

116TH CONGRESS
2D SESSION

H. R. 8373

To provide for orderly and secure digital commodity exchange markets, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2020

Mr. CONAWAY (for himself, Mr. AUSTIN SCOTT of Georgia, Mr. JOHNSON of
South Dakota, Mr. EMMER, Mr. SOTO, and Mr. SCHWEIKERT) introduced
the following bill; which was referred to the Committee on Agriculture

A BILL

To provide for orderly and secure digital commodity exchange
markets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Commodity Ex-
5 change Act of 2020”.

6 **SEC. 2. AMENDMENTS TO THE COMMODITY EXCHANGE**
7 **ACT.**

8 (a) DEFINITIONS.—Section 1a of the Commodity Ex-
9 change Act (7 U.S.C. 1a) is amended—

10 (1) in paragraph (40)—

1 (A) in subparagraph (E), by striking
2 “and” at the end; and

3 (B) by redesignating subparagraph (F) as
4 subparagraph (G) and inserting after subpara-
5 graph (E) the following:

6 “(F) a digital commodity exchange reg-
7 istered under section 5i; and”; and

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

9 “(52) DIGITAL COMMODITY.—The term ‘digital
10 commodity’ means any form of fungible intangible
11 personal property that can be exclusively possessed
12 and transferred person to person without necessary
13 reliance on an intermediary, and which does not rep-
14 resent a financial interest in a company, partner-
15 ship, or investment vehicle.

16 “(53) DIGITAL COMMODITY CUSTODIAN.—The
17 term ‘digital commodity custodian’ means an entity
18 that holds, maintains, or safeguards digital commod-
19 ities and other assets on behalf of digital commodity
20 market participants.

21 “(54) DIGITAL COMMODITY EXCHANGE.—The
22 term ‘digital commodity exchange’ means a trading
23 facility that lists for trading at least one digital com-
24 modity.

1 “(55) DIGITAL COMMODITY PRESALE.—The
 2 term ‘digital commodity presale’ means the delivery
 3 of a unit of a digital commodity, or any promise or
 4 right to a future unit of a digital commodity, to a
 5 participant in a securities offering conducted in com-
 6 pliance with the Securities Act of 1933 before the
 7 listing of the digital commodity for trading on a reg-
 8 istered digital commodity exchange.”.

9 (b) COMMISSION JURISDICTION OVER RETAIL DIG-
 10 ITAL COMMODITY TRANSACTIONS.—Section 2(c)(2) of
 11 such Act (7 U.S.C. 2(c)(2)) is amended—

12 (1) in subparagraph (D)(ii)—

13 (A) in subclause (III), in the matter that
 14 precedes item (aa), by inserting “of a com-
 15 modity, other than a digital commodity,” before
 16 “that”; and

17 (B) by redesignating subclauses (IV) and
 18 (V) as subclauses (V) and (VI) and inserting
 19 after subclause (III) the following:

20 “(IV) a contract of sale of a dig-
 21 ital commodity that—

22 “(aa) results in actual deliv-
 23 ery within 2 days or such other
 24 period as the Commission may
 25 determine by rule or regulation

1 based upon the typical commer-
2 cial practice in cash or spot mar-
3 kets for the digital commodity in-
4 volved; or

5 “(bb) is executed on or sub-
6 ject to the rules of a registered
7 digital commodity exchange;”;
8 and

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

10 “(F) COMMISSION JURISDICTION OVER DIGITAL
11 COMMODITY TRANSACTIONS.—

12 “(i) Notwithstanding any other provision of
13 law, the Commission shall have exclusive jurisdiction
14 over any agreement, contract, or transaction involv-
15 ing a contract of sale of any digital commodity in
16 interstate commerce which is offered, solicited, trad-
17 ed, executed, or otherwise dealt in on or subject to
18 the rules of a registered entity, including the con-
19 duct of any such office or business.

20 “(ii) Notwithstanding any other provision of
21 law, the Commission shall have exclusive jurisdiction
22 over any agreement, contract, or transaction involv-
23 ing a unit of a digital commodity, or any promise or
24 right to a future unit of a digital commodity, ob-

1 tained through a digital commodity presale and sub-
 2 ject to the restrictions in section 4c(h).

3 “(iii) Nothing in this subparagraph shall be
 4 construed to limit the power of any State or other
 5 Federal regulatory agency, or to provide the Com-
 6 mission with jurisdiction, with respect to—

7 “(I) custodial or depository activities for a
 8 digital asset, or custodial or depository activi-
 9 ties for any promise or right to a future digital
 10 asset, of an entity regulated by a State or an-
 11 other Federal regulatory agency; or

12 “(II) a securities offering or transaction
 13 associated with—

14 “(aa) a digital commodity presale; or

15 “(bb) a sale described in section
 16 4c(h)(3)(A)(i).”.

17 (c) PROHIBITED TRANSACTIONS.—Section 4c of such
 18 Act (7 U.S.C. 6c) is amended by adding at the end the
 19 following:

20 “(h) PROHIBITED DIGITAL COMMODITY TRANS-
 21 ACTIONS.—

22 “(1) IN GENERAL.—It shall be a violation of
 23 this Act for any person who owns or controls a unit
 24 of a digital commodity, or any promise or right to
 25 a future unit of a digital commodity, obtained

1 through a digital commodity presale and subject to
2 the restrictions in this subsection, to offer to enter
3 into, to enter into, or to execute a contract for the
4 purchase or sale of the unit, promise, or right, ex-
5 cept as provided in paragraph (3).

6 “(2) UNLAWFUL FACILITATION OF PROHIBITED
7 TRANSACTION.—It shall be a violation of this Act for
8 any person willfully to execute, confirm the execution
9 of, or conduct any office or business for the purpose
10 of soliciting, accepting any order for, or otherwise
11 dealing in, any transaction in, or in connection with,
12 a contract for the purchase or sale of a unit of a
13 digital commodity, or any promise or right to a fu-
14 ture unit of a digital commodity, which such person
15 has reason to believe is obtained through a digital
16 commodity presale and subject to the restrictions in
17 this subsection, except as provided in paragraph (3).

18 “(3) EXCEPTIONS.—

19 “(A) OFF-EXCHANGE TRANSACTIONS.—

20 “(i) SALE OF A PROMISE OR RIGHT.—

21 A promise or right to a future unit of a
22 digital commodity obtained through a dig-
23 ital commodity presale may be sold pursu-
24 ant to a securities transaction conducted in

1 compliance with the Securities Act of
2 1933.

3 “(ii) SALE OF A DIGITAL COM-
4 MODITY.—A unit of a digital commodity
5 obtained through a digital commodity
6 presale may be sold to an accredited
7 investor (as defined in section 2(a)(15) of
8 the Securities Act of 1933).

9 “(iii) TREATMENT.—For purposes of
10 this subsection, a unit of a digital com-
11 modity or any promise or right to a future
12 unit of a digital commodity obtained
13 through a transaction utilizing this excep-
14 tion shall continue to be considered to be
15 obtained through a digital commodity
16 presale.

17 “(B) ON-EXCHANGE TRANSACTIONS.—

18 “(i) IN GENERAL.—A unit of a digital
19 commodity that is obtained through a dig-
20 ital commodity presale or a transaction de-
21 scribed in subparagraph (A) may be of-
22 fered for sale or exchange on a registered
23 digital commodity exchange, subject to any
24 limitations imposed by the exchange.

1 “(ii) TREATMENT.—For purposes of
2 this subsection, a unit of a digital com-
3 modity obtained through a transaction uti-
4 lizing this exception shall not be considered
5 to be obtained through a digital commodity
6 presale.

7 “(C) UTILIZATION OF PRESOLD DIGITAL
8 COMMODITIES.—

9 “(i) IN GENERAL.—A unit of a digital
10 commodity that is obtained through a dig-
11 ital commodity presale may be—

12 “(I) utilized for the purposes of
13 receiving the non-financial rights or
14 services associated with the digital
15 commodity; or

16 “(II) exchanged or sold in such
17 limited quantities as the Commission
18 determines support the public use and
19 functioning of services and rights as-
20 sociated with the digital commodity.

21 “(ii) TREATMENT.—For purposes of
22 this subsection, a unit of a digital com-
23 modity obtained through a transaction uti-
24 lizing this exception shall not be considered

1 to be obtained though a digital commodity
2 presale.

3 “(D) PRIOR DIGITAL COMMODITIES.—A
4 unit of a digital commodity shall not be subject
5 to this subsection if, before the date of the en-
6 actment of this subsection, the digital com-
7 modity was publicly available for trading on a
8 trading facility licensed as a money transmitter
9 in a State or territory of the United States.

10 “(4) TRANSITION RULES.—

11 “(A) IN GENERAL.—For the purpose of a
12 transaction described in paragraph (3)(B), the
13 Commission shall consider a trading facility to
14 be a registered digital commodity exchange if—

15 “(i) the trading facility—

16 “(I) has been continuously li-
17 censed as a money transmitter in at
18 least 20 States or territories of the
19 United States since August 1, 2019;

20 “(II) is a designated contract
21 market; or

22 “(III) is a swap execution facil-
23 ity;

1 “(ii) the trading facility submits a
2 listing notice to the Commission con-
3 taining—

4 “(I) documentation demonstrat-
5 ing its licensing referred to in clause
6 (i)(I); and

7 “(II) the determination made by
8 the trading facility under section
9 5i(c)(3) that the digital commodity
10 that is the subject of the transaction
11 is not readily susceptible to manipula-
12 tion; and

13 “(iii) the Commission has not issued a
14 notice of disapproval of the listing notice.

15 “(B) DISAPPROVAL PROCESS.—In making
16 a disapproval under subparagraph (A), the
17 Commission shall—

18 “(i) issue any disapproval within 20
19 business days after receipt of a completed
20 listing notice; and

21 “(ii) identify the specific deficiencies
22 with the listing notice that necessitated the
23 disapproval.

1 “(C) EXTENSIONS.—The Commission may
2 extend the time for disapproval under subpara-
3 graph (B)—

4 “(i) once, for 20 days, through writ-
5 ten notice to the digital commodity ex-
6 change given by a division director; and

7 “(ii) once, for an additional 90 busi-
8 ness days, through notice given by the
9 Commission which includes a description of
10 any deficiencies with the listing notice, in-
11 cluding any—

12 “(I) novel or complex issues
13 which require additional time to ana-
14 lyze;

15 “(II) missing information or in-
16 adequate explanations; or

17 “(III) potential inconsistencies
18 with this Act.

19 “(D) EXPIRATION.—The authority pro-
20 vided by this subparagraph shall expire 1 year
21 after the date of the final promulgation of the
22 digital commodity exchange registration re-
23 quirements, or on the first registration of a dig-
24 ital commodity exchange, whichever occurs ear-
25 lier.”.

1 (d) COMMON PROVISIONS APPLICABLE TO REG-
2 ISTERED ENTITIES.—Section 5c of such Act (7 U.S.C.
3 7a–2) is amended—

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

6 (2) in subsection (b)—

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

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

13 (3) in subsection (c)—

14 (A) in paragraph (2), by inserting “or par-
15 ticipants” before “(in”;

16 (B) in paragraph (4)(B), by striking
17 “1a(10)” and inserting “1a(9)”;

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

20 “(D) SPECIAL RULES FOR THE LISTING OF
21 CERTAIN DIGITAL COMMODITIES.—

22 “(i) IN GENERAL.—In the case of list-
23 ing a digital commodity for trading which
24 has not yet been listed for trading on an-
25 other registered entity, paragraphs (2) and

(3) shall apply as if the listing were a rule, and paragraph (2) shall be applied by substituting ‘20 business days’ for ‘10 business days’.

“(ii) TRANSITIONAL EXTENSION.—For 1 year after the registration of the first digital commodity exchange, the Commission shall have an additional 20 business days review any certification under clause (i).

“(iii) DIGITAL COMMODITY PRESALES.—In conjunction with listing a digital commodity in which any unit of the digital commodity was obtained through a digital commodity presale, the Commission shall require the registered entity to prohibit the sale of any unit of the digital commodity that was obtained in violation of section 4c(h).”.

(e) REGISTRATION OF DIGITAL COMMODITY EXCHANGES; QUALIFIED DIGITAL COMMODITY CUSTODIANS.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5h the following:

1 **“SEC. 5i. REGISTRATION OF DIGITAL COMMODITY EX-**
2 **CHANGES.**

3 “(a) IN GENERAL.—

4 “(1) VOLUNTARY REGISTRATION.—

5 “(A) IN GENERAL.—Any trading facility
6 that offers or seeks to offer a market in digital
7 commodities may register with the Commission
8 as a digital commodity exchange.

9 “(B) APPLICATION.—A person desiring to
10 register as a digital commodity exchange shall
11 submit to the Commission an application in
12 such form and containing such information as
13 the Commission may require for the purpose of
14 making the determinations required for ap-
15 proval under subsections (c) and (e).

16 “(2) DEEMED REGISTRATION.—A registered
17 designated contract market or registered swap exe-
18 cution facility which fulfills the requirements of this
19 section shall be considered a registered digital com-
20 modity exchange.

21 “(b) TRADING.—

22 “(1) IN GENERAL.—A digital commodity ex-
23 change that is registered under subsection (a) may
24 make available for trading any digital commodity
25 that is not readily subject to manipulation, subject
26 to this subsection.

1 “(2) RULES GOVERNING MARGINED OR LEVER-
2 AGED TRADING.—The Commission may make, pro-
3 mulgate, and enforce such rules governing margined,
4 leveraged, or financed transactions as are reasonably
5 necessary to protect market participants and pro-
6 mote the orderly settlement of transactions with re-
7 spect to—

8 “(A) disclosure;

9 “(B) recordkeeping;

10 “(C) capital, margin, and other financial
11 resources;

12 “(D) reporting;

13 “(E) business conduct;

14 “(F) documentation; and

15 “(G) such other matters as the Commis-
16 sion demonstrates to be necessary.

17 “(3) PROHIBITION ON CERTAIN TRADING PRAC-
18 TICES.—Sections 4b, 4c, and 6(c) shall apply to any
19 agreement, contract, or transaction in a digital com-
20 modity as if the agreement, contract, or transaction
21 were a contract of sale of a commodity for future de-
22 livery.

23 “(4) PROHIBITION ON TRADING DERIVATIVES
24 PRODUCTS.—Registration as a digital commodity ex-
25 change shall not permit a trading facility to offer

1 any contract of sale of a commodity for future deliv-
2 ery, option, or swap for trading without also being
3 registered as a designated contract market or swap
4 execution facility.

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

7 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

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

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

14 “(ii) any requirement that the Com-
15 mission may impose by rule or regulation
16 pursuant to section 8a(5).

17 “(B) REASONABLE DISCRETION OF A DIG-
18 ITAL COMMODITY EXCHANGE.—Unless other-
19 wise determined by the Commission by rule or
20 regulation, a digital commodity exchange de-
21 scribed in subparagraph (A) shall have reason-
22 able discretion in establishing the manner in
23 which the digital commodity exchange complies
24 with the core principles described in this sub-
25 section.

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

3 “(A) establish and enforce compliance with
4 any rule of the digital commodity exchange, in-
5 cluding—

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

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

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

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

18 “(ii) to capture information that may
19 be used in establishing whether rule viola-
20 tions have occurred; and

21 “(C) establish rules governing the oper-
22 ation of the exchange, including rules specifying
23 trading procedures to be used in entering and
24 executing orders traded or posted on the facil-
25 ity.

1 “(3) DIGITAL COMMODITIES NOT READILY SUS-
2 CEPTIBLE TO MANIPULATION.—

3 “(A) IN GENERAL.—The digital commodity
4 exchange shall permit trading only in digital
5 commodities that are not readily susceptible to
6 manipulation.

7 “(B) DETERMINATIONS.—Prior to offering
8 trading in any digital commodity, the digital
9 commodity exchange shall make a determina-
10 tion under this paragraph as to whether the
11 digital commodity is readily susceptible to ma-
12 nipulation.

13 “(C) CONSIDERATIONS.—In making a de-
14 termination under this paragraph, the exchange
15 shall consider the digital commodity’s—

16 “(i) purpose and use;

17 “(ii) governance structure;

18 “(iii) participation;

19 “(iv) distribution;

20 “(v) intended, current, and proposed
21 functionality;

22 “(vi) other relevant factors deter-
23 mined by the exchange; and

24 “(vii) any other factor required by the
25 Commission.

1 “(D) RULES FOR DIGITAL COMMODITY
2 PRESALES.—The digital commodity exchange
3 shall have in place such rules as may be nec-
4 essary to reasonably ensure the orderly sale of
5 any unit of a digital commodity obtained
6 through a digital commodity presale.

7 “(4) TREATMENT OF CUSTOMER ASSETS.—

8 “(A) REQUIRED STANDARDS AND PROCE-
9 DURES.—Each digital commodity exchange
10 shall establish standards and procedures that
11 are designed to protect and ensure the safety of
12 customer money, assets, and property.

13 “(B) HOLDING OF CUSTOMER ASSETS.—

14 “(i) IN GENERAL.—Each digital com-
15 modity exchange shall hold customer
16 money, assets, and property in a manner
17 to minimize the customer’s risk of loss or
18 unreasonable delay in the access to the
19 money, assets, and property of the cus-
20 tomer.

21 “(ii) SEGREGATION OF FUNDS.—

22 “(I) IN GENERAL.—A digital
23 commodity exchange shall treat and
24 deal with all money, assets, and prop-

erty of any customer received as belonging to the customer.

“(II) COMMINGLING PROHIBITED.—Money, assets, and property of a customer described in subclause (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.

“(iii) EXCEPTIONS.—

“(I) USE OF FUNDS.—

“(aa) IN GENERAL.—Notwithstanding clause (ii), money, assets, and property of customers of a described in clause (ii) may, for convenience, be commingled and deposited in the same account or accounts with any bank, trust company, or qualified digital commodity custodian.

1 “(bb) WITHDRAWAL.—Not-
2 withstanding clause (ii), such
3 share of the money, assets, and
4 property described in item (aa)
5 as in the normal course of busi-
6 ness shall be necessary to mar-
7 gin, guarantee, secure, transfer,
8 adjust, or settle a digital com-
9 modity transaction with a reg-
10 istered entity may be withdrawn
11 and applied to such purposes, in-
12 cluding the payment of commis-
13 sions, brokerage, interest, taxes,
14 storage, and other charges, law-
15 fully accruing in connection with
16 the digital commodity trans-
17 action.

18 “(II) COMMISSION ACTION.—
19 Notwithstanding clause (ii), in accord-
20 ance with such terms and conditions
21 as the Commission may prescribe by
22 rule, regulation, or order, any money,
23 assets, or property of the customers of
24 a digital commodity exchange de-
25 scribed in clause (ii) may be commin-

1 gled and deposited in customer ac-
2 counts with any other money, assets,
3 or property received by the digital
4 commodity exchange and required by
5 the Commission to be separately ac-
6 counted for and treated and dealt
7 with as belonging to the customer of
8 the digital commodity exchange.

9 “(C) PERMITTED INVESTMENTS.—Money
10 described in clause (ii) may be invested in obli-
11 gations of the United States, in general obliga-
12 tions of any State or of any political subdivision
13 of a State, and in obligations fully guaranteed
14 as to principal and interest by the United
15 States, or in any other investment that the
16 Commission may by rule or regulation pre-
17 scribe, and such investments shall be made in
18 accordance with such rules and regulations and
19 subject to such conditions as the Commission
20 may prescribe.

21 “(D) CUSTOMER PROPERTY.—Assets held
22 on behalf of a customer by a digital commodity
23 exchange shall be considered to be customer
24 property as such term is defined in section 761
25 of title 11, United States Code, with regard to

1 all money, assets, and property of any customer
2 received by a digital commodity exchange for
3 trading or custody, or to margin, guarantee, or
4 secure digital commodity transactions (includ-
5 ing money, assets, or property accruing to the
6 customer as the result of such transactions).

7 “(E) MISUSE OF CUSTOMER PROPERTY.—

8 It shall be unlawful—

9 “(i) for any digital commodity ex-
10 change that has received any customer
11 money, assets, or property for custody to
12 dispose of, or use any such money, assets,
13 or property as belonging to the digital
14 commodity exchange; or

15 “(ii) for any other person, including
16 any depository, other digital commodity ex-
17 change, or digital commodity custodian
18 that has received any customer money, as-
19 sets, or property for deposit, to hold, dis-
20 pose of, or use any such money, assets, or
21 property as belonging to the depositing
22 digital commodity exchange or any person
23 other than the customers of the digital
24 commodity exchange.

25 “(F) CUSTOMER RIGHT TO OPT OUT.—

1 “(i) IN GENERAL.—A customer shall
2 have the right to waive the restrictions in
3 subparagraph (B), by affirmatively elect-
4 ing, in writing to the digital commodity ex-
5 change, to waive the restrictions.

6 “(ii) LIMITATIONS.—The Commission
7 may, by rule, establish notice and disclo-
8 sure requirements, segregation require-
9 ments, investment limitations, and other
10 rules related to the waiving of any restric-
11 tions under this paragraph that are rea-
12 sonably necessary to protect customers, in-
13 cluding eligible contract participants, non-
14 eligible contract participants, or any other
15 class of customers.

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

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

23 “(B) PROTECTION OF MARKETS AND MAR-
24 KET PARTICIPANTS.—The digital commodity ex-
25 change shall establish and enforce rules—

1 “(i) to protect markets and market
2 participants from abusive practices com-
3 mitted by any party, including abusive
4 practices committed by a party acting as
5 an agent for a participant; and

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

8 “(C) The digital commodity exchange
9 shall—

10 “(i) establish and enforce rules or
11 terms and conditions defining, or specifica-
12 tions detailing—

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

17 “(II) procedures for trade proc-
18 essing of digital commodities on or
19 through the facilities of the digital
20 commodity exchange; and

21 “(ii) monitor trading in digital com-
22 modities to prevent manipulation, price
23 distortion, and disruptions of the delivery
24 or cash settlement process through surveil-
25 lance, compliance, and disciplinary prac-

1 tices and procedures, including methods
2 for conducting real-time monitoring of
3 trading and comprehensive and accurate
4 trade reconstructions.

5 “(6) ABILITY TO OBTAIN INFORMATION.—The
6 digital commodity exchange shall—

7 “(A) establish and enforce rules that will
8 allow the facility to obtain any necessary infor-
9 mation to perform any of the functions de-
10 scribed in this section;

11 “(B) provide the information to the Com-
12 mission on request; and

13 “(C) have the capacity to carry out such
14 international information-sharing agreements as
15 the Commission may require.

16 “(7) EMERGENCY AUTHORITY.—The digital
17 commodity exchange shall adopt rules to provide for
18 the exercise of emergency authority, in consultation
19 or cooperation with the Commission or a registered
20 entity, as is necessary and appropriate, including the
21 authority to facilitate the liquidation or transfer of
22 open positions in any digital commodity or to sus-
23 pend or curtail trading in a digital commodity.

24 “(8) REPORTING REQUIREMENTS.—

1 “(A) DUTY OF DIGITAL COMMODITY EX-
2 CHANGE.—Each digital commodity exchange
3 shall provide to the Commission all information
4 that is determined by the Commission to be
5 necessary to perform each responsibility of the
6 Commission under this Act.

7 “(B) TIMELY PUBLICATION OF TRADING
8 INFORMATION.—

9 “(i) IN GENERAL.—The digital com-
10 modity exchange shall make public timely
11 information on price, trading volume, and
12 other trading data on digital commodities
13 to the extent prescribed by the Commis-
14 sion.

15 “(ii) CAPACITY OF DIGITAL COM-
16 MODITY EXCHANGE.—The digital com-
17 modity exchange shall be required to have
18 the capacity to electronically capture and
19 transmit trade information with respect to
20 transactions executed on the exchange.

21 “(9) RECORDKEEPING AND REPORTING.—

22 “(A) IN GENERAL.—A digital commodity
23 exchange shall—

24 “(i) maintain records of all activities
25 relating to the business of the facility, in-

cluding 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 Com-
mission, such information as the Commis-
sion determines to be necessary or appro-
priate 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 bank-
ing agency;

1 “(iv) each appropriate State bank su-
2 pervisor (within the meaning of section 3
3 of the Federal Deposit Insurance Act);

4 “(v) the Financial Stability Oversight
5 Council;

6 “(vi) the Department of Justice; and

7 “(vii) any other person that the Com-
8 mission determines to be appropriate, in-
9 cluding—

10 “(I) foreign financial supervisors
11 (including foreign futures authorities);

12 “(II) foreign central banks; and

13 “(III) foreign ministries.

14 “(C) CONFIDENTIALITY AGREEMENT.—Be-
15 fore the Commission may share information
16 with any entity described in subparagraph (B),
17 the Commission shall receive a written agree-
18 ment from each entity stating that the entity
19 shall abide by the confidentiality requirements
20 described in section 8 relating to the informa-
21 tion on digital commodity transactions that is
22 provided.

23 “(D) PROVIDING INFORMATION.—Each
24 digital commodity exchange shall provide to the
25 Commission (including any designee of the

1 Commission) information under subparagraph
2 (A) in such form and at such frequency as is
3 required by the Commission.

4 “(10) ANTITRUST CONSIDERATIONS.—Unless
5 necessary or appropriate to achieve the purposes of
6 this Act, the digital commodity exchange shall not—

7 “(A) adopt any rules or take any actions
8 that result in any unreasonable restraint of
9 trade; or

10 “(B) impose any material anticompetitive
11 burden on trading.

12 “(11) CONFLICTS OF INTEREST.—The digital
13 commodity exchange shall—

14 “(A) establish and enforce rules to mini-
15 mize conflicts of interest in its decision-making
16 process; and

17 “(B) establish a process for resolving the
18 conflicts of interest.

19 “(12) FINANCIAL RESOURCES.—

20 “(A) IN GENERAL.—Each digital com-
21 modity exchange shall have adequate financial,
22 operational, and managerial resources, as deter-
23 mined by the Commission, to discharge each re-
24 sponsibility of the digital commodity exchange.

1 “(B) MINIMUM AMOUNT OF FINANCIAL RE-
2 SOURCES.—Each digital commodity exchange
3 shall possess financial resources that, at a min-
4 imum, exceed the total amount that would en-
5 able the digital commodity exchange to conduct
6 an orderly wind down of its activities.

7 “(C) ADDITIONAL FINANCIAL RESOURCES
8 FOR LEVERAGE TRADING.—The Commission
9 may require such additional financial resources
10 as are necessary to enable a digital commodity
11 exchange which offers margined, leveraged, or
12 financed transactions to fulfill its customer obli-
13 gations.

14 “(13) GOVERNANCE FITNESS STANDARDS.—

15 “(A) GOVERNANCE ARRANGEMENTS.—
16 Each digital commodity exchange shall establish
17 governance arrangements that are transparent
18 to fulfill public interest requirements.

19 “(B) FITNESS STANDARDS.—Each digital
20 commodity exchange shall establish and enforce
21 appropriate fitness standards for—

22 “(i) directors;

23 “(ii) any individual or entity with di-
24 rect access to the settlement activities of
25 the digital commodity exchange;

1 “(iii) any individual or entity with di-
2 rect access to any affiliated digital com-
3 modity custodian;

4 “(iv) any entity offering affiliated
5 services for the digital commodity ex-
6 change; and

7 “(v) any party affiliated with any in-
8 dividual or entity described in this clause.

9 “(14) SYSTEM SAFEGUARDS.—The digital com-
10 modity exchange shall—

11 “(A) establish and maintain a program of
12 risk analysis and oversight to identify and mini-
13 mize sources of operational and security risks,
14 through the development of appropriate controls
15 and procedures, and automated systems, that—

16 “(i) are reliable and secure; and

17 “(ii) have adequate scalable capacity;

18 “(B) establish and maintain emergency
19 procedures, backup facilities, and a plan for dis-
20 aster recovery that allow for—

21 “(i) the timely recovery and resump-
22 tion of operations; and

23 “(ii) the fulfillment of the responsibil-
24 ities and obligations of the digital com-
25 modity exchange; and

1 “(C) periodically conduct tests to verify
2 that the backup resources of the digital com-
3 modity exchange are sufficient to ensure contin-
4 ued—

5 “(i) order processing and trade
6 matching;

7 “(ii) price reporting;

8 “(iii) market surveillance; and

9 “(iv) maintenance of a comprehensive
10 and accurate audit trail.

11 “(d) APPOINTMENT OF TRUSTEE.—

12 “(1) IN GENERAL.—If a proceeding under sec-
13 tion 5e results in the suspension or revocation of the
14 registration of a digital commodity exchange, or if a
15 digital commodity exchange withdraws from registra-
16 tion, the Commission, on notice to the digital com-
17 modity exchange, may apply to the appropriate
18 United States district court where the digital com-
19 modity exchange is located for the appointment of a
20 trustee.

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

24 “(A) the court may take exclusive jurisdic-
25 tion over the digital commodity exchange and

1 the records and assets of the digital commodity
2 exchange, wherever located; and

3 “(B) if the court takes jurisdiction under
4 subparagraph (A), the court shall appoint the
5 Commission, or a person designated by the
6 Commission, as trustee with power to take pos-
7 session and continue to operate or terminate
8 the operations of the digital commodity ex-
9 change in an orderly manner for the protection
10 of customers subject to such terms and condi-
11 tions as the court may prescribe.

12 “(e) QUALIFIED DIGITAL COMMODITY CUSTO-
13 DIAN.—A digital commodity exchange shall hold in a
14 qualified digital commodity custodian each unit of a digital
15 commodity that is—

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

18 “(2) required to be held by the digital com-
19 modity exchange under subsection (b)(2) or (c)(12)
20 of this section; or

21 “(3) otherwise so required by the Commission
22 to reasonably protect customers or promote the pub-
23 lic interest.

24 “(f) EXEMPTIONS.—In order to promote responsible
25 economic or financial innovation and fair competition, or

1 protect customers, the Commission may (on its own initia-
2 tive or on application of the registered digital commodity
3 exchange) exempt, either unconditionally or on stated
4 terms or conditions or for stated periods and either retro-
5 actively or prospectively, or both, a registered digital com-
6 modity exchange from the requirements of this section, if
7 the Commission determines that—

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

10 “(2) the exemption will not have a material ad-
11 verse effect on the ability of the Commission or the
12 digital commodity exchange to discharge regulatory
13 or self-regulatory duties under this Act.

14 “(g) CUSTOMER DEFINED.—In this section, the term
15 ‘customer’ means any person that maintains an account
16 for the trading of digital commodities directly with a dig-
17 ital commodity exchange (other than a person that is
18 owned or controlled, directly or indirectly, by the digital
19 commodity exchange) for its own behalf or on behalf of
20 other any person.

21 “(h) FEES.—

22 “(1) IN GENERAL.—The Commission may, by
23 rule, establish—

24 “(A) an initial application fee to offset the
25 cost to review an application under this section

1 and the initial registration of a digital com-
2 modity exchange under this section; and

3 “(B) an annual supervisory fee to offset
4 the cost to provide ongoing supervision and
5 oversight of a digital commodity exchange
6 under this section.

7 “(2) IMPOSITION; COLLECTION.—The Commis-
8 sion may impose on, and collect from applicants and
9 entities registered under this section fees established
10 under paragraph (1), in reasonable amounts to off-
11 set the costs described in paragraph (1).

12 “(3) RETENTION OF FEES.—Any fees collected
13 under this section shall remain available for expendi-
14 ture, without further appropriation, until expended
15 for the purpose of—

16 “(A) implementing this section; and

17 “(B) providing ongoing registration, super-
18 vision, and oversight under this section.

19 “(i) FEDERAL PREEMPTION.—Notwithstanding any
20 other provision of law, the Commission shall have exclusive
21 jurisdiction over any digital commodity exchange reg-
22 istered under this section.

1 **“SEC. 5j. QUALIFIED DIGITAL COMMODITY CUSTODIANS.**

2 “(a) IN GENERAL.—The Commission shall designate
3 a digital commodity custodian as a qualified digital com-
4 modity custodian, if—

5 “(1) the Commission finds the digital com-
6 modity custodian is subject to adequate supervision
7 and appropriate regulation by an appropriate Fed-
8 eral banking agency, a State bank supervisor (within
9 the meaning of section 3 of the Federal Deposit In-
10 surance Act), or an appropriate government author-
11 ity in the home country of the organization; and

12 “(2) the digital commodity custodian agrees to
13 such regular and periodic sharing of information as
14 the Commission determines by rule shall be reason-
15 ably necessary to effectuate any of the provisions, or
16 to accomplish any of the purposes, of this Act.

17 “(b) RULEMAKING AUTHORITY.—For purposes of
18 subsection (a), the Commission, by rule or order, shall de-
19 fine ‘adequate supervision’ and ‘appropriate regulation’ as
20 any regulatory regime which meets such minimum stand-
21 ards for supervision and regulation as the Commission de-
22 termines are reasonably necessary to protect the property
23 of customers of a registered digital commodity exchange,
24 including minimum standards relating to—

25 “(1) financial resources;

26 “(2) risk management requirements;

1 “(3) governance arrangements;

2 “(4) fitness standards;

3 “(5) recordkeeping;

4 “(6) information-sharing; and

5 “(7) conflicts of interest.

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

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