIANCE OFFICER.*—

(1) *IN GENERAL.*—A digital commodity exchange shall designate an individual to serve as a chief compliance officer.

(2) *DUTIES.*—The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the exchange;

(B) review compliance with the core principles in this subsection;

(C) in consultation with the board of the exchange, a body performing a function similar to that of a board, or the senior officer of the exchange, resolve any conflicts of interest that may arise;

(D) establish and administer the policies and procedures required to be established pursuant to this section;

(E) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

(F) establish procedures for the remediation of non-compliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

(3) *REQUIREMENTS FOR PROCEDURES.*—In establishing procedures under paragraph (2)(F), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(4) *ANNUAL REPORTS.*—

(A) *IN GENERAL.*—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the digital commodity exchange with this Act; and

(ii) the policies and procedures, including the code of ethics and conflict of interest policies, of the digital commodity exchange.

(B) *REQUIREMENTS.*—The chief compliance officer shall—

(i) submit each report described in subparagraph (A) with the appropriate financial report of the digital commodity exchange that is required to be submitted to the Commission pursuant to this section; and

(ii) include in the report a certification that, under penalty of law, the report is accurate and complete.

(g) *APPOINTMENT OF TRUSTEE.*—

(1) *IN GENERAL.*—If a proceeding under section 5e results in the suspension or revocation of the registration of a digital commodity exchange, or if a digital commodity exchange withdraws from registration, the Commission, on notice to the digital commodity exchange, may apply to the appropriate United States district court where the digital commodity exchange is located for the appointment of a trustee.

(2) *ASSUMPTION OF JURISDICTION.*—If the Commission applies for appointment of a trustee under paragraph (1)—

(A) the court may take exclusive jurisdiction over the digital commodity exchange and the records and assets of the digital commodity exchange, wherever located; and

(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the digital commodity exchange in an orderly manner for the protection of customers subject to such terms and conditions as the court may prescribe.

(h) *QUALIFIED DIGITAL COMMODITY CUSTODIAN.*—A digital commodity exchange shall hold in a qualified digital commodity custodian each unit of a digital commodity that is—

(1) the property of a customer of the digital commodity exchange;

(2) required to be held by the digital commodity exchange under subsection (c)(12) of this section; or

(3) otherwise so required by the Commission to reasonably protect customers or promote the public interest.

(i) *EXEMPTIONS.*—In order to promote responsible economic or financial innovation and fair competition, or protect customers, the Commission may (on its own initiative or on application of the registered digital commodity exchange) exempt, either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, a registered digital commodity exchange from the requirements of this section, if the Commission determines that—

(1)(A) the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the exemption will not have a material adverse effect on the ability of the Commission or the digital commodity exchange to discharge regulatory or self-regulatory duties under this Act; or

(2) the digital commodity exchange is subject to comparable, comprehensive supervision and regulation by the appropriate government authorities in the home country of the exchange.

(j) *CUSTOMER DEFINED.*—In this section, the term “customer” means any person that maintains an account for the trading of digital commodities directly with a digital commodity exchange (other than a person that is owned or controlled, directly or indirectly, by the digital commodity exchange) for its own behalf or on behalf of other any person.

(k) *FEDERAL PREEMPTION.*—Notwithstanding any other provision of law, the Commission shall have exclusive jurisdiction over any digital commodity exchange registered under this section.

(l) *TREATMENT UNDER THE BANK SECRECY ACT.*—A registered digital commodity exchange shall be treated as a financial institution for purposes of the Bank Secrecy Act.

SEC. 5j. QUALIFIED DIGITAL COMMODITY CUSTODIANS.

(a) *IN GENERAL.*—For purposes of this Act, a qualified digital commodity custodian is a digital commodity custodian who meets the following conditions:

(1) *SUPERVISION.*—The digital commodity custodian is subject to adequate supervision and appropriate regulation.

(2) *NO PROHIBITION.*—The digital commodity custodian is—

(A) subject to the supervision of—

(i) an appropriate Federal banking agency;

(ii) a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act); or

(iii) an appropriate foreign governmental authority in the home country of the digital commodity custodian; and

(B) not prohibited by the applicable supervisor referred to in subparagraph (A) from engaging in any activity with respect to the holding of digital commodities.

(3) *INFORMATION SHARING.*—

(A) *IN GENERAL.*—The digital commodity custodian agrees to such periodic sharing of information regarding customer accounts the digital commodity custodian holds on behalf of an entity registered with the Commission, as the Commission determines by rule shall be reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.

(B) *PROVISION OF INFORMATION.*—Any person that is subject to regulation and examination by a prudential regulator may satisfy any information request described in subparagraph (A), by providing the Commission with a detailed listing, in writing, of the digital commodities of a customer within the custody or use of the person.

(b) *ADEQUATE SUPERVISION AND APPROPRIATE REGULATION FURTHER DEFINED.*—

(1) *IN GENERAL.*—In subsection (a), the terms “adequate supervision” and “appropriate regulation” mean such minimum standards for supervision and regulation as are reasonably necessary to protect the digital commodities of customers of an entity registered with the Commission, including minimum standards relating to—

(A) accessibility of customer assets;

(B) financial resources;

(C) risk management requirements;

(D) governance arrangements;

(E) fitness standards;

(F) recordkeeping;

(G) information sharing; and

(H) conflicts of interest.

(2) *DEEMED COMPLIANCE.*—For purposes of subsection (a), a bank subject to the supervision of an appropriate Federal banking agency or a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act) is deemed to be subject to adequate supervision and appropriate regulation.

(3) *RULEMAKING AUTHORITY.*—For purposes of subsection (a), the Commission, by rule or order, may further define the terms “adequate supervision” and “appropriate regulation” as necessary in the public interest, as appropriate for the protection of customers, and consistent with the purposes of this Act.

(c) *AUTHORITY TO TEMPORARILY SUSPEND STANDARDS.*—The Commission may, by rule or order, temporarily suspend, in whole or in part, any requirement imposed under, or any standard referred to in, this section if the Commission determines that the suspension would be consistent with the public interest and the purposes of this Act.

SEC. 6. (a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this Act, and with a sufficient assurance that it will continue to comply with the the requirements of this Act. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed 6 months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that the contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government, made a condition of its designation or registration as set forth in sections 5 through 5b or section 5f, or that the contract market or derivatives transaction execution facility or electronic trading facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set

aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

(C) GOOD FAITH MISTAKES.—Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).

(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

(3) OTHER MANIPULATION.—In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

(4) ENFORCEMENT.—

(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

- (i) contain a description of the charges against the person that is the subject of the complaint; and
- (ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

(C) HEARING.—A hearing described in subparagraph (B)(ii)—

- (i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);
- (ii) shall require the person to show cause regarding why—

(I) an order should not be made—

(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

(iii) may be held before—

(I) the Commission; or

(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is re-

corded in written form and submitted to the Commission.

(5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

(6) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

(7) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

(8) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

(9) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

(10) EVIDENCE.—On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

(C) assess such person—

(i) a civil penalty of not more than an amount equal to the greater of—

(I) \$140,000; or

(II) triple the monetary gain to such person for each such violation; or

(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

(I) \$1,000,000; or

(II) triple the monetary gain to the person for each such violation; and

(D) require restitution to customers of damages proximately caused by violations of the person.

(11) ORDERS.—

(A) NOTICE.—The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

- (i) registered mail;
- (ii) certified mail; or
- (iii) personal delivery.

(B) REVIEW.—

(i) IN GENERAL.—A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

(I) for the circuit in which the petitioner carries out the business of the petitioner; or

(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

(C) PROCEDURE.—

(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.

(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an

order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of \$140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): *Provided*, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c).

(e)(1) In determining the amount of the money penalty assessed under subsection (c), the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under subsection (c) shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by subsection (c) has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under subsection (c) takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).

(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).

(f)(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(g) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to ~~section 4k(6)~~ *section 4k(7)*, or any board of trade designated as a contract market pursuant to section 5f.

* * * * *

SEC. 6c. (a) Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery or any swap, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, as-

sets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this Act shall be issued ex parte by said court.

(b) Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take action as is necessary to remove the danger of violation of this Act or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte.

(d) CIVIL PENALTIES.—

(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

(A) a civil penalty in the amount of not more than the greater of \$100,000 or triple the monetary gain to the person for each violation; or

(B) in any case of manipulation or attempted manipulation in violation of section 6(c), 6(d), or 9(a)(2), a civil penalty in the amount of not more than the greater of \$1,000,000 or triple the monetary gain to the person for each violation.

(2) If a person on whom such a penalty is imposed fails to pay the penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover the penalty by action in the appropriate United States district court.

(3) EQUITABLE REMEDIES.—In any action brought under this section, the Commission may seek, and the court may impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

(B) disgorgement of gains received in connection with such violation.

(e) Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(f) In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action.

(g) Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

(h) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to ~~section 4k(6)~~ *section 4k(7)*, or any board of trade designated as a contract market pursuant to section 5f.

* * * * *

SEC. 8. (a)(1) For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—
 (i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this Act; or
 (ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding involving a receiver appointed in a judicial proceeding commenced by the United States or the Commission, or in any proceeding under title 11 of the United States Code in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this Act, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover operations by such agencies. The Commission and the Department of Justice shall assess the effectiveness of such undercover operations and, within two years of the date of enactment of the Futures Trading Practices Act of 1992, shall recommend to Congress any additional undercover or other authority for the Commission that the Commission or the Department of Justice believes to be necessary.

(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to ~~section 4k(6)~~ *section 4k(7)*, or any board of trade designated as a contract market pursuant to section 5f.

(b) The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, in an administrative or judicial proceeding brought under this Act, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code. This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.

(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any registered entity or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

(d) The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. However, any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such foreign futures authority, department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a foreign futures authority or to a department, central bank and ministries, or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department, central bank and ministries, or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority is a party.

(f) The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpoena or summons to such person, and

(2) at least fourteen days have expired from the date of such mailing of the subpoena or summons, or such other notice. This subsection shall not apply to congressional subpoenas or congressional requests for information.

(g) The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

(h) The Commission shall submit to Congress a written report within one hundred and twenty days after the end of each fiscal year detailing the operations of the Commission during such fiscal year. The Commission shall include in such report such information, data, and legislative recommendations as it deems advisable with respect to the administration of this Act and its powers and functions under this Act.

(i) The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

* * * * *

SEC. 18. (a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this Act.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

(c) *LABCFTC.*—

(1) *ESTABLISHMENT.*—*There is established in the Commission LabCFTC.*

(2) *PURPOSE.*—*The purposes of LabCFTC are to—*

(A) *promote responsible financial technology innovation and fair competition for the benefit of the American public;*

(B) serve as an information platform to inform the Commission about new financial technology innovation; and

(C) provide outreach to financial technology innovators to discuss their innovations and the regulatory framework established by this Act and the regulations promulgated thereunder.

(3) *DIRECTOR.*—LabCFTC shall have a Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. Notwithstanding section 2(a)(6)(A), the Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(4) *DUTIES.*—LabCFTC shall—

(A) advise the Commission with respect to rulemakings or other agency or staff action regarding financial technology;

(B) provide internal education and training to the Commission regarding financial technology;

(C) advise the Commission regarding financial technology that would bolster the Commission’s oversight functions;

(D) engage with academia, students, and professionals on financial technology issues, ideas, and technology relevant to activities under this Act;

(E) provide persons working in emerging technology fields with information on the Commission, its rules and regulations, and the role of a registered futures association; and

(F) encourage persons working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

(5) *ACCESS TO DOCUMENTS.*—The Commission shall ensure that LabCFTC has full access to the documents and information of the Commission and any self-regulatory organization or registered futures association, as necessary to carry out the functions of LabCFTC.

(6) *REPORT TO CONGRESS.*—

(A) *IN GENERAL.*—Not later than October 31 of each year after 2024, LabCFTC shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on its activities.

(B) *CONTENTS.*—Each report required under paragraph (1) shall include—

(i) the total number of persons that met with LabCFTC;

(ii) a summary of general issues discussed during meetings with the person;

(iii) information on steps LabCFTC has taken to improve Commission services, including responsiveness to the concerns of persons;

(iv) recommendations made to the Commission with respect to the regulations, guidance, and orders of the Commission and such legislative actions as may be appropriate; and

(v) any other information determined appropriate by the Director of LabCFTC.

(C) *CONFIDENTIALITY.*—A report under paragraph (A) shall abide by the confidentiality requirements in section 8.
 (7) *SYSTEMS OF RECORDS.*—

(A) *IN GENERAL.*—The Commission shall establish a detailed system of records (as defined in section 552a of title 5, United States Code) to assist LabCFTC in communicating with interested parties.

(B) *PERSONS COVERED BY THE SYSTEM.*—The persons covered by the system of records shall include persons submitting requests or inquiries and other information to the Commission through LabCFTC.

(C) *SECURITY AND STORAGE OF RECORDS.*—The system of records shall store records electronically or on paper in secure facilities, and shall store electronic records on the secure network of the Commission and on other electronic media, such as encrypted hard drives and back-up media, as needed.

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INVESTMENT ADVISERS ACT OF 1940

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TITLE II—INVESTMENT ADVISERS

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DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) “Assignment” includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor’s outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) “Bank” means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners’ Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 2(4) of the Home Owners’ Loan Act, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having

supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term “broker” has the same meaning as given in section 3 of the Securities Exchange Act of 1934.

(4) “Commission” means the Securities and Exchange Commission.

(5) “Company” means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) “Convicted” includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of *nolo contendere*, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term “dealer” has the same meaning as given in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

(8) “Director” means any director of a corporation or any person performing similar functions, with respect to any organization, whether incorporated or unincorporated.

(9) “Exchange” means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(10) “Interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(11) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company, except that the term “investment adviser” includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose

performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; (F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others;; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) "Investment company", affiliated person, and "insurance company" have the same meanings as in the Investment Company Act of 1940. "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) "Investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(15) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934.

(16) "Person" means a natural person or a company.

(17) The term "person associated with an investment adviser" means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion or portions of this title, persons, including employees controlled by an investment adviser.

(18) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or

subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing. *The term does not include a digital commodity or permitted payment stablecoin.*

(19) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(20) “Underwriter” means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor’s or seller’s commission. As used in this paragraph the term “issuer” shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(21) “Securities Act of 1933”, “Securities Exchange Act of 1934”, and “Trust Indenture Act of 1939”, mean those Acts, respectively, as heretofore or hereafter amended.

(22) “Business development company” means any company which is a business development company as defined in section 2(a)(48) of title I of this Act and which complies with section 55 of title I of this Act, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 2(a)(48) and 55 of title I of this Act shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 55 through 65 of title I of this Act; and

(C) the securities which may be purchased pursuant to section 55(a) of title I of this Act may be purchased from any person.

For purposes of this paragraph, all terms in sections 2(a)(48) and 55 of title I of this Act shall have the same meaning set forth in such title as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 55 through 65 of title I of this Act shall be determined as of the date of the most recent financial state-

ments which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

(23) “Foreign securities authority” means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(24) “Foreign financial regulatory authority” means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(25) “Supervised person” means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(26) The term “separately identifiable department or division” of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank’s investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit’s own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.

(27) The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(28) The term “credit rating agency” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(29) The term “private fund” means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act.

(30) The term “foreign private adviser” means any investment adviser who—

(A) has no place of business in the United States;

(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

(D) neither—

(i) holds itself out generally to the public in the United States as an investment adviser; nor

(ii) acts as—

(I) an investment adviser to any investment company registered under the Investment Company Act of 1940; or

(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53), and has not withdrawn its election.

[(29)] (31) The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(32) *DIGITAL ASSET-RELATED TERMS.—The terms “digital commodity” and “permitted payment stablecoin” have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).*

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) **CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.**—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

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INVESTMENT COMPANY ACT OF 1940

TITLE I—INVESTMENT COMPANIES

* * * * *

GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) “Advisory board” means a board, whether elected or appointed, which is distinct from the board of directors or board

of trustees, of an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) "Affiliated company" means a company which is an affiliated person.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) "Assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) "Bank" means (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

(6) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this title. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term "dealer" has the same meaning as given in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) "Employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by

such employer or employers together with any one or more of the foregoing classes of persons.

(14) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(15) "Face-amount certificate" means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the "installment type"); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a "fully paid" face-amount certificate).

(16) "Government security" means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

- (i) any affiliated person of such company,
- (ii) any member of the immediate family of any natural person who is an affiliated person of such company,
- (iii) any interested person of any investment adviser of or principal underwriter for such company,
- (iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,
- (v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the

date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment advisor or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser

or principal underwriter or by a controlling person of such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), “member of the immediate family” means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it

finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

(20) "Investment adviser" of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) regularly performs substantially all of the duties undertaken by such person described in clause (A); but does not include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) "Investment banker" means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) "Lend" includes a purchase coupled with an agreement by the vendor to repurchase; "borrow" includes a sale coupled with a similar agreement.

(24) "Majority-owned subsidiary" of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(26) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934.

(27) "Periodic payment plan certificate" means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in clause (A) have upon completing the periodic payments for which such securities provide.

(28) "Person" means a natural person or a company.

(29) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) "Prospectus", as used in section 22, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933.

(32) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the al-

teration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) "Sales load" means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fee, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *The term does not include a digital commodity or permitted payment stablecoin.*

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) “Short-term paper” means any note, draft, bill of exchange, or banker’s acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(40) “Underwriter” means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor’s or seller’s commission. As used in this paragraph the term “issuer” shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) “Value”, with respect to assets of registered investment companies, except as provided in subsection (b) of section 28 of this title, means—

(A) as used in sections 3, 5, and 12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this title, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this title, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 5(b)(1), the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this title. For purposes of sections 5 and 12, in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be following by any such company, as provided in sections 8, 30, and 31.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) "Securities Act of 1933", "Securities Exchange Act of 1934", and "Trust Indenture Act of 1939" means those Acts, respectively, as heretofore or hereafter amended.

(45) "Savings and loan association" means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) "Eligible portfolio company" means any issuer which—
 (A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 3 (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 3(c); and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934;

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

(iii) it has total assets of not more than \$4,000,000, and capital and surplus (shareholders' equity less retained earnings) of not less than \$2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this title.

(47) "Making available significant managerial assistance" by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to

any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) “Business development company” means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 55(a), and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of the value of its total assets condition of section 55; and provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this title; and

(C) has elected pursuant to section 54(a) to be subject to the provisions of sections 55 through 65.

(49) “Foreign securities authority” means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) “Foreign financial regulatory authority” means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) “Qualified purchaser” means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person’s qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term “qualified purchaser” does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c), would be an investment company (hereafter in this paragraph referred to as an “excepted investment company”), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 3(c)(1)(A), that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as “pre-amendment beneficial owners”), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(53) The term “credit rating agency” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(54) The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).”

(55) *DIGITAL ASSET-RELATED TERMS.—The terms “digital commodity” and “permitted payment stablecoin” have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).*

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

* * * * *

Minority Views

Securities and Exchange Commission (SEC) Chair Gary Gensler has repeatedly and unambiguously stated that most digital assets are in fact securities.¹ Unfortunately, most digital assets firms have chosen not to register with the SEC and in response, Chair Gensler has been diligent in utilizing the resources at his disposal to crack down on this mass noncompliance.² To the extent that Chair Gensler's enforcement actions have been challenged in court,³ the SEC has prevailed again and again with stunning consistency with the exception of one outlier case that may yet be reversed on appeal.⁴ Despite the lengths that SEC Chair Gensler has gone to provide regulatory clarity for digital assets, the crypto industry continues to insist that there is a lack of regulatory clarity without providing much of any detail on how the current securities law framework doesn't work for their industry.

In response to ambiguous industry complaints, H.R. 4763 would create a new, alternative legal framework specifically for digital assets. Rather than providing greater regulatory clarity, this bill provides more than 200 pages of new definitions and legal tests that only create more confusion and uncertainty. For example, while the "Howey" test, which is the current standard for determining whether something is a security under current law, has decades of judicial precedent to clarify how to apply it in different situations, the new definitions and tests in this bill come with zero judicial precedent, making it very unclear how these new standards would be applied by the courts. The current securities law framework has served us well for nearly a century, evolving with various technological innovations in the industry. There is simply no good reason to throw all of that away in favor of a complicated new framework that caters to a single industry that refuses to follow the rules.

We agree with federal regulators and the GAO who have stated that there are discrete gaps in the current federal regulatory regime regarding digital assets.⁵ This includes providing spot market authority for the CFTC, ensuring the SEC has extraterritorial reach overseas, and providing regulators with oversight of affiliates and subsidiaries of digital asset businesses. Such authorities could have helped the SEC act against FTX, or its affiliated Alameda Research (which was functioning as an unregistered hedge fund) be-

¹ *Most Cryptocurrencies Are Securities, Says SEC Chair*, Investopedia (Sept. 8, 2022).

² *Gensler defends SEC's crypto crackdown in marathon House hearing*, CNBC (Apr. 18, 2023).

³ *Ripple says it will fight the SEC lawsuit 'all the way through'*, CNBC (Sept. 12, 2023); see also *Crypto firms facing US SEC charges find hope in Ripple ruling, experts say*, Reuters (July 17, 2023).

⁴ *Judge grants SEC request to file motion for appeal in Ripple case*, CoinTelegraph (Aug. 17, 2023); see also *Judge Rejects Ripple Ruling Precedent in Denying Terraform Labs' Motion to Dismiss SEC Lawsuit*, CoinDesk (Aug. 1, 2023).

⁵ See FSOC, *Report on Digital Asset Financial Stability Risks and Regulation* (Oct. 3, 2022); U.S. Government Accountability Office, *Blockchain in Finance: Legislative and Regulatory Actions Are Needed to Ensure Comprehensive Oversight of Crypto Assets* (Jun. 22, 2023).

fore its collapse and would provide similar oversight as authorities banking regulators have to examine affiliates and subsidiaries of most banks. We believe that we should be focusing on these discrete issues and leveraging the current securities law framework rather than throwing it out the window.

While H.R. 4763 creates a great deal of confusion, a few things are crystal clear. First, this bill would exempt digital assets from several consumer, investor, and market protections that otherwise currently apply to them under existing securities laws. Specifically, under the bill, it is likely that most digital assets would be considered commodities soon after they are issued on any of the current blockchains. By shifting a substantial portion of the digital assets market to the commodities regime, the bill removes several critical protections that apply to securities and not commodities. Simply put, the CFTC regulatory framework was created for and operates for sophisticated and large institutional traders while SEC's framework governs the issuance of investment products meant for everyday retail investors and retirees. This bill also does not require the structural separation that is currently in place under securities laws of broker/dealers, exchanges, and clearing houses to prevent conflicts of interest. Furthermore, the Investment Company Act and the Investment Advisers Act—regulations designed to minimize conflicts of interest that can arise in complex operations—would not apply to digital commodities in this bill.⁶

Second, this bill would allow the commingling of funds, which was a major factor in the fall of FTX. Specifically, while this bill establishes restrictions on the commingling of consumer funds by digital asset broker/dealers, it creates a procedure where consumers can waive this protection. It is not difficult to imagine crypto exchanges or trading facilities encouraging this waiver either as part of the service agreement (not unlike the forced arbitration clauses that exist today) or making it easy for consumers or investors to check a box without realizing that doing so gives the trading firm ability to commingle customer assets with that of the firm or its affiliated hedge funds. When FTX collapsed in November 2022, one of the shocking discoveries in the aftermath was that FTX had been commingling customer funds to make undisclosed investments and trade against its own customers. When the dust had settled, over one million users were owed \$8.7 billion in bankruptcy proceedings.⁷ The collapse of FTX demonstrated the scale of harm possible when commingling occurs, and H.R. 4763 would legitimize this practice.

Third, H.R. 4763 would create new opportunities for regulatory arbitrage. Specifically, the bill's definition of "digital asset" is overly broad, raising the possibility that traditional financial instruments could get swept into the lighter touch regulatory regime designed for digital assets under this bill. Private industry may be incentivized to structure assets and asset pools to avoid the specific categories excluded from the definition.

⁶Section 301(c) of the bill provides that the definition of the term "security" in the Investment Advisers Act "does not include a digital commodity or a permitted payment stablecoin." Similarly, Section 301(d) provides that the definition of the term "security" in the Investment Company Act "does not include a digital commodity or a permitted payment stablecoin." *H.R. 4763*.

⁷*FTX Bankruptcy Team Says the Exchange Owed Customers \$8.7B*, CoinDesk (June 26, 2023).

Fourth, H.R. 4763 not only fails to provide any new funding for the SEC, which would be responsible for implementing much of this highly complicated new regime, but also rescinds \$150 million from the SEC's Reserve Fund, a fund created by Dodd-Frank to fund long term IT projects or to respond to unforeseen events, like the 2010 Flash Crash and the pandemic. This bill takes these funds and proposes \$120 million in resources to the CFTC over a 5-year period, which is significantly less than the amount CFTC Chairman Rostin Behnam said would be needed.⁸ In addition, the bill does not provide for ongoing funding for the agency, such as fees that could be levied on crypto firms. At the same time, Republicans are proposing cuts to these agencies' budgets through the appropriations process. Earlier this year, President Joe Biden requested that Congress provide \$411 million for the CFTC in fiscal year (FY) 2024, a 12.6% increase from the FY 2023 enacted level⁹ and \$2.436 billion for the SEC.¹⁰ However, House Republicans have advanced steep budget cuts through the Default on America Act.¹¹ Their plan revealed that Republicans would impose a 22% cut across the board for non-defense spending.¹² The Financial Services and General Government Appropriations bill, released by the House Appropriations Committee earlier this year, prohibits the implementation of certain SEC rules and cuts the SEC's budget by 8% from FY 2023.¹³ Chair Gensler has explained that "that funding level may not be enough to address staffing and technological needs."¹⁴

While Republicans accepted a few amendments, they rejected critical changes Democrats proposed including:

- Ranking Member Waters' amendment no. 3, which would preserve the current securities law framework and offer targeted and meaningful fixes to address discrete issues in order to better protect investors in the digital assets ecosystem. These narrow fixes respond to recommendations from the FSO to provide the CFTC with spot market authority over digital assets not deemed securities by the SEC and provide the SEC with extraterritorial jurisdiction and oversight into affiliates. This amendment also directs the SEC to issue a report and provide testimony to Congress on whether broader changes to the SEC's oversight of digital assets are necessary.
- Rep. Lynch's amendment no. 11, which would strike Section 311 of the bill, "Treatment of custody activities by banking institutions." This section conflicts with the SEC's SAB 121 which directs banks and public companies to list digital assets as liabilities on their balance sheets.
- Rep. Lynch's amendment no. 13, which would direct the SEC, CFTC, and CFPB to issue rules to ensure investor and

⁸House Ag Committee looks at digital assets regulatory bill, Dems ask how to pay for it, CoinTelegraph (June 6, 2023).

⁹PL 117-328.

¹⁰Gensler Cheers \$2.4B Funding Proposal for SEC in Biden Budget, Blockworks (Mar. 31, 2023).

¹¹Kevin McCarthy Speaker of the House, House GOP Leadership Statement on the House GOP Plan to Address the Debt Ceiling (Apr. 19, 2023).

¹²The White House, State Fact Sheets: MAGA House Republicans' Default on America Act Would Have Devastating Impacts Across America (May 2, 2023).

¹³Womack Remarks at FY24 Financial Services and General Government Markup, House Committee on Appropriations (June 22, 2023).

¹⁴SEC's Gensler Calls CFTC 'Not As Robust' On Crypto, Law360 (July 19, 2023).

consumer protections for digital assets that exist for securities and commodities.

- Rep. Foster’s amendment no. 1, which would direct FinCEN to establish a method for the application and issuance of a crypto license for individuals with operational control over a digital wallet.

- Rep. Sherman’s amendment, which would strike the bill and designates all digital assets and related derivatives to be considered securities and subject to the jurisdiction of the SEC, including all digital asset exchanges as securities exchanges and subject to the full jurisdiction of the SEC.

- Rep. Lynch’s amendment, which would authorize such funding as may be necessary for the CFTC and the SEC to execute this bill.

- Rep. Pressley’s amendment, which was withdrawn, but would prevent Members of Congress, their employees, and other federal employees from using non-public information obtained through their official positions for personal benefit, such as in stock market trading.¹⁵ The STOCK Act provides for greater transparency by requiring Congress and federal employees to report certain investment activities, while preventing insider trading, strengthening ethics, and strengthening public trust. Rep. Pressley’s proposal would treat digital assets as the same for the purposes of the STOCK Act. Republicans indicated an interest in working with Democrats on this proposal.

- Rep. Lynch’s amendment, which would strike part of Section 306 “Requirements of Digital Asset Brokers and Digital Asset Dealers,” to protect consumers from being directed to waive guardrails around commingling their funds with the funds of the entity.

- Rep. Green amendment, no. 14,¹⁶ which was withdrawn with the commitment that Rep. Hill would work with him on whistleblower protections in the legislation. His amendment would confirm that nothing in the bill would prevent the SEC or CFTC from going after bad actors in the digital asset ecosystem, even in relation to entities filing a notice of intent to register. This amendment also ensures that the SEC can pursue enforcement in illegal market activities, such as price manipulation, insider trading, Ponzi schemes, fraud, wash trading, common ownership of tokens trading on an exchange against consumers, and prop trading/affiliated trading.

Finally, the following groups are opposed to the legislation: American Association for Justice, American Economic Liberties Project, Americans for Financial Reform, Center for American Progress, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumer Reports, Demand Progress, Institute for Agriculture and Trade Policy, National Consumer Law Center (on behalf of its low-income clients), National Community Reinvestment Coalition, North American Securities Administrators Association, Open Markets Institute, Public Cit-

¹⁵ *Public Law No. 112–105*, 112th Congress (2011–2012); see also *STOCK Act: Meaning, Overview, Criticisms*, Investopedia (Aug. 31, 2022).

¹⁶ HFSC, Rep. Green Amendment No. 14 to H.R. 4763 (July 26, 2023).

izen, Revolving Door Project, Rise Economy (formerly California Reinvestment Coalition), Strong Economy for All Coalition, Texas Appleseed, 20/20 Vision, Woodstock Institute.

For these reasons, we strongly oppose H.R. 4763.

Sincerely,

MAXINE WATERS,
Ranking Member.
NYDIA M. VELÁZQUEZ,
DAVID SCOTT,
AL GREEN,
BILL FOSTER,
JUAN VARGAS,
BRAD SHERMAN,
STEPHEN F. LYNCH,
EMANUEL CLEAVER, II,
JOYCE BEATTY,
VICENTE GONZALEZ,
SEAN CASTEN,
RASHIDA TLAIB,
NIKEMA WILLIAMS,
AYANNA PRESSLEY,
SYLVIA R. GARCIA,
Members of Congress.

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