

# DavisPolk

## Amendments to the Commodity Exchange Act as made by the Financial Innovation and Technology for the 21<sup>st</sup> Century Act (May 10, 2024)

AN ACT For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [7 U.S.C. 1] That this Act may be cited as the “Commodity Exchange Act”.*

### Sec. 1a. [7 U.S.C. 1a] definitions.

As used in this Act:

...

(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—

...

[\(iii\) digital commodity;](#)

~~(iii)~~ commodity option authorized under section 4c; or

~~(iv)~~ leverage transaction authorized under section 19.

...

(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—

...

[\(III\) digital commodity;](#)

~~(III)~~ commodity option authorized under section 4c; or

~~(IV)~~ 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) any excluded activity, as described in section 4v.

~~(B)~~ 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—

...

(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;

~~(HIV)~~ any commodity option authorized under section 4c; or

~~(IVV)~~ any leverage transaction authorized under section 19;

...

(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.

...

(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 an order for the purchase or sale of a digital commodity; or

(ii) the supervision of any person engaged in the solicitation or acceptance of an order for the purchase or 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 an order for the purchase or sale of a digital commodity; or

(ii) the supervision of any person engaged in the solicitation or acceptance of an order for the purchase or 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 the 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 system and certified to be a decentralized system 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;

(ii) any unit of a digital asset held by a person, other than the 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 system and certified to be a decentralized system 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 system and certified to be a decentralized system under section 44 of the Securities Exchange Act of 1934.

(B) Exclusion.—The term ‘digital commodity’ does not include a permitted payment stablecoin.

(C) Treatment of adjudicated non-securities.—If, before enactment of this paragraph, a Federal court in a Securities and Exchange Commission enforcement action determines that a digital asset transaction is not an offer or sale of a security, any unit of a digital asset transferred pursuant to the transaction shall be considered a digital commodity, unless the determination is overturned.

(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 person 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 person 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;

(ii) validates a digital commodity transaction, operates a node, or engages in similar activity to participate in facilitating, operating, or securing a blockchain system; or

(iii) is a bank (as defined under section 3(a) of the Securities Exchange Act of 1934) engaging in certain banking activities with respect to a digital commodity in the same manner as a bank is excluded from the definition of a broker under section 3(a)(4) of the Securities Exchange Act of 1934.

(57) Digital commodity custodian.—The term ‘digital commodity custodian’ means an entity in the business of holding, maintaining, or safeguarding digital commodities for others.

(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) has an identifiable business of dealing in a digital commodity as principal 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) has an identifiable business of entering 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;

(v) validates a digital commodity transaction, operates a node, or engages in similar activity to participate in facilitating, operating, or securing a blockchain system; or

(vi) is a bank (as defined under section 3(a) of the Securities Exchange Act of 1934) engaging in certain banking activities with respect to a digital commodity in the same manner as a bank is excluded from the definition of a dealer under section 3(a)(5) of the Securities Exchange Act of 1934.

(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 system’, ‘digital asset’, ‘digital asset issuer’, ‘end user distribution’, ‘functional system’, ‘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’ means an agreement, contract, or transaction involving a digital commodity and—

(A) a security; or

(B) a restricted digital asset.

**Sec. 2. [7 U.S.C. 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 [subparagraphs \(F\) and \(G\) of subsection \(c\)\(2\) 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.

...

(D)

...

(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~~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(67), 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(67), 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(67), 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.

(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 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.

...

(6)

(A) Except as otherwise provided in this paragraph, ~~and in~~ paragraphs (4) and (5) of this subsection, the and section 18(c)(3) 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.

...

(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.—

...

(D) Retail commodity transactions.—

...

(ii) Exceptions.—This subparagraph shall not apply to—

(I) an agreement, contract, or transaction described in paragraph (1) (other than an agreement, contract, or transaction in a permitted payment stablecoin) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

...

(III) a contract of sale of a commodity, other than a digital commodity or a permitted payment stablecoin that—

...

(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 or a permitted payment stablecoin that 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;

(V) a contract of sale of a digital commodity or a permitted payment stablecoin that—

(aa) 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

(bb) is not a contract of sale of—

(AA) a digital commodity or a permitted payment stablecoin that references, represents an interest in, or is functionally equivalent to an agricultural commodity, an excluded commodity, or an exempt commodity, other than the digital commodity itself, as shall be further defined by the Commission; or

(BB) a digital commodity or a permitted payment stablecoin to which the Commission determines, by rule or regulation, it is not in the public interest for this section to apply;

~~(IV)~~(VI) 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)~~(VII) 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)).

...

(iv) The Commission shall adopt rules and regulations applicable to digital commodity dealers and digital commodity brokers in connection with the agreements, contracts or transactions in digital commodities or permitted payment stablecoins described in clause (ii)(V) of this subparagraph, which shall set forth minimum requirements related to disclosure, recordkeeping, margin and financing arrangements, capital, reporting, business conduct, documentation, and supervision of employees and agents. Except as prohibited in subparagraph (G)(iii), the Commission may also 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 such clause (ii)(V), which may include, without limitation, requirements regarding registration with the Commission and membership in a registered futures association

~~(iv)~~(v) 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.

...

(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) 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.—Subject to clauses (ii) and (iii), the Commission shall

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 with the Commission.

(ii) Permitted payment stablecoin transaction rules.—This Act shall apply to a transaction described in clause (i) only for the purpose of regulating the offer, execution, solicitation, or acceptance of a cash or spot permitted payment stablecoin transaction on a registered entity or by any other entity registered with the Commission, as if the permitted payment stablecoin were a digital commodity.

(iii) No authority over permitted payment stablecoins.—

Notwithstanding clauses (i) and (ii), the Commission shall not make a rule or regulation, impose a requirement or obligation on a registered entity or other entity registered with 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.

#### **Sec. 4c. [7 U.S.C. 6c] prohibited transactions.**

(a) In General.—

...

(3) Contract of sale.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress (as such terms are defined under section 2 of the STOCK Act) or any judicial officer or judicial employee (as such terms are defined, respectively, under section 2 of the STOCK Act) who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal

capacity and for personal gain to enter into, or offer to enter into—

...

(B) 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)); ~~or~~

(C) a swap; or

(D) a contract of sale of a digital commodity.

(4) Nonpublic information.—

(A) Imparting of nonpublic information.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee who, by virtue of the employment or position of the Member, officer, employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

...

(ii) 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)); ~~or~~

(iii) a swap; or

(iv) a contract of sale of a digital commodity.

(B) Knowing use.—It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government or any Member of Congress or employee of Congress or any judicial officer or judicial employee as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

...

(ii) 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)); ~~or~~

(iii) a swap; ~~or~~

(iv) a contract of sale of a digital commodity.

(C) Theft of nonpublic information.—It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government or by Congress or by the judiciary that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information or by Congress or by the judiciary in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

...

(ii) 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)); ~~or~~

(iii) a swap;

(iv) a contract of sale of a digital commodity, provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, to Congress, any Member of Congress, any employee of Congress, any judicial officer, or any judicial employee, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in any of clauses (i), through ~~(iiiv)~~, ~~or~~ ~~(iii)~~;

**Sec. 4d. [7 U.S.C. 6d]**

(a) It shall be unlawful for any person to be a futures commission merchant unless—

...

(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 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.

(f) Swaps.—

...

(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, or qualified digital commodity custodian or with a derivatives clearing organization.

#### **Sec. 4k. [7 U.S.C. 6k]**

(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.

(45) 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 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.

(56)<sup>1</sup> 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.

(67) 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.

#### **Sec. 4m. [7 U.S.C. 6m]**

(3) Exception.—

(A) In general.—Paragraph (1) shall not apply to ~~any~~ 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 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.

...

<sup>1</sup> This paragraph (5) was inserted after section 4k(4), *as added by subsection (c) of this section*, [which added section 4f(a)(4)] by section 252(d) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554, 114 Stat. 2763, 2763A-448, Dec. 21, 2000). The amendment was executed to section 4(k)(4) (vs. section 4f(a)) because section 252(d) of that Act specifically amended section 4k and included the U.S.C. cite for section 4k.

(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.

[\(4\) Exemptive Authority.—The Commission shall promulgate rules to provide appropriate exemptions for commodity pool operators and commodity trading advisors, to provide relief from duplicative, conflicting, or unduly burdensome requirements or to promote responsible innovation, to the extent the exemptions foster the development of fair and orderly cash or spot digital commodity markets, are necessary or appropriate in the public interest, and are consistent with the protection of customers.](#)

**Sec. 4t. [7 U.S.C. 6t] Large swap trader reporting.**

...

**[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.](#)

[\(3\) 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 of 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.

(4) Limitations on certain assets.—A digital commodity broker or digital commodity dealer shall not offer, offer to enter into, enter into, or facilitate any contract of 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.

(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 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 digital commodity broker and digital commodity dealer shall meet such minimum capital requirements as the Commission may prescribe to address the risks associated with digital commodity trading and 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; and

(B) in the case of a digital commodity dealer, fulfill the counterparty 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.—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.).

(f) Reporting and Recordkeeping.—Each digital commodity broker and 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 digital commodity broker and 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 digital commodity broker and 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 digital commodity broker and digital commodity dealer shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(h) Business Conduct Standards.—

(1) In general.—Each digital commodity broker and 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;

(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 broker and digital commodity dealer 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 digital commodity broker or 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 digital commodity broker and 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 digital commodity broker and 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 digital commodity broker and 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 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 persons involved in digital commodity activities; 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 digital commodity broker and 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 non-compliance 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 re- port 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 digital commodity broker and 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 digital commodity broker and 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;

(ii) required to be held by the digital commodity broker or digital commodity dealer under subsection (e); or

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

(2) Segregation of funds.—

(A) In general.—Each digital commodity broker and digital commodity dealer shall treat and deal with all money, assets, and property that is received by the digital commodity broker or 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

digital commodity broker and 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 digital commodity broker or 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 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.

(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 digital commodity broker or 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 digital commodity dealer and a 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 (6) 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 any person other than a customer of 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 (6) 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 to be used under subparagraph (B), 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.—

(i) In general.—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.

(ii) Customer choice.—A digital commodity broker or digital commodity dealer may not require a waiver from a customer described in subparagraph (A) as a condition of doing business with the broker or dealer.

(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 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 digital commodity broker and a digital commodity dealer shall be treated as a financial institution for purposes of the Bank Secrecy Act.

#### **Sec. 4v. Decentralized finance activities not subject to this act**

(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 based on the person directly or indirectly engaging in any of the following activities, whether singly or in combination, in relation to the operation of a blockchain system or in relation to decentralized finance (as defined in section 605(d) of the Financial Innovation and Technology for the 21st Century Act):

(1) Compiling network transactions, operating or participating in a

liquidity pool, relaying, searching, sequencing, validating, or acting in a similar capacity with respect to contract of sale of 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 contract of sale of 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 hardware or software, including wallets or other systems, facilitating an individual user's own personal ability to keep, safeguard, or custody the user's digital commodities or related private keys.

(b) Exceptions.—Subsection (a) shall not be interpreted to apply to the anti-fraud, anti-manipulation, or false reporting enforcement authorities of the Commission.

**Sec. 5c. [7 U.S.C. 7a-2] 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), and 5i(c)<sup>2</sup>, to describe what would constitute an acceptable business practice under such sections.

...

(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

<sup>2</sup>Sec. 13105(e) of the Food, Conservation, and Energy Act of 2008 (122 Stat. 2196) amended this paragraph by striking “5(b)(d)(2)” and inserting “5b(c)(2)”. Sec. 13203(i) of that Act (122 Stat. 2202) subsequently amended this paragraph by inserting “, and section 2(h)(7) with respect to significant price discovery contracts,” after “, and 5b(d)(2)”. Amendment executed to effectuate the probable intent of Congress.

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)<sup>3</sup> New Contracts, New Rules, and Rule Amendments.—

...

(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).

...

(4) Prior approval.—

...

(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(109) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months

<sup>3</sup> The amendments made to subsec. (c) by secs. 717(d) and 721(e)(7) of P.L. 111-203 (124 Stat. 1652, 1671) were eliminated when this subsection was amended in its entirety by sec. 745(b) of P.L. 111-203 (124 Stat. 1747).

which have already been listed for trading and have open interest.

...

(5) Approval.—

...

(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 the regulations prescribed under this Act).

(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 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 in adequate explanations; or

(III) potential inconsistencies with this Act.

(6) Certification required.—Notwithstanding any other provision 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 commodity, unless a certification has been made under this section for the digital commodity.

(7) Prior approval before registration.—

(A) In general.—A person applying for registration with the Commission for the purposes of listing or offering a digital commodity for trading in a digital commodity cash or spot market may request that the Commission grant prior approval for the person to list or offer the digital commodity on being registered with the Commission.

(B) Request for prior approval.—A person seeking prior approval under subparagraph (A) shall furnish the Commission with a written certification that the digital commodity meets the requirements of this Act (including the regulations prescribed under this Act) and the information described in paragraph (2).

(C) Deadline.—The Commission shall take final action on a request for prior approval not later than 90 business days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(D) Disapproval.—

(i) In general.—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 a regulations prescribed under this Act).

(ii) Analysis required.—The Commission shall include, with any findings made under clause (i), a detailed analysis of the factors on which the decision is based.

(iii) Public findings.—The Commission shall make public any disapproval decision, and any related findings and analysis, made under this paragraph.

(8) Eligible entity defined.—In this subsection, the term ‘eligible entity’ means a registered entity or group of registered entities acting jointly.

**Sec. 5h. [7 U.S.C. 7b-3] swap execution facilities.**

...

**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 in a digital commodity; 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 restricted digital assets.

(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 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.

(C) Section 4b-1 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.

(2) Prohibition on acting as a counterparty.—

(A) In general.—A digital commodity exchange or any affiliate of such an exchange shall not trade on or subject to the rules of the digital commodity exchange for its own account.

(B) Exceptions.—The Commission shall, by rule, permit a digital commodity exchange or any affiliate of a digital commodity exchange to engage in trading on an affiliated exchange so long as the trading is not solely for the purpose of the profit of the exchange, including the following:

(i) Customer direction.—A transaction for, or entered into at the direction of, or for the benefit of, an unaffiliated customer.

(ii) Risk management.—A transaction to manage the risks associated with the digital commodity business of the exchange.

(iii) Functional use.—A transaction related to the functional operation of a blockchain network.

(C) Notice requirement.—In order for a digital commodity exchange or any affiliate of a digital commodity exchange to engage in trading on the affiliated exchange pursuant to subsection (B), notice must be given to the Commission that shall enumerate how any proposed activity is consistent with the exceptions in subsection (B) and the principles of the Act.

(D) Delegation.—The Commission may, by rule, delegate authority to the Director of the Division of Market Oversight, or such other employee or employees as the Director of the Division of Market Oversight may designate from time to time, to carry out these provisions.

(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 restricted digital asset.

(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) Trading volume and volatility.—The trading volume and volatility of the digital commodity.

(V) 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.

(iii) Format.—The Commission shall prescribe rules and regulations for the standardization and simplification of disclosures under clause (ii), including requiring that disclosures—

(I) be conspicuous;

(II) use plain language comprehensible to customers; and

(III) succinctly explain the information that is required to be communicated to the customer.

(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) or between self-regulatory obligations and commercial interests, which may include information partitions, restrictions on employees and directors, 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 an 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 greater of—

(i) the total amount that would enable the digital commodity exchange to conduct an orderly wind-down of its activities or

(ii) the total amount that would enable the digital commodity exchange to cover the operating costs of the digital commodity exchange for a 1-year period, as calculated on a rolling basis.

(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 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.

(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.

(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 any person other than a customer of 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 to be used under subparagraph (B), 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.—

(i) In general.—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.

(ii) Customer choice.—A digital commodity exchange may not require a waiver from a customer described in subparagraph (A) as a condition of doing business on the exchange.

(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 permit an affiliated digital commodity broker to facilitate access to the digital commodity exchange.

(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.—The Commission may, by rule, impose any additional requirements related to the operations and activities of the digital commodity exchange and an 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.

(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.—

(1) 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—

(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.

(2) The Commission may exempt, conditionally or unconditionally, a digital commodity exchange from registration under this section if the Commission finds that the digital commodity exchange is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the appropriate governmental authorities in the home country<sup>7</sup> of the facility.

(i) 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

any other 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 digital commodity exchange shall be treated as a financial institution for purposes of the Bank Secrecy Act.

(m) Withdrawal of Certification of a Blockchain System.—

(1) In general.—

(A) Determination by a digital commodity exchange.—With respect to a certification of a blockchain system that becomes effective pursuant to section 44(f) of the Securities Exchange Act of 1934, if a digital commodity exchange determines that the blockchain system may not be a decentralized system, the digital commodity exchange shall notify the Commission of such determination.

(B) Withdrawal process.—With respect to each notification received under subparagraph (A), the Commission shall initiate a withdrawal process under which the Commission shall—

(i) publish a notice announcing the proposed withdrawal;

(ii) provide a 30 day comment period with respect to the proposed withdrawal; and

(iii) after the end of the 30-day comment required under clause (ii), publish either—

(I) a notification of withdrawal of the applicable certification; or

(II) a notice that the Commission is not withdrawing the certification.

(C) Detailed analysis required.— The Commission shall include, with each publication of a notification of withdrawal described under subparagraph (B)(iii)(I), a detailed analysis of the factors on which the decision was based.

(2) Recertification.—With respect to a blockchain system for which a certification has been withdrawn under this subsection, no person may make a certification under section 44(a) of the Securities Exchange Act of 1934 with respect to such blockchain system during the 90-day period beginning on the date of such withdrawal.

(3) Appeal of withdrawal.—

(A) In general.—If a certification is withdrawn under this subsection, a person making 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 withdrawal is made.

(B) Review.—In an appeal under subparagraph (A), the court shall have de novo re- view of the determination to withdraw the certification.”.

#### **Sec. 5j. Qualified digital commodity custodians.**

(a) In general.—A digital commodity custodian is a qualified digital commodity custodian if the digital commodity custodian complies with the requirements of this section.

(b) Supervision Requirement.—A digital commodity custodian that is not subject to supervision and examination by an appropriate Federal banking agency, the National Credit Union Administration, the Commission, or the Securities and Exchange Commission shall be subject to adequate supervision and appropriate regulation by—

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

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

(3) an appropriate foreign governmental authority in the home country of the digital commodity custodian.

(c) Other Requirements.—

(1) Not otherwise prohibited.—The digital commodity custodian has not been prohibited by a supervisor of the digital commodity custodian from engaging in an activity with respect to the custody and safekeeping of digital commodities.

(2) Information sharing.—

(A) In general.—A digital commodity custodian shall share information with the Commission on request and comply with such requirements for periodic sharing of information regarding customer accounts that the digital commodity custodian holds on behalf of an entity registered with the Commission as the Commission determines by rule are reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.

(B) Provision of information.—Any entity that is subject to regulation and examination by an appropriate Federal banking agency

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 entity.

(d) Adequate Supervision and Appropriate Regulation.—

(1) In general.—For purposes of subsection (b), 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 standards relating to the licensing, examination, and supervisory processes that require the digital commodity custodian to, at a minimum—

(A) receive a review and evaluation of ownership, character and fitness, conflicts of interest, business model, financial statements, funding resources, and policies and procedures of the digital commodity custodian;

(B) hold capital sufficient for the financial integrity of the digital commodity custodian;

(C) protect customer assets;

(D) establish and maintain books and records regarding the business of the digital commodity custodian;

(E) submit financial statements and audited financial statements to the applicable supervisor described in subsection (b);

(F) provide disclosures to the applicable supervisor described in subsection (b) regarding actions, proceedings, and other items as determined by the supervisor;

(G) maintain and enforce policies and procedures for compliance with applicable State and Federal laws, including those related to anti-money laundering and cybersecurity;

(H) establish a business continuity plan to ensure functionality in cases of disruption; and

(I) establish policies and procedures to resolve complaints.

(2) Rulemaking with respect to definitions.—

(A) In general.—For purposes of this section, 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.

(B) Conditional treatment of certain custodians before rulemaking.—Before the effective date of a rulemaking under

subparagraph (A), a trust company is deemed subject to adequate supervision and appropriate regulation if—

(i) the trust company is expressly permitted by a State bank supervisor to engage in the custody and safekeeping of digital commodities;

(ii) the State bank supervisor has established licensing, examination, and supervisory processes that require the trust company to, at a minimum, meet the conditions described in subparagraphs (A) through (I) of paragraph (1); and

(iii) the trust company is in good standing with its State bank supervisor.

(C) Transition period for certain custodians.—In implementing the rulemaking under subparagraph (A), the Commission shall provide a transition period of not less than 2 years for any trust company that is deemed subject to adequate supervision and appropriate regulation under subparagraph (B) on the effective date of the rulemaking.

(e) 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. [7 U.S.C. 8]<sup>4</sup>**

(g) [7 U.S.C. 9c] 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(67), or any board of trade designated as a contract market pursuant to section 5f.

**Sec. 8. [7 U.S.C. 12]**

(a)

...

<sup>4</sup> Subsections (a) and (b) of section 6 are classified to 7 U.S.C. 8.

(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(67), or any board of trade designated as a contract market pursuant to section 5f.

**Sec. 18. [7 U.S.C. 22]**

...

(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.