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119TH CONGRESS
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REPT. 119–168
Part 2

DIGITAL ASSET MARKET CLARITY ACT OF 2025

R E P O R T

OF THE

COMMITTEE ON FINANCIAL SERVICES

TOGETHER WITH

MINORITY VIEWS

[TO ACCOMPANY H.R. 3633]

JUNE 23, 2025.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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DIGITAL ASSET MARKET CLARITY ACT OF 2025

JUNE 23, 2025.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HILL of Arkansas, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3633]

The Committee on Financial Services, to whom was referred the bill (H.R. 3633) to provide for a system of regulation of the offer and sale of digital commodities by the Securities and Exchange Commission and the Commodity Futures Trading Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Digital Asset Market Clarity Act of 2025" or the "CLARITY Act of 2025".

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

Sec. 1. Short title; table of contents.

TITLE I—DEFINITIONS; RULEMAKING; PROVISIONAL REGISTRATION

Sec. 101. Definitions under the Securities Act of 1933.
Sec. 102. Definitions under the Securities Exchange Act of 1934.
Sec. 103. Definitions under the Commodity Exchange Act.
Sec. 104. Definitions under this Act.
Sec. 105. Rulemakings.
Sec. 106. Provisional registration for digital commodity exchanges, brokers, and dealers.
Sec. 107. Commodity Exchange Act and securities laws savings provisions.
Sec. 108. Administrative requirements.
Sec. 109. International cooperation.
Sec. 110. Treatment of certain non-controlling blockchain developers.
Sec. 111. Application of the Bank Secrecy Act.
Sec. 112. Implementation.

TITLE II—OFFERS AND SALES OF DIGITAL COMMODITIES

Sec. 201. Treatment of investment contract assets.
Sec. 202. Exempted primary transactions in digital commodities.
Sec. 203. Treatment of secondary transactions in digital commodities that originally involved investment contracts.
Sec. 204. Requirements for offers and sales of digital commodities by digital commodity related persons and digital commodity affiliated persons.
Sec. 205. Mature blockchain system requirements.
Sec. 206. Effective date.

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

Sec. 301. Treatment of digital commodities and permitted payment stablecoins.
Sec. 302. Anti-fraud authority over permitted payment stablecoins and certain digital commodity transactions.
Sec. 303. Eligibility of alternative trading systems.
Sec. 304. Operation of alternative trading systems.
Sec. 305. Modernization of recordkeeping requirements.
Sec. 306. Exemptive authority.
Sec. 307. Additional registrations with the Commodity Futures Trading Commission.
Sec. 308. Exempting digital commodities from State securities laws.
Sec. 309. Exclusion for decentralized finance activities.
Sec. 310. Treatment of custody activities by banking institutions.
Sec. 311. Broker and dealer disclosures regarding the treatment of assets.
Sec. 312. Digital commodity activities that are financial in nature.
Sec. 313. Effective date; administration.
Sec. 314. Studies on foreign adversary participation.

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

Sec. 401. Commission jurisdiction over digital commodity transactions.
Sec. 402. Requiring futures commission merchants to use qualified digital asset custodians.
Sec. 403. Trading certification and approval for digital commodities.
Sec. 404. Registration of digital commodity exchanges.
Sec. 405. Qualified digital asset custodians.
Sec. 406. Registration and regulation of digital commodity brokers and dealers.
Sec. 407. Registration of associated persons.
Sec. 408. Registration of commodity pool operators and commodity trading advisors.
Sec. 409. Exclusion for decentralized finance activities.
Sec. 410. Resources for implementation and enforcement.
Sec. 411. Digital commodity activities by SEC-registered entities.
Sec. 412. Requirements related to control persons.
Sec. 413. Effective date.
Sec. 414. Sense of Congress.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

Sec. 501. Findings; sense of Congress.
Sec. 502. Modernization of the Securities and Exchange Commission mission.
Sec. 503. Strategic Hub for Innovation and Financial Technology.
Sec. 504. Codification of LabCFTC.
Sec. 505. Study on decentralized finance.
Sec. 506. Study on non-fungible tokens.
Sec. 507. Study on expanding financial literacy amongst digital commodity holders.
Sec. 508. Study on financial market infrastructure improvements.
Sec. 509. Study on blockchain in payments.

TITLE I—DEFINITIONS; RULEMAKING; PROVISIONAL REGISTRATION

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

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

"(20) BLOCKCHAIN.—The term 'blockchain' means—

"(A) any technology—

"(i) where data is—

"(I) shared across a network to create a distributed ledger of independently verifiable transactions or information among network participants;

"(II) linked using cryptography to maintain the integrity of the distributed ledger and to execute other functions; and

"(III) propagated among network participants to reach consensus on the state of the distributed ledger and any other functions; and

"(ii) composed of source code that is publicly available; and

"(B) any similar technology to the technology described in subparagraph (A).

"(21) BLOCKCHAIN APPLICATION.—The term 'blockchain application' means any executable software that is deployed to a blockchain and composed of source code that is publicly available, including a smart contract or any network of smart contracts, or other similar technology.

"(22) BLOCKCHAIN PROTOCOL.—The term 'blockchain protocol' means publicly available source code of a blockchain that is executed by the network participants of a blockchain to facilitate its functioning, or other similar technology.

"(23) BLOCKCHAIN SYSTEM.—The term 'blockchain system' means any blockchain, together with its blockchain protocol or any blockchain application or network of blockchain applications.

"(24) DECENTRALIZED GOVERNANCE SYSTEM.—

"(A) IN GENERAL.—The term 'decentralized governance system' means, with respect to a blockchain system, any transparent, rules-based system permitting persons to form consensus or reach agreement in the development, provision, publication, maintenance, or administration of such blockchain system, where participation is not limited to, or under the effective control of, any person or group of persons under common control.

"(B) RELATIONSHIP OF PERSONS TO DECENTRALIZED GOVERNANCE SYSTEMS.—With respect to a decentralized governance system, the decentralized governance system and any persons participating in the decentralized governance system shall be treated as separate persons unless such persons are under common control or acting pursuant to an agreement to act in concert.

"(C) LEGAL ENTITIES FOR DECENTRALIZED GOVERNANCE SYSTEMS.—The term 'decentralized governance system' shall include a legal entity used to implement the rules-based system described in subparagraph (A), provided that the legal entity does not operate pursuant to centralized management. For the purposes of this subparagraph, the delegation of ministerial or administrative authority at the direction of the participants in a decentralized governance system shall not be construed to be centralized management.

"(25) DIGITAL ASSET.—The term 'digital asset' means any digital representation of value which is recorded on a cryptographically-secured distributed ledger or other similar technology.

"(26) DIGITAL COMMODITY.—The term 'digital commodity' has the meaning given that term under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

"(27) DIGITAL COMMODITY AFFILIATED PERSON.—The term 'digital commodity affiliated person' means a person (including a digital commodity related person) that, with respect to any digital commodity—

"(A) acquires or has any right to acquire 5 percent or more of the total outstanding units of such digital commodity from a digital commodity issuer or an agent or underwriter thereof (other than a decentralized governance system);

"(B) is a founder of the digital commodity issuer; or

"(C) is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the digital commodity issuer or held such role at any point in the previous 12-month period.

"(28) DIGITAL COMMODITY ISSUER.—

"(A) IN GENERAL.—With respect to a digital commodity, the term 'digital commodity issuer' means any person that—

"(i) issues or causes to be issued, or proposes to issue or cause to be issued, a unit of such digital commodity to a person; or

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

"(B) PROHIBITION ON EVASION.—It shall be unlawful for any person to knowingly evade classification as a 'digital commodity issuer' and facilitate an arrangement for the primary purpose of effecting an offer, sale, distribution, or other issuance of a digital commodity, including via any arrangement involving the transfer of intellectual property associated with the blockchain system to which the digital commodity relates.

"(29) DIGITAL COMMODITY RELATED PERSON.—

"(A) IN GENERAL.—With respect to a digital commodity issuer, the term 'digital commodity related person' means a person—

"(i) that is or was in the previous 6-month period a promoter, senior employee, advisory board member, consultant, advisor, or person serving in a similar capacity; or

"(ii) that acquires or has any right to acquire 1 percent or more of the total outstanding units of such digital commodity from a digital commodity issuer or an agent or underwriter thereof (other than a decentralized governance system).

"(B) SENIOR EMPLOYEE DEFINED.—In this paragraph and with respect to a digital commodity issuer, the term 'senior employee' means any employee materially involved in the management of the digital commodity issuer, including management of the development of the blockchain system to which the digital commodity relates.

"(30) END USER DISTRIBUTION.—The term 'end user distribution' means a distribution of a unit of a digital commodity that—

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

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

"(i) to users of the digital commodity or any blockchain system to which the digital commodity relates;

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

"(iii) to the existing holders of another digital commodity, in proportion to the total units of such other digital commodity as are held by each person.

"(31) MATURE BLOCKCHAIN SYSTEM.—The term 'mature blockchain system' means a blockchain system, together with its related digital commodity, that is not controlled by any person or group of persons under common control.

"(32) PERMITTED PAYMENT STABLECOIN.—

"(A) IN GENERAL.—The term 'permitted payment stablecoin' means a digital asset—

"(i) that is or is designed to be used as a means of payment or settlement;

"(ii) that is denominated in a national currency;

"(iii) the issuer of which is subject to the regulatory and supervisory authority of a State or Federal agency;

"(iv) the issuer of which—

"(I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; or

"(II) represents that the digital asset will maintain or creates the reasonable expectation that the digital asset will maintain a stable value relative to the value of a fixed amount of monetary value; and

"(v) that is not—

"(I) a national currency;

"(II) a security issued by—

"(aa) an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)); or

"(bb) a person that would be an investment company under the Investment Company Act of 1940 but for paragraphs (1) and (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c));

"(III) a deposit (as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), regardless of the technology used to record such deposit; or

"(IV) an account (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), regardless of the technology used to record such account.

"(B) MONETARY VALUE DEFINED.—The term 'monetary value'—

"(i) means—

"(I) a national currency;

"(II) a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is denominated in a national currency; or

"(III) an account (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)); and

"(ii) does not include any agricultural or other physical commodity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)).

"(33) SECURITIES LAWS.—The term 'securities laws' has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).".

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

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

(1) by redesignating the second paragraph (80) (relating to funding portals) as paragraph (81); and

(2) by adding at the end the following:

"(82) BANK SECRECY ACT.—The term 'Bank Secrecy Act' means—

"(A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

"(B) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and

"(C) subchapter II of chapter 53 of title 31, United States Code.

"(83) ADDITIONAL DIGITAL COMMODITY-RELATED TERMS.—

"(A) SECURITIES ACT OF 1933.—The terms 'blockchain system', 'decentralized governance system', 'digital asset', 'digital commodity affiliated person', 'digital commodity issuer', 'digital commodity related person', 'end user distribution', 'mature blockchain system', and 'permitted payment stablecoin' have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

"(B) COMMODITY EXCHANGE ACT.—The terms 'digital commodity', 'digital commodity broker', 'digital commodity dealer', 'digital commodity exchange', 'decentralized finance messaging system', and 'decentralized finance trading protocol' have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).".

SEC. 103. DEFINITIONS UNDER THE COMMODITY EXCHANGE ACT.

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

(1) in paragraph (10)—

(A) in subparagraph (A)—

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

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

"(iii) digital commodity;"; and

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

"(B) EXCLUSION.—For purposes of this paragraph, the term 'trading in commodity interests' shall not include transacting in digital commodities for the purpose of—

"(i) acting as a digital commodity custodian;

"(ii) establishing, maintaining, or managing inventory or payment instruments for commercial purposes; or

"(iii) maintaining or supporting the operation of, or validating transactions on, a blockchain system.";

(2) in paragraph (11)—

(A) in subparagraph (A)(i)—

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

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

"(III) digital commodity;"; and

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

"(B) EXCLUSION.—For purposes of this paragraph, the term 'trading in commodity interests' shall not include transacting in digital commodities for the purpose of—

"(i) acting as a digital commodity custodian;

"(ii) establishing, maintaining, or managing inventory or payment instruments for commercial purposes; or

"(iii) maintaining or supporting the operation of, or validating transactions on, a blockchain system.";

(3) in paragraph (12)(A)(i)—

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

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

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

"(III) a digital commodity;";

(4) by redesignating paragraphs (16) through (51) as paragraphs (17) through (52), respectively, and inserting after paragraph (15) the following:

"(16) TERMS RELATED TO DIGITAL COMMODITIES.—

"(A) ASSOCIATED PERSON OF A DIGITAL COMMODITY BROKER.—

"(i) IN GENERAL.—Except as provided in clause (ii), 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.

"(ii) 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.

"(B) ASSOCIATED PERSON OF A DIGITAL COMMODITY DEALER.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'associated person of a digital commodity dealer' means a person who is associated with a digital commodity dealer as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves—

"(I) the solicitation or acceptance of a contract for the purchase or sale of a digital commodity; or

"(II) the supervision of any person engaged in the solicitation or acceptance of a contract for the purchase or sale of a digital commodity.

"(ii) 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.

"(C) BANK SECRECY ACT.—The term 'Bank Secrecy Act' means—

"(i) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

"(ii) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and

"(iii) subchapter II of chapter 53 of title 31, United States Code.

"(D) DECENTRALIZED FINANCE MESSAGING SYSTEM.—

"(i) IN GENERAL.—The term 'decentralized finance messaging system' means a software application that provides a user with the ability to create or submit an instruction, communication, or message to a decentralized finance trading protocol for the purpose of executing a transaction by the user.

"(ii) ADDITIONAL REQUIREMENTS.—The term 'decentralized finance messaging system' does not include any system that provides any person other than the user with control over—

"(I) the funds of the user; or

"(II) the execution of the transaction of the user.

"(E) DECENTRALIZED FINANCE TRADING PROTOCOL.—

"(i) IN GENERAL.—The term 'decentralized finance trading protocol' means a blockchain system through which multiple participants can execute a financial transaction—

"(I) in accordance with an automated rule or algorithm that is predetermined and non-discretionary; and

"(II) without reliance on any other person to maintain control of the digital assets of the user during any part of the financial transaction.

"(ii) EXCLUSIONS.—

"(I) IN GENERAL.—The term 'decentralized finance trading protocol' does not include a blockchain system if—

"(aa) a person or group of persons under common control has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system; or

"(bb) the blockchain system does not operate, execute and enforce its operations and transactions based solely on pre-established, transparent rules encoded directly within the source code of the blockchain system.

"(II) SPECIAL RULE.—For purposes of subclause (I), a decentralized governance system shall not be considered to be a person or a group of persons under common control.

"(F) DIGITAL COMMODITY.—

"(i) IN GENERAL.—The term 'digital commodity' means a digital asset that is intrinsically linked to a blockchain system, and the value of which is derived from or is reasonably expected to be derived from the use of the blockchain system.

"(ii) RELATIONSHIP TO A BLOCKCHAIN SYSTEM.—For purposes of this subparagraph, a digital asset is intrinsically linked to a blockchain system if the digital asset is directly related to the functionality or operation of the blockchain system or to the activities or services for which the blockchain system is created or utilized, including where the digital asset is—

"(I) issued or generated by the programmatic functioning of the blockchain system;

"(II) used to transfer value between participants in the blockchain system;

"(III) used to access the activities or services of the blockchain system;

"(IV) used to participate in the decentralized governance system of the blockchain system;

"(V) used or removed from circulation in whole or in part to pay fees or otherwise verify or validate transactions on the blockchain system;

"(VI) used as payment or incentive to participants in the blockchain system to engage in the activities of the blockchain system, provide services to other participants in the blockchain system, or otherwise participate in the functionality of the blockchain system; or

"(VII) used as payment or incentive to participants in the blockchain system to validate transactions, secure the blockchain system, provide computational services, maintain or distribute information, or otherwise participate in the operations of the blockchain system.

"(iii) EXCLUSION.—The term 'digital commodity' does not include any of the following:

"(I) SECURITY.—

"(aa) Any security, other than a note, an investment contract, or a certificate of interest or participation in any profit-sharing agreement.

"(bb) A note, an investment contract, or a certificate of interest or participation in any profit-sharing agreement that represents or gives the holder an ownership interest or other interest in the revenues, profits, obligations, debts, assets, or assets or debts to be acquired of the issuer of the digital asset or another person (other than a decentralized governance system).

"(II) SECURITY DERIVATIVE.—A digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

"(aa) a security future, as defined in section 2a of the Securities Act of 1933;

"(bb) a security-based swap, as defined in section 2a of the Securities Act of 1933;

"(cc) a put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), as defined in section 2a of the Securities Act of 1933; or

"(dd) a put, call, straddle, option, or privilege on any security, as defined in section 2a of the Securities Act of 1933.

"(III) PERMITTED PAYMENT STABLECOIN.—A digital asset that is a permitted payment stablecoin.

"(IV) BANKING DEPOSIT.—

"(aa) A deposit (as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), regardless of the technology used to record the deposit.

"(bb) An account (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), regardless of the technology used to record the account.

"(V) COMMODITY.—A digital asset that references, represents an interest in, or is functionally equivalent to—

"(aa) an agricultural commodity;

"(bb) an excluded commodity, other than a security; or

"(cc) an exempt commodity, other than the digital commodity itself, as shall be further defined by the Commission.

"(VI) COMMODITY DERIVATIVE.—A digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

"(aa) a contract of sale of a commodity for future delivery or an option thereon;

"(bb) a security futures product;

"(cc) a swap;

"(dd) an agreement, contract, or transaction described in section 2(c)(2)(C)(i) or 2(c)(2)(D)(i);

"(ee) a commodity option authorized under section 4c; or

"(ff) a leverage transaction authorized under section 19.

"(VII) POOLED INVESTMENT VEHICLE.—

"(aa) IN GENERAL.—A digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to—

"(AA) a commodity pool, as defined in this Act; or

"(BB) a pooled investment vehicle.

"(bb) POOLED INVESTMENT VEHICLE DEFINED.—In this subclause, the term 'pooled investment vehicle' means any investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) or any company that would be an investment company under section 3(a) of such Act but for the exclusion provided from that definition by paragraph (1), (7), or (9) of section 3(c) of such Act (15 U.S.C. 80a–3(c)(1), (7), or (9)).

"(VIII) GOOD, COLLECTIBLE, AND OTHER NON-COMMODITY ASSET.—A digital asset that has inherent value, utility, or significance beyond its mere existence as a digital asset, including the digital equivalent of a tangible or intangible good, such as—

"(aa) a work of art, a musical composition, a literary work, or other intellectual property;

"(bb) collectibles, merchandise, virtual land, and video game assets;

"(cc) affinity, rewards, or loyalty points, including airline miles or credit card points, that are not primarily speculative in nature; or

"(dd) rights, licenses, and tickets.

"(iv) RULE OF CONSTRUCTION.—No presumption shall exist that a digital asset is a security, nor shall a digital asset be excluded from being a digital commodity pursuant to clause (iii)(I), solely due to—

"(I) the digital asset providing voting or economic rights with respect to the blockchain system to which the digital asset relates or the decentralized governance system of the blockchain system;

"(II) the value of the digital asset having the potential to appreciate or depreciate in response to the efforts, operations, or financial performance of the decentralized governance system of the blockchain system to which the digital asset relates; or

"(III) the value of the digital asset appreciating or depreciating due to the adoption and use of the blockchain system to which the digital asset relates or the decentralized governance system of the blockchain system.

"(G) DIGITAL COMMODITY BROKER.—

"(i) IN GENERAL.—The term 'digital commodity broker' means any person who, as a regular business—

"(I) is engaged in—

"(aa) soliciting or accepting an order from a customer for—

"(AA) the purchase or sale of a digital commodity; or

"(BB) an agreement, contract, or transaction described in section 2(c)(2)(D)(iv); and

"(bb) in conjunction with the activities in item (aa), accepts or maintains control over—

"(AA) the funds of any customer; or

"(BB) the execution of any transaction of a customer;

"(II) is engaged in soliciting or accepting orders from a customer for the purchase or sale of a unit of a digital commodity on or subject to the rules of a registered entity; or

"(III) is registered with the Commission as a digital commodity broker.

"(ii) EXCEPTIONS.—The term 'digital commodity broker' does not include a person solely because the person—

"(I) solicits or accepts an order described in clause (i)(I)(aa)(AA) from a customer who is an eligible contract participant;

"(II) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or

"(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 or a similar manner as a bank is excluded from the definition of a broker under such section, as determined by the Commission.

"(iii) FURTHER DEFINITION.—The Commission, by rule or regulation, may exclude from the term 'digital commodity broker' any person or class of persons if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

"(H) DIGITAL COMMODITY DEALER.—

"(i) IN GENERAL.—The term 'digital commodity dealer' means any person who, as a regular business—

"(I) is, or offers to be a counterparty to a person for the purchase or sale of a digital commodity as a regular business, and in conjunction with the activities, accepts or maintains control over the funds of any counterparty; or

"(II) is registered with the Commission as a digital commodity dealer.

"(ii) EXCEPTION.—The term 'digital commodity dealer' does not include a person solely because the person—

"(I) is or offers to be a counterparty to a person who is an eligible contract participant;

"(II) enters into a digital commodity transaction with an eligible contract participant;

"(III) enters into a digital commodity transaction on or through a registered digital commodity exchange, with a registered digital commodity broker, or through a decentralized finance trading protocol;

"(IV) 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;

"(V) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or

"(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 or a similar manner as a bank is excluded from the definition of a dealer under section 3(a)(5) of such Act, as determined by the Commission.

"(iii) FURTHER DEFINITION.—The Commission, by rule or regulation, may exclude from the term 'digital commodity dealer' any person or class of persons if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

"(I) 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.

"(J) MIXED DIGITAL ASSET TRANSACTION.—The term 'mixed digital asset transaction' means a transaction in which a digital commodity is traded for a security.

"(K) TERMS DEFINED UNDER THE SECURITIES ACT OF 1933.—The terms 'blockchain system', 'decentralized governance system', 'digital asset', 'digital commodity issuer', 'digital commodity affiliated person', 'digital commodity related person', 'end user distribution', 'mature blockchain system', and 'permitted payment stablecoin' have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).''; and

(5) in paragraph (41) (as so redesignated by paragraph (4) of this subsection)—

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

(B) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(C) by adding at the end the following:

"(G) a digital commodity exchange registered under section 5i.".

(b) CONFORMING AMENDMENTS.—

(1) Each of the following provisions of law is amended by striking "1a(18)" and inserting "1a(19)":

(A) Section 4s(h)(5)(A)(i) of the Commodity Exchange Act (7 U.S.C. 6s(h)(5)(A)(i)).

(B) Section 5(e) of the Securities Act of 1933 (15 U.S.C. 77e(e)).

(C) Section 6(g)(5)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)).

(D) Section 15F(h)(5)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(h)(5)(A)(i)).

(2) Section 752 of the Wall Street Transparency and Accountability Act of 2010 (15 U.S.C. 8325) is amended by striking "1a(39)" and inserting "1a(40)".

(3) Section 4s(f)(1)(D) of the Commodity Exchange Act (7 U.S.C. 6s(f)(1)(D)) is amended by striking "1a(47)(A)" and inserting "1a(48)(A)".

(4) Each of the following provisions of the Commodity Exchange Act is amended by striking "1a(47)(A)(v)" and inserting "1a(48)(A)(v)":

(A) Section 4t(b)(1)(C) (7 U.S.C. 6t(b)(1)(C)).

(B) Section 5(d)(23) (7 U.S.C. 7(d)(23)).

(C) Section 5b(k)(3) (7 U.S.C. 7a–1(k)(3)).

(D) Section 5h(f)(10)(A)(iii) (7 U.S.C. 7b–3(f)(10)(A)(iii)).

(5) Section 21(f)(4)(C) of the Commodity Exchange Act (7 U.S.C. 24a(f)(4)(C)) is amended by striking "1a(48)" and inserting "1a(49)".

(6) Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended—

(A) in subsection (a)(2), by striking "1a(47)(A)(v)" and inserting "1a(48)(A)(v)"; and

(B) in each of subsections (b)(1) and (c)(2), by striking "1a(47)" and inserting "1a(48)".

(7) Section 712 of the Wall Street Transparency and Accountability Act of 2010 (15 U.S.C. 8302) is amended—

(A) in subsection (a)(8), by striking "1a(47)(D)" each place it appears and inserting "1a(48)(D)"; and

(B) in subsection (d)(1), by striking "1a(47)(A)(v)" each place it appears and inserting "1a(48)(A)(v)".

SEC. 104. DEFINITIONS UNDER THIS ACT.

In this Act:

(1) DEFINITIONS UNDER THE COMMODITY EXCHANGE ACT.—The terms "decentralized finance messaging system", "decentralized finance trading protocol", "digital commodity", "digital commodity broker", "digital commodity dealer",

"digital commodity exchange", and "mixed digital asset transaction" have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(2) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—The terms "blockchain", "blockchain system", "blockchain protocol", "decentralized governance system", "digital asset", "digital commodity issuer", "end user distribution", "mature blockchain system", "permitted payment stablecoin", and "securities laws" have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(3) DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.—The terms "Bank Secrecy Act", "securities laws", and "self-regulatory organization" have the meaning given those terms, respectively, under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SEC. 105. RULEMAKINGS.

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

(1) The terms—

(A) "blockchain", "blockchain application", "blockchain system", "blockchain protocol", "decentralized governance system", "digital commodity affiliated person", "digital commodity issuer", "digital commodity related person", "end user distribution", and "mature blockchain system", as defined under section 2(a) of the Securities Act of 1933;

(B) "unilateral authority", as such term is used in section 42 of the Securities Exchange Act of 1934 and section 1a of the Commodity Exchange Act; and

(C) "programmatic functioning", as such term is used in sections 4C of the Securities Act of 1933, section 42 of the Securities Exchange Act of 1934, and section 1a of the Commodity Exchange Act.

(2) The terms "digital commodity", "decentralized finance messaging system", and "decentralized finance trading protocol", as defined under section 1a of the Commodity Exchange Act.

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

(c) PROTECTION OF SELF-CUSTODY.—

(1) IN GENERAL.—A United States individual shall retain the right to—

(A) maintain a hardware wallet or software wallet for the purpose of facilitating the individual's own lawful custody of digital assets; and

(B) engage in direct, peer-to-peer transactions in digital assets with another individual or entity for the individual's own lawful purposes using a hardware wallet or software wallet, if—

(i) such other individual or entity is not a financial institution (as defined in section 5312 of title 31, United States Code); and

(ii) the transactions do not involve any property or interests in property that are blocked pursuant to, or are otherwise prohibited by, United States sanctions.

(2) APPLICATION.—This subsection—

(A) applies solely to personal use by individuals; and

(B) does not apply to individuals acting in a custodial or fiduciary capacity for others.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of the Secretary of the Treasury, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration to carry out any enforcement action or special measure authorized under applicable law, including—

(A) the Bank Secrecy Act, section 9714 of the Combating Russian Money Laundering Act (31 U.S.C. 5318A note), and section 7213A of the Fentanyl Sanctions Act (21 U.S.C. 2313a); or

(B) any other law relating to illicit finance, money laundering, terrorism financing, or United States sanctions.

(d) JOINT RULEMAKING, PROCEDURES, OR GUIDANCE FOR DELISTING.—Not later than 180 days after the date of the enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly issue rules, procedures, or guidance (as determined appropriate by the Commis-

sions) regarding the process to delist an asset for trading under section 106 of this Act if the Commissions determine that the listing is inconsistent with the Commodity Exchange Act, the securities laws (including regulations under those laws), or this Act.

(e) JOINT RULES FOR PORTFOLIO MARGINING DETERMINATIONS.—

(1) IN GENERAL.—Not later than 360 days after the date of the enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly issue rules describing the process for persons registered with either such Commission to seek a joint order or determination with respect to margin, customer protection, segregation, or other requirements as necessary to facilitate portfolio margining of securities (including related extensions of credit), security-based swaps, contracts for future delivery, options on a contract for future delivery, swaps, and digital commodities, or any subset thereof, in—

(A) a securities account carried by a registered broker or dealer or a security-based swap account carried by a registered security-based swap dealer;

(B) a futures or cleared swap account carried by a registered futures commission merchant;

(C) a swap account carried by a swap dealer; or

(D) a digital commodity account carried by a registered digital commodity broker or digital commodity dealer that is also registered in such other capacity as is necessary to also carry the other customer or counterparty positions being held in the account.

(2) PROCESS.—With respect to a joint order or determination described in paragraph (1), the rules required to be issued pursuant to paragraph (1) shall require—

(A) the joint order or determination to be issued only if the order or determination is in the public interest and provides for the appropriate protection of customers;

(B) applicants to file a standard application, in a form and manner determined by the Securities and Exchange Commission and the Commodity Futures Trading Commission, which shall include the information necessary to make the joint order or determination;

(C) the Securities and Exchange Commission and the Commodity Futures Trading Commission to make a final determination not later than 270 days after the filing of a completed application;

(D) the Securities and Exchange Commission and the Commodity Futures Trading Commission to consider the public interest of the joint order or determination through the solicitation of public comments; and

(E) the Securities and Exchange Commission and the Commodity Futures Trading Commission to consult with other relevant foreign or domestic regulators, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, as appropriate.

(f) CAPITAL REQUIREMENTS TO ADDRESS NETTING AGREEMENTS.—No later than 360 days following the date of enactment of this Act, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation shall develop risk-based and leverage capital requirements for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address netting agreements that provide for termination and close-out netting across multiple types of financial transactions, consistent with subsection (e), in the event of a counterparty's default.

SEC. 106. PROVISIONAL REGISTRATION FOR DIGITAL COMMODITY EXCHANGES, BROKERS, AND DEALERS.

(a) IN GENERAL.—

(1) PROVISIONAL REGISTRATION.—Within 180 days after the date of the enactment of this Act, a person acting as a digital commodity exchange, digital commodity broker, or digital commodity dealer shall file a statement of provisional registration with the Commodity Futures Trading Commission (in this subsection referred to as the "Commission"), unless exempted from registration under section 5k of the Commodity Exchange Act, as a—

(A) digital commodity exchange, for a person acting as a digital commodity exchange;

(B) digital commodity broker, for a person acting as a digital commodity broker; or

(C) digital commodity dealer, for a person acting as a digital commodity dealer.

(2) CONDITIONS.—

(A) NON-REGISTERED ENTITIES.—A person, other than a registered entity, who files a statement of provisional registration under paragraph (1) shall be considered to be in compliance with this section if the person—

(i) is a member of a futures association registered under section 17 of the Commodity Exchange Act, and complies with the rules of the association, including the rules of the association pertaining to customer disclosures and protection of customer assets;

(ii) submits to the Commission, in the form and manner determined by the Commission, and continues to materially update, as necessary or required by the Commission, a statement of the nature of the digital commodity-related activities the person is pursuing or intends to pursue;

(iii) submits to the Commission and continues to materially update the information required by this subsection;

(iv) complies with subsection (c) of this section; and

(v) pays all fees and penalties imposed on the person under section 410 of this Act.

(B) REGISTERED ENTITY.—

(i) IN GENERAL.—A registered entity who files a statement of provisional registration under paragraph (1) shall be considered to be in compliance with this section if the person—

(I) submits to the Commission and continues to materially update, a statement of the nature of the digital commodity-related activities the person is pursuing or intends to pursue;

(II) submits, and continues to materially update, the information required by this subsection and subsection (b);

(III) complies with subsection (c); and

(IV) pays all fees and penalties imposed on the person under section 410.

(ii) DEFINITION.—In this paragraph, the term "registered entity" means a person who is designated by the Commodity Futures Trading Commission as a contract market or registered with the Commodity Futures Trading Commission as a swap execution facility.

(b) DISCLOSURE OF GENERAL INFORMATION.—A person who files a statement of provisional registration under subsection (a) shall disclose to the Commission, unless already known to the Commission, the following:

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

(A) the ownership and management of the person;

(B) the financial condition of the person;

(C) affiliated entities;

(D) potential conflicts of interest;

(E) the address of the person, including—

(i) the place of incorporation;

(ii) principal place of business; and

(iii) an address for service of process; and

(F) a list of the States in which the person has operations.

(2) DIGITAL COMMODITY OPERATIONS.—Information concerning the digital commodity operations of the person, including—

(A) a general description of the person's business and the terms of service for United States customers;

(B) a description of the person's account approval process;

(C) any rulebook or other customer order fulfillment rules or procedures;

(D) risk management procedures;

(E) a description of the product listing process; and

(F) policies and procedures for compliance with the Bank Secrecy Act.

(c) REQUIREMENTS.—A person who files a statement of provisional registration under subsection (a) shall comply with the following requirements:

(1) STATUTORY DISQUALIFICATIONS.—Except to the extent otherwise specifically provided by the Commission or any registered futures association rule, regulation, or order, the person shall not permit an individual who is subject to a statutory disqualification under paragraph (2) or (3) of section 8a of the Commodity Exchange Act or subject to a statutory disqualification as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) to effect or be involved in effecting transactions on behalf of the person, if the person knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(2) BOOKS AND RECORDS.—The person shall keep their books and records open to inspection and examination by the Commission and by any registered futures association or national securities association of which the person is a member.

(3) CUSTOMER DISCLOSURES.—The person shall disclose to customers—

(A) information about the material risks and characteristics of the assets listed for trading on the person;

(B) information about the legal entity that custodies customer assets and the general manner in which the digital assets of the customer will be and are custodied;

(C) information concerning the policies and procedures of the person that are related to the protection of customers of the person, including information regarding any conflicts of interest or material affiliates; and

(D) in their disclosure documents, offering documents, and promotional material—

(i) in a prominent manner, that they are not registered with or regulated by the Commission; and

(ii) the contact information for the whistleblower, complaint, and reparation programs of the Commission.

(d) AUTHORITY.—

(1) IN GENERAL.—

(A) DEEMED REGISTRATION.—A person who remains in compliance with the requirements of this section is deemed to be—

(i) a registered digital commodity exchange, pursuant to section 5i, if the person filed a statement of provisional registration as a digital commodity exchange; or

(ii) a registered digital commodity broker or dealer, pursuant to section 4u, if the person filed a statement of provisional registration as a digital commodity broker or dealer, as the case may be.

(B) SUNSET.—The applicability of subparagraph (A) shall expire—

(i) in the case of a digital commodity exchange deemed registered pursuant to subparagraph (A)(i), 180 days after the final effective date of the rulemakings required under 5i; or

(ii) in the case of a digital commodity broker or dealer deemed registered pursuant to subparagraph (A)(ii), 180 days after the final effective date of the rulemakings required under 4u.

(2) SUPERIORITY OF COMMISSION-ADOPTED REQUIREMENTS.—The requirements of the preceding provisions of this section shall not supersede any requirements applicable to registered persons adopted by the Commission under the Commodity Exchange Act.

(e) DELISTING.—This section shall not be construed to limit the authority of the Commission and the Securities and Exchange Commission to jointly require a person to delist an asset for trading if the Commission and the Securities and Exchange Commission determine, in accordance with rules, procedures or guidance jointly issued by the Commission and the Securities and Exchange Commission to delist an asset for trading, that the listing is inconsistent with the Commodity Exchange Act, the securities laws (including regulations under those laws), or this Act.

(f) REGISTRATION.—A person may not file a statement of provisional registration with the Commission after the Commission has finalized its rules for the registration of digital commodity exchanges, digital commodity brokers, or digital commodity dealers, as appropriate.

(g) RULEMAKING.—

(1) IN GENERAL.—Within 180 days after the date of the enactment of this Act, a registered futures association shall adopt and enforce rules applicable to persons required by subsection (a)(2) to be members of the association.

(2) FEES.—The rules adopted under subparagraph (A) of this paragraph may provide for dues in accordance with section 17(b)(6) of the Commodity Exchange Act.

(3) EFFECT.—A registered futures association shall submit to the Commission any rule adopted under subparagraph (A) of this paragraph, which shall take effect pursuant to the requirements of section 17(j) of the Commodity Exchange Act.

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

(i) WHISTLEBLOWER ENFORCEMENT.—For purposes of section 23 of the Commodity Exchange Act, the term "this Act" includes this section.

(j) FEDERAL PREEMPTION.—

(1) This section shall supersede any State or local law (other than antifraud provisions of general applicability) that regulates the offer or sale of digital as-

sets in the case of a transaction conducted in compliance with this section and conducted on or through a person who files a statement of provisional registration under subsection (a) and complies with the requirements of this section.

(2) Notwithstanding any other provision of law, the Commission shall have exclusive jurisdiction over the digital asset activities of a person who—

(A) files a statement of provisional registration under subsection (a); and

(B) complies with the requirements of this section.

SEC. 107. COMMODITY EXCHANGE ACT AND SECURITIES LAWS SAVINGS PROVISIONS.

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

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

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

(B) a swap;

(C) a security futures product;

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

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

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

(2) any agreement, contract, or transaction that is subject to the securities laws as—

(A) a security-based swap;

(B) a security futures product; or

(C) an option on or based on the value of a security; or

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

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

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

SEC. 108. ADMINISTRATIVE REQUIREMENTS.

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

(1) in paragraph (3)—

(A) in subparagraph (B), by striking "or" at the end;

(B) in subparagraph (C), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

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

(2) in paragraph (4)—

(A) in subparagraph (A)—

(i) in clause (ii), by striking "or" at the end;

(ii) in clause (iii), by striking the period and inserting "; or"; and

(iii) by adding at the end the following:

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

(B) in subparagraph (B)—

(i) in clause (ii), by striking "or" at the end;

(ii) in clause (iii), by striking the period and inserting "; or"; and

(iii) by adding at the end the following:

"(iv) a contract of sale of a digital commodity."; and

(C) in subparagraph (C)—

(i) in clause (ii), by striking "or" at the end;

(ii) by striking "(iii) a swap, provided however," and inserting the following:

"(iii) a swap; or

"(iv) a contract of sale of a digital commodity,

provided, however,"; and

(iii) by striking "clauses (i), (ii), or (iii)" and insert "any of clauses (i) through (iv)".

SEC. 109. INTERNATIONAL COOPERATION.

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

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

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

SEC. 110. TREATMENT OF CERTAIN NON-CONTROLLING BLOCKCHAIN DEVELOPERS.

(a) IN GENERAL.—Notwithstanding applicable law, a non-controlling blockchain developer or provider of a blockchain service shall not be treated as a money transmitter or as engaged in "money transmitting" or, following the date of enactment of this Act, be otherwise subject to any new registration requirement that is substantially similar to the requirement that currently applies to money transmitters, solely on the basis of—

(1) creating or publishing software to facilitate the creation of, or provision of maintenance services to, a blockchain or blockchain service;

(2) providing hardware or software to facilitate a customer's own custody or safekeeping of the customer's digital assets; or

(3) providing infrastructure support to maintain a blockchain service.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect whether a blockchain developer or provider of a blockchain service is otherwise subject to classification or treatment as a money transmitter, or as engaged in "money transmitting", under applicable State or Federal law, including laws relating to anti-money laundering or countering the financing of terrorism, based on conduct outside the scope of subsection (a). Nothing in this section shall be construed to affect whether a blockchain developer or provider of a blockchain service is otherwise subject to classification or treatment as a financial institution under the Bank Secrecy Act, this Act, or any Act enacted after the date of enactment of this Act.

(c) EFFECT ON OTHER LAWS.—

(1) INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(2) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(d) DEFINITIONS.—In this section:

(1) BLOCKCHAIN DEVELOPER.—The term "blockchain developer" means any person or business that creates or publishes software to facilitate the creation of, or provide maintenance to, a blockchain or a blockchain service.

(2) BLOCKCHAIN SERVICE.—The term "blockchain service" means any information, transaction, or computing service or system that provides or enables access to a blockchain network by multiple users, including specifically a service or system that enables users to send, receive, exchange, or store digital assets described by blockchain networks.

(3) NON-CONTROLLING BLOCKCHAIN DEVELOPER OR PROVIDER OF A BLOCKCHAIN SERVICE.—The term "non-controlling blockchain developer or provider of a blockchain service" means a blockchain developer or provider of a blockchain service that in the regular course of operations, does not have the legal right or the unilateral and independent ability to control, initiate upon demand, or effectuate transactions involving digital assets that users are entitled to, without the approval, consent, or direction of any other third party.

SEC. 111. APPLICATION OF THE BANK SECRECY ACT.

(a) IN GENERAL.—Section 5312(c)(1)(A) of title 31, United States Code, is amended—

(1) by inserting "digital commodity broker, digital commodity dealer," after "futures commission merchant,"; and

(2) by inserting before the period the following: "and any digital commodity exchange registered, or required to register, under the Commodity Exchange Act which permits direct customer access".

(b) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States, in consultation with the Secretary of the Treasury, shall conduct a study to—

(A) assess the risks posed by centralized intermediaries that are primarily located in foreign jurisdictions that provide services to U.S. persons without regulatory requirements that are substantially similar to the requirements of the Bank Secrecy Act; and

(B) provide any regulatory or legislative recommendations to address these risks under subparagraph (A).

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall issue a report to Congress containing all findings and determinations made in carrying out the study required under paragraph (1).

SEC. 112. IMPLEMENTATION.

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

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

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

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

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

(C) register persons under this Act; and

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

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

TITLE II—OFFERS AND SALES OF DIGITAL COMMODITIES

SEC. 201. TREATMENT OF INVESTMENT CONTRACT ASSETS.

(a) SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)), as amended by section 101, is further amended—

(1) in paragraph (1), by adding at the end the following: "The term 'investment contract' does not include an investment contract asset."; and

(2) by adding at the end the following:

"(34) The term 'investment contract asset' means a digital commodity—

"(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; and

"(B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract.".

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(18)) is amended by adding at the end the following: "The term 'investment contract' does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(36)) is amended by adding at the end the following: "The term 'investment contract' does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

(d) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)) is amended by adding at the end the following: "The term 'investment contract' does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

(e) SECURITIES INVESTOR PROTECTION ACT OF 1970.—Section 16(14) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll(14)) is amended by adding at the end the following: "The term 'investment contract' does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933).".

SEC. 202. EXEMPTED PRIMARY TRANSACTIONS IN DIGITAL COMMODITIES.

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

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

"(8) the offer or sale of an investment contract involving units of a digital commodity by its digital commodity issuer (including all entities controlled by or under common control with the issuer), if—

"(A) the blockchain system to which the digital commodity relates, together with the digital commodity, is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934 or the issuer intends for the blockchain system to which the digital commodity relates to be a mature blockchain system by the later of—

"(i) the date that is four years after the first sale of the investment contract involving a unit of such digital commodity in reliance on the exemption provided under this paragraph, subject to any extensions as may be granted by the Commission; or

"(ii) the date that is four years after the effective date of this paragraph;

"(B) the sum of all cash and other consideration to be received by the digital commodity issuer in reliance on the exemption provided under this paragraph, during the 12-month period preceding the date of such offering, including the amount received in such offering, is not more than $75,000,000 (as such amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor);

"(C) after the completion of the transaction, a purchaser does not own more than 10 percent of the total amount of the outstanding units of the digital commodity;

"(D) the transaction does not involve the offer or sale of an investment contract involving units of a digital commodity by its digital commodity issuer that—

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

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

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

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

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

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

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

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

"(E) the issuer meets the requirements of section 4B(b)."; and

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

"SEC. 4B. REQUIREMENTS WITH RESPECT TO CERTAIN DIGITAL COMMODITY TRANSACTIONS.

"(a) COMMISSION JURISDICTION.—For the purposes of this section:

"(1) The Commission shall have jurisdiction and enforcement authority with respect to disclosures described in this section.

"(2) Section 17 shall apply to a statement made in an offering statement, disclosure, or report filed under this section to the same extent as such section 17 applies to a statement made in any other offering statement, disclosure, or report filed under this Act.

"(b) REQUIREMENTS FOR DIGITAL COMMODITY ISSUERS.—

"(1) TERMS AND CONDITIONS.—A digital commodity issuer offering or selling an investment contract involving units of a digital commodity in reliance on section 4(a)(8) shall file with the Commission an offering statement and any related documents, in such form and with such content as prescribed by the Commission, including financial information, a description of the issuer and the operations of the issuer, the financial condition of the issuer, a description of the plan of distribution of any unit of a digital commodity that is to be offered as well as the intended use of the offering proceeds, and a description of the development plan for the blockchain system, and the related digital commodity, to become a mature blockchain system, if such blockchain system is not already certified as a mature blockchain system pursuant to section 42 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(2) INFORMATION REQUIRED FOR PURCHASERS.—A digital commodity issuer that has filed a statement under paragraph (1) to offer and sell an investment contract involving a unit of a digital commodity in reliance on section 4(a)(8) shall include in such statement the following information:

"(A) MATURITY STATUS.—Whether the blockchain system to which the digital commodity relates has been certified as a mature blockchain system pursuant to section 42 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and, where such blockchain system is not so certified, a statement of the digital commodity issuer's intent for the blockchain system to which the digital commodity relates to be a mature blockchain system within the time period described in section 4(a)(8)(A).

"(B) SOURCE CODE.—The source code, or a publicly accessible webpage displaying such source code, for any blockchain system to which the digital commodity relates, and whether the source code was sourced from an external third party, whether there are any existing external dependencies, and whether the code underwent a third-party security audit, along with material results of any such audit.

"(C) TRANSACTION HISTORY.—A description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital commodity relates, to the extent any such independent access, search, and verification activities are technically feasible with respect to such blockchain system.

"(D) DIGITAL COMMODITY ECONOMICS.—A description of the purpose of any blockchain system to which the digital commodity relates and the operation of any such blockchain system, including—

"(i) information explaining the launch and supply process, including the number of units of the digital commodity to be issued in an initial allocation, the total number of units of the digital commodity to be created, the release schedule for the units of the digital commodity, and the total number of units of the digital commodity outstanding;

"(ii) information explaining the technical requirements for holding, accessing, and transferring the digital commodity;

"(iii) information on any applicable consensus mechanism or process for validating transactions, method of generating or mining digital commodities, and any process for burning or destroying units of the digital commodity on the blockchain system;

"(iv) an explanation of any mechanism for driving value to the digital commodity of such blockchain system; and

"(v) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of units of such digital commodity.

"(E) PLAN OF DEVELOPMENT.—The current state and timeline for the development of any blockchain system to which the digital commodity relates, detailing how and when the blockchain system is intended to be a mature blockchain system, if the blockchain system is not yet certified as a mature blockchain system, and the various roles that exist or are intended to exist in connection with the blockchain system, such as users, service providers, developers, transaction validators, and governance participants, including a discussion of any mechanisms by which control or authority are exerted with respect to the blockchain system or its related digital commodity, and any critical operational dependencies of the blockchain system or its related digital commodity.

"(F) OWNERSHIP DISCLOSURES.—

"(i) IN GENERAL.—A list of all persons who are digital commodity related persons or digital commodity affiliated persons who have been issued a unit of the digital commodity by the digital commodity issuer or have a right to a unit of the digital commodity from the digital commodity issuer.

"(ii) CONFIDENTIALITY.—The Commission shall keep each list described under clause (i) confidential, consistent with what is necessary or appropriate in the public interest or for the protection of investors.

"(G) RISK FACTOR DISCLOSURES.—A description of the material risks surrounding ownership of a unit of a digital commodity.

"(3) ONGOING DISCLOSURE REQUIREMENTS FOR MATURING BLOCKCHAIN SYSTEMS.—Subject to paragraph (5), the issuer of a digital commodity related to a blockchain system that is not yet certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934 that has filed a statement under paragraph (1) to offer and sell an investment contract involving a unit of a digital commodity in reliance on section 4(a)(8) shall file the following with the Commission:

"(A) SEMIANNUAL REPORTS.—Every 6 months, a report containing—

"(i) an updated description of the current state and timeline for the development of the blockchain system to which the digital commodity

relates, showing how and when the blockchain is intended to be a mature blockchain system;

"(ii) a description of the efforts of the issuer and digital commodity related persons in developing the blockchain system to which the digital commodity relates;

"(iii) the amount of money raised by the digital commodity issuer in reliance on section 4(a)(8), how much of that money has been spent, and the general categories of activities for which that money has been spent and amounts spent per category; and

"(iv) financial statements, where applicable.

"(B) CURRENT REPORTS.—A current report reflecting any material changes relevant to the information previously reported to the Commission by the digital commodity issuer, which shall be filed as soon as practicable after the material change occurred, in accordance with such rules as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(4) RULEMAKING.—Not later than 360 days after the date of the enactment of this section, the Commission shall prescribe rules on requirements applicable to issuers of digital commodities in reliance on section 4(a)(8).

"(5) TERMINATION OF CERTAIN REPORTING REQUIREMENTS; POST-MATURITY REPORTING REQUIREMENTS.—

"(A) IN GENERAL.—The ongoing reporting requirements under paragraph (3) shall not apply to a digital commodity issuer 180 days after the end of the covered fiscal year, if the information with respect to the digital commodity and the blockchain system to which it relates described in subparagraphs (A) through (C) of paragraph (2) is made publicly available and the disclosure requirements under subparagraph (C) of this paragraph are satisfied.

"(B) COVERED FISCAL YEAR DEFINED.—In this paragraph, the term 'covered fiscal year' means, with respect to a digital commodity, the first fiscal year of a digital commodity issuer in which the blockchain system to which such digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934.

"(C) POST-MATURITY REPORTING REQUIREMENTS.—After the blockchain system to which a digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, any digital commodity issuer that has filed a statement under paragraph (1) to offer and sell an investment contract involving a unit of a digital commodity in reliance on section 4(a)(8) and is engaged in material ongoing efforts related to the mature blockchain system shall disclose, in a manner reasonably calculated to inform the public, and at such frequency as the Commission may prescribe, by rule, a description of such efforts, including—

"(i) any participation in a decentralized governance system of such blockchain system;

"(ii) any participation in alterations or proposed alterations to the functionality or operation of such blockchain system;

"(iii) the use or planned use of any funds raised in reliance on section 4(a)(8) or any rulemaking pursuant to section 202(c) of the CLARITY Act of 2025 in such efforts;

"(iv) the amount of units of the digital commodity, or rights thereto, owned and controlled by such issuer and any use, sale, trading, or other disposition thereof; and

"(v) any affiliations of such issuer material to the efforts of such issuer.

"(D) TERMINATION OF AND EXEMPTION FROM POST-MATURITY REPORTING REQUIREMENTS.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules—

"(i) for terminating the disclosure requirements described in subparagraph (C) during the first fiscal year in which the digital commodity issuer does not engage in material ongoing efforts related to the mature blockchain system; and

"(ii) to, as is necessary or appropriate in the public interest or for the protection of investors, exempt a digital commodity issuer from the requirements described in subparagraph (C) where only a de minimis amount of market activity involving the digital commodity of such digital commodity issuer is taking place.

"(E) RULE OF CONSTRUCTION.—Nothing in subparagraph (C) may be construed to make any digital commodity described in such subparagraph a security.

"(c) REQUIREMENTS FOR INTERMEDIARIES.—A person acting as an intermediary in connection with the offer or sale of an investment contract involving units of a digital commodity in reliance on section 4(a)(8) shall—

"(1) register with the Commission as a broker or dealer; and

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

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

"(e) FAILURE TO MATURE.—

"(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules applying such additional obligations and disclosures for the digital commodity issuers, digital commodity related persons, and digital commodity affiliated persons of a blockchain system described under subsection (b)(1) that does not become a mature blockchain system within the time period described in section 4(a)(8)(A) as are necessary or appropriate in the public interest or for the protection of investors. Such obligations and disclosures shall include the following:

"(A) DISCLOSURES.—Disclosures regarding the following:

"(i) FAILURE TO MATURE.—A detailed explanation of the reason that the blockchain system has not become a mature blockchain system within the time period described in section 4(a)(8)(A).

"(ii) DEVELOPMENT PLANS.—The future plans of development of the blockchain system, including information required under subsection (b)(3).

"(iii) RISK FACTOR DISCLOSURES.—The material risks surrounding ownership of a unit of a digital commodity that relates to a blockchain system described under subsection (b)(1) that has not become a mature blockchain system within the time period described in section 4(a)(8)(A).

"(B) OBLIGATIONS.—Transaction reporting and beneficial ownership disclosure obligations applicable to digital commodity related persons and digital commodity affiliated persons of such blockchain system.

"(2) QUALIFICATION REQUIRED.—The Commission may not permit any additional reliance on an exempt offering for the offer or sale of an investment contract involving a unit of a digital commodity by the issuer of the digital commodity related to a blockchain system described under subsection (a)(1) that has not become a mature blockchain system within the time period described in section 4(a)(8)(A) unless the Commission has qualified any offering statement related to such exempt offering.".

(b) ADDITIONAL EXEMPTIONS.—

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

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

(A) in subparagraph (B), by striking "section 4(4)" and inserting "section 4(a)(4)";

(B) in subparagraph (C), by striking "section 4(6)" and inserting "section 4(a)(6)";

(C) in subparagraph (F)—

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

(ii) by striking "or" at the end;

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

(E) by adding at the end the following:

"(H) section 4(a)(8).".

(c) USE OF OTHER EXEMPTIONS.—

(1) RULE OF CONSTRUCTION.—Except as provided in this subsection, nothing in this section or the amendments made by this section may be construed as prohibiting the offer or sale of an investment contract involving units of a digital commodity in reliance on an exemption provided under section 3, 4(a), or 19 of the Securities Act of 1933 other than that provided under section 4(a)(8) of the Securities Act of 1933.

(2) RULEMAKINGS.—

(A) The Securities and Exchange Commission may issue rules—

(i) to permit the issuer of a digital commodity related to a blockchain system described under section 4B(b)(1) of the Securities Act of 1933 that has not become a mature blockchain system within the time period described in section 4(a)(8)(A) of such Act, or the issuer of a digital commodity described in subparagraph (B)(iii), to utilize an exempt offering to offer or sell an investment contract involving the digital commodity, if the Commission qualifies any offering statement related to such exempt offering; and

(ii) for the offer and sale of investment contracts involving units of a digital commodity by issuers that are not organized under the laws of a State, a territory of the United States, or the District of Columbia.

(B) Not later than 270 days after the date of the enactment of this section, the Securities and Exchange Commission shall issue the following rules:

(i) A rule requiring a digital commodity issuer that last offered or sold an investment contract involving units of a digital commodity in reliance on an exemption provided under section 3, 4(a), or 19 of the Securities Act of 1933 prior to the date of enactment of this Act, to file a comparable set of disclosures to those described under section 4B of the Securities Act of 1933 as the Commission determines appropriate based on the exemption, the maturity of the blockchain system to which such digital commodity relates, and any material ongoing efforts of such digital commodity issuer (provided that for blockchains certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, such disclosures shall be comparable to those under section 4B(b)(5)(C)), not later than the later of—

(I) one year after the effective date of this section; or

(II) the date of any secondary market sale of such digital commodity made in reliance on section 203.

(ii) A rule requiring a digital commodity issuer that offers or sells an investment contract involving units of a digital commodity in reliance on an exemption provided under section 3, 4(a), or 19 of the Securities Act of 1933, other than that provided under section 4(a)(8) of the Securities Act of 1933, on or after the date of enactment of this Act, to file a comparable set of disclosures to those described under section 4B of the Securities Act of 1933 as the Commission determines appropriate based on the exemption, the maturity of the blockchain system to which such digital commodity relates, and any material ongoing efforts of such digital commodity issuer, prior to the date of any secondary market sale of such digital commodity made in reliance on section 203.

(iii) With respect to a digital commodity where the digital commodity issuer is required to file disclosures under clause (i) or (ii) and where the blockchain system to which the digital commodity relates is not certified as a mature blockchain system pursuant to section 42 of the Securities Exchange Act of 1934 after the 4-year period beginning on the date that the first such disclosure is filed—

(I) a rule prohibiting the offer or sale of an investment contract involving units of the digital commodity unless the Commission has qualified any offering statement related to such offer or sale, where such offer or sale is permitted pursuant to subparagraph (A)(i); and

(II) a rule requiring the digital commodity issuer to make disclosures comparable to those described in 4B(e)(1)(A) of the Securities Act of 1933.

SEC. 203. TREATMENT OF SECONDARY TRANSACTIONS IN DIGITAL COMMODITIES THAT ORIGINALLY INVOLVED INVESTMENT CONTRACTS.

(a) SECONDARY MARKET TREATMENT.—Notwithstanding any other provision of law, the offer or sale of a digital commodity that originally involved an investment contract by a person other than the issuer of such digital commodity, or an agent or underwriter thereof, shall be deemed not to be an offer or sale of such investment contract between the issuer of the investment contract involving the digital commodity, or an agent or underwriter thereof, and the purchaser of such digital commodity under—

(1) the Securities Act of 1933 (15 U.S.C. 77a et seq.);

(2) the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(3) the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.);

(4) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(5) the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(6) any applicable provisions of State law.

(b) END USER DISTRIBUTIONS NOT AN OFFER OR SALE OF A SECURITY.—An end user distribution does not involve the offer or sale of a security.

(c) AGENT DEFINED.—In this section and with respect to a digital commodity issuer, the term "agent" means any person directly or indirectly controlled by the issuer or under direct or indirect common control with the issuer.

SEC. 204. REQUIREMENTS FOR OFFERS AND SALES OF DIGITAL COMMODITIES BY DIGITAL COMMODITY RELATED PERSONS AND DIGITAL COMMODITY AFFILIATED PERSONS.

The Securities Act of 1933 (15 U.S.C. 77a et seq.), as amended by section 202, is further amended by inserting after section 4B the following:

"SEC. 4C. REQUIREMENTS FOR OFFERS AND SALES OF DIGITAL COMMODITIES BY DIGITAL COMMODITY RELATED PERSONS AND DIGITAL COMMODITY AFFILIATED PERSONS.

"(a) IN GENERAL.—It shall be a violation of this Act for a digital commodity affiliated person or a digital commodity related person to offer or sell a digital commodity acquired directly from its issuer, or an agent or underwriter thereof, pursuant to an investment contract in reliance on section 4(a)(8) or another exemption under this Act, other than as provided in this section.

"(b) COMMISSION JURISDICTION.—

"(1) Where a digital commodity affiliated person or a digital commodity related person offers or sells a digital commodity acquired directly from its issuer, or an agent or underwriter thereof, pursuant to an investment contract in reliance on section 4(a)(8), or another exemption under this Act, other than as provided in this section, such digital commodity affiliated person or digital commodity related person shall be considered an issuer of such investment contract.

"(2) For the purposes of this section, the Commission shall have jurisdiction and enforcement authority with respect to an offer or sale of a digital commodity described in subsection (a).

"(c) RESTRICTIONS ON DIGITAL COMMODITY RELATED PERSONS AND DIGITAL COMMODITY AFFILIATED PERSONS.—

"(1) PRIOR TO BEING A MATURE BLOCKCHAIN SYSTEM.—Prior to the blockchain system to which a digital commodity relates being certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, units of the digital commodity acquired by a digital commodity related person or digital commodity affiliated person directly from its issuer (or an agent or underwriter thereof) pursuant to an investment contract in reliance on section 4(a)(8), or another exemption under this Act, may be offered or sold by such digital commodity related person or digital commodity affiliated person if—

"(A) reports with respect to such digital commodity, where required under section 4B(b)(3) (or, with respect to a digital commodity not issued in reliance on section 4(a)(8), a comparable set of reports where required by the Commission) have been filed with the Commission;

"(B) the digital commodity related person or digital commodity affiliated person has held the units for not less than 12 months; and

"(C) the aggregate amount of the units of the digital commodity offered or sold by the digital commodity related person or digital commodity affiliated person is—

"(i) in any 12-month period, or shorter period as the Commission may prescribe, not less than 5 percent or greater than 20 percent of the total units of the digital commodity acquired directly from its issuer (or an agent or underwriter thereof) by the digital commodity related person or digital commodity affiliated person, as determined by the Commission pursuant to paragraph (3); and

"(ii) an amount, as determined by the Commission pursuant to paragraph (3), not less than 30 percent or greater than 50 percent of the total units of the digital commodity acquired directly from its issuer (or an agent or underwriter thereof) by the digital commodity related person or digital commodity affiliated person.

"(2) AFTER BECOMING A MATURE BLOCKCHAIN SYSTEM.—After the blockchain system to which a digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, units of the digital commodity acquired by a digital commodity related person or digital commodity affiliated person directly from its issuer (or an agent or underwriter thereof) pursuant to an investment contract in reliance on section 4(a)(8) or another exemption under this Act, may be—

"(A) offered or sold by a digital commodity related person; or

"(B) offered or sold by a digital commodity affiliated person if—

"(i) information described in section 4B(b)(5)(C), where required (or, with respect to a digital commodity not issued in reliance on section

4(a)(8), a comparable set of information, where required) is publicly available;

"(ii) the digital commodity affiliated person has held the units for not less than the earlier of—

"(I) 12 months; or

"(II) 3 months following the date on which the blockchain system is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934; and

"(iii) the aggregate amount of the units of the digital commodity offered or sold by the digital commodity affiliated person in any 12-month period is an amount, as determined by the Commission pursuant to paragraph (3), not less than 5 percent or greater than 10 percent of the total outstanding amount of the digital commodity.

"(3) RULEMAKINGS REQUIRED.—Not later than 270 days after the date of the enactment of this section, consistent with protecting investors, fostering the development of mature blockchain systems, facilitating capital formation, and maintaining fair and orderly markets the Commission, by rule, after notice and comment—

"(A) shall set the percentage amounts described in paragraphs (1)(C)(i), (1)(C)(ii), and (2)(B)(iii); and

"(B) may provide an exemption from the limitation described in paragraph (1)(C)(ii), if the Commission requires any offer or sale pursuant to such exemption of a digital commodity related to a blockchain system that has failed to become a mature blockchain system under this Act or any rule promulgated hereunder to be accompanied by the disclosures required under, as applicable, section 4B(e)(1)(A) or section 202(c)(2)(B)(iii)(II) of the CLARITY Act of 2025.

"(d) USE OF A DIGITAL COMMODITY IN THE PROGRAMMATIC FUNCTIONING OF THE BLOCKCHAIN SYSTEM.—For purposes of this section, the use of a digital commodity in the programmatic functioning of the blockchain system to which it relates is not an offer or sale of a digital commodity.

"(e) MANIPULATIVE AND DECEPTIVE DEVICES; REPORTING.—

"(1) IN GENERAL.—It shall be unlawful for any digital commodity issuer, digital commodity related person, or digital commodity affiliated person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use or employ, in connection with the purchase or sale of any digital commodity, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(2) AFFIRMATIVE DEFENSE.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules to implement paragraph (1), including by providing any affirmative defenses to an enforcement action thereunder as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(3) REPORTING.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules to prescribe such transaction reporting and beneficial ownership disclosure obligations applicable to digital commodity related persons and digital commodity affiliated persons, as necessary or appropriate in the public interest or for the protection of investors.

"(4) DIFFERENTIATION BETWEEN PERSONS.—In issuing rules required under paragraphs (2) and (3), the Commission shall differentiate between digital commodity related persons and digital commodity affiliated persons, as necessary or appropriate in the public interest or for the protection of investors.

"(f) CERTAIN UNITS RECEIVED PRIOR TO ENACTMENT.—A unit of a digital commodity received from the digital commodity issuer prior to the date of the enactment of this section through an offer or sale of an investment contract involving units of a digital commodity in reliance on an exemption provided under section 3, 4(a), or 19, may be offered or sold by a digital commodity related person or digital commodity affiliated person, if—

"(1) the digital commodity issuer is no longer engaged in material ongoing efforts related to the blockchain system to which the digital commodity relates and the blockchain system to which the digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934;

"(2) the digital commodity issuer is engaged in material ongoing efforts related to the blockchain system to which the digital commodity relates and the blockchain system to which the digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934,

and the appropriate disclosures required under section 202(c)(2)(B) of the CLARITY Act of 2025 have been made with the Commission; or

"(3) the digital commodity issuer is engaged in material ongoing efforts related to the blockchain system to which the digital commodity relates and the blockchain system to which the digital commodity relates is not certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, and the appropriate disclosures required under section 202(c)(2)(B) of the CLARITY Act of 2025 have been made with the Commission.

"(g) RULEMAKING ON FURTHER USAGE OF DIGITAL COMMODITIES.—The Commission, consistent with protecting investors, fostering the development of mature blockchain systems, facilitating capital formation, and maintaining fair and orderly markets, may, by rule, exempt unconditionally or on stated terms or conditions, a digital commodity related person or a digital commodity affiliated person, or any class thereof, from the requirements of this section for the offer or sale of a digital commodity.".

SEC. 205. MATURE BLOCKCHAIN SYSTEM REQUIREMENTS.

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

"SEC. 42. MATURE BLOCKCHAIN SYSTEMS.

"(a) CERTIFICATION OF BLOCKCHAIN SYSTEMS.—

"(1) CERTIFICATION.—For purposes of sections 4(a)(8), 4B, and 4C of the Securities Act of 1933, any digital commodity issuer, digital commodity related person, digital commodity affiliated person, or decentralized governance system of the blockchain system may certify to the Securities and Exchange Commission that the blockchain system to which a digital commodity relates is a mature blockchain system.

"(2) FILING REQUIREMENTS.—A certification described under paragraph (1) shall be filed with the Commission, and include such information that is reasonably necessary to establish that the blockchain system is not controlled by any person or group of persons under common control, which may include information regarding—

"(A) the operation of the blockchain system;

"(B) the functionality of the related digital commodity;

"(C) how the market value of the digital commodity is substantially derived from the programmatic functioning of such blockchain system;

"(D) any decentralized governance system which relates to the blockchain system; and

"(E) the current roles, if any, of the digital commodity issuer, digital commodity affiliated persons, and digital commodity related persons where such roles are material to the development or operation of such blockchain system or the decentralized governance system of such blockchain system.

"(3) REBUTTABLE PRESUMPTION.—The Commission may rebut a certification described under paragraph (1) with respect to a blockchain system if the Commission, within 60 days of receiving such certification, determines that the blockchain system is not a mature blockchain system.

"(4) CERTIFICATION REVIEW.—

"(A) IN GENERAL.—Any blockchain system that relates to a digital commodity for which a certification has been made under paragraph (1) shall be considered a mature blockchain system 60 days after the date on which the Commission receives a certification under paragraph (1), unless the Commission notifies the person who made the certification within such time that the Commission is staying the certification due to—

"(i) an inadequate explanation by the person making the certification; or

"(ii) any novel or complex issues which require additional time to consider.

"(B) PUBLIC NOTICE.—The Commission shall make the following available to the public and provide a copy to the Commodity Futures Trading Commission:

"(i) Each certification received under paragraph (1).

"(ii) Each stay of the Commission under this subsection, and the reasons therefor.

"(iii) Any response from a person making a certification under paragraph (1) to a stay of the certification by the Commission.

"(C) CONSOLIDATION.—The Commission may consolidate and treat as one submission multiple certifications made under paragraph (1) for the same blockchain system which relates to a digital commodity which are received during the review period provided under this paragraph.

"(5) STAY OF CERTIFICATION.—

"(A) IN GENERAL.—A notification by the Commission pursuant to paragraph (4)(A) shall stay the certification once for up to an additional 120 days from the date of the notification.

"(B) PUBLIC COMMENT PERIOD.—Before the end of the 60-day period described under paragraph (4)(A), the Commission may begin a public comment period of at least 30 days in conjunction with a stay under this subsection.

"(6) DISPOSITION OF CERTIFICATION.—A certification made under paragraph (1) shall—

"(A) become effective—

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

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

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

"(7) RECERTIFICATION.—With respect to a blockchain system for which a certification has been rebutted under this subsection, no person may make a certification under paragraph (1) with respect to such blockchain system during the 90-day period beginning on the date of such rebuttal.

"(8) APPEAL OF REBUTTAL.—

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

"(B) REVIEW.—In an appeal under subparagraph (A), the court shall have de novo review of the determination to rebut the certification.

"(b) MATURITY CRITERIA.—

"(1) SENSE OF CONGRESS.—It is the sense of the Congress that protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation necessitates establishing clear criteria for blockchain systems to be deemed mature, as well as enabling the Commission to develop, without prejudice to any such criteria codified in statute, alternative criteria by which blockchain systems may be considered not to be controlled by any person or group of persons under common control in order to accommodate changes in markets and technology.

"(2) IN GENERAL.—The Commission may issue rules identifying conditions by which a blockchain system, together with its related digital commodity, shall be considered a mature blockchain system, consistent with the protection of investors, maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation.

"(3) RULES OF CONSTRUCTION.—

"(A) Nothing in this subsection may be construed to permit the Commission to impose additional criteria to the criteria in subsection (c) for certifying that a blockchain system is a mature blockchain system pursuant to subsection (c).

"(B) Nothing in this subsection or subsection (c) may be construed to limit the Commission's ability to identify alternative conditions and criteria by which a blockchain system may be considered a mature blockchain system.

"(c) DEEMED MATURE.—

"(1) IN GENERAL.—Notwithstanding subsection (b), for the purposes of subsection (a), a digital commodity issuer, digital commodity related person, digital commodity affiliated person, or decentralized governance system of the blockchain system may establish that a blockchain system, together with its related digital commodity, is not controlled by any person or group of persons under common control, if the blockchain system, together with its related digital asset, meets the requirements described in paragraph (2) or (3).

"(2) CRITERIA FOR ANY BLOCKCHAIN SYSTEM.—The requirements described in this paragraph are the following:

"(A) SYSTEM VALUE.—

"(i) MARKET VALUE.—The digital commodity has a value that is substantially derived from the use and functioning of the blockchain system.

"(ii) DEVELOPMENT OF VALUE MECHANISM SUBSTANTIALLY COMPLETED.—Where the digital commodity issuer has made public a development plan describing how the digital commodity's value is reasonably expected to be derived from the programmatic functioning of the

blockchain system, the development of such mechanisms has been substantially completed.

"(B) FUNCTIONAL SYSTEM.—The blockchain system allows network participants to engage in the activities the blockchain system is intended to provide, including—

"(i) using, transmitting, or storing value, or otherwise executing transactions, on the blockchain system;

"(ii) deploying, executing, or accessing software or services, or otherwise offering or participating in services, deployed on or integrated with the blockchain system;

"(iii) participating in the consensus mechanism, transaction validation process, or decentralized governance system of the blockchain system; or

"(iv) operating any client, node, validator, or other form of computational infrastructure with respect to the blockchain system.

"(C) OPEN AND INTEROPERABLE SYSTEM.—The blockchain system—

"(i) is composed of source code that is open source; and

"(ii) does not restrict or prohibit based on the exercise of unilateral authority any person, other than a digital commodity issuer, digital commodity related person, or digital commodity affiliated person from engaging in the activities the blockchain system is intended to provide, including the activities described in subparagraph (B).

"(D) PROGRAMMATIC SYSTEM.—The blockchain system operates, executes, and enforces its operations and transactions based solely on pre-established, transparent rules encoded directly within the source code of the blockchain system.

"(E) SYSTEM GOVERNANCE.—No person or group of persons under common control—

"(i) has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity; or

"(ii) has the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of such blockchain system by means of a related digital commodity, nodes or validators, a decentralized governance system, or otherwise, in a blockchain system which can be altered by a voting system.

"(F) IMPARTIAL SYSTEM.—No person or group of persons under common control possesses a unique permission or privilege to alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity, unless such alteration—

"(i) addresses errors, regular maintenance, or cybersecurity risks of the blockchain system that affect the programmatic functioning of the blockchain system; and

"(ii) is adopted through the consensus or agreement of a decentralized governance system.

"(G) DISTRIBUTED OWNERSHIP.—No digital commodity issuer, digital commodity related person, or digital commodity affiliated person beneficially owns, in the aggregate, 20 percent or more of the total amount of units of the digital commodity.

"(3) OPTIONAL CRITERIA FOR PREEXISTING BLOCKCHAIN SYSTEMS.—The requirements described in this paragraph are that the blockchain system—

"(A) was created prior to the date of enactment of this section;

"(B) met the requirements of subparagraphs (A) through (F) of paragraph (2) prior to January 1, 2020; and

"(C) at least 50 percent of the units of the digital commodity related to the blockchain system are held by persons other than the digital commodity issuer, a digital commodity related person, or a digital commodity affiliated person.

"(d) DECENTRALIZED GOVERNANCE SYSTEM.—

"(1) For the purposes of this section, a decentralized governance system is not a 'person' or a 'group of persons under common control'.

"(2) A blockchain system, together with its digital commodity, shall not be precluded from being considered a mature blockchain system solely based on a functional, administrative, clerical, or ministerial action of a decentralized governance system, including any such action taken by a person acting on behalf of and at the direction of the decentralized governance system, as determined

by the Commission and consistent with the protection of investors, maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation.

"(e) RULEMAKING.—Not more than 270 days after the date of enactment of this section, the Commission shall issue rules to carry out this section.".

SEC. 206. EFFECTIVE DATE.

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

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

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

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

SEC. 301. TREATMENT OF DIGITAL COMMODITIES AND PERMITTED PAYMENT STABLECOINS.

(a) SECURITIES ACT OF 1933.—Section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)), as amended by section 201(a)(1), is further amended by adding at the end the following: "The term does not include a digital commodity or permitted payment stablecoin.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as amended by section 201(d) is further is amended by adding at the end the following: "The term does not include a digital commodity or permitted payment stablecoin.".

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

(1) in paragraph (18)), as amended by section 201(b), by adding at the end the following: "The term does not include a digital commodity or permitted payment stablecoin.";

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

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

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

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

(1) in paragraph (36), as amended by section 201(c), by adding at the end the following: "The term does not include a digital commodity or permitted payment stablecoin."; and

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

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

(e) SECURITIES INVESTOR PROTECTION ACT OF 1970.—Section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll) is amended—

(1) in paragraph (14), as amended by section 201(e), by adding at the end the following: "The term does not include a digital commodity or permitted payment stablecoin, as such terms are defined, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))"; and

(2) by adding at the end the following:

"(15) TREATMENT OF PERMITTED PAYMENT STABLECOINS.—A permitted payment stablecoin, as defined in section 2(a) of the Securities Act of 1933, shall not qualify as 'cash' and a claim for a permitted payment stablecoin shall not qualify as a 'claim for cash'.".

SEC. 302. ANTI-FRAUD AUTHORITY OVER PERMITTED PAYMENT STABLECOINS AND CERTAIN DIGITAL COMMODITY TRANSACTIONS.

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

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

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

"(d) To use or employ, in connection with the purchase or sale of any permitted payment stablecoin or digital commodity, including, as applicable, by or

through a broker or dealer or an alternative trading system, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."; and

(3) by adding at the end the following: "Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply with respect to permitted payment stablecoin and digital commodity transactions engaged in by a broker or dealer or through an alternative trading system or, as applicable, a national securities exchange to the same extent as they apply to securities transactions. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to permitted payment stablecoins and digital commodities with respect to those circumstances in which the permitted payment stablecoins and digital commodities are brokered, traded, or custodied by a broker or dealer or through an alternative trading system or, as applicable, a national securities exchange to the same extent as they apply to securities.".".

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

"SEC. 6A. TREATMENT OF TRANSACTIONS IN PERMITTED PAYMENT STABLECOINS.

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

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

"(1) by a broker or dealer;

"(2) through a national securities exchange; or

"(3) through an alternative trading system.

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

"(1) by a broker or dealer;

"(2) through a national securities exchange; or

"(3) through an alternative trading system.".

SEC. 303. ELIGIBILITY OF ALTERNATIVE TRADING SYSTEMS.

(a) IN GENERAL.—Section 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78e) is amended—

(1) by striking "It" and inserting the following:

"(a) IN GENERAL.—It"; and

(2) by adding at the end the following:

"(b) DIGITAL COMMODITY PROTECTIONS.—

"(1) IN GENERAL.—The Commission may not preclude a trading platform from operating pursuant to a covered exemption on the basis that the assets traded or to be traded on such platform include—

"(A) digital commodities or permitted payment stablecoins; and

"(B) securities.

"(2) COVERED EXEMPTION.—In this subsection, the term 'covered exemption' means an exemption—

"(A) described in subsection (a)(2); or

"(B) with respect to any other rule of the Commission relating to the definition of 'exchange'.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(2)) is amended by adding at the end the following: "An alternative trading system primarily facilitating the trading of digital commodities, permitted payment stablecoins, or both, is not a 'facility' of an exchange.".

(c) RULE OF CONSTRUCTION.—Nothing in this section, the amendments made by this section, or section 304 may be construed to—

(1) prohibit a national securities exchange from owning or operating any other type of alternative trading system; or

(2) create a presumption that any other type of alternative trading system owned or operated by a national securities exchange is a facility of that exchange.

SEC. 304. OPERATION OF ALTERNATIVE TRADING SYSTEMS.

(a) COMMISSION AUTHORITY.—The Securities and Exchange Commission shall have jurisdiction over digital commodity activities and transactions engaged in by—

(1) a registered broker or registered dealer exempt from registration with the Commodity Futures Trading Commission pursuant to section 5k of the Commodity Exchange Act; and

(2) an alternative trading system exempt from registration with the Commodity Futures Trading Commission pursuant to section 5k of the Commodity Exchange Act, including where such alternative trading system is operated by a national securities exchange or affiliate thereof.

(b) RULEMAKING AUTHORITY.—The Securities and Exchange Commission shall have authority to issue rules governing any digital commodity activities and transactions engaged in by a registered broker or registered dealer, or an alternative trading system, including where such alternative trading system is operated by a national securities exchange or affiliate thereof, that is exempt from registration with the Commodity Futures Trading Commission pursuant to section 5k of the Commodity Exchange Act, consistent with this section and what is necessary or appropriate in the public interest or for the protection of investors.

(c) NATIONAL SECURITIES EXCHANGES.—Not later than 270 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise the covered regulations to permit a national securities exchange or affiliate thereof to operate an alternative trading system that permits the trading of digital commodities, permitted payment stablecoins, or both by registered brokers or registered dealers that are exempt from registration with the Commodity Futures Trading Commission pursuant section 5k of the Commodity Exchange Act, consistent with this section and what is necessary or appropriate in the public interest or for the protection of investors.

(d) REGISTERED BROKERS AND REGISTERED DEALERS.—Not later than 270 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise the covered regulations to permit a registered broker or registered dealer that is exempt from registration with the Commodity Futures Trading Commission pursuant to section 5k of the Commodity Exchange Act to operate an alternative trading system that permits the trading of digital commodities, permitted payment stablecoins, or both, consistent with this section and what is necessary or appropriate in the public interest or for the protection of investors.

(e) PERMITTED TRADING.—

(1) IN GENERAL.—An alternative trading system operated pursuant to this section and the regulations promulgated hereunder shall be permitted to trade upon notice to the Securities and Exchange Commission in a manner prescribed by the Securities and Exchange Commission any digital commodity that has been listed by a digital commodity exchange in compliance with section 5i(c)(3) of the Commodity Exchange Act.

(2) COMMISSION AUTHORITY.—Digital commodity transactions offered on an alternative trading system operating pursuant to this section shall be subject to the jurisdiction of the Securities and Exchange Commission. The Securities and Exchange Commission shall have authority to promulgate rules governing such digital commodity transactions of alternative trading systems, consistent with this section and what is necessary or appropriate in the public interest or for the protection of investors.

(3) SUSPENSION OF TRADING.—The Securities and Exchange Commission may suspend the trading of a digital commodity by an alternative trading system operating pursuant to this section as is necessary or appropriate in the public interest and is consistent with the protection of investors.

(f) ORDER DISPLAY AND EXECUTION.—Not later than 270 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue and revise rules, as necessary or appropriate in the public interest or for the protection of investors, regarding whether alternative trading systems operating pursuant to subsections (c) and (d) have an obligation to provide the prices and sizes of orders displayed to more than one person in such alternative trading system of digital commodities to self-regulatory organizations with members who trade in digital commodities or permitted payment stablecoins.

(g) PRINCIPLES OF TRADE.—Not later than 270 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue and revise rules, as necessary or appropriate in the public interest or for the protection of investors, to—

(1) apply the rules and standards promulgated pursuant to paragraph (2) to the appropriate market participants, including—

(A) national securities exchanges operating an alternative trading system described in subsection (c); and

(B) registered brokers and registered dealers operating or subscribing to an alternative trading system described in subsection (d); and

(2) apply, as appropriate to the market participants described in paragraph (1) and customers thereof, rules and standards to—

(A) prevent fraudulent and manipulative acts and practices;

(B) foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in digital commodities or permitted payment stablecoins traded, as applicable, on or by any alternative trading system operating pursuant to subsection (c) or (d), or any registered broker or registered dealer;

(C) remove impediments to and perfect the mechanism of a free and open market in digital commodities or permitted payment stablecoins traded, as applicable, on or by any alternative trading system operating pursuant to subsection (c) or (d), or any registered broker or registered dealer;

(D) in general, protect investors and the public interest; and

(E) prohibit any unfair discrimination between—

(i) customers;

(ii) any market participants described in subparagraphs (A) and (B) of paragraph (1); or

(iii) issuers of digital commodities.

(h) IMPLEMENTING ORGANIZATIONS.—The Securities and Exchange Commission shall require any registered national securities association that has as a member a registered broker or registered dealer that operates an alternative trading system pursuant to subsection (d) or otherwise transacts in digital commodities or permitted payment stablecoins to adopt such rules as may be necessary to further compliance with this section, including subsection (g)(2), protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(i) RULE OF CONSTRUCTION.—The enumeration of any category of rules or regulations in this section shall not be construed to limit the authority of the Securities and Exchange Commission to promulgate such rules as may be necessary or appropriate to implement this section and the purposes of this Act, including over—

(1) system capacity, integrity, and security;

(2) examinations, inspections, and investigations;

(3) trade reporting; or

(4) written procedures for the confidential treatment of trading information.

(j) MEMORANDUM OF UNDERSTANDING.—Consistent with section 5k of the Commodity Exchange Act and to carry out this Act, the Securities and Exchange Commission shall enter into a memorandum of understanding with the Commodity Futures Trading Commission to ensure—

(1) requirements imposed on registered brokers or registered dealers operating an alternative trading system pursuant to subsection (c) or otherwise transacting in digital commodities or permitted payment stablecoins are consistent with the substantive requirements under section 4u of the Commodity Exchange Act;

(2) requirements imposed on alternative trading systems operating pursuant to subsection (c) or (d) are not inconsistent with core principles of and are consistent with the other substantive requirements under section 5i of the Commodity Exchange Act; and

(3) non-duplicative supervision and enforcement with respect to registrants of the Securities and Exchange Commission notice registered with the Commodity Futures Trading Commission.

(k) COVERED REGULATIONS DEFINED.—In this section, the term "covered regulations" means sections 242.300, 242.301, 242.302, 242.303, 242.304, and 242.1000 through 242.1007 of title 17, Code of Federal Regulations.

(l) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the anti-fraud, anti-manipulation, or false reporting enforcement authorities of the Commodity Futures Trading Commission with respect to a contract of sale of a commodity and persons effecting such contracts.

SEC. 305. MODERNIZATION OF RECORDKEEPING REQUIREMENTS.

(a) IN GENERAL.—For purposes of books and records requirements for brokers, dealers, transfer agents, national securities exchanges under the Securities and Exchange Act of 1934 (15 U.S.C. 78a et seq.), investment advisers under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), and investment companies

under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), a person may consider records from a blockchain system.

(b) REVISION OF RULES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue and revise such rules as may be necessary to implement this section.

SEC. 306. EXEMPTIVE AUTHORITY.

Section 28 of the Securities Act of 1933 (15 U.S.C. 77z–3) is amended by striking "by rule or regulation" and inserting "by rule, regulation, or order".

SEC. 307. ADDITIONAL REGISTRATIONS WITH THE COMMODITY FUTURES TRADING COMMISSION.

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

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

SEC. 308. EXEMPTING DIGITAL COMMODITIES FROM STATE SECURITIES LAWS.

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

"(5) EXEMPTION IN CONNECTION WITH DIGITAL COMMODITIES.—A digital commodity shall be treated as a covered security.".

SEC. 309. EXCLUSION FOR DECENTRALIZED FINANCE ACTIVITIES.

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

"SEC. 15H. 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 a decentralized finance trading protocol:

"(1) Compiling network transactions or relaying, searching, sequencing, validating, or acting in a similar capacity.

"(2) Providing computational work, operating a node or oracle service, or procuring, offering, or utilizing network bandwidth, or providing other similar incidental services.

"(3) Providing a user-interface that enables a user to read and access data about a blockchain system.

"(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or a decentralized finance trading protocol.

"(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a decentralized finance messaging system, or operating or participating in a liquidity pool, for the purpose of executing a spot contract for the purchase or sale of a digital commodity in relation to a decentralized finance trading protocol.

"(6) 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 assets or related private keys.

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

SEC. 310. TREATMENT OF CUSTODY ACTIVITIES BY BANKING INSTITUTIONS.

(a) TREATMENT OF CUSTODY ACTIVITIES.—The appropriate Federal banking agency, the National Credit Union Administration (in the case of a credit union), and the Securities and Exchange Commission may not require a depository institution, national bank, Federal credit union, State credit union, trust company, broker, or dealer, or any affiliate thereof (the "entity")—

(1) to include assets held in custody that are not owned by the entity as a liability on the financial statement or balance sheet of the entity, including digital commodity or permitted payment stablecoin custody or safekeeping services;

(2) to hold regulatory capital against assets, including reserves backing such assets, in custody or safekeeping, except as necessary to mitigate against oper-

ational risks inherent with the custody or safekeeping services, as determined by—

(A) the appropriate Federal banking agency;

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

(C) a State bank supervisor;

(D) a State credit union supervisor (as defined in section 6003 of the Anti-Money Laundering Act of 2020 (31 U.S.C. 5311 note)); or

(E) the Securities and Exchange Commission (in the case of a broker or dealer); and

(3) to recognize a liability for any obligations related to activities or services performed with respect to digital commodities that the entity does not own if that liability would exceed the expense recognized in the income statement as a result of the corresponding obligation.

(b) DEFINITIONS.—In this section:

(1) BANKING TERMS.—The terms "appropriate Federal banking agency", "depository institution", "national bank", and "State bank supervisor" have the meaning given those terms, respectively, under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) CREDIT UNION TERMS.—The terms "Federal credit union" and "State credit union" have the meaning given those terms, respectively, under section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

SEC. 311. BROKER AND DEALER DISCLOSURES REGARDING THE TREATMENT OF ASSETS.

(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue rules requiring written disclosures regarding the treatment of customer assets in the event of an insolvency, resolution, or liquidation proceeding to be provided by a registered broker or dealer to an investor before a digital commodity, a permitted payment stablecoin, or an investment contract involving a unit of a digital commodity is received, acquired, or held by the broker or dealer for the account of the investor, which shall include, as necessary or appropriate for the protection of investors—

(1) a description of the manner in which any digital commodity, permitted payment stablecoin, or investment contact involving a unit of a digital commodity received, acquired, or held by the broker or dealer for the account of such investor would be treated in an insolvency, resolution, or liquidation proceeding with respect to the broker or dealer under—

(A) title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 et seq.);

(B) the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); or

(C) as applicable, chapter 7 or chapter 11 of title 11, United States Code; and

(2) how the treatment described in paragraph (1) differs from the treatment of securities and cash received, acquired, or held by the broker or dealer for the account of such investor in the event of an insolvency, resolution, or liquidation proceeding with respect to the broker or dealer under each law described under subparagraph (A) through (C) of paragraph (1).

SEC. 312. DIGITAL COMMODITY ACTIVITIES THAT ARE FINANCIAL IN NATURE.

(a) DIGITAL COMMODITY ACTIVITIES THAT ARE FINANCIAL IN NATURE.—Section 4(k)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)) is amended—

(1) in subparagraph (A), by striking "or securities" and inserting ", securities, or digital commodities"; and

(2) in subparagraph (E), by inserting "or digital commodities" before the period at the end.

(b) NATIONAL BANK ACTIVITY.—

(1) IN GENERAL.—A national bank may use a digital asset or blockchain system to perform, provide, or deliver any activity, function, product, or service that the national bank is otherwise authorized by law to perform, provide, or deliver.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to exempt a national bank's performance, provision, or delivery of an activity, function, product, or service from a requirement that would apply if the activity were not performed, provided, or delivered using a digital asset or blockchain system.

(c) INSURED STATE BANKS AND SUBSIDIARIES OF INSURED STATE BANKS.—For purposes of sections 24(a) and 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(a) and (d)), all of the activities authorized for a national bank under sub-

section (b) that are principal activities shall be permissible for an insured State bank and subsidiary of an insured State bank.

SEC. 313. EFFECTIVE DATE; ADMINISTRATION.

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

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

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

SEC. 314. STUDIES ON FOREIGN ADVERSARY PARTICIPATION.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, shall, not later than 1 year after date of the enactment of this section, conduct a study and submit a report to the relevant congressional committees that—

(1) identifies any digital commodity registrants which are owned by governments of foreign adversaries;

(2) determines whether any governments of foreign adversaries are collecting personal data or trading data about United States persons in the digital commodity markets; and

(3) evaluates whether any proprietary intellectual property of digital commodity registrants is being misused or stolen by any governments of foreign adversaries.

(b) GAO STUDY AND REPORT.—

(1) IN GENERAL.—The Comptroller General shall, not later than 1 year after date of the enactment of this section, conduct a study and submit a report to the relevant congressional committees that—

(A) identifies any digital commodity registrants which are owned by governments of foreign adversaries;

(B) determines whether any governments of foreign adversaries are collecting personal data or trading data about United States persons in the digital commodity markets; and

(C) evaluates whether any proprietary intellectual property of digital commodity registrants is being misused or stolen by any governments of foreign adversaries.

(c) DEFINITIONS.—In this section:

(1) DIGITAL COMMODITY REGISTRANT.—The term "digital commodity registrant" means any person required to register as a digital commodity exchange, digital commodity broker, or digital commodity dealer under the Commodity Exchange Act.

(2) FOREIGN ADVERSARIES.—The term "foreign adversaries" means the foreign governments and foreign non-government persons determined by the Secretary of Commerce to be foreign adversaries under section 7.4(a) of title 15, Code of Federal Regulations.

(3) RELEVANT CONGRESSIONAL COMMITTEES.—The term "relevant congressional committees" means—

(A) the Committees on Financial Services and Agriculture of the House of Representatives; and

(B) the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate.

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

SEC. 401. COMMISSION JURISDICTION OVER DIGITAL COMMODITY TRANSACTIONS.

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

"(J) Except as expressly provided in this Act, nothing in the CLARITY Act of 2025 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; or
"(ii) the activities of any person with respect to any such an agreement, contract, or transaction.".

(b) LIMITATION ON AUTHORITY OVER PERMITTED PAYMENT STABLECOINS.—Section 2(c)(1) of the Commodity Exchange Act (7 U.S.C. 2(c)(1)) is amended—
(1) in subparagraph (F), by striking "or" at the end;
(2) in subparagraph (G), by striking the period and inserting "; or"; and
(3) by adding at the end the following:
"(H) permitted payment stablecoins.".

(c) COMMISSION JURISDICTION OVER FINANCING AGREEMENTS.—Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) is amended—
(1) in subparagraph (D), by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following:
"(iv) Notwithstanding clause (iii), a digital commodity broker may, subject to the requirements of section 4u(c)(3), offer to or enter into an agreement for margin financing with a customer for the purchase or sale of a digital commodity."; and
(2) by adding at the end the following:

"(F) COMMISSION JURISDICTION WITH RESPECT TO DIGITAL COMMODITY TRANSACTIONS.—
"(i) IN GENERAL.—Subject to sections 6d and 12(e), the Commission shall have exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity in interstate commerce, including in a digital commodity cash or spot market, that is offered, solicited, traded, facilitated, executed, cleared, reported, or otherwise dealt in—
"(I) on or subject to the rules of a registered entity or an entity that is required to be registered as a registered entity; or
"(II) by any other entity registered, or required to be registered, with the Commission.
"(ii) LIMITATIONS.—Clause (i) shall not apply with respect to—
"(I) custodial or depository activities for a 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); or
"(II) an offer or sale of an investment contract involving a digital commodity or of a securities offer or sale involving a digital commodity.
"(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 commodity issuer, digital commodity related person, digital commodity affiliated person, or other person registered with the Securities and Exchange Commission that engages in a mixed digital asset transaction, shall, on request of the Commission, open to inspection and examination by the 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 per-

mitted payment stablecoin issuer, regarding the operation of a permitted payment stablecoin issuer or a permitted payment stablecoin.".

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

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

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

(1) in subsection (a)(2)—

(A) in the 1st proviso, by striking "any bank or trust company" and inserting "any bank, trust company, or qualified digital asset custodian, as applicable,"; and

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

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

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

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

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

(2) in subsection (b)—

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

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

(3) in subsection (c)—

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

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

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

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

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

"(d) CERTIFICATIONS FOR DIGITAL COMMODITY TRADING.—

"(1) IN GENERAL.—Notwithstanding subsection (c), for the purposes of listing or offering a digital commodity for trading in a digital commodity cash or spot market, an eligible entity shall submit a written certification to the Commission 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 an analysis of how the digital commodity meets the requirements of section 5i(c)(3).

"(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 digital commodity related person or a digital commodity 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 listing of the digital commodity is inconsistent with the requirements of this Act or the rules and regulations prescribed under this Act.

"(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) 1 business day 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 Commission; and

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

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

"(II) missing information or inadequate explanations; or

"(III) potential inconsistencies with this Act.

"(6) 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 the listing of the digital commodity unless the Commission finds that the listing is inconsistent with this Act (including any regulation 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.

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

SEC. 404. REGISTRATION OF DIGITAL COMMODITY EXCHANGES.

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

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

"(a) IN GENERAL.—

"(1) REGISTRATION.—

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

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

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

"(i) permits no more than a de minimis amount of trading activity, as the Commission may determine by rule or regulation, in a digital commodity; or

"(ii) serves only customers in a single State, territory, or possession of the United States.

"(2) ADDITIONAL REGISTRATIONS.—

"(A) WITH THE COMMISSION.—In order to foster the development of fair and orderly markets, protect customers, and promote responsible innovation, the Commission—

"(i) shall prescribe rules to exempt an entity registered with the Commission under more than 1 section of this Act from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act;

"(ii) shall prescribe rules to address conflicts of interests and activities of the entity; and

"(iii) may, after an analysis of the risks and benefits, prescribe rules to provide for portfolio margining.

"(B) 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.

"(C) 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 the 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 credit, market, and liquidity risks associated with the digital commodity business of the exchange.

"(iii) OPERATIONAL NEEDS.—A transaction related to the operational needs of the business of the digital commodity exchange or its affiliate.

"(iv) FUNCTIONAL USE.—A transaction related to the functional operation of a blockchain system.

"(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 purposes of this Act.

"(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 not permit trading in a digital commodity unless—

"(i) reports with respect to the digital commodity required under section 4B(b)(3) of the Securities Act of 1933 (or, with respect to a digital commodity not issued in reliance on section 4(a)(8) of the Securities Act of 1933, a comparable set of reports, where required by the Securities and Exchange Commission) have been filed with the Securities and Exchange Commission; or

"(ii) the blockchain system to which the digital commodity relates, together with the digital commodity, is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934.

"(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 description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital commodity relates, to the extent any such independent access, search, and verification activities are technically feasible with respect to the blockchain system.

"(III) DIGITAL COMMODITY ECONOMICS.—A narrative description of the purpose of any blockchain system to which the digital commodity 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 commodities to be created, the release schedule for the digital commodities, and the total number of digital commodities then outstanding;

"(bb) information detailing any applicable consensus mechanism or process for validating transactions, method of generating or mining digital commodities, and any process for burning or destroying digital commodities 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 commodities; 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 on the exchange.

"(V) ADDITIONAL INFORMATION.—Such additional information as the Commission may determine by rule to be necessary for a customer to understand the financial and operational risks of a digital commodity, and to be practically feasible to provide.

"(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.

"(iv) RELIANCE ON PREVIOUS DISCLOSURES.—In complying with this subparagraph, a digital commodity exchange may rely on and make available to the public relevant information publicly disclosed to the Commission, the Securities and Exchange Commission, or an appropriate Federal banking agency.

"(C) DIGITAL COMMODITIES HELD BY RELATED AND DIGITAL COMMODITY AFFILIATED PERSONS.—A digital commodity exchange shall permit the trading of a unit of a digital commodity held by a digital commodity affiliated person or a digital commodity related person, only pursuant to section 4C of the Securities Act of 1933.

"(4) TREATMENT OF CUSTOMER ASSETS.—A digital commodity exchange shall establish policies 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, 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 relating to the operation of the exchange, 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.—The digital commodity exchange shall establish and enforce rules—

"(A) to minimize conflicts of interest in the decision making processes of the contract market; and

"(B) to establish a process for resolving conflicts of interest referred to in subparagraph (A).

"(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—

"(i) 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; and

"(ii) the total amount necessary to meet the financial obligations of the digital commodity exchange to all customers of the digital commodity exchange.

"(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 and designed to permit consideration of the views of market participants.

"(B) FITNESS STANDARDS.—A digital commodity exchange shall establish and enforce appropriate fitness standards for—

"(i) officers and 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 in accordance with industry standards, that—

"(i) are reliable and secure; and

"(ii) have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup resources, 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 customer 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 asset custodian.

"(II) WITHDRAWAL.—Notwithstanding subparagraph (A), such share of the money, assets, and property described in subclause (I) of this clause 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 the sale of 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 purposes of the definition of '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 asset 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 shall, by rule, establish notice and disclosure requirements, and may, by rule, establish 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.—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 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 conflicts 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 ASSET CUSTODIAN.—A digital commodity exchange shall hold in a qualified digital asset custodian each unit of a digital asset 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.

"(i) EXEMPTIONS.—

"(1) In order to promote responsible 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 of the facility.

"(j) CUSTOMER DEFINED.—In this section, the term 'customer' means any person that maintains an account for the trading of digital commodities directly with a digital commodity exchange (other than a person that is owned or controlled, directly or indirectly, by the digital commodity exchange) for its own behalf or on behalf of 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 with respect to activities and transactions subject to this Act.".

SEC. 405. QUALIFIED DIGITAL ASSET CUSTODIANS.

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

"SEC. 5j. QUALIFIED DIGITAL ASSET CUSTODIANS.

"(a) IN GENERAL.—A person is a qualified digital asset custodian for purposes of this Act if the person—

"(1) holds digital assets on behalf of a person registered under this Act or a customer of a person registered under this Act; and

"(2) is in compliance with subsections (b) and (c).

"(b) SUPERVISION REQUIREMENT.—A person is in compliance with this subsection if the person is subject to—

"(1) supervision and examination for custody and safekeeping of digital assets by an appropriate Federal banking agency, the National Credit Union Administration, the Commission, or the Securities and Exchange Commission; or

"(2) adequate supervision and appropriate regulation for custody and safekeeping of digital assets by—

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

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

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

"(c) OTHER REQUIREMENTS.—A person shall be in compliance with this subsection if:

"(1) NOT OTHERWISE PROHIBITED.—The person has not been prohibited by its supervisor from engaging in an activity with respect to the custody and safekeeping of digital assets.

"(2) INFORMATION SHARING.—

"(A) IN GENERAL.—The person shares information with the Commission on request and complies with such requirements for periodic sharing of in-

formation regarding customer accounts that the person 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.—If the person is subject to regulation and examination by an appropriate Federal banking agency, the person may satisfy any information request described in subparagraph (A) by providing the Commission with a detailed listing, in writing, of the digital assets of a customer in the custody of, or use by, the person.

"(C) RULEMAKING FOR CFTC ENTITIES.—

"(i) IN GENERAL.—The Commission shall prescribe rules to permit a person registered with the Commission to be a qualified digital asset custodian in compliance with this section.

"(ii) CONTENT.—In prescribing the rules under subparagraph (A), the Commission shall require a person registered with the Commission to—

"(I) implement requirement consistent with the requirements in subsection (d)(1);

"(II) establish sufficient system safeguards;

"(III) prevent or mitigate conflicts of interest, as appropriate; and

"(IV) establish separate governance arrangements for the custodial function 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 assets held by a person registered under this Act, including standards relating to the licensing, examination, and supervisory processes that require the person 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 person;

"(B) hold capital sufficient for the financial integrity of the person;

"(C) protect customer assets;

"(D) establish and maintain books and records regarding the business of the person;

"(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 and appropriate for the protection of customers, 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 assets;

"(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. 406. REGISTRATION AND REGULATION OF DIGITAL COMMODITY BROKERS AND DEALERS.

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

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

"(a) REGISTRATION.—

"(1) REQUIREMENT.—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.

"(2) ADDITIONAL REGISTRATION.—

"(A) RULES.—In order to foster the development of fair and orderly markets, protect customers, and promote responsible innovation, the Commission—

"(i) shall prescribe rules to exempt an entity registered with the Commission under more than 1 section of this Act from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act;

"(ii) shall prescribe rules to address conflicts of interests and the activities of the entity; and

"(iii) may after an analysis of the risks and benefits, prescribe rules to provide for portfolio margining.

"(B) 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.

"(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.

"(c) 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) FINANCING AGREEMENTS.—

"(A) IN GENERAL.—The Commission shall prescribe rules and regulations applicable to digital commodity brokers or digital commodity dealers which shall set forth minimum requirements related to disclosure, recordkeeping, margin and financing arrangements, rehypothecation, capital, reporting, business conduct, documentation, and supervision of employees and agents, in connection with—

"(i) an agreement described in section 2(c)(2)(D)(iv); or

"(ii) any other margined, leveraged, or financing arrangement for the purchase or sale of a digital commodity with an eligible contract participant.

"(B) SPECIFIC AUTHORITY.—Except as prohibited in section 2(c)(2)(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 an agreement referred to in subparagraph (A) of this paragraph, which may include, without limitation, requirements regarding registration with the Commission and membership in a registered futures association.

"(d) 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, at all times, to—

"(A) meet, and continue to meet the obligations of such a registrant; and

"(B) fulfill obligations to customers or counterparties for any margined, leveraged, or financed transactions.

"(2) 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.).

"(e) 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.

"(f) 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.

"(g) 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 appropriate for the protection of customers.

"(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.

"(h) 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 establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the person, to mitigate any conflicts of interest in transactions or arrangements with affiliates.

"(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.

"(i) 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 noncompliance issues.

"(3) ANNUAL REPORTS.—

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

"(i) the compliance of the registered digital commodity broker or registered digital commodity dealer with this Act (including regulations); and

"(ii) each policy and procedure of the registered digital commodity broker or registered digital commodity dealer followed by the chief compliance officer (including the code of ethics and conflict of interest policies).

"(B) REQUIREMENTS.—The chief compliance officer shall ensure that a compliance report under subparagraph (A)—

"(i) accompanies each appropriate financial report of the registered digital commodity broker or registered digital commodity dealer that is required to be furnished to the Commission pursuant to this section; and

"(ii) includes a certification that, under penalty of law, the compliance report is accurate and complete.

"(j) 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 ASSET CUSTODIAN.—Each digital commodity broker and digital commodity dealer shall hold in a qualified digital asset custodian each unit of a digital asset 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 asset 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 broker or 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 broker and a digital commodity dealer 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 (2) for any unit of a digital commodity to be used under subparagraph (B) of this paragraph, 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 shall, by rule, establish notice and disclosure requirements, and may, by rule, establish 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.

"(k) 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 with respect to activities subject to this Act, except as provided in section 5k.

"(l) EXEMPTIONS.—In order to promote responsible 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.".

SEC. 407. REGISTRATION OF ASSOCIATED PERSONS.

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

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

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

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

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

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

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

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

(1) in subparagraph (A)—

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

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

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

(b) EXEMPTIVE AUTHORITY.—Section 4m of such Act (7 U.S.C. 6m) is amended by adding at the end the following:

"(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. 409. EXCLUSION FOR DECENTRALIZED FINANCE ACTIVITIES.

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

"SEC. 4v. 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 trading protocol:

"(1) Compiling network transactions or relaying, searching, sequencing, validating, or acting in a similar capacity.

"(2) Providing computational work, operating a node or oracle service, or procuring, offering, or utilizing network bandwidth, or other similar incidental services.

"(3) Providing a user-interface that enables a user to read, and access data about a blockchain system.

"(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or a decentralized finance trading protocol.

"(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a decentralized finance messaging system or operating or participating in a liquidity pool for the purpose of executing a contract of sale of a digital commodity.

"(6) 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 assets 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. 410. RESOURCES FOR IMPLEMENTATION AND ENFORCEMENT.

(a) COLLECTION OF FEES.—

(1) IN GENERAL.—The Commodity Futures Trading Commission (in this section referred to as the "Commission") shall charge and collect a filing fee from each person who files with the Commission a statement of provisional registration as a digital commodity exchange, digital commodity broker, or digital commodity dealer pursuant to section 106.

(2) AMOUNT.—The fees authorized under paragraph (1) may be collected and available for obligation only in the amounts provided in advance in an appropriation Act.

(3) AUTHORITY TO ADJUST FEES.—Notwithstanding the preceding provisions of this subsection, to promote fair competition or innovation, the Commission, in its sole discretion, may reduce or eliminate any fee otherwise required to be paid by a small or medium filer under this subsection.

(b) FEE SCHEDULE.—

(1) IN GENERAL.—The Commission shall publish in the Federal Register a schedule of the fees to be charged and collected under this section.

(2) CONTENT.—The fee schedule for a fiscal year shall include a written analysis of the estimate of the Commission of the total costs of carrying out the functions of the Commission under this Act during the fiscal year.

(3) SUBMISSION TO CONGRESS.—Before publishing the fee schedule for a fiscal year, the Commission shall submit a copy of the fee schedule to the Committees on Agriculture and on Appropriations of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Appropriations of the Senate.

(4) TIMING.—

(A) 1ST FISCAL YEAR.—The Commission shall publish the fee schedule for the fiscal year in which this Act is enacted, within 30 days after the date of the enactment of this Act.

(B) SUBSEQUENT FISCAL YEARS.—The Commission shall publish the fee schedule for each subsequent fiscal year, not less than 90 days before the due date prescribed by the Commission for payment of the annual fee for the fiscal year.

(c) LATE PAYMENT PENALTY.—

(1) IN GENERAL.—The Commission may impose a penalty against a person that fails to pay an annual fee charged under this section, within 30 days after the due date prescribed by the Commission for payment of the fee.

(2) AMOUNT.—The amount of the penalty shall be—

(A) 5 percent of the amount of the fee due, multiplied by

(B) the whole number of consecutive 30-day periods that have elapsed since the due date.

(d) REIMBURSEMENT OF EXCESS FEES.—To the extent that the total amount of fees collected under this section during a fiscal year that begins after the date of the enactment of this Act exceeds the amount provided under subsection (a)(2) with respect to the fiscal year, the Commission shall reimburse the excess amount to the persons who have timely paid their annual fees, on a pro-rata basis that excludes penalties, and shall do so within 60 days after the end of the fiscal year.

(e) DEPOSIT OF FEES INTO THE TREASURY.—All amounts collected under this section shall be credited to the currently applicable appropriation, account, or fund of the Commission as discretionary offsetting collections, and shall be available for the purposes authorized in subsection (f) only to the extent and in the amounts provided in advance in appropriations Acts.

(f) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated to the Commission, there is authorized to be appropriated to the Commission amounts collected under this section to cover the costs the costs of carrying out the functions of the Commission under this Act.

(g) EXPEDITED HIRING AUTHORITY.—

(1) APPOINTMENT AUTHORITY.—The Chairman, pursuant to section 6(a), may appoint individuals to a position described in paragraph (2) of this subsection—

(A) in accordance with the statutes, rules, and regulations governing appointments to positions in the excepted service (as defined in section 2103 of title 5, United States Code); and

(B) without regard to any statute, rule, or regulation governing appointments to positions in the competitive service (as defined in section 2102 of such title).

(2) POSITION DESCRIBED.—A position referred to in subparagraph (1) is a position at the Commission that—

(A) is in the competitive service (as defined in section 2102 of such title); and

(B) requires specialized knowledge of digital commodities markets, financial and capital market formation or regulation, financial market structures or surveillance, data collection or analysis, or information technology, cybersecurity, or system safeguards.

(3) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under this subsection shall not be considered to cause the position to be converted from the competitive service to the excepted service.

(h) SUNSET.—The authorities provided by this section shall expire at the end of the 4th fiscal year that begins after the date of the enactment of this Act.

SEC. 411. DIGITAL COMMODITY ACTIVITIES BY SEC-REGISTERED ENTITIES.

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

"SEC. 5k. EXEMPTION FOR CERTAIN REGISTERED ENTITIES ENGAGED IN DIGITAL COMMODITY ACTIVITIES.

"(a) BY ALTERNATIVE TRADING SYSTEMS.—

"(1) IN GENERAL.—On receipt by the Commission from an alternative trading system of a written or electronic notice that contains such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors, the alternative trading system shall be exempt from registration as a digital commodity exchange pursuant to section 5i if—

"(A) the alternative trading system does not list any retail commodity transactions pursuant to section 2(c)(2)(D);

"(B) the provider, or an affiliate person of the provider, of the alternative trading system is not otherwise registered under this Act;

"(C) the alternative trading system lists or trades no other contracts of sale of commodities, except for digital commodities, currencies, and securities; and

"(D) the registration of the alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

"(2) FURTHER REQUIREMENTS.—An alternative trading system that provides notice to the Commission pursuant to paragraph (1) of this subsection shall be exempt from the requirements of section 5i to the extent that the alternative trading system—

"(A) is in compliance with requirements consistent with the requirements of section 5i and imposed on the alternative trading system by the Securities and Exchange Commission;

"(B) annually files with the Commission, in a form and manner acceptable to the Commission, a notice that demonstrates compliance with this paragraph and contains any other information the Commission determines to be necessary or appropriate to perform the duties of the Commission under this Act; and

"(C) has total trading volume in digital commodities during any calendar quarter in either of its 2 most recently completed fiscal years that does not exceed the lesser of—

"(i) 25 percent of the total trading volume for all transactions over the same period; or

"(ii) $50,000,000,000.

"(3) ENFORCEMENT.—This subsection shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act with respect to a contract of sale of a digital commodity or persons effecting contracts of sale of digital commodities.

"(b) BY REGISTERED INTERMEDIARIES.—

"(1) IN GENERAL.—On receipt by the Commission, from a broker or dealer that is registered with the Securities and Exchange Commission, of a written or electronic notice that contains such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors, the broker or dealer shall be exempt from registration as a digital commodity broker or digital commodity dealer pursuant to section 4u of this Act if—

"(A) the broker or dealer does not offer or engage in any retail commodity transactions pursuant to section 2(c)(2)(D) of this Act or other contracts of sale of commodities, except for digital commodities, currencies, and securities;

"(B) the broker or dealer is not otherwise registered under this Act;

"(C) the broker or dealer is not subject to a statutory disqualification, as defined under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); and

"(D) the broker or dealer is a member of a national securities association registered pursuant to section 15A of the Securities Exchange Act of 1934.

"(2) FURTHER REQUIREMENTS.—A broker or dealer that provides notice to the Commission pursuant to paragraph (1) shall be exempt from the requirements of section 4u to the extent that the broker or dealer—

"(A) is in compliance with requirements consistent with the requirements of section 4u and imposed on the broker or dealer by the Securities and Exchange Commission;

"(B) annually files with the Commission, in a form and manner acceptable to the Commission, a notice that demonstrates compliance with this subsection and contains any other information the Commission determines to be necessary or appropriate to perform the duties of the Commission under this Act; and

"(C) has consolidated annual gross financial revenues in either of its 2 most recently completed fiscal years from sales, commissions or other activities in digital commodities that do not exceed the lesser of—

"(i) 10 percent of the total annual gross revenues during the same period; or

"(ii) $100,000,000.

"(3) ENFORCEMENT.—This subsection shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act with respect to a contract of sale of a digital commodity and persons effecting contracts of sale of digital commodities.".

SEC. 412. REQUIREMENTS RELATED TO CONTROL PERSONS.

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

"SEC. 4w. LIMITATION ON TRANSACTIONS BY BLOCKCHAIN CONTROL PERSONS.

"(a) LIMITATION.—It shall be unlawful for a blockchain control person with respect to a blockchain system certified as a mature blockchain system in accordance with section 42 of the Securities Exchange Act of 1934 to sell a unit of a digital commodity related to the blockchain system unless the person files notice with the Commission, in a form and manner determined by the Commission, that the person has or intends to obtain an authority described in subsection (b)(1) with respect to the blockchain system, and complies with rules adopted by the Commission that require—

"(1) disclosure of information to the Commission and the public about the material activities, as determined by the Commission, of the blockchain control person; and

"(2)(A) the use of a digital commodity broker to effect the sale; or

"(B) such other sales restrictions applicable to blockchain control person, or any of its digital commodity affiliated persons, to prevent manipulation and distortion of the value of the digital commodity and promote further maturity of the blockchain system to which the digital commodity relates.

"(b) DEFINITIONS.—In this section:

"(1) BLOCKCHAIN CONTROL PERSON.—The term 'blockchain control person' means, with respect to a blockchain system, any person or group of persons under common control who—

"(A) has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity; or

"(B) has the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of the blockchain system by means of a related digital commodity, nodes or validators, a decentralized governance system, or otherwise, in a blockchain system which can be altered by a voting system.

"(2) DIGITAL COMMODITY AFFILIATED PERSON.—The term 'digital commodity affiliated person' means any person directly or indirectly controlling, controlled by, or under common control with a blockchain control person, as the Commission by rule or regulation, may determine will effectuate the purposes of this section.".

SEC. 413. EFFECTIVE DATE.

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

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

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

SEC. 414. SENSE OF CONGRESS.

It is the sense of Congress that nothing in this Act or any amendment made by this Act should be interpreted to authorize any entity to regulate any commodity, other than a digital commodity, on any spot market.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

SEC. 501. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) Entrepreneurs and innovators are building and deploying this next generation of the internet.

(2) Digital commodity networks represent a new way for people to join together and cooperate with one another to undertake certain activities.

(3) Digital commodities have the potential to be the foundational building blocks of these systems, aligning the economic incentive for individuals to cooperate with one another to achieve a common purpose.

(4) The digital commodity ecosystem has the potential to grow our economy and improve everyday lives of Americans by facilitating collaboration through

the use of technology to manage activities, allocate resources, and facilitate decision making.

(5) Blockchain systems and the digital commodities they empower provide control, enhance transparency, reduce transaction costs, and increase efficiency if proper protections are put in place for investors, consumers, our financial system, and our national security.

(6) Blockchain technology facilitates new types of network participation which businesses in the United States may utilize in innovative ways.

(7) Other digital commodity companies are setting up their operations outside of the United States, where countries are establishing frameworks to embrace the potential of blockchain technology and digital commodities and provide safeguards for consumers.

(8) Digital commodities, despite the purported anonymity, provide law enforcement with an exceptional tracing tool to identify illicit activity and bring criminals to justice.

(9) The Financial Services Committee of the House of Representatives has held multiple hearings highlighting various risks that digital commodities can pose to the financial markets, consumers, and investors that must be addressed as we seek to harness the benefits of these innovations.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should seek to prioritize understanding the potential opportunities of the next generation of the internet;

(2) the United States should seek to foster advances in technology that have robust evidence indicating they can improve our financial system and create more fair and equitable access to financial services for everyday Americans while protecting our financial system, investors, and consumers;

(3) the United States must support the responsible development of digital commodities and the underlying technology in the United States or risk the shifting of the development of such assets and technology outside of the United States, to less regulated countries;

(4) Congress should consult with public and private sector stakeholders to understand how to enact a functional framework tailored to the specific risks and unique benefits of different digital commodity-related activities, distributed ledger technology, distributed networks, and mature blockchain systems;

(5) Congress should enact a functional framework tailored to the specific risks of different digital commodity-related activities and unique benefits of distributed ledger technology, distributed networks, and mature blockchain systems; and

(6) consumers and market participants will benefit from a framework for digital commodities consistent with longstanding investor protections in securities and commodities markets, yet tailored to the unique benefits and risks of the digital commodity ecosystem.

SEC. 502. MODERNIZATION OF THE SECURITIES AND EXCHANGE COMMISSION MISSION.

(a) SECURITIES ACT OF 1933.—Section 2(b) of the Securities Act of 1933 (15 U.S.C. 77(b)) is amended—

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and

(2) by inserting "innovation," after "efficiency,".

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

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and

(2) by inserting "innovation," after "efficiency,".

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

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and

(2) by inserting "innovation," after "efficiency,".

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

(1) in the heading, by inserting "INNOVATION," after "EFFICIENCY,"; and

(2) by inserting "innovation," after "efficiency,".

SEC. 503. STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.

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

"(l) STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this subsection, the Securities and Exchange Commission shall establish a committee to be known as the Strategic Hub for Innovation and Financial Technology (referred to in this subsection as the 'FinHub') to support engagement on emerging technologies in the financial sector.

"(2) MEMBERS.—The composition of FinHub shall be determined by the Commission, drawing from relevant divisions as appropriate, including the Division of Trading and Markets, Division of Corporate Finance, and Division of Investment Management.

"(3) RESPONSIBILITIES.—FinHub shall—

"(A) serve as a resource for the Commission on emerging financial technology advancements;

"(B) engage with market participants working on emerging financial technologies; and

"(C) facilitate communication between the Commission and businesses working in emerging financial technology fields with information on the Commission, its rules, and regulations.

"(4) REPORT TO THE COMMISSION.—

"(A) IN GENERAL.—Not later than October 31 of each year after 2025, FinHub shall provide an annual summary of its engagement activities to the Commission, which shall be included in the Commission's annual report to Congress.

"(B) CONFIDENTIALITY.—Each report submitted under this paragraph shall not contain confidential information.".

SEC. 504. CODIFICATION OF LABCFTC.

(a) IN GENERAL.—Section 18 of the Commodity Exchange Act (7 U.S.C. 22) is amended by adding at the end the following:

"(c) LABCFTC.—

"(1) ESTABLISHMENT.—There is established in the Commission LabCFTC.

"(2) PURPOSE.—The purposes of LabCFTC are to—

"(A) promote responsible financial technology innovation and fair competition for the benefit of the American public;

"(B) serve as an information platform to inform the Commission about new financial technology innovation; and

"(C) provide outreach to financial technology innovators to discuss their innovations and the regulatory framework established by this Act and the regulations promulgated thereunder.

"(3) DIRECTOR.—LabCFTC shall have a Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. Notwithstanding section 2(a)(6)(A), the Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

"(4) DUTIES.—LabCFTC shall—

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

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

"(C) advise the Commission regarding financial technology that would bolster the Commission's oversight functions;

"(D) engage with academia, students, and professionals on financial technology issues, ideas, and technology relevant to activities under this Act;

"(E) provide persons working in emerging technology fields with information on the Commission, its rules and regulations, and the role of a registered futures association; and

"(F) encourage persons working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

"(5) REPORT TO CONGRESS.—

"(A) IN GENERAL.—Not later than October 31 of each year after 2025, 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.

"(6) RECORDS AND ENGAGEMENT.—The Commission shall—

"(A) maintain systems of records to track engagements with the public through LabCFTC;

"(B) store communications and materials received in connection with any such engagement in accordance with Commission policies and procedures on data retention and confidentiality; and

"(C) take reasonable steps to protect any confidential or proprietary information received through LabCFTC engagement.".

(b) CONFORMING AMENDMENTS.—Section 2(a)(6)(A) of such Act (7 U.S.C. 2(a)(6)(A)) is amended—

(1) by striking "paragraph and in" and inserting "paragraph,"; and

(2) by inserting "and section 18(c)(3)," before "the executive".

(c) EFFECTIVE DATE.—The Commodity Futures Trading Commission shall implement the amendments made by this section (including complying with section 18(c)(7) of the Commodity Exchange Act) within 180 days after the date of the enactment of this Act.

SEC. 505. STUDY ON DECENTRALIZED FINANCE.

(a) IN GENERAL.—The Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Secretary of the Treasury shall jointly carry out a study on decentralized finance that analyzes—

(1) the nature, size, role, and use of decentralized finance blockchain applications;

(2) the operation of blockchain applications that comprise decentralized finance;

(3) the interoperability of blockchain applications and other blockchain systems;

(4) the interoperability of blockchain applications and software-based systems, including websites and wallets;

(5) the decentralized governance systems through which blockchain applications may be developed, published, constituted, administered, maintained, or otherwise distributed, including—

(A) whether the systems enhance or detract from—

(i) the decentralization of the decentralized finance; and

(ii) the inherent benefits and risks of the decentralized governance system; and

(B) any procedures, requirements, or best practices that would mitigate the risks identified in subparagraph (A)(ii);

(6) the benefits of decentralized finance, including—

(A) operational resilience and availability of blockchain systems;

(B) interoperability of blockchain systems;

(C) market competition and innovation;

(D) transaction efficiency;

(E) transparency and traceability of transactions; and

(F) disintermediation;

(7) the risks of decentralized finance, including—

(A) pseudonymity of users and transactions;

(B) disintermediation; and

(C) cybersecurity vulnerabilities;

(8) the extent to which decentralized finance has integrated with the traditional financial markets and any potential risks or improvements to the stability of the markets;

(9) how the levels of illicit activity in decentralized finance compare with the levels of illicit activity in traditional financial markets;

(10) methods for addressing illicit activity in decentralized finance and traditional markets that are tailored to the unique attributes of each;

(11) how decentralized finance may increase the accessibility of cross-border transactions; and

(12) the feasibility of embedding self-executing compliance and risk controls into decentralized finance.

(b) CONSULTATION.—In carrying out the study required under subsection (a), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consult with the Secretary of the Treasury on the factors described under paragraphs (7) through (10) of subsection (a).

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commis-

sion shall jointly submit to the relevant congressional committees a report that includes the results of the study required by subsection (a).

(d) GAO STUDY.—The Comptroller General of the United States shall—

(1) carry out a study on decentralized finance that analyzes the information described under paragraphs (1) through (12) of subsection (a); and

(2) not later than 1 year after the date of enactment of this Act, submit to the relevant congressional committees a report that includes the results of the study required by paragraph (1).

(e) DEFINITIONS.—In this section:

(1) DECENTRALIZED FINANCE.—

(A) IN GENERAL.—The term "decentralized finance" means blockchain applications (including decentralized finance trading protocols and related decentralized finance messaging systems) that allow users to engage in financial transactions in a self-directed manner so that a third-party intermediary does not effectuate the transactions or take custody of digital commodities of a user during any part of the transactions.

(B) RELATIONSHIP TO EXCLUDED ACTIVITIES.—The term "decentralized finance" shall not be interpreted to limit or exclude any activity from the activities described in section 15I(a) of the Securities Exchange Act of 1934 or section 4v(a) of the Commodity Exchange Act.

(2) RELEVANT CONGRESSIONAL COMMITTEES.—The term "relevant congressional committees" means—

(A) the Committees on Financial Services and Agriculture of the House of Representatives; and

(B) the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate.

SEC. 506. STUDY ON NON-FUNGIBLE TOKENS.

(a) IN GENERAL.—The Comptroller General of the United States shall carry out a study of non-fungible tokens that analyzes—

(1) the nature, size, role, purpose, and use of non-fungible tokens;

(2) the similarities and differences between non-fungible tokens and other digital commodities, including digital commodities and permitted payment stablecoins, and how the markets for those digital commodities intersect with each other;

(3) how non-fungible tokens are minted by issuers and subsequently administered to purchasers;

(4) how non-fungible tokens are stored after being purchased by a consumer;

(5) the interoperability of non-fungible tokens between different blockchain systems;

(6) the scalability of different non-fungible tokens marketplaces;

(7) the benefits of non-fungible tokens, including verifiable digital ownership;

(8) the risks of non-fungible tokens, including—

(A) intellectual property rights;

(B) cybersecurity risks; and

(C) market risks;

(9) whether and how non-fungible tokens have integrated with traditional marketplaces, including those for music, real estate, gaming, events, and travel;

(10) whether and how non-fungible tokens can be used to facilitate commerce or other activities through the representation of documents, identification, contracts, licenses, and other commercial, government, or personal records;

(11) any potential risks to traditional markets from such integration; and

(12) the levels and types of illicit activity in non-fungible tokens markets.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General, shall make publicly available a report that includes the results of the study required by subsection (a).

SEC. 507. STUDY ON EXPANDING FINANCIAL LITERACY AMONGST DIGITAL COMMODITY HOLDERS.

(a) IN GENERAL.—The Commodity Futures Trading Commission with the Securities and Exchange Commission shall jointly conduct a study to identify—

(1) the existing level of financial literacy among retail digital commodity holders, including subgroups of investors identified by the Commodity Futures Trading Commission with the Securities and Exchange Commission;

(2) methods to improve the timing, content, and format of financial literacy materials regarding digital commodities provided by the Commodity Futures Trading Commission and the Securities and Exchange Commission;

(3) methods to improve coordination between the Securities and Exchange Commission and the Commodity Futures Trading Commission with other agencies, including the Financial Literacy and Education Commission as well as

nonprofit organizations and State and local jurisdictions, to better disseminate financial literacy materials;

(4) the efficacy of current financial literacy efforts with a focus on rural communities and communities with majority minority populations;

(5) the most useful and understandable relevant information, including clear disclosures, that retail digital commodity holders need to make informed financial decisions before engaging with or purchasing a digital commodity or service that is typically sold to retail investors of digital commodities;

(6) the most effective public-private partnerships in providing financial literacy regarding digital commodities to consumers;

(7) the most relevant metrics to measure successful improvement of the financial literacy of an individual after engaging with financial literacy efforts; and

(8) in consultation with the Financial Literacy and Education Commission, a strategy (including to the extent practicable, measurable goals and objectives) to increase financial literacy of investors regarding digital commodities.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly submit a written report on the study required by subsection (a) to the Committees on Financial Services and on Agriculture of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 508. STUDY ON FINANCIAL MARKET INFRASTRUCTURE IMPROVEMENTS.

(a) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study to assess whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products, and to the extent such guidance or rules would foster the development of fair and orderly financial markets, be necessary or appropriate in the public interest, and be consistent with the protection of investors and customers.

(b) REPORT.—

(1) TIME LIMIT.—Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly submit to the relevant congressional committees a report that includes the results of the study required by subsection (a).

(2) RELEVANT CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "relevant congressional committees" means—

(A) the Committees on Financial Services and on Agriculture of the House of Representatives; and

(B) the Committees on Banking, Housing, and Urban Affairs and on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 509. STUDY ON BLOCKCHAIN IN PAYMENTS.

(a) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study on the potential use of blockchain technology by the domestic private sector to address—

(1) fraud in payments;

(2) transaction costs and transaction times;

(3) automated payments; and

(4) efficiency in commercial transactions.

(b) REPORT TO CONGRESS.—Not later than one year after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that summarizes the findings of the study required under subsection (a).

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to mandate the use of blockchain technology by any public or private entity.

PURPOSE AND SUMMARY

Introduced on May 29, 2025, by Chairman French Hill (AR–02), H.R. 3633, the *Digital Asset Market Clarity (CLARITY) Act*, provides the Commodity Futures Trading Commission (CFTC) with jurisdiction over digital commodities and clarifies the Securities and Exchange Commission's (SEC) jurisdiction over investment contracts involving digital commodities. Additionally, the bill clarifies the regulatory treatment of secondary market trading of digital commodities that were initially offered as part of an investment

contract. Finally, the bill imposes robust customer protections on all entities required to be registered with the CFTC and the SEC.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3633, as reported, establishes a digital asset market structure framework that is consistent with existing regulatory financial market requirements and recognizes the unique characteristics of digital assets. This functional framework provides digital asset firms with regulatory certainty, establishes clear jurisdictional lines between the SEC and CFTC, and ensures Americans have comparable protections in digital asset markets to those in the traditional financial system. The reported legislation will ensure the United States sets the global standard for the future of innovation.

INNOVATION

Digital assets and blockchain technology have the potential to make our financial system more efficient and accessible to consumers. At a May 6, 2025, Joint Roundtable of the House Committee on Financial Services (HFSC) Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence and the House Committee on Agriculture (HAC) Subcommittee on Commodity Markets, Digital Assets, and Rural Development (May 2025 Joint Roundtable), James Rathmell, General Counsel of Haun Ventures, explained, "With crypto, we believe money, assets, and markets will become like everything else on the internet: transferable at the speed of information, accessible, programmable, transparent, and auditable."

Because digital assets can be accessed from anywhere, at any time, by anyone with an internet connection, digital assets solve some of the accessibility constraints associated with traditional financial services. At an April 9, 2025, hearing before the HFSC Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence (April 2025 HFSC Hearing), Jacob Werrett, Chief Legal Officer of Polygon Labs, testified, "Unlike traditional financial services, blockchains do not typically require users to meet specific eligibility criteria such as credit checks, geographic restrictions, or minimum financial thresholds. Whether for saving, investing, or borrowing, blockchains offer the opportunity for greater financial freedom and access, particularly in regions where traditional banking infrastructure is lacking or unavailable."

At a February 11, 2025, hearing before the Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence, (February 2025 HFSC Hearing), Ji Hun Kim, President and Acting CEO of the Crypto Council for Innovation, testified, "We are in the early innings of increased traditional finance adoption of digital asset and blockchain technologies to enhance the efficiency, transparency, and security of market infrastructure." At the same hearing, former CFTC Chairman Timothy Massad, who currently serves as a Research Fellow and Director of the Digital Assets Policy Project at the Kennedy School of Government at Harvard University, provided an explanation for traditional firms staying on the sidelines of the digital asset ecosystem. He explained, "the absence of a clear regulatory framework has caused some institutions to refrain from making investments that might lead to applications of

greater utility." Mr. Kim further emphasized the need for regulatory and legislative clarity to preserve digital asset innovation in the United States, emphasizing "It is important for the U.S. to build upon the progress made during the 118th Congress and ensure U.S. leadership in digital assets at the global level . . . increased clarity regarding regulatory expectations will unleash further innovation and ensure that American markets remain the envy of the world."

Mark Tague, Co-Founder and Chief Revenue Officer of CattleProof Verified LLC, testified at an April 9 HAC Subcommittee on Commodity Markets, Digital Assets, and Rural Development hearing (April 2025 HAC Hearing) stating, "other jurisdictions are actively creating regulatory certainty for digital assets and blockchain technology. The U.S. risks falling behind if it does not foster an environment that encourages and supports innovation in this space." At the same hearing, Mike Horton, Project Creator at the GEODNET Foundation, testified that "it is imperative that future innovators have absolute clarity around how digital assets are to be regulated. A lack of clarity stifles innovation and discourages investment in the U.S."

At a June 4, 2025, hearing before the HAC (June 2025 HAC Hearing), Dr. Avery Ching, the CEO and Co-Founder of blockchain developer Aptos Labs, also spoke on the importance of supporting innovation:

> "Just as the internet rewired everyday life, decentralized networks will form the core infrastructure of the coming digital economy—delivering systems that are transparent, interoperable, designed for innovation, and will redefine how we engage with the world around us.
>
> "Tokens serve a vital role in every application built on a blockchain. For blockchain innovation to expand responsibly in the U.S., developers need clear regulatory guidance around token issuance and distributions. We're ready to help realize that mission, and we're grateful for the Committee's leadership in making it possible.
>
> "Market structure legislation and well-defined, consistent rules around token issuance and distribution will ensure that networks like Aptos can function as designed, U.S. builders can innovate while staying compliant and competitive, and regulators can enforce meaningful consumer protections.
>
> "The infrastructure is ready. Regulatory clarity will ensure U.S. leadership in the next era of the internet."

ECONOMIC IMPACT

The lack of a comprehensive federal regulatory framework for digital assets incentivizes digital asset innovators to move offshore to pursue development overseas, at the expense of U.S. economic growth. Other countries have built frameworks and become developmental hubs for the digital asset ecosystem. Currently, the largest trading platform and the largest stablecoin issuer are based outside of the United States.

Many jurisdictions are successfully building digital asset regulatory frameworks and incorporating distributed ledger technology

into their financial systems. For example, the European Union approved its Markets in Crypto-Assets (MiCA) framework, and the United Kingdom has worked toward its own digital asset regulatory framework.

At the February 2025 HFSC Hearing, Coy Garrison, Partner at Steptoe LLP and former counsel to SEC Commissioner Hester Peirce, testified, "On the global stage, the U.S. ceded leadership in this technology to other jurisdictions as entrepreneurs and capital flew to jurisdictions willing to provide regulatory certainty for the industry, including the European Union, United Arab Emirates, and Hong Kong." During the May 2025 Joint Roundtable, Greg Tusar, Vice President of Institutional Product of Coinbase Global, Inc., further emphasized the competitive disadvantage the United States faces in the absence of market structure legislation:

> "While Singapore, Switzerland, and the European Union have adopted unified frameworks that attract talent and capital, the fragmented U.S. regulatory landscape coupled by an enforcement-first approach has pushed innovators overseas. Without a clear, consistent roadmap for compliance across all states, developers and businesses find themselves focusing on jurisdictions where regulations are predictable and accessible, leaving the United States at a competitive disadvantage."

During the April 2025 HAC Hearing, Bill Hughes, Senior Counsel and Director of Global Regulatory Matters of Consensys Software Inc., highlighted the potential of blockchain projects, emphasizing, "new computer networks like Ethereum have enticed meaningful computer engineering talent to migrate to the blockchain space to build the apps that will impact our future. What we see with Ethereum is the building of a new world computer." He added, "Blockchain unlocks a software application frontier that can meaningfully impact the real world in ways the current internet simply cannot."

CONSUMER PROTECTION

The current regulatory framework for digital assets fails to provide adequate consumer protection. At a June 4, 2025, hearing before the HFSC (June 2025 HFSC Hearing), former CFTC Chairman Rostin Behnam, who currently serves as a Distinguished Fellow at the Psaros Center for Financial Markets & Policy at Georgetown University, explained, "for far too long, the vast majority of the digital asset market [has been] unregulated and American investors vulnerable to fraud and manipulation." Digital commodities, as defined in the CLARITY Act, account for roughly 70 percent of the total market capitalization on digital assets traded today. Because there is no direct federal oversight of the digital commodity marketplace, there are no federally mandated customer protections, including requirements pertaining to customer disclosures, segregation of customer funds, and conflicts of interest. Additionally, without registration and oversight of digital commodity intermediaries and trading platforms, customers are unable to discern the reputable firms from the disreputable. Consequently, customers face significant risks with respect to the digital commodities they purchase, how they purchase those digital commodities, how an inter-

mediary or trading platform custodies their cash, securities, and digital commodities, and their ability to access those digital commodities, especially if the intermediary or trading platform holding their digital commodities dissolves.

At the February 2025 HFSC Hearing, Coy Garrison outlined how the lack of a comprehensive market structure framework for digital assets has impacted consumers: "Americans who hold and trade digital assets are left unprotected with no regulatory framework imposing baseline protections." During the June 2025 HFSC Hearing, Vivek Raman, Co-Founder and CEO of Etherealize, testified, "the lack of clarity harms the very investors we aim to protect. A prime example is the collapse of offshore exchanges or issuers that were not subject to robust oversight and U.S. regulatory standards. Regulatory clarity will raise the bar for conduct in this industry by bringing serious players into compliance and weeding out bad actors."

At the June 2025 HFSC Hearing, Katherine Minarik, Chief Legal Officer at Uniswap Labs, explained why all Americans—even those that are crypto skeptics—should want comprehensive digital asset legislation stating "If you are deeply skeptical of crypto, then you should want this legislation even more. Because without it, we are not protecting the public, we are abandoning them."

Daniel J. Davis, former General Counsel at the CFTC, participating in the May 2025 Joint Roundtable, stated that "there are significant rules [at the CFTC] regarding the segregation and protection of customer funds." He added that "[t]he CFTC also has extensive rules to protect retail customers engaging in certain foreign exchange transactions." Chelsea Pizzola, Partner at Willkie Farr & Gallagher LLP, highlighted at the June 2025 HAC Hearing how CFTC oversight provides necessary consumer protections in her testimony:

> "The CFTC's oversight of digital asset markets is not only long-running but also battle-tested: in the 2022 failure of digital asset exchange operator FTX, while other FTX trading platforms revealed a total $8.9 billion shortfall in customer funds and went into bankruptcy, FTX's CFTC-regulated DCM, swap execution facility ("SEF"), and [derivatives clearing organization] survived without any loss of customer assets and remain in operation today under new ownership."

Ryne Miller, Partner at Lowenstein Sandler LLP and Former General Counsel of FTX US, illustrated the vital nature of a comprehensive market structure framework to consumer protection at the June 2025 HAC Hearing:

> "Had the regulatory structure provided for in the bill currently being considered by this Committee and ultimately Congress applied to FTX, the story I just told would almost certainly have a much different ending. Examinations, governance requirements, audits, reporting, recordkeeping, and customer asset segregation requirements directly address the shortfalls that have allowed various digital asset industry failures and thefts to occur."

REGULATORY GAP

Currently, there is no comprehensive federal regulatory regime for the cash or spot digital commodity markets. The Commodity Exchange Act (CEA) and the CFTC regulations promulgated thereunder provide a comprehensive regulatory regime for the trading of commodity derivatives, including digital commodity derivatives (e.g., buying or selling Bitcoin futures contracts). This includes registration and regulatory requirements for exchanges and intermediaries. Under the CEA, the CFTC also has "after-the- fact" enforcement jurisdiction over fraud and manipulation in the cash or spot commodity markets (e.g., buying or selling a commodity, including digital commodities, like Bitcoin). However, the CFTC has no power to impose registration and regulatory requirements for exchanges or intermediaries, or on market participants in the cash or spot digital commodity markets. This lack of a comprehensive federal regulatory framework for digital commodity cash or spot transactions is referred to as the "spot market regulatory gap."

Daniel J. Davis, former General Counsel at the CFTC, explained at the May 2025 Joint Roundtable that "neither the CFTC nor any other federal regulator has plenary regulatory authority over the trading of digital assets that qualify as commodities . . . there appears to be a significant gap at the federal level in the regulation of spot digital assets." At the June 2025 HAC Hearing, Mrs. Pizzola, Partner at Willkie Farr & Gallagher LLP, shared this view, testifying "[t]hough the CFTC currently does not have plenary regulatory authority over spot commodity markets, it has anti-fraud and anti-manipulation authority over such markets."

During the June 2025 HFSC Hearing, former CFTC Chairman Behnam testified about the longstanding nature of the spot market gap and its detrimental impact:

> "The principal objective of market structure legislation . . . should be to provide regulatory oversight of the spot market for digital asset tokens that are not securities. That structural gap in our regulatory framework has led to the high degree of fraud, manipulation and lack of investor protection, as well as rampant speculation, that has characterized the digital asset sector to date. I have spoken about this gap since shortly after I became chairman of the [CFTC] in 2014 and we declared bitcoin to be a commodity."

COMMODITY VS. SECURITY

Under the Biden Administration, former SEC Chairman Gary Gensler opined on numerous occasions that the "test to determine whether a crypto asset is a security is clear." However, SEC Commissioner Hester Peirce and former SEC Commissioner and Acting Chairman Elad Roisman disagreed, citing requests the SEC received for clarity and the consistent outreach to the Commission staff for no-action and other relief. During Chairman Gensler's tenure at the SEC, Commissioner Peirce repeatedly emphasized her concerns with the SEC's enforcement-centric approach and highlighted the importance of regulatory clarity for the digital asset markets.

Under the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), the SEC has full regulatory authority over the offer, sale, and the trading of securities, including investment contracts, and many security derivatives. Under the federal securities laws, every offer and sale of securities must be either registered with the SEC or conducted pursuant to an exemption to registration.

Both the term "security" and the term "commodity" are broadly defined in statute. The federal securities laws define the term "security" to include not only specific types of financial instruments, such as stocks and bonds, but also several undefined terms, notably "investment contract." The term "investment contract" captures unique or novel instruments and arrangements, including many utilized by digital asset projects which raised funds.

The CEA defines "commodity" broadly to include all "goods and articles and all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in." In 2015, during the Obama Administration, the CFTC clarified that bitcoin and certain other virtual currencies are commodities under the CEA.

Because these legal definitions are broad and overlapping, the boundary between a security and commodity can be unclear, and it can be difficult to determine whether a digital asset is offered as part of an investment contract or falls under the definition of commodity in the CEA. As Tiffany Smith, Partner at WilmerHale, pointed out during the April 2025 HFSC Hearing, the SEC's broad interpretation of its authority has made determining the legal classification of digital asset difficult:

> "The term 'digital assets' has broadly been used by the SEC to refer to 'an asset that is issued and transferred using distributed ledger or blockchain technology' and includes virtual currency, coins, and tokens. The SEC also used the term 'crypto asset security' to refer to digital assets that meet the definition of 'security' under the federal securities laws and that rely on cryptographic protocols. Importantly, these broad terms combined with the expansive past views of SEC officials that most digital assets are offered and sold as securities, failed to distinguish between different types of digital assets, including those that are intended to be offered and sold as securities, like tokenized securities and security tokens, versus assets that were not intended to be offered and sold as securities, like many other types of crypto assets."

Until there is a consistent, clear framework in place, market participants, consumers, and investors will continue to seek regulatory clarity given the requirements that stem from the classification of a particular digital asset. This is a reality reiterated by Greg Tusar, Vice President of Institutional Product of Coinbase Global, Inc., during the May 2025 Joint Roundtable:

> "The root of the current regulatory confusion is token classification . . . current frameworks fail to offer objective criteria for determining how assets should be classified, forcing developers and market participants to operate in regulatory gray areas . . . the need for Congress to ad-

> dress the issue of token classification is absolutely critical to the healthy functioning of markets. The United States needs a consistent framework for token classification that reflects the unique qualities of digital assets whose value and functionality is derived from a blockchain network, and Congress has a critical role in bringing this about."

Similarly, Dr. Chris Brummer's, Sesquicentennial Professor of Financial Technology at Georgetown University Law Center, testimony at the April 2025 HAC hearing echoed the need for a comprehensive digital asset market framework from Congress to define jurisdiction:

> "In the course of my research, I asked the SEC on many occasions to rethink and modernize its approach, like many of you today. And I hoped and waited for the CFTC to be empowered legislatively to do what it does best—to innovate. But the SEC's leadership had no interest, and the CFTC was left wanting for basic powers over spot markets to be able to deliver on its end."

At the June 2025 HAC Hearing, Mrs. Pizzola, Partner at Willkie Farr & Gallagher LLP, affirmed the CFTC's experience and expertise are best suited to fill this void:

> "The [CLARITY Act] applies many of the same remedies that cured the problem in 2000, including a core principles framework for digital commodity exchanges and a self-certification listing process. This flexible, adaptable framework is particularly well-suited for the relatively novel and constantly evolving nature of digital asset markets. There is no better agency to implement such a regulatory framework in furtherance of responsible innovation than the one that has done so for the last twenty-five years, allowing the markets under its jurisdiction to become by far the largest, and the most vibrant and robust, of their kind in the world."

INCOMPATIBILITY OF SECURITIES LAWS

Under the Biden Administration, many digital asset brokers and dealers, and issuers, asserted that the SEC did not provide a viable path for the registration of digital asset intermediaries and the offering of securities. Moreover, the SEC's regulations are heavily dependent on the roles of intermediaries and therefore directly at odds with transactions based on decentralized blockchain technology.

At the June 2025 HFSC Hearing, Elad Roisman, Partner at Cravath and a former Commissioner and Acting Chairman of the SEC, explained:

> "The primary challenge in regulating digital assets is the reality that the existing federal securities statutory and regulatory framework does not, in many cases, squarely address whether the many types of digital assets—with varying characteristics—should be covered . . . As digital assets have evolved, it has become clear that many of these assets are unlike the traditional assets for which the

existing statutory and SEC regulatory frameworks were designed."

Roisman further testified that "clarity has been sparse regarding the status of market intermediaries and their ability to hold, transact in, and act as custodian of digital asset securities."

During the May 2025 Joint Roundtable, Alex Miller, CEO of Hiro Systems PBC, described his company's experience attempt to raise capital through one of the exempt offering pathways at the SEC:

> "We approached the SEC with the intention of complying with the federal securities laws. To date, we have spent well more than $15 million dollars on the offering process, compliance with the reporting regime, and our defense against an unwarranted investigation triggered by our attempts to work with the Staff. That amount represents more than the entire amount raised through the offering. Though we walked willingly into the SEC's doors, we were in many ways left with a competitive disadvantage relative to other projects, especially those based outside the U.S. Based on our experience, I believe that there is limited efficacy for existing registration and qualification processes as a mechanism for a tailored disclosure regime without significant substantive amendments."

At the April 2025 HFSC Hearing, Rodrigo Seira, Special Counsel at Cooley LLP, highlighted the incompatibility of the SEC's existing disclosure regime with digital assets and blockchain technology testifying, "the current securities disclosure forms focus on irrelevant corporate and financial information while ignoring critical crypto-specific aspects like governance mechanisms, network design, token omics, cybersecurity, and the network utility of the assets. As a result, forcing crypto into the traditional securities disclosure regime is harmful to the very public securities laws are intended to protect because it fails to provide purchasers with the material information they need to determine the value and risks of their crypto holdings."

At the same hearing, Ms. Smith, highlighted additional areas of incompatibility between the digital asset ecosystem and the U.S. securities laws:

> "My comments are focused on crypto assets that were not initially offered and sold as securities. With respect to these assets, there are many complex challenges to complying with the federal securities laws, and I want to highlight a few . . . securities intermediaries cannot offer or sell crypto assets that were not sold in compliance with the Securities Act, market structure for crypto differs from traditional securities, and custody practices for crypto assets differ from traditional securities"

Coy Garrison, former counsel to SEC Commissioner Hester Peirce, testified at the April 2025 HAC Hearing, underscoring the novel and contested application of current securities laws to the digital asset marketplace perpetuated by the Biden Administration SEC:

> "The SEC under Gary Gensler adopted a broad and shifting interpretation suggesting that a digital asset em-

> bodies an 'investment contract' in secondary market transactions and went so far as to coin the term 'crypto asset security' in court filings alleging that major centralized spot market exchanges were operating as unregistered securities exchanges, broker-dealers, and clearing agencies. Multiple district courts reprimanded the agency for its legal imprecision, with one court describing the label "unclear at best and confusing at worst."

Michael S. Piwowar, former SEC Commissioner and Acting Chairman testified at the June 2025 HAC Hearing on the merits of the CLARITY Act complementing existing securities laws while tailoring them to digital assets:

> "The SEC's experience striking the right balance of disclosures for investors, giving them just what they need—not too much, not too little—to make informed investment decisions to buy, sell, or hold securities, is exactly what is needed in the digital asset markets. A similar consideration for striking the right balance for issuers of securities—not too burdensome, not too sparse—is also what is needed for capital-raising issuers of digital assets that fall under the SEC's jurisdiction."

The CLARITY Act establishes a critical role for the SEC to provide transparency for new digital commodity issuances. Like primary offerings of public companies, the SEC will ensure that investors have helpful information about primary offerings of digital assets to make informed decisions. The CLARITY Act also recognizes that meaningful information about the digital commodity issuer changes over the maturation of the blockchain system. It provides for a ratcheting down of disclosure requirements as the digital commodity issuer is no longer in control of the blockchain system and eventually no longer a meaningful part of the development process."

LASTING REGULATORY CLARITY

At the June 2025 HFSC Hearing, Katherine Minarik, Chief Legal Officer at Uniswap Labs, underscored the need to change the United States' current approach to digital assets by enacting legislation:

> "The absence of an initial legislative framework for digital asset and blockchain technology from Congress has already led to irreparable harm to America's digital asset and blockchain industry. What began as attempts to stretch existing authority conferred to regulators to their limits evolved quickly into conflicting interpretations of those laws, refusals by some regulators to share their interpretations of those laws before launching enforcement actions, and even at times misrepresentations by regulatory agency lawyers in court leading to sanctions. Against this backdrop of expansive enforcement investigation and actions against multiple American companies building in good faith, other regulators took steps to cut off these companies' access to basic operational banking services. It is no surprise that courts called for help from Con-

> gress. And now Congressional action is necessary to put an end to this chapter."

While the SEC has changed its approach under the current Trump Administration, creating a Crypto Task Force, rescinding and reviewing many of the previous rulemakings and guidance, and changing its approach to enforcement, comprehensive market structure legislation is needed to solve the most pressing issues facing the ecosystem.

At the April 2025 HFSC Hearing, Tiffany Smith, Partner at WilmerHale, underscored the need for legislation to provide lasting clarity to the digital asset ecosystem:

> "Because the jurisdiction of the SEC and other federal agencies is limited, congressional intervention is necessary to create a comprehensive and clear regulatory framework for digital assets. In addition, Congress should consider codifying guidance of the SEC and other agencies to create regulatory certainty. As seen through recent actions, guidance issued by agencies can be proposed and rescinded, thus congressional action could provide more regulatory certainty and consistency.

During the April 2025 HAC Hearing, Bill Hughes, Senior Counsel and Director of Global Regulatory Matters of Consensys Software Inc., emphasized that "durable clarity on the law is what we need today to ensure we can capture the opportunities presented by blockchain technology. What we can build is limited only by our imagination and the law."

At the June 2025 HAC Hearing Ryne Miller, Partner at Lowenstein Sandler LLP and former General Counsel of FTX US, echoed these benefits of legislative clarity saying, "[a] federal framework, especially one that preempts duplicative state regulation, would level the playing field and bring clarity to innovators and investors alike. It would allow regulators to concentrate expertise and resources where they are most needed."

Under the Biden Administration, the SEC pursued enforcement actions against entities in the digital asset market while failing to develop comprehensive regulations that would bring digital asset intermediaries under their jurisdiction. This approach led many entrepreneurs to warn against doing business in the United States and advocate for digital asset companies to move offshore. Congress must act to ensure that consumers have adequate protections and developers can build and innovate in the United States for the foreseeable future.

THE COMMITTEE-REPORTED LEGISLATION

The House Agriculture Committee (HAC) and House Financial Services Committee (HFSC) have worked toward establishing a workable framework for digital assets over several congresses by introducing bills, holding hearings and roundtables, and engaging industry and federal agencies. In the 118th Congress, the HAC and HFSC began a strong partnership to further their work and craft comprehensive digital asset market structure legislation.

The Committees worked together throughout the 118th Congress to draft legislation that sought to address some of the most pressing issues facing digital asset markets. The HFSC held three hear-

ings, and the HAC held two hearings. The Committees also held a historic joint hearing. On July 20, 2023, HAC Chairman Thompson introduced H.R. 4763, the *Financial Innovation and Technology for the 21st Century Act (FIT21)*, with Representatives French Hill, Dusty Johnson, Warren Davidson, and Tom Emmer as original cosponsors. The bill passed through both the HAC and HFSC and passed the House Floor on a bipartisan basis by a recorded vote of 279–136.

Since the House passage of FIT21 during the 118th Congress, the Committees have worked to refine and update the legislation. At the start of the 119th Congress, HAC Chairman Thompson and HFSC Chairman Hill published a blueprint for digital asset market structure legislation, reaffirming their commitment to working together to provide clarity to the digital asset markets. The Committees received feedback from a range of stakeholders and worked to refine and simplify FIT21. This work included two hearings in the HAC and four hearings in the HFSC on digital asset market structure, as well as a joint public roundtable, to examine regulatory gaps with respect to digital assets.

In the 119th Congress, the Committees have received testimony regarding digital asset market structure from former CFTC Chairmen Rostin Behnam and Timothy Massad, former SEC Commissioners and Acting Chairmen Michael S. Piwowar and Elad Roisman, other former government officials, legal experts in commodities and securities laws, and various digital asset ecosystem participants, including trading platforms, digital asset projects, and blockchain developers. Almost all witnesses testified that there is a regulatory gap over the digital asset spot market and significant ambiguity as to where digital assets fall between the SEC's jurisdiction over securities and the CFTC's jurisdiction over commodity derivatives that must be addressed through legislation. Indeed, rather than hiding from regulation, market participants called on Congress to resolve the regulatory gap.

During the June 2025 HAC Hearing, Mr. Ryne Miller, Partner at Lowenstein Sandler LLP and Former General Counsel of FTX US, urged Congress to act, saying "[o]n the legislative side, I am confident in suggesting to this Committee that the Digital Asset Market Clarity (CLARITY) Act is good to go; it is ready. A decade of legislative inaction in pursuit of perfection has already wrought its damage."

The work of both Committees culminated in the release of a discussion draft of digital asset market structure legislation on May 5, 2025. The Committees revised the bill to address feedback from federal agencies, market participants, and Members of Congress on both sides of the aisle. The CLARITY Act was introduced on May 29, 2025. Finally, changes were made to the bill through amendments, including comprehensive amendments in the nature of a substitute, during each markup, which are reflected in this Report.

The Committee-reported bill addresses the issues that have plagued the digital asset ecosystem and answers the calls for regulation from various agencies and stakeholders by establishing a comprehensive regulatory framework for the United States's digital asset markets.

COMMITTEE CONSIDERATION

On May 29, 2025, Chairman Hill introduced H.R. 3633, the *CLARITY Act of 2025*, with Representatives Glenn Thompson (R–PA), Angie Craig (D–MN), Tom Emmer (R–MN), Dusty Johnson (R–SD), Don Davis (D–NC), Bryan Steil (R–WI), Ritchie Torres (D–NY), and Warren Davidson (R–OH), as original cosponsors. Representatives Josh Gottheimer (D–NJ), Bill Huizenga (R–MI), Zachary Nunn (R–IA), Mike Lawler (R–NY), Daniel Meuser (R–PA), Buddy Carter (R–GA), Riley Moore (R–WV), Nicholas Begich (R–AK), Kristen McDonald Rivet (D–MI), Shri Thanedar (D–MI), Mark Messmer (R–IN), Robert Bresnahan (R–PA), and Haley Stevens (D–MI) were added subsequently as cosponsors. The bill was referred to the Committee on Financial Services, and in addition to the Committee on Agriculture. The bill was attached to the June 4, 2025, Committee on Financial Services hearing titled "American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework."

On June 10, 2025, the Committee on Financial Services met in open session to consider, among others, H.R. 3633. The Committee ordered H.R. 3633, as amended, to be favorably reported to the House of Representatives.

RELATED HEARINGS

Pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the following hearings were used to develop H.R. 3633:

119TH CONGRESS

The Full Committee held a hearing on June 4, 2025, entitled "American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework." H.R. 3633 was attached to the hearing. The following witnesses testified: The Honorable Elad Roisman, Partner, Cravath, Swaine & Moore LLP and Former SEC Commissioner; Mr. Vivek Raman, Founder, Etherealize; the Honorable Rostin Behnam, Distinguished Fellow, Psaros Center for Financial Markets & Policy, Georgetown University and Former CFTC Chairman; Ms. Katherine Minarik, Chief Legal Officer, Uniswap Labs, and The Honorable Timothy Massad, Research Fellow and Director of Digital Assets Policy Project of the Mossavar-Rahmani Center for Business and Government, Kennedy School of Government, Harvard University and Former CFTC Chairman.

The Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence held a hearing on April 9, 2025, entitled "American Innovation and the Future of Digital Assets: Aligning the U.S. Securities Laws for the Digital Age." The following witnesses testified: Mr. Rodrigo Seira, Special Counsel, Cooley LLP, Ms. Tiffany J. Smith, Partner and Co-Chair of the Blockchain & Cryptocurrency Working Group, WilmerHale, Mr. Jake Werrett, Chief Legal Officer, Polygon, and Ms. Alexandra Thornton, Senior Director, Financial Regulation, Center for American Progress.

The Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence held a hearing on February 11, 2025, entitled "A Golden Age of Digital Assets: Charting a Path Forward." The following witnesses testified: Mr. Jonathan Jachym, Deputy Gen-

eral Counsel and Global Head of Policy & Government Relations, Kraken Digital Asset Exchange, Mr. Ji Hun Kim, President and Acting CEO, Crypto Council for Innovation, Mr. Coy Garrison, Partner, Steptoe LLP, Mr. Jose Fernandez da Ponte, Senior Vice President and General Manager of Blockchain, Crypto and Digital Currencies, PayPal, and the Honorable Timothy Massad, Research Fellow and Director of Digital Assets Policy Project, Kennedy School of Government, Harvard University and Former CFTC Chairman.

118TH CONGRESS

The Committee on Financial Services held a hearing on June 13, 2023, titled "The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem."

The Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services and the Subcommittee on Commodity Markets, Digital Assets, and Rural Development of the Committee on Agriculture held a joint hearing on May 10, 2023, titled "The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets."

The Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services held a hearing on April 27, 2023, titled "The Future of Digital Assets: Identifying the Regulatory Gaps in Digital Asset Market Structure."

The Committee on Financial Services held a hearing on April 18, 2023, titled "Oversight of the Securities and Exchange Commission."

The Subcommittee on Digital Assets, Financial Technology and Inclusion of the Committee on Financial Services held a hearing on March 9, 2023, titled "Coincidence or Coordinated? The Administration's Attack on the Digital Asset Ecosystem."

117TH CONGRESS

The Committee on Financial Services held a hearing on December 13, 2022, titled "Investigating the Collapse of FTX."

The Committee on Financial Services held a hearing on December 8, 2021, titled "Digital Assets and the Feature of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States."

The Committee on Financial Services held a hearing on October 5, 2021, titled "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat."

The Subcommittee on Oversight and Investigations held a hearing on June 30, 2021, titled "Will the Crypto Frenzy Lead to Financial Independence and Early Retirement or Financial Ruin?"

115TH CONGRESS

The Subcommittee on Capital Markets held a hearing on March 14, 2018, titled "Examining the Cryptocurrencies and ICO Markets."

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote

on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

On June 10, 2025, the Committee ordered H.R. 3633, as amended, to be reported favorably to the House by a recorded vote of 32 yeas and 19 nays, a quorum being present. (Record Vote No. FC–169).

The Committee considered the following amendments to H.R. 3633:

- Representative French Hill (R–AR) offered an amendment in the nature of a substitute, which requires the prudential regulators to develop capital requirements for financial institutions that address netting agreements, clarifies that certain blockchain developers and service providers that do not custody or control consumer funds are not classified as money transmitters, requires rulemaking regarding disclosures related to the treatment of certain assets held by SEC registrants in the event of their insolvency and the use of certain exemptions under securities laws, and makes minor edits and technical changes. This amendment was adopted by a voice vote.
- Representative Maxine Waters (D–CA) offered an amendment (No. 6), designated HR3633_T01. This amendment would prohibit the President, Vice President, Members of Congress, and certain members of their families from participating or trading—directly or indirectly—in digital asset projects. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–142).
- Representative Brad Sherman (D–CA) offered an amendment (No. 7), designated SHERMA_047. This amendment would prevent federal agencies from providing financial assistance to digital asset issuers and exchanges in the event of failure or bankruptcy through any emergency liquidity facility or the Exchange Stabilization Fund. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–143).
- Representative Sherman offered an amendment (No. 8), designated SHERMA_050. This amendment would prohibit the Federal Government and Federal Reserve banks from purchasing digital assets. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–144).
- Representative Waters offered an amendment (No. 9), designated HR3633_T27. This amendment would require a person acting as a broker, dealer, or Alternative Trading System for blockchain-based securities to register with the SEC and all the states in which they seek to operate. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–145).
- Representative Waters offered an amendment (No. 10), designated HR3633_T25. This amendment would establish a bill of rights for crypto investors that requires digital asset trading platforms to develop policies and procedures to uphold.

This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–146).

• Representative Vicente Gonzalez (D–TX) offered an amendment (No. 11), designated GONZTX_005. This amendment would require the Treasury Secretary to conduct a review of transnational criminal organizations financing and submit a report to Congress, issue guidance, and support the CFTC and SEC with AML enforcement. This amendment is duplicative of an amendment adopted by the House Agriculture Committee. This amendment was withdrawn.

• Representative Sean Casten (D–IL) offered an amendment (No. 12), designated CASTEN_050. This amendment would prevent the SEC and CFTC from jointly issuing or finalizing rulemakings required by the CLARITY Act unless both Commissions have three Commissioners and one of them is affiliated with the opposite political party of the President. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–147).

• Representative Casten offered an amendment (No. 13), designated CASTEN_056. This amendment would require the Secretary of the Treasury in consultation with FinCEN, OFAC, FBI, USS, NIST, and CISA to develop a public-private partnership program with DeFi services and relevant risk management experts. This amendment also requires FinCEN to do an advisory related to the responsible development of DeFi to strengthen compliance with the Bank Secrecy Act (BSA). This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–148).

• Representative Sherman offered an amendment (No. 14), designated SHERMA_051. This amendment would prohibit political campaigns from owning or making use of a digital asset wallet or making use of a digital asset in connection with a political campaign contribution. This amendment failed by a recorded vote of 20 yeas and 31 nays, a quorum being present. (Record Vote No. FC–149).

• Representative Sherman offered an amendment (No. 15), designated SHERMA_052. This amendment would require hosted wallet providers to comply with Know-Your-Customer and anti-money laundering requirements under the BSA. This amendment failed by a recorded vote of 20 yeas and 31 nays, a quorum being present. (Record Vote No. FC–150).

• Representative Sherman offered an amendment (No. 16), designated SHERMA_054. This amendment would require the Secretary of the Treasury to certify to Congress that digital assets cannot be used to avoid the excise tax on remittance transfers, as outlined in H.R. 1, the One Big Beautiful Bill Act. This amendment was defeated by a voice vote.

• Representative Sherman offered an amendment (No. 17), designated SHERMA_055. This amendment would reaffirm that the SEC can still regulate stocks and bonds as securities, even if they are distributed on a blockchain. This amendment was withdrawn.

• Representative Rashida Tlaib (D–MI) offered an amendment (No. 18), designated TLAIB_053. This amendment would prohibit digital assets from being traded on any platform or ex-

change that controls, is controlled by, or is under common control with a private fund. This amendment was defeated by a voice vote.

• Representative Tlaib offered an amendment (No. 19), designated HR3633_T09. This amendment would prohibit the government from requiring the use of a digital asset to enter into any transaction with the Government if it is owned, affiliated, or controlled by the President, Vice President, or certain members of their family. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–151).

• Representative Stephen Lynch (D–MA) offered an amendment (No. 20), designated LYNCH_036. This amendment would require the Inspectors General of the Treasury Department and the SEC to jointly conduct an investigation of any digital asset holdings of the President. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–152).

• Representative Lynch offered an amendment (No. 21), designated HR3633_T07. This amendment would require the SEC, the CFTC, and the Secretary of the Treasury, in consultation with the Attorney General, to re-establish the National Cryptocurrency Enforcement Team. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–153).

• Representative Lynch offered an amendment (No. 22), designated LYNCH_035. This amendment would amend Section 314(a) of the USA PATRIOT Act to include cyber-enabled financial crime activities, would require FinCEN to develop a standardized form for financial institutions to use when sharing information, and would require FinCEN to submit a report to Congress that evaluates whether Section 314 of the PATRIOT Act should apply to non-financial institutions. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–154).

• Representative Lynch offered an amendment (No. 23), designated HR3633_T08. This amendment would remove Section 502 from the CLARITY Act, which adds innovation to the SEC's mission. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–155).

• Representative Jim Himes (D–CT) offered an amendment (No. 24), designated HIMES_015. This amendment would prohibit Senior Federal elected officials from issuing a digital asset or holding a financial interest in an issuer of a digital asset and give these Senior officials 60 days to divest from any such involvement. This amendment would authorize the Attorney General to enforce this provision. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–156).

• Representative Himes offered an amendment (No. 25), designated HIMES_017. This amendment would strike Section 202, which is the new exemption for digital commodity issuers. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–157).

• Representative Himes offered an amendment (No. 26), designated HR3633_T20. This amendment would give the SEC the ability to require additional information to verify certifications of a blockchain's maturity and the sole authority to determine if a blockchain is mature. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–158).

• Representative Bill Foster (D–IL) offered an amendment (No. 27), designated FOSTER_038. This amendment would require the Secretary of the Treasury in consultation with the CFTC, the SEC, and FinCEN to submit a report to Congress on the utility and implementation of a Digital Identity Passport. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–159).

• Representative Foster offered an amendment (No. 28), designated HR3633_T10. This amendment would direct the CFTC and SEC to establish a senior scam hotline and require Bitcoin ATM operators to display this hotline on their machines. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–160).

• Representative Foster offered an amendment (No. 29), designated FOSTER_036. This amendment would require the SEC and CFTC to jointly establish a Financial Influencer Task Force to help investors identify social media influencers and platforms that have violated the law. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–161).

• Representative Ayanna Pressley (D–MA) offered an amendment (No. 30), designated PRESMA_030. This amendment would require the GAO to conduct a study on the financial abuse and exploitation of vulnerable populations. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–162).

• Representative Sylvia Garcia (D–TX) offered an amendment (No. 31), designated GARCTX_028. This amendment would require individuals to submit Suspicious Activity Reports (SARs) for cross-border digital commodity and payment stablecoin transactions and Treasury, in consultation with the CFTC, to propose rules establishing minimum thresholds for these SARs. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–163).

• Representative Garcia offered an amendment (No. 32), designated GARCTX_029. This amendment would establish requirements for SEC registrants to use blockchain technology for their books and records under Section 305 of the CLARITY Act. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–164).

• Representative Cleo Fields (D–LA) offered an amendment (No. 33), designated FIELDS_006. This amendment would require digital commodity trading platforms to provide educational materials to their customers that are approved by the SEC. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–165).

• Representative Sam Liccardo (D–CA) offered an amendment (No. 34), designated LICCAR_026. This amendment would prohibit digital commodity exchanges, brokers, dealers, and Alternative Trading Systems from listing or trading a digital asset issued by the President, Vice President, and certain members of their families. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–166).

• Representative Liccardo offered an amendment (No. 35), designated LICCAR_027. This amendment would expand the CLARITY Act's DeFi study to assess the feasibility of implementing a regulatory sandbox where the true identity of all users of a DeFi system can be ascertained. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–167).

• Representative Gonzalez offered an amendment (No. 36), designated GONZTX_005. This amendment would require the Treasury Secretary to conduct a review of transnational criminal organizations financing and submit a report to Congress, issue guidance, and support the CFTC and SEC with AML enforcement. This amendment is duplicative of an amendment adopted by the House Agriculture Committee. This amendment failed by a recorded vote of 21 yeas and 30 nays, a quorum being present. (Record Vote No. FC–168).

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-142

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T01 (Waters 2)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-143

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **SHERMA_047 (Sherman 1)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-144

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **SHERMA_050 (Sherman 2)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-145

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T27 (Waters 3)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T25 (Waters 4)**

Record Vote No.
FC-146

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-147

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **CASTEN_050 (Casten 1)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-148

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **CASTEN_056 (Casten 2)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-149

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **SHERMA_051 (Sherman 3)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (20-31)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo		X	
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**20**	**1**	**3**

Committee Totals:

Yeas	Nays	Not Voting
20	**31**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-150

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **SHERMA_052 (Sherman 4)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (20-31)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes		X	
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**20**	**1**	**3**

Committee Totals:

20	31	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-151

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T09 (Tlaib 2)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **LYNCH_036 (Lynch 1)**

Record Vote No.
FC-152

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T07 (Lynch 2)**

Record Vote No.
FC-153

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-154

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **LYNCH_035 (Lynch 3)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T08 (Lynch 4)**

Record Vote No.
FC-155

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HIMES_015 (Himes 1)**

Record Vote No.
FC-156

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HIMES_017 (Himes 2)**

Record Vote No.
FC-157

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T20 (Himes 3)**
Motion: **to adopt the amendment**

Record Vote No.
FC-158

Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **FOSTER_038 (Foster 2)**

Record Vote No.
FC-159

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-160

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **HR3633_T10 (Foster 3)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **FOSTER_036 (Foster 4)**

Record Vote No.
FC-161

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **PRESMA_030 (Pressley 1)**

Record Vote No.
FC-162

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **GARCTX_028 (Garcia 2)**

Record Vote No.
FC-163

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-164

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **GARCTX_029 (Garcia 3)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-165

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **FIELDS_006 (Fields 1)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **LICCAR_026 (Liccardo 1)**

Record Vote No.
FC-166

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	**30**	**3**

Committee on Financial Services

Markup 5
June 10, 2025

Record Vote No.
FC-167

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **LICCAR_027 (Liccardo 2)**
Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

21	30	3
Yeas	Nays	Not Voting

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **ANS to H.R. 3633**
Amdt. **GONZTX_005 (Gonzalez 2)**

Record Vote No.
FC-168

Motion: **to adopt the amendment**
Disposition: **NOT AGREED TO (21-30)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill		X		Ranking Member Waters	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Sessions		X		Mr. Sherman	X		
Mr. Huizenga		X		Mr. Meeks	X		
Mrs. Wagner		X		Mr. Scott	X		
Mr. Barr		X		Mr. Lynch	X		
Mr. Williams (TX)		X		Mr. Green (TX)	X		
Mr. Emmer		X		Mr. Cleaver	X		
Mr. Loudermilk		X		Mr. Himes	X		
Mr. Davidson		X		Mr. Foster	X		
Mr. Rose		X		Mrs. Beatty			X
Mr. Steil		X		Mr. Vargas	X		
Mr. Timmons		X		Mr. Gottheimer			X
Mr. Stutzman		X		Mr. Gonzalez	X		
Mr. Norman		X		Mr. Casten	X		
Mr. Meuser		X		Ms. Pressley	X		
Mrs. Kim		X		Ms. Tlaib	X		
Mr. Donalds		X		Mr. Torres (NY)	X		
Mr. Garbarino		X		Ms. Garcia (TX)	X		
Mr. Fitzgerald		X		Ms. Williams of GA	X		
Mr. Flood		X		Ms. Pettersen	X		
Mr. Lawler		X		Mr. Fields	X		
Ms. De La Cruz		X		Ms. Bynum			X
Mr. Ogles		X		Mr. Liccardo	X		
Mr. Nunn		X					
Mrs. McClain		X					
Ms. Salazar		X					
Mr. Downing		X					
Mr. Haridopolos		X					
Mr. Moore (NC)		X					
	0	**30**	**0**		**21**	**0**	**3**

Committee Totals:

Yeas	Nays	Not Voting
21	30	3

Committee on Financial Services

Markup 5
June 10, 2025

Bill: **H.R. 3633**
Measure: **H.R. 3633 (as amended)**
Amdt.

Record Vote No.
FC-169

Motion: **to report favorably**
Disposition: **AGREED TO (32-19)**

Member	Yea	Nay	Not Voting	Member	Yea	Nay	Not Voting
Chairman Hill	X			Ranking Member Waters		X	
Mr. Lucas	X			Ms. Velázquez		X	
Mr. Sessions	X			Mr. Sherman		X	
Mr. Huizenga	X			Mr. Meeks		X	
Mrs. Wagner	X			Mr. Scott		X	
Mr. Barr	X			Mr. Lynch		X	
Mr. Williams (TX)	X			Mr. Green (TX)		X	
Mr. Emmer	X			Mr. Cleaver		X	
Mr. Loudermilk	X			Mr. Himes		X	
Mr. Davidson	X			Mr. Foster		X	
Mr. Rose	X			Mrs. Beatty			X
Mr. Steil	X			Mr. Vargas		X	
Mr. Timmons	X			Mr. Gottheimer			X
Mr. Stutzman	X			Mr. Gonzalez		X	
Mr. Norman	X			Mr. Casten		X	
Mr. Meuser	X			Ms. Pressley		X	
Mrs. Kim	X			Ms. Tlaib		X	
Mr. Donalds	X			Mr. Torres (NY)	X		
Mr. Garbarino	X			Ms. Garcia (TX)		X	
Mr. Fitzgerald	X			Ms. Williams of GA		X	
Mr. Flood	X			Ms. Pettersen		X	
Mr. Lawler	X			Mr. Fields	X		
Ms. De La Cruz	X			Ms. Bynum			X
Mr. Ogles	X			Mr. Liccardo		X	
Mr. Nunn	X						
Mrs. McClain	X						
Ms. Salazar	X						
Mr. Downing	X						
Mr. Haridopolos	X						
Mr. Moore (NC)	X						
	30	**0**	**0**		**2**	**19**	**3**

Committee Totals:	**32**	**19**	**3**
	Yeas	Nays	Not Voting

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 3633 is to provide for a system of regulation of the offer and sale of digital commodities by the SEC and the CFTC.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3633. The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause 3(c)(3) of rule XIII and section 402 of the *Congressional Budget Act of 1974*, a cost estimate was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

UNFUNDED MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the *Unfunded Mandates Reform Act*. The Committee will adopt the estimate once it has been prepared by the Director.

EARMARK STATEMENT

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the resolution and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

FEDERAL ADVISORY COMMITTEE ACT STATEMENT

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act*.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

TITLE I—DEFINITIONS; RULEMAKING; PROVISIONAL REGISTRATION

Sec. 101. Definitions under the Securities Act of 1933

Section 101 provides for definitions under the Securities Act of 1933.

Sec. 102. Definitions under the Securities Exchange Act of 1934

Section 102 provides for definitions under the Securities Exchange Act of 1934.

Sec. 103. Definitions under the Commodity Exchange Act

Section 103 provides for definitions under the Commodity Exchange Act.

Sec. 104. Definitions under the Act

Section 104 provides for definitions under the Act.

Sec. 105. Rulemakings

Section 105 provides for several rulemakings by the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC), including joint rulemakings related to defining key terms in the Act; the process to delist an asset for trading under section 106 of the Act; mixed digital asset transactions; and the process for considering relief for portfolio margining activities. It also requires the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation to develop capital requirements for financial institutions that address netting agreements. Section 105 also affirms the right for U.S. individuals to lawfully custody and transact with their own digital assets.

Sec. 106. Provisional registration for digital commodity exchanges, brokers, and dealers

Section 106 allows an entity seeking to become a digital commodity exchange, broker, or dealer to file a statement of provisional registration with the CFTC. The entity filing the statement must submit management and operating information and keep its books and records open to the CFTC. Such entities must also maintain

membership in a registered futures association and comply with rules regarding disclosures to customers and the treatment of customer assets. Provisionally registered entities would be required to implement requirements promulgated by the Commission as they are finalized. After the CFTC has finalized its rules for digital commodity exchanges, digital commodity brokers, and digital commodity dealers, entities can no longer file a statement of provisional registration. Finally, this section clarifies that the CFTC's exclusive jurisdiction over entities that are registered with the Commission also extends to entities that are provisionally registered.

Sec. 107. Commodity Exchange Act and securities laws savings provisions

Section 107 states that nothing in this Act shall apply to any agreement, contract, or transaction that is subject to regulation under the Commodity Exchange Act (including a futures contract, options on a futures contract, swaps, securities futures products, and certain leveraged transactions) or the securities laws as a security-based swap, security futures product, or option on a security. It also clarifies that registration as a digital commodity exchange, digital commodity broker, or digital commodity dealer does not authorize a person to engage in the aforementioned activities.

Sec. 108. Administrative requirements

Section 108 expands the provisions in the Commodity Exchange Act regarding the improper use of nonpublic information by government employees to include the trading of digital commodities.

Sec. 109. International cooperation

Section 109 requires the CFTC and SEC to coordinate with foreign regulators to promote consistent international standards for digital asset market regulation. It also allows the agencies to enter into information-sharing arrangements with foreign counterparts, as appropriate, in the public interest or to protect investors, customers, and users of digital assets.

Sec. 110 Treatment of certain non-controlling blockchain developers

Section 110 exempts non-controlling blockchain developers and blockchain service providers from being treated as money transmitters or engaged in money transmission or being subject to obligations substantially similar to those applicable to money transmitters solely on the basis of providing certain infrastructure or services.

Sec. 111. Application of the Bank Secrecy Act

Section 111 treats digital commodity brokers and dealers, as well as exchanges that permit direct customer access, as "financial institutions" under the Bank Secrecy Act.

Sec. 112. Implementation

Section 112 requires the CFTC and the SEC to promulgate all rules required by the Act no later than 360 days after enactment of the Act.

TITLE II—OFFERS AND SALES OF DIGITAL COMMODITIES

Sec. 201. Treatment of investment contract assets

Section 201 excludes digital commodities sold pursuant to an investment contract from being considered investment contracts themselves.

Sec. 202. Exempted primary transactions in digital commodities

Section 202 provides an exemption for a digital commodity issuer's offer or sale of an investment contract involving digital commodities that meets certain conditions related to the blockchain system and the sale and satisfies disclosure requirements. Issuers are required to file disclosures until a defined period after the blockchain system is certified as mature, as well as other disclosures where the issuer is engaged in certain material activities after the blockchain system is certified as mature. While creating a new exemption, this section does not prohibit the SEC from creating other exemptions or modifying existing exemptions. Section 202 requires the SEC to issue rules applying certain comparable disclosures to digital commodity issuers that relied on exemptions to offer or sell investment contracts involving digital commodities prior to the act, as well as relying on other exemptions following the enactment of the act.

Sec. 203. Treatment of secondary transactions in digital commodities that originally involved Investment Contracts

Section 203 provides that secondary market transactions in digital commodities originally issued as part of an investment contract shall not be considered part of the original investment contract transaction under securities laws.

Sec. 204. Requirements for offers and sales of digital commodities by digital commodity related persons and digital commodity affiliated persons

Section 204 establishes requirements for project insiders to sell their digital commodities. Those requirements taper down after blockchain system of the digital commodity is certified as mature. The requirements include lockup periods and limitations on sales volumes. The SEC is provided with rulemaking authority related to reporting obligations of insiders with respect to transactions in digital commodities. Section 204 also clarifies the treatment of secondary market sales by insiders who acquired digital commodities prior to the enactment of the act.

Sec. 205. Mature blockchain system requirements

Section 205 provides a process for a digital commodity issuer, related person, affiliated person, or decentralized governance system to certify to the SEC that the blockchain system relating to a digital commodity is mature. The SEC may issue rules identifying conditions by which a blockchain system can be considered mature. Section 205 also sets out statutory conditions blockchain system can meet to be deemed mature.

Sec. 206. Effective date

Section 206 provides that the provisions under this Title will take effect 360 days after enactment or, in the case of rulemakings under the Title, the later of 360 days after enactment or 60 days after publication of the final rule in the Federal Register.

TITLE III—REGISTRATION FOR INTERMEDIARIES AT THE SEC

Sec. 301. Treatment of digital commodities and permitted payment stablecoins

Section 301 excludes digital commodities and permitted payment stablecoins from the definition of a security under the securities laws.

Sec. 302. Anti-fraud authority over permitted payment stablecoins and certain digital commodity transactions

Section 302 provides the SEC with anti-fraud and anti-manipulation authority over transactions with or involving permitted payment stablecoins and digital commodities that occur on or with an SEC registered entity. It also provides the SEC with limited authority over transactions in permitted payment stablecoins when transacted by or through an entity registered with the SEC.

Sec. 303. Eligibility of alternative trading systems

Section 303 prevents the SEC from blocking a trading platform from operating under an exemption solely because it trades digital commodities or permitted payment stablecoins and securities. The section also provides that an alternative trading system (ATS) primarily facilitating the trading of digital commodities, permitted payment stablecoins, or both is not to be considered a facility of a national securities exchange.

Sec. 304. Operation of alternative trading systems

Section 304 gives the SEC jurisdiction over digital commodity activities by SEC registered broker-dealers and alternative trading systems (ATS), including where such an ATS is operated by a national securities exchange or affiliate thereof, where such registrants are exempt from registration with the CFTC.

Section 304 directs the SEC to revise existing regulations to allow national securities exchanges, or affiliates thereof, and broker-dealers that are exempt from registration with the CFTC to operate ATSs for digital commodities and permitted payment stablecoins. The SEC may establish additional rules for such systems.

Sec. 305. Modernization of recordkeeping requirements

Section 305 clarifies that brokers, dealers, transfer agents, investment advisers, investment companies, and national securities exchanges under the Securities Exchange Act of 1934 may consider blockchains for purposes of books and records requirements. The section also requires the SEC to issue and revise its rules in accordance with this section within 180 days of enactment.

Sec. 306. Exemptive authority

Section 306 amends the Securities Act of 1933 allowing flexibility for the SEC to utilize its existing exemptive authorities.

Sec. 307. Additional registrations with the commodity futures trading commission

Section 307 permits a SEC registered broker or dealer to maintain a registration with the CFTC as a digital commodity broker or dealer in order to list or trade contracts of sale for digital commodities.

Sec. 308. Exempting digital commodities from state securities laws

Section 308 adds digital commodities to "covered securities," which are exempt from state blue sky law registration requirements.

Sec. 309. Exclusion for decentralized finance activities

Section 309 exempts certain decentralized finance activities related to the operation and maintenance of blockchain networks from SEC regulation, although not from the Commission's anti-fraud or anti-manipulation enforcement authorities. Decentralized finance activities include validating or providing incidental services with respect to a digital asset, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks.

Sec. 310. Treatment of custody activities by banking institutions

Section 310 prevents federal regulators from imposing requirements on financial institutions to include customers' assets as liabilities on their balance sheets or from holding additional capital against these assets, except as necessary to mitigate against operational risks as determined by the appropriate federal or state regulator.

Sec. 311. Broker and dealer disclosures regarding the treatment of assets

Section 311 requires the SEC to adopt rules for mandating clear, written disclosures from brokers and dealers about the treatment of digital commodities, permitted payment stablecoins, or investment contracts involving digital commodities in the event of an insolvency, resolution, or liquidation.

Sec. 312. Digital commodity activities that are financial in nature

Section 312 narrowly amends the Bank Holding Company Act to allow non-bank subsidiaries of holding companies (e.g., digital commodity brokers or dealers) to engage in digital commodity activities by adding such activities to the list of those that are financial in nature. It also allows national banks to use digital assets or blockchain systems to conduct activities that they are already legally authorized to perform and clarifies that using such technology does not exempt national banks from any existing regulatory requirements that apply regardless of the technology used. For purposes of the Federal Deposit Insurance Act, digital asset and blockchain system activities authorized for national banks that are

principal activities are permissible for insured state banks and their subsidiaries.

Sec. 313. Effective Date; administration

Section 313 provides that the provisions under Title III will take effect 360 days after enactment or, in the case of rulemakings under the Title, the later of 360 days after enactment or 60 days after publication of the final rule in the Federal Register.

Sec. 314. Studies on foreign adversary participation

Section 314 requires the Secretary of the Treasury, in consultation with the CFTC and the SEC, to conduct a study and submit a report to the relevant congressional committees within a year of enactment on the involvement of governments of foreign adversaries in digital commodity markets and digital commodity registrants. The Comptroller General is required to conduct the same study and submit the same report to the relevant congressional committees.

TITLE IV—REGISTRATION FOR DIGITAL COMMODITY INTERMEDIARIES AT THE CFTC

Sec. 401. Commission jurisdiction over digital commodity transactions

Section 401 sets out the new authority of the CFTC over certain transactions in digital assets. Specifically, the section provides the Commission with exclusive regulatory jurisdiction over digital commodity cash or spot markets that occur on or with new CFTC registered entities created in this Act: Digital Commodity Exchanges, Digital Commodity Dealers, and Digital Commodity Brokers. This new authority complements the Commission's existing anti-fraud and anti-manipulation authority over all cash or spot market commodity transactions, including cash or spot market transactions in digital assets. This section also permits digital commodity brokers to engage in financing agreements for digital commodities with their customers.

Lastly, this section provides the CFTC with authority over transactions with or involving a permitted payment stablecoin that occurs on or with a CFTC registered entity. Section 401 prohibits the CFTC from implementing a rule or regulation, imposing a requirement or obligation on a registered entity or other entity registered with the CFTC, or imposing 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. 402. Requiring futures commission merchants to use qualified digital asset custodians

Section 402 requires futures commission merchants to hold customers' digital assets in a qualified digital asset custodian.

Sec. 403. Trading certification and approval for digital commodities

Section 403 establishes the process by which a registered entity may determine that digital commodities are eligible to be traded on or through entities registered with the CFTC. The process requires

a registered entity to submit a certification to the CFTC that the digital commodity meets the requirements of the Commodity Exchange Act, including the listing requirements under section 404 of this Act. The CFTC then has up to 80 days to review the certification for its accuracy, completeness, and veracity.

Section 403 also provides that a digital commodity exchange, broker, or dealer applying for CFTC registration may seek prior approval to list or offer certain digital commodities when registered with the CFTC.

Sec. 404. Registration of digital commodity exchanges

Section 404 provides for the registration and regulation of digital commodity exchanges. Registered digital commodity exchanges must comply with core principles that include listing standards, trade surveillance, capital, conflicts of interest, reporting, and system safeguards. Subject to the core principles, digital commodity exchanges are allowed to list only those digital commodities for which the issuer is in compliance with the disclosure requirements and for which they have made public disclosures regarding source code, transaction history, and digital asset economics.

Digital commodity exchanges are also subject to comprehensive requirements to segregate customer funds, provide risk-appropriate disclosures to retail customers, designate a chief compliance officer, be members of a registered futures association if they hold customer funds, and comply with any rules the registered futures association imposes.

Digital commodity exchanges that accept customer funds are required to hold those funds in a qualified digital asset custodian.

No digital commodity exchange or affiliate of the exchange is permitted to act as a counterparty to any transaction on the exchange, except in limited circumstances. And finally, a digital commodity exchange customer may elect, in writing, to participate in any blockchain services facilitated by the exchange, such as staking, subject to the requirements and limitations imposed by the CFTC. A customer's access to the exchange is not permitted to be conditioned on the customer's election to participate in blockchain services.

Sec. 405. Qualified digital asset custodians

Section 405 sets out the requirements for qualified digital asset custodians. Qualified digital asset custodians are subject to adequate supervision and appropriate regulation by certain federal, state, or foreign authorities. Section 405 provides the CFTC authority to further define minimum standards for adequate supervision and appropriate regulation and to provide rules for CFTC registered entities to custody digital assets.

Sec. 406. Registration and regulation of digital commodity brokers and dealers

Section 406 creates a comprehensive federal regulatory framework under the Commodity Exchange Act for the registration, oversight, and supervision of digital commodity brokers and dealers. It requires these firms to register with the CFTC, meet capital and risk management requirements, and comply with recordkeeping, reporting, business conduct, and customer protection standards.

Firms engaged in financing agreements must meet additional requirements including capital, disclosure, recordkeeping, and supervision of employees and agents in connection with such financing agreements.

Customer funds held by a digital commodity broker or dealer are subject to comprehensive segregation and commingling restrictions. They are also required to be held in a qualified digital asset custodian. A customer of a digital commodity broker or dealer may elect, in writing, to participate in any blockchain services facilitated by the broker or dealer, such as staking, subject to the requirements and limitations imposed by the CFTC. A digital commodity broker or dealer may not condition a customer's access to their services on the customer's election to participate in blockchain services. In addition, digital commodity brokers and dealers are required to be members of a registered futures association and comply with any additional rules they impose.

Sec. 407. Registration of associated persons

Section 407 requires associated persons of digital commodity brokers and dealers to register with the CFTC and makes it unlawful for digital commodity brokers and dealers to permit persons to become or remain an associated person if the broker-dealer knew or should have known that the person was not registered with the CFTC or their registration was expired, suspended, or revoked.

Sec. 408. Registration of commodity pool operators and commodity trading advisors

Section 408 codifies the treatment of certain commodity pool operators (CPOs) dually registered with the SEC as investment advisors to match the statutory treatment granted to certain dually registered commodity trading advisors. Section 408 also requires the CFTC to issue rules providing exemptions for CPOs and commodity trading advisors to provide relief from duplicative, conflicting, or unduly burdensome requirements or to promote innovation, if those exemptions foster the development of fair and orderly markets, are in the public interest, and are consistent with the protection of customers.

Sec. 409. Exclusion for decentralized finance activities

Section 409 exempts certain decentralized finance activities related to the operations and maintenance of blockchain networks from CFTC regulation, although not from the Commission's antifraud or anti-manipulation enforcement authorities. Exempted activities include validating or providing incidental services with respect to a digital commodity, providing user-interfaces for a blockchain network, publishing and updating software, and developing wallets for blockchain networks.

Sec. 410. Resources for implementation and enforcement

Section 410 authorizes the CFTC to charge and collect filing fees from entities that are provisionally registered as digital commodity exchanges, brokers, or dealers under the Act. It requires the CFTC to publish a fee schedule, including an analysis of estimated costs to carry out the Act, annually in the Federal Register. This fee schedule must be submitted to Congress prior to publication. Addi-

tionally, the CFTC is provided expedited hiring authority to fill positions related to carrying out this Act. The authorities granted by this section sunset after four fiscal years.

Sec. 411. Digital commodity activities by SEC-registered entities

Section 411 creates an exemption from CFTC registration for certain SEC-regulated entities engaged in limited digital commodity activities. Specifically, alternative trading systems and registered brokers or dealers can avoid duplicative CFTC registration by submitting a notice, operating within defined trading or revenue limits, and complying with applicable SEC regulations.

Sec. 412. Requirements related to control persons

Section 412 makes it unlawful for a blockchain control person to sell digital commodities tied to a certified mature blockchain system without first notifying the CFTC and complying with certain disclosure and sales restrictions. A "blockchain control person" is defined as any individual or group with unilateral control over the system's rules or with significant voting power.

Sec. 413. Effective date

Section 413 provides that the provisions under this Title will take effect 360 days after enactment or, in the case of rulemakings under the Title, the later of 360 days after enactment or 60 days after publication of the final rule in the Federal Register.

Sec. 414. Sense of the Congress

Section 414 articulates the sense of the Congress that nothing in this Act or any amendment made by this Act should be interpreted to authorize any entity to regulate any commodity, other than a digital commodity, on any spot market.

TITLE V—INNOVATION AND TECHNOLOGY IMPROVEMENTS

Sec. 501. Findings; sense of Congress

Section 501 expresses support for U.S. leadership in digital assets and reaffirms that Congress should establish a functional framework for the issuance of digital assets.

Sec. 502. Modernization of the Securities and Exchange Commission mission

Section 502 amends the Securities Act of 1933, the Securities Act of 1934, and the Investment Advisers Act of 1940, and the Investment Company Act of 1940 by adding "innovation" to the factors the SEC must consider when issuing a rulemaking.

Sec. 503. Strategic Hub for Innovation and Financial Technology

Section 503 establishes a committee to be known as the Strategic Hub for Innovation and Financial Technology (FinHub), which will serve as a resource to the SEC on emerging financial technologies, engage with market participants developing these innovations, and facilitate communication between the Commission and these businesses by providing information on SEC rules and regulations.

Sec. 504. Codification of LabCFTC

Section 504 establishes LabCFTC in the CFTC, which will serve as an information source for the CFTC on financial technology (FinTech) innovation. It will ensure the CFTC is more accessible to FinTech innovators and bolster the CFTC's understanding of new technologies. LabCFTC will also serve as a forum for innovators seeking a better understanding of the CFTC's regulatory framework. Section 504 further requires LabCFTC to submit an annual report to Congress on its activity.

Sec. 505. Study on decentralized finance

Section 505 requires the CFTC, the SEC, and the Secretary of the Treasury to conduct a joint study on decentralized finance (DeFi), which will include an analysis of the size, scope, role, nature, and use of DeFi protocols; the benefits and risks of DeFi; how DeFi has integrated into the traditional financial markets, including the risks of DeFi integration; and the levels and types of illicit activities in DeFi compared to traditional financial markets. The agencies must submit a report to Congress one year after enactment. The Government Accountability Office (GAO) shall also conduct a report on DeFi and submit it to Congress one year after enactment.

DeFi is defined as blockchain applications that allow users to engage in financial transactions in a self-directed manner such that no third-party intermediary effectuates such transactions or takes custody of a user's digital assets during any part of such transaction.

Sec. 506. Study on non-fungible tokens

Section 506 requires GAO to conduct a study on non-fungible digital tokens. GAO must make the report publicly available one year after enactment.

Sec. 507. Study on expanding financial literacy amongst digital commodity holders

Section 507 requires the SEC and CFTC to conduct a study on the financial literacy of digital commodity holders and examine ways the agencies can work together and/or in collaboration with other entities to improve financial literacy among digital commodity holders. This study must be submitted to Congress within a year of enactment.

Sec. 508. Study on financial market infrastructure improvements

Section 508 requires the CFTC and the SEC to conduct a study on whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products. The study will also examine whether further rules would foster the development of fair and orderly financial markets, be appropriate for the public interest, and provide further investor protections. The agencies must submit the report to Congress one year after enactment.

Sec. 509. Study on blockchain in payments

Section 509 requires the Secretary of the Treasury to conduct a study on how blockchain technology can be used to address fraud,

transaction costs, automation, and efficiency in payments. Treasury must submit a report summarizing the findings of the study to Congress one year after enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933

TITLE I—

* * * * * * *

DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *The term "investment contract" does not include an investment contract asset. The term does not include a digital commodity or permitted payment stablecoin.*

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an

issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited

liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the

direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term "accredited investor" shall mean—

(i) a bank as defined in section 3(a)(2) whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms "security future", "narrow-based security index", and "security futures product" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(17) The terms "swap" and "security-based swap" have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(18) The terms "purchase" or "sale" of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

(20) BLOCKCHAIN.—The term "blockchain" means—

(A) any technology—

(i) where data is—

(I) shared across a network to create a distributed ledger of independently verifiable transactions or information among network participants;

(II) linked using cryptography to maintain the integrity of the distributed ledger and to execute other functions; and

(III) propagated among network participants to reach consensus on the state of the distributed ledger and any other functions; and

(ii) composed of source code that is publicly available; and

(B) any similar technology to the technology described in subparagraph (A).

(21) BLOCKCHAIN APPLICATION.—The term "blockchain application" means any executable software that is deployed to a blockchain and composed of source code that is publicly avail-

able, including a smart contract or any network of smart contracts, or other similar technology.

(22) BLOCKCHAIN PROTOCOL.—The term "blockchain protocol" means publicly available source code of a blockchain that is executed by the network participants of a blockchain to facilitate its functioning, or other similar technology.

(23) BLOCKCHAIN SYSTEM.—The term "blockchain system" means any blockchain, together with its blockchain protocol or any blockchain application or network of blockchain applications.

(24) DECENTRALIZED GOVERNANCE SYSTEM.—

(A) IN GENERAL.—The term "decentralized governance system" means, with respect to a blockchain system, any transparent, rules-based system permitting persons to form consensus or reach agreement in the development, provision, publication, maintenance, or administration of such blockchain system, where participation is not limited to, or under the effective control of, any person or group of persons under common control.

(B) RELATIONSHIP OF PERSONS TO DECENTRALIZED GOVERNANCE SYSTEMS.—With respect to a decentralized governance system, the decentralized governance system and any persons participating in the decentralized governance system shall be treated as separate persons unless such persons are under common control or acting pursuant to an agreement to act in concert.

(C) LEGAL ENTITIES FOR DECENTRALIZED GOVERNANCE SYSTEMS.—The term "decentralized governance system" shall include a legal entity used to implement the rules-based system described in subparagraph (A), provided that the legal entity does not operate pursuant to centralized management. For the purposes of this subparagraph, the delegation of ministerial or administrative authority at the direction of the participants in a decentralized governance system shall not be construed to be centralized management.

(25) DIGITAL ASSET.—The term "digital asset" means any digital representation of value which is recorded on a cryptographically-secured distributed ledger or other similar technology.

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

(27) DIGITAL COMMODITY AFFILIATED PERSON.—The term "digital commodity affiliated person" means a person (including a digital commodity related person) that, with respect to any digital commodity—

(A) acquires or has any right to acquire 5 percent or more of the total outstanding units of such digital commodity from a digital commodity issuer or an agent or underwriter thereof (other than a decentralized governance system);

(B) is a founder of the digital commodity issuer; or

(C) is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the digital

commodity issuer or held such role at any point in the previous 12-month period.

(28) DIGITAL COMMODITY ISSUER.—

(A) IN GENERAL.—With respect to a digital commodity, the term "digital commodity issuer" means any person that—

(i) issues or causes to be issued, or proposes to issue or cause to be issued, a unit of such digital commodity to a person; or

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

(B) PROHIBITION ON EVASION.—It shall be unlawful for any person to knowingly evade classification as a "digital commodity issuer" and facilitate an arrangement for the primary purpose of effecting an offer, sale, distribution, or other issuance of a digital commodity, including via any arrangement involving the transfer of intellectual property associated with the blockchain system to which the digital commodity relates.

(29) DIGITAL COMMODITY RELATED PERSON.—

(A) IN GENERAL.—With respect to a digital commodity issuer, the term "digital commodity related person" means a person—

(i) that is or was in the previous 6-month period a promoter, senior employee, advisory board member, consultant, advisor, or person serving in a similar capacity; or

(ii) that acquires or has any right to acquire 1 percent or more of the total outstanding units of such digital commodity from a digital commodity issuer or an agent or underwriter thereof (other than a decentralized governance system).

(B) SENIOR EMPLOYEE DEFINED.—In this paragraph and with respect to a digital commodity issuer, the term "senior employee" means any employee materially involved in the management of the digital commodity issuer, including management of the development of the blockchain system to which the digital commodity relates.

(30) END USER DISTRIBUTION.—The term "end user distribution" means a distribution of a unit of a digital commodity that—

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

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

(i) to users of the digital commodity or any blockchain system to which the digital commodity relates;

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

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

(31) MATURE BLOCKCHAIN SYSTEM.—The term 'mature blockchain system' means a blockchain system, together with its related digital commodity, that is not controlled by any person or group of persons under common control.

(32) PERMITTED PAYMENT STABLECOIN.—

(A) IN GENERAL.—The term "permitted payment stablecoin" means a digital asset—

(i) that is or is designed to be used as a means of payment or settlement;

(ii) that is denominated in a national currency;

(iii) the issuer of which is subject to the regulatory and supervisory authority of a State or Federal agency;

(iv) the issuer of which—

(I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; or

(II) represents that the digital asset will maintain or creates the reasonable expectation that the digital asset will maintain a stable value relative to the value of a fixed amount of monetary value; and

(v) that is not—

(I) a national currency;

(II) a security issued by—

(aa) an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)); or

(bb) a person that would be an investment company under the Investment Company Act of 1940 but for paragraphs (1) and (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c));

(III) a deposit (as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), regardless of the technology used to record such deposit; or

(IV) an account (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), regardless of the technology used to record such account.

(B) MONETARY VALUE DEFINED.—The term "monetary value"—

(i) means—

(I) a national currency;

(II) a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is denominated in a national currency; or

(III) an account (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)); and

(ii) does not include any agricultural or other physical commodity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)).

(33) SECURITIES LAWS.—The term "securities laws" has the meaning given that term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(34) The term "investment contract asset" means a digital commodity—

(A) that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a blockchain; and

(B) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment contract.

(b) CONSIDERATION OF PROMOTION OF EFFICIENCY, *INNOVATION,* COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, *innovation,* competition, and capital formation.

* * * * * * *

EXEMPTED TRANSACTIONS

SEC. 4. (a) The provisions of section 5 shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

(D) the issuer complies with the requirements of section 4A(b).

(7) transactions meeting the requirements of subsection (d).

(8) the offer or sale of an investment contract involving units of a digital commodity by its digital commodity issuer (including all entities controlled by or under common control with the issuer), if—

(A) the blockchain system to which the digital commodity relates, together with the digital commodity, is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934 or the issuer intends for the blockchain system to which the digital commodity relates to be a mature blockchain system by the later of—

(i) the date that is four years after the first sale of the investment contract involving a unit of such digital commodity in reliance on the exemption provided under this paragraph, subject to any extensions as may be granted by the Commission; or

(ii) the date that is four years after the effective date of this paragraph;

(B) the sum of all cash and other consideration to be received by the digital commodity issuer in reliance on the exemption provided under this paragraph, during the 12-month period preceding the date of such offering, including the amount received in such offering, is not more than $75,000,000 (as such amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor);

(C) after the completion of the transaction, a purchaser does not own more than 10 percent of the total amount of the outstanding units of the digital commodity;

(D) the transaction does not involve the offer or sale of an investment contract involving units of a digital commodity by its digital commodity issuer that—

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

(ii) is a development stage company that either—

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

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

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

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

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

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

(E) the issuer meets the requirements of section 4B(b).

(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(c)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 3(a)(39) of this title and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term "ancillary services" means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(d) CERTAIN ACCREDITED INVESTOR TRANSACTIONS.—The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

(1) ACCREDITED INVESTOR REQUIREMENT.—Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.—Neither the seller, nor any person acting on the seller's behalf, offers or sells securities by any form of general solicitation or general advertising.

(3) INFORMATION REQUIREMENT.—In the case of a transaction involving the securities of an issuer that is neither subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)), nor exempt from reporting pursuant to section 240.12g3–2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

(A) The exact name of the issuer and the issuer's predecessor (if any).

(B) The address of the issuer's principal executive offices.

(C) The exact title and class of the security.

(D) The par or stated value of the security.

(E) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year.

(F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.

(G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.

(H) The names of the officers and directors of the issuer.

(I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person's participation in the offer or sale of the securities.

(J) The issuer's most recent balance sheet and profit and loss statement and similar financial statements, which shall—

(i) be for such part of the 2 preceding fiscal years as the issuer has been in operation;

(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

(iii) be presumed reasonably current if—

(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer's balance sheet; and

(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

(4) ISSUERS DISQUALIFIED.—The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.

(5) BAD ACTOR PROHIBITION.—Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for

the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 CFR 230.506(d)(1)) or is subject to a statutory disqualification described under section 3(a)(39) of the Securities Exchange Act of 1934.

(6) BUSINESS REQUIREMENT.—The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer's primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(7) UNDERWRITER PROHIBITION.—The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

(8) OUTSTANDING CLASS REQUIREMENT.—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

(e) ADDITIONAL REQUIREMENTS.—

(1) IN GENERAL.—With respect to an exempted transaction described under subsection (a)(7):

(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

(B) Such transaction shall be deemed not to be a distribution for purposes of section 2(a)(11).

(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 CFR 230.144).

(2) RULE OF CONSTRUCTION.—The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 5.

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SEC. 4B. REQUIREMENTS WITH RESPECT TO CERTAIN DIGITAL COMMODITY TRANSACTIONS.

(a) COMMISSION JURISDICTION.—For the purposes of this section:

(1) The Commission shall have jurisdiction and enforcement authority with respect to disclosures described in this section.

(2) Section 17 shall apply to a statement made in an offering statement, disclosure, or report filed under this section to the same extent as such section 17 applies to a statement made in any other offering statement, disclosure, or report filed under this Act.

(b) REQUIREMENTS FOR DIGITAL COMMODITY ISSUERS.—

(1) TERMS AND CONDITIONS.—A digital commodity issuer offering or selling an investment contract involving units of a digital commodity in reliance on section 4(a)(8) shall file with the Commission an offering statement and any related documents, in such form and with such content as prescribed by the Commission, including financial information, a description of the

issuer and the operations of the issuer, the financial condition of the issuer, a description of the plan of distribution of any unit of a digital commodity that is to be offered as well as the intended use of the offering proceeds, and a description of the development plan for the blockchain system, and the related digital commodity, to become a mature blockchain system, if such blockchain system is not already certified as a mature blockchain system pursuant to section 42 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) INFORMATION REQUIRED FOR PURCHASERS.—A digital commodity issuer that has filed a statement under paragraph (1) to offer and sell an investment contract involving a unit of a digital commodity in reliance on section 4(a)(8) shall include in such statement the following information:

(A) MATURITY STATUS.—Whether the blockchain system to which the digital commodity relates has been certified as a mature blockchain system pursuant to section 42 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and, where such blockchain system is not so certified, a statement of the digital commodity issuer's intent for the blockchain system to which the digital commodity relates to be a mature blockchain system within the time period described in section 4(a)(8)(A).

(B) SOURCE CODE.—The source code, or a publicly accessible webpage displaying such source code, for any blockchain system to which the digital commodity relates, and whether the source code was sourced from an external third party, whether there are any existing external dependencies, and whether the code underwent a third-party security audit, along with material results of any such audit.

(C) TRANSACTION HISTORY.—A description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital commodity relates, to the extent any such independent access, search, and verification activities are technically feasible with respect to such blockchain system.

(D) DIGITAL COMMODITY ECONOMICS.—A description of the purpose of any blockchain system to which the digital commodity relates and the operation of any such blockchain system, including—

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

(ii) information explaining the technical requirements for holding, accessing, and transferring the digital commodity;

(iii) information on any applicable consensus mechanism or process for validating transactions, method of generating or mining digital commodities, and any process for burning or destroying units of the digital commodity on the blockchain system;

(iv) an explanation of any mechanism for driving value to the digital commodity of such blockchain system; and

(v) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of units of such digital commodity.

(E) PLAN OF DEVELOPMENT.—The current state and timeline for the development of any blockchain system to which the digital commodity relates, detailing how and when the blockchain system is intended to be a mature blockchain system, if the blockchain system is not yet certified as a mature blockchain system, and the various roles that exist or are intended to exist in connection with the blockchain system, such as users, service providers, developers, transaction validators, and governance participants, including a discussion of any mechanisms by which control or authority are exerted with respect to the blockchain system or its related digital commodity, and any critical operational dependencies of the blockchain system or its related digital commodity.

(F) OWNERSHIP DISCLOSURES.—

(i) IN GENERAL.—A list of all persons who are digital commodity related persons or digital commodity affiliated persons who have been issued a unit of the digital commodity by the digital commodity issuer or have a right to a unit of the digital commodity from the digital commodity issuer.

(ii) CONFIDENTIALITY.—The Commission shall keep each list described under clause (i) confidential, consistent with what is necessary or appropriate in the public interest or for the protection of investors.

(G) RISK FACTOR DISCLOSURES.—A description of the material risks surrounding ownership of a unit of a digital commodity.

(3) ONGOING DISCLOSURE REQUIREMENTS FOR MATURING BLOCKCHAIN SYSTEMS.—Subject to paragraph (5), the issuer of a digital commodity related to a blockchain system that is not yet certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934 that has filed a statement under paragraph (1) to offer and sell an investment contract involving a unit of a digital commodity in reliance on section 4(a)(8) shall file the following with the Commission:

(A) SEMIANNUAL REPORTS.—Every 6 months, a report containing—

(i) an updated description of the current state and timeline for the development of the blockchain system to which the digital commodity relates, showing how and when the blockchain is intended to be a mature blockchain system;

(ii) a description of the efforts of the issuer and digital commodity related persons in developing the blockchain system to which the digital commodity relates;

(iii) the amount of money raised by the digital commodity issuer in reliance on section 4(a)(8), how much of that money has been spent, and the general categories of activities for which that money has been spent and amounts spent per category; and

(iv) financial statements, where applicable.

(B) CURRENT REPORTS.—A current report reflecting any material changes relevant to the information previously reported to the Commission by the digital commodity issuer, which shall be filed as soon as practicable after the material change occurred, in accordance with such rules as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(4) RULEMAKING.—Not later than 360 days after the date of the enactment of this section, the Commission shall prescribe rules on requirements applicable to issuers of digital commodities in reliance on section 4(a)(8).

(5) TERMINATION OF CERTAIN REPORTING REQUIREMENTS; POST-MATURITY REPORTING REQUIREMENTS.—

(A) IN GENERAL.—The ongoing reporting requirements under paragraph (3) shall not apply to a digital commodity issuer 180 days after the end of the covered fiscal year, if the information with respect to the digital commodity and the blockchain system to which it relates described in subparagraphs (A) through (C) of paragraph (2) is made publicly available and the disclosure requirements under subparagraph (C) of this paragraph are satisfied.

(B) COVERED FISCAL YEAR DEFINED.—In this paragraph, the term "covered fiscal year" means, with respect to a digital commodity, the first fiscal year of a digital commodity issuer in which the blockchain system to which such digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934.

(C) POST-MATURITY REPORTING REQUIREMENTS.—After the blockchain system to which a digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, any digital commodity issuer that has filed a statement under paragraph (1) to offer and sell an investment contract involving a unit of a digital commodity in reliance on section 4(a)(8) and is engaged in material ongoing efforts related to the mature blockchain system shall disclose, in a manner reasonably calculated to inform the public, and at such frequency as the Commission may prescribe, by rule, a description of such efforts, including—

(i) any participation in a decentralized governance system of such blockchain system;

(ii) any participation in alterations or proposed alterations to the functionality or operation of such blockchain system;

(iii) the use or planned use of any funds raised in reliance on section 4(a)(8) or any rulemaking pursuant to section 202(c) of the CLARITY Act of 2025 in such efforts;

(iv) the amount of units of the digital commodity, or rights thereto, owned and controlled by such issuer and any use, sale, trading, or other disposition thereof; and

(v) any affiliations of such issuer material to the efforts of such issuer.

(D) TERMINATION OF AND EXEMPTION FROM POST-MATURITY REPORTING REQUIREMENTS.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules—

(i) for terminating the disclosure requirements described in subparagraph (C) during the first fiscal year in which the digital commodity issuer does not engage in material ongoing efforts related to the mature blockchain system; and

(ii) to, as is necessary or appropriate in the public interest or for the protection of investors, exempt a digital commodity issuer from the requirements described in subparagraph (C) where only a de minimis amount of market activity involving the digital commodity of such digital commodity issuer is taking place.

(E) RULE OF CONSTRUCTION.—Nothing in subparagraph (C) may be construed to make any digital commodity described in such subparagraph a security.

(c) REQUIREMENTS FOR INTERMEDIARIES.—A person acting as an intermediary in connection with the offer or sale of an investment contract involving units of a digital commodity in reliance on section 4(a)(8) shall—

(1) register with the Commission as a broker or dealer; and

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

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

(e) FAILURE TO MATURE.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules applying such additional obligations and disclosures for the digital commodity issuers, digital commodity related persons, and digital commodity affiliated persons of a blockchain system described under subsection (b)(1) that does not become a mature blockchain system within the time period described in section 4(a)(8)(A) as are necessary or appropriate in the public interest or for the protection of investors. Such obligations and disclosures shall include the following:

(A) DISCLOSURES.—Disclosures regarding the following:

(i) FAILURE TO MATURE.—A detailed explanation of the reason that the blockchain system has not become a mature blockchain system within the time period described in section 4(a)(8)(A).

(ii) DEVELOPMENT PLANS.—The future plans of development of the blockchain system, including information required under subsection (b)(3).

(iii) RISK FACTOR DISCLOSURES.—The material risks surrounding ownership of a unit of a digital commodity that relates to a blockchain system described under subsection (b)(1) that has not become a mature blockchain system within the time period described in section 4(a)(8)(A).

(B) OBLIGATIONS.—Transaction reporting and beneficial ownership disclosure obligations applicable to digital commodity related persons and digital commodity affiliated persons of such blockchain system.

(2) QUALIFICATION REQUIRED.—The Commission may not permit any additional reliance on an exempt offering for the offer or sale of an investment contract involving a unit of a digital commodity by the issuer of the digital commodity related to a blockchain system described under subsection (a)(1) that has not become a mature blockchain system within the time period described in section 4(a)(8)(A) unless the Commission has qualified any offering statement related to such exempt offering.

SEC. 4C. REQUIREMENTS FOR OFFERS AND SALES OF DIGITAL COMMODITIES BY DIGITAL COMMODITY RELATED PERSONS AND DIGITAL COMMODITY AFFILIATED PERSONS.

(a) IN GENERAL.—It shall be a violation of this Act for a digital commodity affiliated person or a digital commodity related person to offer or sell a digital commodity acquired directly from its issuer, or an agent or underwriter thereof, pursuant to an investment contract in reliance on section 4(a)(8) or another exemption under this Act, other than as provided in this section.

(b) COMMISSION JURISDICTION.—

(1) Where a digital commodity affiliated person or a digital commodity related person offers or sells a digital commodity acquired directly from its issuer, or an agent or underwriter thereof, pursuant to an investment contract in reliance on section 4(a)(8), or another exemption under this Act, other than as provided in this section, such digital commodity affiliated person or digital commodity related person shall be considered an issuer of such investment contract.

(2) For the purposes of this section, the Commission shall have jurisdiction and enforcement authority with respect to an offer or sale of a digital commodity described in subsection (a).

(c) RESTRICTIONS ON DIGITAL COMMODITY RELATED PERSONS AND DIGITAL COMMODITY AFFILIATED PERSONS.—

(1) PRIOR TO BEING A MATURE BLOCKCHAIN SYSTEM.—Prior to the blockchain system to which a digital commodity relates being certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, units of the digital commodity acquired by a digital commodity related person or digital commodity affiliated person directly from its issuer (or an agent or underwriter thereof) pursuant to an investment contract in reliance on section 4(a)(8), or another exemption under this Act, may be offered or sold by such digital commodity related person or digital commodity affiliated person if—

(A) reports with respect to such digital commodity, where required under section 4B(b)(3) (or, with respect to a digital commodity not issued in reliance on section 4(a)(8), a com-

parable set of reports where required by the Commission) have been filed with the Commission;

(B) the digital commodity related person or digital commodity affiliated person has held the units for not less than 12 months; and

(C) the aggregate amount of the units of the digital commodity offered or sold by the digital commodity related person or digital commodity affiliated person is—

(i) in any 12-month period, or shorter period as the Commission may prescribe, not less than 5 percent or greater than 20 percent of the total units of the digital commodity acquired directly from its issuer (or an agent or underwriter thereof) by the digital commodity related person or digital commodity affiliated person, as determined by the Commission pursuant to paragraph (3); and

(ii) an amount, as determined by the Commission pursuant to paragraph (3), not less than 30 percent or greater than 50 percent of the total units of the digital commodity acquired directly from its issuer (or an agent or underwriter thereof) by the digital commodity related person or digital commodity affiliated person.

(2) AFTER BECOMING A MATURE BLOCKCHAIN SYSTEM.—After the blockchain system to which a digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, units of the digital commodity acquired by a digital commodity related person or digital commodity affiliated person directly from its issuer (or an agent or underwriter thereof) pursuant to an investment contract in reliance on section 4(a)(8) or another exemption under this Act, may be—

(A) offered or sold by a digital commodity related person; or

(B) offered or sold by a digital commodity affiliated person if—

(i) information described in section 4B(b)(5)(C), where required (or, with respect to a digital commodity not issued in reliance on section 4(a)(8), a comparable set of information, where required) is publicly available;

(ii) the digital commodity affiliated person has held the units for not less than the earlier of—

(I) 12 months; or

(II) 3 months following the date on which the blockchain system is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934; and

(iii) the aggregate amount of the units of the digital commodity offered or sold by the digital commodity affiliated person in any 12-month period is an amount, as determined by the Commission pursuant to paragraph (3), not less than 5 percent or greater than 10 percent of the total outstanding amount of the digital commodity.

(3) RULEMAKINGS REQUIRED.—Not later than 270 days after the date of the enactment of this section, consistent with protecting investors, fostering the development of mature blockchain systems, facilitating capital formation, and maintaining fair and orderly markets the Commission, by rule, after notice and comment—

(A) shall set the percentage amounts described in paragraphs (1)(C)(i), (1)(C)(ii), and (2)(B)(iii); and

(B) may provide an exemption from the limitation described in paragraph (1)(C)(ii), if the Commission requires any offer or sale pursuant to such exemption of a digital commodity related to a blockchain system that has failed to become a mature blockchain system under this Act or any rule promulgated hereunder to be accompanied by the disclosures required under, as applicable, section 4B(e)(1)(A) or section 202(c)(2)(B)(iii)(II) of the CLARITY Act of 2025.

(d) USE OF A DIGITAL COMMODITY IN THE PROGRAMMATIC FUNCTIONING OF THE BLOCKCHAIN SYSTEM.—For purposes of this section, the use of a digital commodity in the programmatic functioning of the blockchain system to which it relates is not an offer or sale of a digital commodity.

(e) MANIPULATIVE AND DECEPTIVE DEVICES; REPORTING.—

(1) IN GENERAL.—It shall be unlawful for any digital commodity issuer, digital commodity related person, or digital commodity affiliated person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use or employ, in connection with the purchase or sale of any digital commodity, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) AFFIRMATIVE DEFENSE.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules to implement paragraph (1), including by providing any affirmative defenses to an enforcement action thereunder as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) REPORTING.—Not later than 270 days after the date of the enactment of this section, the Commission shall issue rules to prescribe such transaction reporting and beneficial ownership disclosure obligations applicable to digital commodity related persons and digital commodity affiliated persons, as necessary or appropriate in the public interest or for the protection of investors.

(4) DIFFERENTIATION BETWEEN PERSONS.—In issuing rules required under paragraphs (2) and (3), the Commission shall differentiate between digital commodity related persons and digital commodity affiliated persons, as necessary or appropriate in the public interest or for the protection of investors.

(f) CERTAIN UNITS RECEIVED PRIOR TO ENACTMENT.—A unit of a digital commodity received from the digital commodity issuer prior to the date of the enactment of this section through an offer or sale of an investment contract involving units of a digital commodity in reliance on an exemption provided under section 3, 4(a), or 19, may

be offered or sold by a digital commodity related person or digital commodity affiliated person, if—

(1) the digital commodity issuer is no longer engaged in material ongoing efforts related to the blockchain system to which the digital commodity relates and the blockchain system to which the digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934;

(2) the digital commodity issuer is engaged in material ongoing efforts related to the blockchain system to which the digital commodity relates and the blockchain system to which the digital commodity relates is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, and the appropriate disclosures required under section 202(c)(2)(B) of the CLARITY Act of 2025 have been made with the Commission; or

(3) the digital commodity issuer is engaged in material ongoing efforts related to the blockchain system to which the digital commodity relates and the blockchain system to which the digital commodity relates is not certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934, and the appropriate disclosures required under section 202(c)(2)(B) of the CLARITY Act of 2025 have been made with the Commission.

(g) RULEMAKING ON FURTHER USAGE OF DIGITAL COMMODITIES.—The Commission, consistent with protecting investors, fostering the development of mature blockchain systems, facilitating capital formation, and maintaining fair and orderly markets, may, by rule, exempt unconditionally or on stated terms or conditions, a digital commodity related person or a digital commodity affiliated person, or any class thereof, from the requirements of this section for the offer or sale of a digital commodity.

PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a

prospectus that meets the requirements of subsection (a) of section 10.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8.

(d) LIMITATION.—Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

(e) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section [1a(18)] *1a(19)* of the Commodity Exchange Act (7 U.S.C. 1a(18)).

* * * * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) SCOPE OF EXEMPTION.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act

of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 11A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(a)(2)) that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) SALES TO QUALIFIED PURCHASERS.—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) **[**section 4(4)**]** *section 4(a)(4)*;

(C) **[**section 4(6)**]** *section 4(a)(6)*;

(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under [section 4(2)] *section 4(a)(2)*, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under [section 4(2)] *section 4(a)(2)* that are in effect on September 1, 1996; [or]

(G) section 4(a)(7)[.]*; or*

(H) section 4(a)(8).

(5) EXEMPTION IN CONNECTION WITH DIGITAL COMMODITIES.—A digital commodity shall be treated as a covered security.

(c) PRESERVATION OF AUTHORITY.—

(1) FRAUD AUTHORITY.—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker or dealer; and

(B) in connection to a transaction described under section 4(6), with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) NOTICE FILINGS PERMITTED.—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) PRESERVATION OF FEES.—

(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Markets

Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) OFFERING DOCUMENT.—The term "offering document"—

(A) has the meaning given the term "prospectus" in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3) STATE.—The term "State" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) SENIOR SECURITY.—The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock

of a class having priority over any other class as to distribution of assets or payment of dividends.

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SEC. 28. GENERAL EXEMPTIVE AUTHORITY.

The Commission, [by rule or regulation] *by rule, regulation, or order*, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation issued under this title, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

SCHEDULE A(1) THE NAME UNDER WHICH THE ISSUER IS DOING OR INTENDS TO DO BUSINESS;

(2) the name of the State or other sovereign power under which the issuer is organized;

(3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;

(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any,

to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration state-

ment, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the fiing of the registration statement;

(28) a copy of any agreement or agreements (or, if identical agreements are used, the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this title, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincor-

porated association, joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

SCHEDULE B

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of,

or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commission specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

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SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

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DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. *An alternative trading system primarily facilitating the trading of digital commodities, permitted payment stablecoins, or both, is not a "facility" of an exchange.*

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 6(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursu-

ant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I),

(II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Gramm-Leach-Bliley Act; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(5) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after the date of the enactment of the Gramm-Leach-Bliley Act, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in

connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term "fiduciary capacity" means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term "broker" does not include a bank that—

(i) was, on the day before the date of enactment of the Gramm-Leach-Bliley Act, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term "dealer" does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section

15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term "bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners' Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term "director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certifi-

cates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap,bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited. *The term "investment contract" does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933). The term does not include a digital commodity or permitted payment stablecoin.*

(11) The term "equity security" means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition

of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940;

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities".

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 17A of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections 15 and 17A of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, (iii) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning

of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(14) The terms "sale" and "sell" each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(15) The term "Commission" means the Securities and Exchange Commission established by section 4 of this title.

(16) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, Philippine Islands, the Virgin Islands, or any other possession of the United States.

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company," "affiliated person," "insurance company," "separate account," and "company" have the same meanings as in the Investment Company Act of 1940.

(20) The terms "investment adviser" and "underwriter" have the same meanings as in the Investment Advisers Act of 1940.

(21) The term "persons associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 3 of the Communications Act of 1934, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 3 of that Act, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or

registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise; *Provided, however,* That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 15B(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer

which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph, a subsidiary or a department or division of such subsidiary, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and when the appropriate regulatory agency for such clearing agency is not the Commission;

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insur-

ance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the

Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 2 of the Bank Holding Company Act of 1956. As used in this paragraph, the term "savings and loan holding company" has the same meaning as in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation

of the provisions of this title and rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this title which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this title.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration

under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time,

and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(40) The term "financial responsibility rules" means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term "mortgage related security" means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgage approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 2 of the National Housing Act; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also

include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.

(43) The term "government securities broker" means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(44) The term "government securities dealer" means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 15 or 15B of this title, except that in paragraph (3) of this subsection and sections 6 and 15A the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of this title.

(49) The terms "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, super-

vision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940;

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders, the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either—

(i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or

(ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

(B) For purposes of this paragraph—

(i) an "interest in a promissory note or a lease of personal property" includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;

(ii) the term "small business concern" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act;

(iii) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

(iv) the term "insured credit union" has the same meaning as in section 101 of the Federal Credit Union Act.

(54) QUALIFIED INVESTOR.—

(A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this title, the term "qualified investor" means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary,

as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of section 3(a)(5)(C)(iii) of this title and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term "qualified investor" has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting "$10,000,000" for "$25,000,000".

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of this title as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of the enactment of the Futures Trading Act of 1982). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

(B) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

(i)(I) it has at least nine component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of the enactment of the Commodity Futures Modernization Act of 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

(v) no more than 18 months have passed since the date of the enactment of the Commodity Futures Modernization Act of 2000 and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was au-

thorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term "margin", when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms "margin level" and "level of margin", when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms "higher margin level" and "higher level of margin", when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established and in effect pursuant to section 7(c)(2)(B).

(58) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting proc-

esses of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 15E.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with" a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

(64) QUALIFIED INSTITUTIONAL BUYER.—The term "qualified institutional buyer" has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.

(79) ASSET-BACKED SECURITY.—The term "asset-backed security"—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

(i) a collateralized mortgage obligation;

(ii) a collateralized debt obligation;

(iii) a collateralized bond obligation;

(iv) a collateralized debt obligation of asset-backed securities;

(v) a collateralized debt obligation of collateralized debt obligations; and

(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(65) ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(66) MAJOR SWAP PARTICIPANT.—The term "major swap participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "major security-based swap participant" means any person—

(i) who is not a security-based swap dealer; and

(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(III) that is a financial entity that—

(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "security-based swap" means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term "security-based swap" shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term "security-based swap" does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is

based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term "index" means an index or group of securities, including any interest therein or based on the value thereof.

(69) SWAP.—The term "swap" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 15F(l)(2), the term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term "security-based swap dealer" means any person who—

(i) holds themself out as a dealer in security-based swaps;

(ii) makes a market in security-based swaps;

(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term "security-based swap dealer" does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term "prudential regulator" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term "security-based swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term "swap dealer" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term "security-based swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of security-based swaps between persons; and

(B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term "security-based swap agreement" means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term "security-based swap agreement" does not include any security-based swap.

(80) EMERGING GROWTH COMPANY.—The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

[(80)] *(81)* FUNDING PORTAL.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(82) BANK SECRECY ACT.—The term "Bank Secrecy Act" means—

(A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

(B) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and

(C) subchapter II of chapter 53 of title 31, United States Code.

(83) ADDITIONAL DIGITAL COMMODITY-RELATED TERMS.—

(A) SECURITIES ACT OF 1933.—The terms "blockchain system", "decentralized governance system", "digital asset", "digital commodity affiliated person", "digital commodity issuer", "digital commodity related person", "end user distribution", "mature blockchain system", and "permitted payment stablecoin" have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(B) COMMODITY EXCHANGE ACT.—The terms "digital commodity", "digital commodity broker", "digital commodity dealer", "digital commodity exchange", "decentralized finance messaging system", and "decentralized finance trading protocol" have the meaning given those terms, respectively, under section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(b) The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title.

(c) No provision of this title shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

(e) CHARITABLE ORGANIZATIONS.—

(1) EXEMPTION.—Notwithstanding any other provision of this title, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, shall not be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", or "government securities dealer" for purposes of this title solely because such organization or person buys, holds, sells, or trades in securities for its

own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

(A) such a charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

(2) LIMITATION ON COMPENSATION.—The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after the date of enactment of this subsection, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

(f) CONSIDERATION OF PROMOTION OF EFFICIENCY, *INNOVATION,* COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, *innovation,* competition, and capital formation.

(g) CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this title—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any

activities conducted in reliance on the exemption provided by this subsection.

(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 15A; and

(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term "broker or dealer" includes a funding portal and the term "registered broker or dealer" includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.

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SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Nothwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reim-

bursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

(i) report directly to the Chairman; and

(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this title; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of

the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) REPORT ON ACTIVITIES.—

(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner,

any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semiannual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the "Securities and Exchange Commission Reserve Fund" (referred to in this subsection as the "Reserve Fund").

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed $50,000,000; and

(ii) the balance in the Fund may not exceed $100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of $100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the "Office").

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be

equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;

(D) analyze the potential impact on small businesses and small business investors of—

(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORT ON ACTIVITIES.—

(A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

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

(i) appropriate statistical information and full and substantive analysis;

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(II) the length of time that each item has remained on such inventory; and

(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

(k) OPEN DATA PUBLICATION.—All public data assets published by the Commission under the securities laws and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376) shall be—

(1) made available as an open Government data asset (as defined in section 3502 of title 44, United States Code);

(2) freely available for download;

(3) rendered in a human-readable format; and

(4) accessible via application programming interface where appropriate.

(l) STRATEGIC HUB FOR INNOVATION AND FINANCIAL TECHNOLOGY.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this subsection, the Securities and Exchange Commission shall establish a committee to be known as the Strategic Hub for Innovation and Financial Technology (referred to in this subsection as the "FinHub") to support engagement on emerging technologies in the financial sector.

(2) MEMBERS.—The composition of FinHub shall be determined by the Commission, drawing from relevant divisions as appropriate, including the Division of Trading and Markets, Division of Corporate Finance, and Division of Investment Management.

(3) RESPONSIBILITIES.—FinHub shall—

(A) serve as a resource for the Commission on emerging financial technology advancements;

(B) engage with market participants working on emerging financial technologies; and

(C) facilitate communication between the Commission and businesses working in emerging financial technology fields with information on the Commission, its rules, and regulations.

(4) REPORT TO THE COMMISSION.—

(A) IN GENERAL.—Not later than October 31 of each year after 2025, FinHub shall provide an annual summary of its engagement activities to the Commission, which shall be included in the Commission's annual report to Congress.

(B) CONFIDENTIALITY.—Each report submitted under this paragraph shall not contain confidential information.

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TRANSACTIONS ON UNREGISTERED EXCHANGES

SEC. 5. [It] *(a) IN GENERAL.—It* shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as a national securities exchange under section 6 of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

(b) DIGITAL COMMODITY PROTECTIONS.—

(1) IN GENERAL.—The Commission may not preclude a trading platform from operating pursuant to a covered exemption on the basis that the assets traded or to be traded on such platform include—

(A) digital commodities or permitted payment stablecoins; and

(B) securities.

(2) COVERED EXEMPTION.—In this subsection, the term "covered exemption" means an exemption—

(A) described in subsection (a)(2); or

(B) with respect to any other rule of the Commission relating to the definition of "exchange".

NATIONAL SECURITIES EXCHANGES

SEC. 6. (a) An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the

provisions of this title, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(9)(A) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 14(h)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(i) the right of dissenting limited partners to one of the following:

(I) an appraisal and compensation;

(II) retention of a security under substantially the same terms and conditions as the original issue;

(III) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(IV) the use of a committee of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(V) other comparable rights that are prescribed by rule by the exchange and that are designed to protect dissenting limited partners;

(ii) the right not to have their voting power unfairly reduced or abridged;

(iii) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(iv) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

(B) As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commis-

sion, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

(c)(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such

persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided*, *however*, That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further*, That the Commission, in accordance with the provisions of section 19(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(d)(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this title, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or

prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e)(1) On and after the date of enactment of the Securities Acts Amendments of 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided*, *however*, That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further*, That the Commission, in accordance with the provisions of section 19(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in rela-

tion to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this title.

(2) Notwithstanding the provisions of section 19(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this title.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in subsection 25(a), a reviewing Court may set aside an order of the Commission under section 19(b) approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(g) NOTICE REGISTRATION OF SECURITY FUTURES PRODUCT EXCHANGES.—

(1) REGISTRATION REQUIRED.—An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act.

(2) REGISTRATION BY NOTICE FILING.—

(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and

documents concerning such exchange, comparable to the information and documents required for national securities exchanges under section 6(a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

(C) TERMINATION.—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) PUBLIC AVAILABILITY.—The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

(4) EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.—

(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this title and the rules thereunder:

(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

(ii) Section 8.

(iii) Section 11.

(iv) Subsections (d), (f), and (k) of section 17.

(v) Subsections (a), (f), and (h) of section 19.

(B) RULE CHANGE EXEMPTIONS.—An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 19(b)(7);

(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abro-

gated by the Commission pursuant to section 19(b)(7)(C).

(5) TRADING IN SECURITY FUTURES PRODUCTS.—

(A) IN GENERAL.—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

(i) 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(ii) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(B) PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

(i) the transaction is entered into—

(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section [1a(18)] *1a(19)*(B)(ii) of the Commodity Exchange Act; and

(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section [1a(18)] *1a(19)*) at the time at which the persons enter into the agreement, contract, or transaction; and

(ii) the transaction is entered into on or after the later of—

(I) 8 months after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(h) TRADING IN SECURITY FUTURES PRODUCTS.—

(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

(2) LISTING STANDARDS REQUIRED.—Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 19(b) and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 15A(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B), except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(4) AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.—

(A) AUTHORITY TO MODIFY.—The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(B) AUTHORITY TO GRANT EXEMPTIONS.—The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a) or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

(6) DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of the enactment of this subsection, the Commission and the Com-

modity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act.

(7) DEFERRAL OF LINKED AND COORDINATED CLEARING.—

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 15A(a) may trade a security futures product that does not—

(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act.

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term "compliance date" means the later of—

(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 15A(a), and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

(ii) 2 years after the date on which trading in any security futures product commences under this title.

(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(c)(3)(B) involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.

(j) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.

(k)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

(l) SECURITY-BASED SWAPS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

SEC. 6A. TREATMENT OF TRANSACTIONS IN PERMITTED PAYMENT STABLECOINS.

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

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

(1) by a broker or dealer;

(2) through a national securities exchange; or

(3) through an alternative trading system.

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

(1) by a broker or dealer;

(2) through a national securities exchange; or

(3) through an alternative trading system.

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REGULATION OF THE USE OF MANIPULATIVE AND DECEPTIVE DEVICES

SEC. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Paragraph (1) of this subsection shall not apply to security futures products.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

(d) To use or employ, in connection with the purchase or sale of any permitted payment stablecoin or digital commodity, including, as applicable, by or through a broker or dealer or an alternative trading system, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities. *Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply with respect to permitted payment stablecoin and digital commodity transactions engaged in by a broker or dealer or through an alternative trading system or, as applicable, a national securities exchange to the same extent as they apply to securities transactions. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to permitted*

payment stablecoins and digital commodities with respect to those circumstances in which the permitted payment stablecoins and digital commodities are brokered, traded, or custodied by a broker or dealer or through an alternative trading system or, as applicable, a national securities exchange to the same extent as they apply to securities.

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REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structures, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding $20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every ma-

terial patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 13 of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange be-

comes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f)(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2), subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the

ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph—

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

(2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 25 of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5, United States Code. Upon such suspension—

(i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title; and

(ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).

(C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.

(D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—

(i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(ii) shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of

this title. The powers and duties of the Commission under this title shall be applicable to the rules of an exchange in respect to any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 13, 14, or 16 of this title.

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

(i) 2,000 persons, or

(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

(B) in the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is super-

vised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of "held of record" shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.

(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made [under section 4(6)] *under section 4(a)(6) or 4(a)(8)* of the Securities Act of 1933 from the provisions of this subsection.

(h) The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the

above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

(i) In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act, the powers, functions, and duties vested in the Commission to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(2) EMERGENCY ORDERS.—

(A) IN GENERAL.—The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—

(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

(B) EFFECTIVE PERIOD.—An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

(C) EXTENSION.—An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

(D) SECURITY FUTURES.—If the actions described in subparagraph (A) involve a security futures product, the Com-

mission shall consult with and consider the views of the Commodity Futures Trading Commission.

(E) EXEMPTION.—In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

(i) section 19(c); or

(ii) section 553 of title 5, United States Code.

(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

(4) COMPLIANCE WITH ORDERS.—No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

(5) LIMITATIONS ON REVIEW OF ORDERS.—An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

(7) DEFINITION.—For purposes of this subsection, the term "emergency" means—

(A) a major market disturbance characterized by or constituting—

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

(l) It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

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REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a)(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b)(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on the date of enactment of the Securities Acts Amendments of 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this title.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this title and the rules and regulations thereunder: *Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker

or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer municipal advisor,, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code, or a violation of a substantially equivalent foreign statute.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor,, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent,

nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker, dealer, security-based swap dealer, or a major security-based swap participant;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign fi-

nancial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for

a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of this subsection;

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;

(ii) for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or

(iii) for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

(C) For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from such term.

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A) shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(11) BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—

(A) NOTICE REGISTRATION.—

(i) CONTENTS OF NOTICE.—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such

form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

(ii) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) SUSPENSION.—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

(iv) TERMINATION.—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security futures products:

(i) Section 8.

(ii) Section 11.

(iii) Subsections (c)(3) and (c)(5) of this section.

(iv) Section 15B.

(v) Section 15C.

(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(12) EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.—

(A) REGISTRATION EXEMPTION.—A natural person shall be exempt from the registration requirements of this section if such person—

(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);

(ii) effects transactions only in securities on the exchange of which such person is a member; and

(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

(B) OTHER EXEMPTIONS.—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

(i) Section 8.

(ii) Section 11.

(iii) Subsections (c)(3), (c)(5), and (e) of this section.

(iv) Section 15B.

(v) Section 15C.

(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(13) REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an M&A broker shall be exempt from registration under this section.

(B) EXCLUDED ACTIVITIES.—An M&A broker is not exempt from registration under this paragraph if such broker does any of the following:

(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(ii) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the Commission under section 12 or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection (d).

(iii) Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company.

(iv) Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company.

(v) Assists any party to obtain financing from an unaffiliated third party without—

(I) complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. 220 et seq.); and

(II) disclosing any compensation in writing to the party.

(vi) Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.

(vii) Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker to acquire the eligible privately held company.

(viii) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers.

(ix) Binds a party to a transfer of ownership of an eligible privately held company.

(C) DISQUALIFICATION.—An M&A broker is not exempt from registration under this paragraph if such broker (and if and as applicable, including any officer, director, member, manager, partner, or employee of such broker)—

(i) has been barred from association with a broker or dealer by the Commission, any State, or any self-regulatory organization; or

(ii) is suspended from association with a broker or dealer.

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit any other authority of the Commission to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

(E) DEFINITIONS.—In this paragraph:

(i) BUSINESS COMBINATION RELATED SHELL COMPANY.—The term "business combination related shell company" means a shell company that is formed by an entity that is not a shell company—

(I) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(II) solely for the purpose of completing a business combination transaction (as defined under section 230.165(f) of title 17, Code of Federal Regulations) among one or more entities other than the company itself, none of which is a shell company.

(ii) CONTROL.—The term "control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control if, upon completion of a transaction, the buyer or group of buyers—

(I) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(II) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

(iii) ELIGIBLE PRIVATELY HELD COMPANY.—The term "eligible privately held company" means a privately held company that meets both of the following conditions:

(I) The company does not have any class of securities registered, or required to be registered, with the Commission under section 12 or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d).

(II) In the fiscal year ending immediately before the fiscal year in which the services of the M&A broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(aa) The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

(bb) The gross revenues of the company are less than $250,000,000.

For purposes of this subclause, the Commission may by rule modify the dollar figures if the Commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.

(iv) M&A BROKER.—The term "M&A broker" means a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that—

(I) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert—

(aa) will control the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(bb) directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company, including without limitation, for example, by—

(AA) electing executive officers;

(BB) approving the annual budget;

(CC) serving as an executive or other executive manager; or

(DD) carrying out such other activities as the Commission may, by rule, determine to be in the public interest; and

(II) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than 120 days before the date of the offer,

and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(v) SHELL COMPANY.—The term "shell company" means a company that at the time of a transaction with an eligible privately held company—

(I) has no or nominal operations; and

(II) has—

(aa) no or nominal assets;

(bb) assets consisting solely of cash and cash equivalents; or

(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—On the date that is 5 years after the date of the enactment of this paragraph, and every 5 years thereafter, each dollar amount in subparagraph (E)(iii)(II) shall be adjusted by—

(I) dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

(II) multiplying such dollar amount by the quotient obtained under subclause (I).

(ii) ROUNDING.—Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of $100,000.

(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), or any security-based swap agreement by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or to attempt to induce the purchase or sale of, any government security or any security-based swap agreement involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(2)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such broker, dealer, or municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(3)(A) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and

dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(B) Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of: (i) the provisions of section 8, section 15(c)(3), and section 17 of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act and rules and regulations thereunder involving security futures products.

(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or other-

wise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.

(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

(1) IN GENERAL.—Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this title in respect of a security reg-

istered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(2) ASSET-BACKED SECURITIES.—

(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.

(f) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under section 15 of this title and any person associated with any such member to comply with any provision of this title (other than section 15(a)) or the rules or regulations thereunder which by its terms regulates or

prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

(g) Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

(h) REQUIREMENTS FOR TRANSACTIONS IN PENNY STOCKS.—

(1) IN GENERAL.—No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

(2) RISK DISCLOSURE WITH RESPECT TO PENNY STOCKS.—Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer a risk disclosure document that—

(A) contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;

(B) contains a description of the broker's or dealer's duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;

(C) contains a brief, clear, narrative description of a dealer market, including "bid" and "ask" prices for penny stocks and the significance of the spread between the bid and ask prices;

(D) contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 15A(i) of this title;

(E) defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and

(F) contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

(3) COMMISSION RULES RELATING TO DISCLOSURE.—The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules—

(A) shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors—

(i) the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

(ii) the number of shares to which such bid and ask prices apply, or other comparable information relating to the depth and liquidity of the market for such stock; and

(iii) the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;

(B) shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and

(C) may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

(4) EXEMPTIONS.—The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

(5) REGULATIONS.—It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets—

(A) as necessary or appropriate to carry out this subsection; or

(B) as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

(i) LIMITATIONS ON STATE LAW.—

(1) CAPITAL, MARGIN, BOOKS AND RECORDS, BONDING, AND REPORTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this title. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this title.

(2) FUNDING PORTALS.—

(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

(C) DEFINITION.—For purposes of this paragraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) DE MINIMIS TRANSACTIONS BY ASSOCIATED PERSONS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) for a customer in such State if—

(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

(B) such associated person is registered with a registered securities association and at least one State; and

(C) the broker or dealer with which such person is associated is registered with such State.

(4) DESCRIBED TRANSACTIONS.—

(A) IN GENERAL.—A transaction is described in this paragraph if—

(i) such transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) by an associated person of the broker or dealer—

(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or

(ii) the transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) during the period beginning on the date on which such associated person files an application

for registration with the State in which the transaction is effected and ending on the earlier of—

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

(B) RULES OF CONSTRUCTION.—For purposes of subparagraph (A)(i)(II)—

(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned; and

(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

(j) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

(1) CONSULTATION.—Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

(2) LIMITATION.—The Commission shall not—

(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A),

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

(3) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—

(A) the new hybrid product is a security; and

(B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

(4) CONSIDERATIONS.—In making a determination under paragraph (3), the Commission shall consider—

(A) the nature of the new hybrid product; and

(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

(5) OBJECTION TO COMMISSION REGULATION.—

(A) FILING OF PETITION FOR REVIEW.—The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

(B) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(C) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

(D) STANDARD OF REVIEW.—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—

(i) the subject product is a new hybrid product, as defined in this subsection;

(ii) the subject product is a security; and

(iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

(E) JUDICIAL STAY.—The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

(F) OTHER AUTHORITY TO CHALLENGE.—Any aggrieved party may seek judicial review of the Commission's rulemaking under this subsection pursuant to section 25 of this title.

(6) DEFINITIONS.—For purposes of this subsection:

(A) NEW HYBRID PRODUCT.—The term "new hybrid product" means a product that—

(i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act;

(ii) is not an identified banking product as such term is defined in section 206 of such Act; and

(iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

(B) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(j) The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 3A(b) of this title.

(k) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(l) TERMINATION OF A UNITED STATES BROKER OR DEALER.—For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(k) STANDARD OF CONDUCT.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other lim-

ited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

(l) OTHER MATTERS.—The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(m) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.

(n) DISCLOSURES TO RETAIL INVESTORS.—

(1) IN GENERAL.—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

(2) CONSIDERATIONS.—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

(3) FORM AND CONTENTS OF DOCUMENTS AND INFORMATION.—Any documents or information designated under a rule promulgated under paragraph (1) shall—

(A) be in a summary format; and

(B) contain clear and concise information about—

(i) investment objectives, strategies, costs, and risks; and

(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.

(o) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require cus-

tomers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

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

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SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

(a) REGISTRATION.—

(1) SECURITY-BASED SWAP DEALERS.—It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

(b) REQUIREMENTS.—

(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

(2) CONTENTS.—

(A) IN GENERAL.—The application shall be made in such form and manner as 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 security-based swap dealer or major security-based swap participant 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) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and major security-based swap participants.

(5) TRANSITION.—Not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) DUAL REGISTRATION.—

(1) SECURITY-BASED SWAP DEALER.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

(d) RULEMAKING.—

(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) IN GENERAL.—

(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) RULES.—

(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

(C) CAPITAL.—In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

(3) STANDARDS FOR CAPITAL AND MARGIN.—

(A) IN GENERAL.—To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.

(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this title or the Commodity Exchange Act.

(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

(i) preserving the financial integrity of markets trading security-based swaps; and

(ii) preserving the stability of the United States financial system.

(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

(I) security-based swap dealers; and

(II) major security-based swap participants.

(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a security-based swap in which a counterparty qualifies for an exception under section 3C(g)(1) or satisfies the criteria in section 3C(g)(4).

(f) REPORTING AND RECORDKEEPING.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered se-

curity-based swap dealer or major security-based swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, 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

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

(g) DAILY TRADING RECORDS.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

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

(3) COUNTERPARTY RECORDS.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

(4) AUDIT TRAIL.—Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) RULES.—The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

(h) BUSINESS CONDUCT STANDARDS.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

(A) ADVISING SPECIAL ENTITIES.—A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

(B) ENTERING OF SECURITY-BASED SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A security-based swap dealer that enters into or offers to enter into security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term "special entity" means—

(i) a Federal agency;

(ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;

(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant, security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the security-based swap;

(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS.—

(A) IN GENERAL.—It shall be unlawful for a security-based swap dealer or major security-based swap participant—

(i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;

(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or

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

(B) DUTY.—Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

(C) REASONABLE EFFORTS.—Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

(i) the financial status of the special entity;

(ii) the tax status of the special entity;

(iii) the investment or financing objectives of the special entity; and

(iv) any other information that the Commission may prescribe by rule or regulation.

(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

(A) IN GENERAL.—Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

(i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section ⟦1a(18)⟧ *1a(19)* of the Commodity Exchange Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the security-based swap dealer or major security-based swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

(B) COMMISSION AUTHORITY.—The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

(7) APPLICABILITY.—This subsection shall not apply with respect to a transaction that is—

(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction."

(i) DOCUMENTATION STANDARDS.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

(2) RULES.—The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

(j) DUTIES.—Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

(2) RISK MANAGEMENT PROCEDURES.—The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems ade-

quate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

(3) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

(A) terms and conditions of its security-based swaps;

(B) security-based swap trading operations, mechanisms, and practices;

(C) financial integrity protections relating to security-based swaps; and

(D) other information relevant to its trading in security-based swaps.

(4) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major security-based swap participant 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 and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

(5) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, 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 title; and

(B) address such other issues as the Commission determines to be appropriate.

(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant 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.

(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.

(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each security-based swap dealer and major security-based swap participant 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 security-based swap dealer or major security-based swap participant;

(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant 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 title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) ANNUAL REPORTS.—

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

(i) the compliance of the security-based swap dealer or major swap participant with respect to this title (including regulations); and

(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and

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

(l) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

(1) PRIMARY ENFORCEMENT AUTHORITY.—

(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

(B) PRUDENTIAL REGULATORS.—The prudential regulators shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this title (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

(C) REFERRAL.—

(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(D) BACKSTOP ENFORCEMENT AUTHORITY.—

(i) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (C)(i), the prudential regulator may initiate an enforcement proceeding.

(ii) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under sub-

section (C)(ii), the Commission may initiate an enforcement proceeding.

(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(4) UNLAWFUL CONDUCT.—It shall be unlawful—

(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.

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SEC. 15H. 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 a decentralized finance trading protocol:

(1) Compiling network transactions or relaying, searching, sequencing, validating, or acting in a similar capacity.

(2) Providing computational work, operating a node or oracle service, or procuring, offering, or utilizing network bandwidth, or providing other similar incidental services.

(3) Providing a user-interface that enables a user to read and access data about a blockchain system.

(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or a decentralized finance trading protocol.

(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a decentralized finance messaging system, or operating or participating in a liquidity pool, for the purpose of executing a spot contract for the purchase or sale of a digital commodity in relation to a decentralized finance trading protocol.

(6) 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 assets or related private keys.

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

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SEC. 42. MATURE BLOCKCHAIN SYSTEMS.

(a) CERTIFICATION OF BLOCKCHAIN SYSTEMS.—

(1) CERTIFICATION.—For purposes of sections 4(a)(8), 4B, and 4C of the Securities Act of 1933, any digital commodity issuer, digital commodity related person, digital commodity affiliated person, or decentralized governance system of the blockchain system may certify to the Securities and Exchange Commission that the blockchain system to which a digital commodity relates is a mature blockchain system.

(2) FILING REQUIREMENTS.—A certification described under paragraph (1) shall be filed with the Commission, and include such information that is reasonably necessary to establish that the blockchain system is not controlled by any person or group of persons under common control, which may include information regarding—

(A) the operation of the blockchain system;

(B) the functionality of the related digital commodity;

(C) how the market value of the digital commodity is substantially derived from the programmatic functioning of such blockchain system;

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

(E) the current roles, if any, of the digital commodity issuer, digital commodity affiliated persons, and digital commodity related persons where such roles are material to the development or operation of such blockchain system or the decentralized governance system of such blockchain system.

(3) REBUTTABLE PRESUMPTION.—The Commission may rebut a certification described under paragraph (1) with respect to a blockchain system if the Commission, within 60 days of receiving such certification, determines that the blockchain system is not a mature blockchain system.

(4) CERTIFICATION REVIEW.—

(A) IN GENERAL.—Any blockchain system that relates to a digital commodity for which a certification has been made under paragraph (1) shall be considered a mature blockchain system 60 days after the date on which the Commission receives a certification under paragraph (1), unless the Commission notifies the person who made the certification within such time that the Commission is staying the certification due to—

(i) an inadequate explanation by the person making the certification; or

(ii) any novel or complex issues which require additional time to consider.

(B) PUBLIC NOTICE.—The Commission shall make the following available to the public and provide a copy to the Commodity Futures Trading Commission:

(i) Each certification received under paragraph (1).

(ii) Each stay of the Commission under this subsection, and the reasons therefor.

(iii) Any response from a person making a certification under paragraph (1) to a stay of the certification by the Commission.

(C) CONSOLIDATION.—The Commission may consolidate and treat as one submission multiple certifications made under paragraph (1) for the same blockchain system which relates to a digital commodity which are received during the review period provided under this paragraph.

(5) STAY OF CERTIFICATION.—

(A) IN GENERAL.—A notification by the Commission pursuant to paragraph (4)(A) shall stay the certification once for up to an additional 120 days from the date of the notification.

(B) PUBLIC COMMENT PERIOD.—Before the end of the 60-day period described under paragraph (4)(A), the Commission may begin a public comment period of at least 30 days in conjunction with a stay under this subsection.

(6) DISPOSITION OF CERTIFICATION.—A certification made under paragraph (1) shall—

(A) become effective—

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

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

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

(7) RECERTIFICATION.—With respect to a blockchain system for which a certification has been rebutted under this subsection, no person may make a certification under paragraph (1) with respect to such blockchain system during the 90-day period beginning on the date of such rebuttal.

(8) APPEAL OF REBUTTAL.—

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

(B) REVIEW.—In an appeal under subparagraph (A), the court shall have de novo review of the determination to rebut the certification.

(b) MATURITY CRITERIA.—

(1) SENSE OF CONGRESS.—It is the sense of the Congress that protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation necessitates establishing clear criteria for blockchain systems to be deemed mature, as well as enabling the Commission to develop, without prejudice to any such criteria codified in statute, alternative criteria by which blockchain systems may be considered not to be controlled by any person or group of persons under common

control in order to accommodate changes in markets and technology.

(2) IN GENERAL.—The Commission may issue rules identifying conditions by which a blockchain system, together with its related digital commodity, shall be considered a mature blockchain system, consistent with the protection of investors, maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation.

(3) RULES OF CONSTRUCTION.—

(A) Nothing in this subsection may be construed to permit the Commission to impose additional criteria to the criteria in subsection (c) for certifying that a blockchain system is a mature blockchain system pursuant to subsection (c).

(B) Nothing in this subsection or subsection (c) may be construed to limit the Commission's ability to identify alternative conditions and criteria by which a blockchain system may be considered a mature blockchain system.

(c) DEEMED MATURE.—

(1) IN GENERAL.—Notwithstanding subsection (b), for the purposes of subsection (a), a digital commodity issuer, digital commodity related person, digital commodity affiliated person, or decentralized governance system of the blockchain system may establish that a blockchain system, together with its related digital commodity, is not controlled by any person or group of persons under common control, if the blockchain system, together with its related digital asset, meets the requirements described in paragraph (2) or (3).

(2) CRITERIA FOR ANY BLOCKCHAIN SYSTEM.—The requirements described in this paragraph are the following:

(A) SYSTEM VALUE.—

(i) MARKET VALUE.—The digital commodity has a value that is substantially derived from the use and functioning of the blockchain system.

(ii) DEVELOPMENT OF VALUE MECHANISM SUBSTANTIALLY COMPLETED.—Where the digital commodity issuer has made public a development plan describing how the digital commodity's value is reasonably expected to be derived from the programmatic functioning of the blockchain system, the development of such mechanisms has been substantially completed.

(B) FUNCTIONAL SYSTEM.—The blockchain system allows network participants to engage in the activities the blockchain system is intended to provide, including—

(i) using, transmitting, or storing value, or otherwise executing transactions, on the blockchain system;

(ii) deploying, executing, or accessing software or services, or otherwise offering or participating in services, deployed on or integrated with the blockchain system;

(iii) participating in the consensus mechanism, transaction validation process, or decentralized governance system of the blockchain system; or

(iv) operating any client, node, validator, or other form of computational infrastructure with respect to the blockchain system.

(C) OPEN AND INTEROPERABLE SYSTEM.—The blockchain system—

(i) is composed of source code that is open source; and

(ii) does not restrict or prohibit based on the exercise of unilateral authority any person, other than a digital commodity issuer, digital commodity related person, or digital commodity affiliated person from engaging in the activities the blockchain system is intended to provide, including the activities described in subparagraph (B).

(D) PROGRAMMATIC SYSTEM.—The blockchain system operates, executes, and enforces its operations and transactions based solely on pre-established, transparent rules encoded directly within the source code of the blockchain system.

(E) SYSTEM GOVERNANCE.—No person or group of persons under common control—

(i) has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity; or

(ii) has the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of such blockchain system by means of a related digital commodity, nodes or validators, a decentralized governance system, or otherwise, in a blockchain system which can be altered by a voting system.

(F) IMPARTIAL SYSTEM.—No person or group of persons under common control possesses a unique permission or privilege to alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity, unless such alteration—

(i) addresses errors, regular maintenance, or cybersecurity risks of the blockchain system that affect the programmatic functioning of the blockchain system; and

(ii) is adopted through the consensus or agreement of a decentralized governance system.

(G) DISTRIBUTED OWNERSHIP.—No digital commodity issuer, digital commodity related person, or digital commodity affiliated person beneficially owns, in the aggregate, 20 percent or more of the total amount of units of the digital commodity.

(3) OPTIONAL CRITERIA FOR PREEXISTING BLOCKCHAIN SYSTEMS.—The requirements described in this paragraph are that the blockchain system—

(A) was created prior to the date of enactment of this section;

(B) met the requirements of subparagraphs (A) through (F) of paragraph (2) prior to January 1, 2020; and

(C) at least 50 percent of the units of the digital commodity related to the blockchain system are held by persons other than the digital commodity issuer, a digital commodity related person, or a digital commodity affiliated person.

(d) DECENTRALIZED GOVERNANCE SYSTEM.—

(1) For the purposes of this section, a decentralized governance system is not a "person" or a "group of persons under common control".

(2) A blockchain system, together with its digital commodity, shall not be precluded from being considered a mature blockchain system solely based on a functional, administrative, clerical, or ministerial action of a decentralized governance system, including any such action taken by a person acting on behalf of and at the direction of the decentralized governance system, as determined by the Commission and consistent with the protection of investors, maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation.

(e) RULEMAKING.—Not more than 270 days after the date of enactment of this section, the Commission shall issue rules to carry out this section.

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COMMODITY EXCHANGE ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Exchange Act".

SEC. 1a. DEFINITIONS.

As used in this Act:

(1) ALTERNATIVE TRADING SYSTEM.—The term "alternative trading system" means an organization, association, or group of persons that—

(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof);

(B) performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of the Securities Exchange Act of 1934);

(C) does not—

(i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on the alternative trading system; or

(ii) discipline subscribers other than by exclusion from trading; and

(D) is exempt from the definition of the term "exchange" under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency"—

(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) means the Board in the case of a noninsured State bank; and

(C) is the Farm Credit Administration for farm credit system institutions.

(3) ASSOCIATED PERSON OF A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term "associated person of a security-based swap dealer or major security-based swap participant" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(4) ASSOCIATED PERSON OF A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "associated person of a swap dealer or major swap participant" means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

(i) the solicitation or acceptance of swaps; or

(ii) the supervision of any person or persons so engaged.

(B) EXCLUSION.—Other than for purposes of section 4s(b)(6), the term "associated person of a swap dealer or major swap participant" does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

(5) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(6) BOARD OF TRADE.—The term "board of trade" means any organized exchange or other trading facility.

(7) CLEARED SWAP.—The term "cleared swap" means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.

(8) COMMISSION.—The term "Commission" means the Commodity Futures Trading Commission established under section 2(a)(2).

(9) COMMODITY.—The term "commodity" means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by the first section of Public Law 85–839 (7 U.S.C. 13–1)) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.

(10) COMMODITY POOL.—

(A) IN GENERAL.—The term "commodity pool" means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

(i) commodity for future delivery, security futures product, or swap;

(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(iii) digital commodity;

[(iii)**]** *(iv)* commodity option authorized under section 4c; or

[(iv)**]** *(v)* leverage transaction authorized under section 19.

(B) EXCLUSION.—For purposes of this paragraph, the term "trading in commodity interests" shall not include transacting in digital commodities for the purpose of—

(i) acting as a digital commodity custodian;

(ii) establishing, maintaining, or managing inventory or payment instruments for commercial purposes; or

(iii) maintaining or supporting the operation of, or validating transactions on, a blockchain system.

[(B)**]** *(C)* FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term "commodity pool" any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(11) COMMODITY POOL OPERATOR.—

(A) IN GENERAL.—The term "commodity pool operator" means any person—

(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—

(I) commodity for future delivery, security futures product, or swap;

(II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(III) digital commodity;

[(III)**]** *(IV)* commodity option authorized under section 4c; or

[(IV)**]** *(V)* leverage transaction authorized under section 19; or

(ii) who is registered with the Commission as a commodity pool operator.

(B) EXCLUSION.—For purposes of this paragraph, the term "trading in commodity interests" shall not include transacting in digital commodities for the purpose of—

(i) acting as a digital commodity custodian;

(ii) establishing, maintaining, or managing inventory or payment instruments for commercial purposes; or

(iii) maintaining or supporting the operation of, or validating transactions on, a blockchain system.

[(B)**]** *(C)* FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term "commodity pool operator" any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(12) COMMODITY TRADING ADVISOR.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "commodity trading advisor" means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery, security futures product, or swap;

(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)*;*

(III) a digital commodity;

[(III)**]** *(IV)* any commodity option authorized under section 4c; or

[(IV)**]** *(V)* any leverage transaction authorized under section 19;

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i);

(iii) is registered with the Commission as a commodity trading advisor; or

(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(B) EXCLUSIONS.—Subject to subparagraph (C), the term "commodity trading advisor" does not include—

(i) any bank or trust company or any person acting as an employee thereof;

(ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher;

(iii) any floor broker or futures commission merchant;

(iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;

(v) the fiduciary of any defined benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

(vi) any contract market or derivatives transaction execution facility; and

(vii) such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.

(C) INCIDENTAL SERVICES.—Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

(D) ADVISORS.—The Commission, by rule or regulation, may include within the term "commodity trading advisor", any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.

(13) CONTRACT OF SALE.—The term "contract of sale" includes sales, agreements of sale, and agreements to sell.

(14) COOPERATIVE ASSOCIATION OF PRODUCERS.—The term "cooperative association of producers" means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with the Act of February 18, 1922 (42 Stat. 388, chapter 57; 7 U.S.C. 291 and 292), including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with this Act.

(15) DERIVATIVES CLEARING ORGANIZATION.—

(A) IN GENERAL.—The term "derivatives clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(B) EXCLUSIONS.—The term "derivatives clearing organization" does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(16) TERMS RELATED TO DIGITAL COMMODITIES.—

(A) ASSOCIATED PERSON OF A DIGITAL COMMODITY BROKER.—

(i) IN GENERAL.—Except as provided in clause (ii), 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.

(ii) 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.

(B) ASSOCIATED PERSON OF A DIGITAL COMMODITY DEALER.—

(i) IN GENERAL.—Except as provided in clause (ii), the term "associated person of a digital commodity dealer" means a person who is associated with a digital commodity dealer as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions) in any capacity that involves—

(I) the solicitation or acceptance of a contract for the purchase or sale of a digital commodity; or

(II) the supervision of any person engaged in the solicitation or acceptance of a contract for the purchase or sale of a digital commodity.

(ii) 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.

(C) BANK SECRECY ACT.—The term "Bank Secrecy Act" means—

(i) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

(ii) chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.); and

(iii) subchapter II of chapter 53 of title 31, United States Code.

(D) DECENTRALIZED FINANCE MESSAGING SYSTEM.—

(i) IN GENERAL.—The term "decentralized finance messaging system" means a software application that provides a user with the ability to create or submit an instruction, communication, or message to a decentralized finance trading protocol for the purpose of executing a transaction by the user.

(ii) ADDITIONAL REQUIREMENTS.—The term "decentralized finance messaging system" does not include any system that provides any person other than the user with control over—

(I) the funds of the user; or

(II) the execution of the transaction of the user.

(E) DECENTRALIZED FINANCE TRADING PROTOCOL.—

(i) IN GENERAL.—The term "decentralized finance trading protocol" means a blockchain system through which multiple participants can execute a financial transaction—

(I) in accordance with an automated rule or algorithm that is predetermined and non-discretionary; and

(II) without reliance on any other person to maintain control of the digital assets of the user during any part of the financial transaction.

(ii) EXCLUSIONS.—

(I) IN GENERAL.—The term "decentralized finance trading protocol" does not include a blockchain system if—

(aa) a person or group of persons under common control has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system; or

(bb) the blockchain system does not operate, execute and enforce its operations and transactions based solely on pre-established, transparent rules encoded directly within the source code of the blockchain system.

(II) SPECIAL RULE.—For purposes of subclause (I), a decentralized governance system shall not be considered to be a person or a group of persons under common control.

(F) DIGITAL COMMODITY.—

(i) IN GENERAL.—The term "digital commodity" means a digital asset that is intrinsically linked to a blockchain system, and the value of which is derived from or is reasonably expected to be derived from the use of the blockchain system.

(ii) RELATIONSHIP TO A BLOCKCHAIN SYSTEM.—For purposes of this subparagraph, a digital asset is intrinsically linked to a blockchain system if the digital asset is directly related to the functionality or operation of the blockchain system or to the activities or services for which the blockchain system is created or utilized, including where the digital asset is—

(I) issued or generated by the programmatic functioning of the blockchain system;

(II) used to transfer value between participants in the blockchain system;

(III) used to access the activities or services of the blockchain system;

(IV) used to participate in the decentralized governance system of the blockchain system;

(V) used or removed from circulation in whole or in part to pay fees or otherwise verify or validate transactions on the blockchain system;

(VI) used as payment or incentive to participants in the blockchain system to engage in the activities of the blockchain system, provide services to other participants in the blockchain system, or otherwise participate in the functionality of the blockchain system; or

(VII) used as payment or incentive to participants in the blockchain system to validate transactions, secure the blockchain system, provide computational services, maintain or distribute information, or otherwise participate in the operations of the blockchain system.

(iii) EXCLUSION.—The term "digital commodity" does not include any of the following:

(I) SECURITY.—

(aa) Any security, other than a note, an investment contract, or a certificate of interest or participation in any profit-sharing agreement.

(bb) A note, an investment contract, or a certificate of interest or participation in any profit-sharing agreement that represents or gives the holder an ownership interest or other interest in the revenues, profits, obligations, debts, assets, or assets or debts to be acquired of the issuer of the digital asset or another person (other than a decentralized governance system).

(II) SECURITY DERIVATIVE.—A digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

(aa) a security future, as defined in section 2a of the Securities Act of 1933;

(bb) a security-based swap, as defined in section 2a of the Securities Act of 1933;

(cc) a put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), as defined in section 2a of the Securities Act of 1933; or

(dd) a put, call, straddle, option, or privilege on any security, as defined in section 2a of the Securities Act of 1933.

(III) PERMITTED PAYMENT STABLECOIN.—A digital asset that is a permitted payment stablecoin.

(IV) BANKING DEPOSIT.—

(aa) A deposit (as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), regardless of the technology used to record the deposit.

(bb) An account (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), regardless of the technology used to record the account.

(V) COMMODITY.—A digital asset that references, represents an interest in, or is functionally equivalent to—

(aa) an agricultural commodity;

(bb) an excluded commodity, other than a security; or

(cc) an exempt commodity, other than the digital commodity itself, as shall be further defined by the Commission.

(VI) COMMODITY DERIVATIVE.—A digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is—

(aa) a contract of sale of a commodity for future delivery or an option thereon;

(bb) a security futures product;

(cc) a swap;

(dd) an agreement, contract, or transaction described in section 2(c)(2)(C)(i) or 2(c)(2)(D)(i);

(ee) a commodity option authorized under section 4c; or

(ff) a leverage transaction authorized under section 19.

(VII) POOLED INVESTMENT VEHICLE.—

(aa) IN GENERAL.—A digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to—

(AA) a commodity pool, as defined in this Act; or

(BB) a pooled investment vehicle.

(bb) POOLED INVESTMENT VEHICLE DEFINED.—In this subclause, the term "pooled investment vehicle" means any investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) or any company that would be an investment company under section 3(a) of such Act but for the exclusion provided from that definition by paragraph (1), (7), or (9) of section 3(c) of such Act (15 U.S.C. 80a–3(c)(1), (7), or (9)).

(VIII) GOOD, COLLECTIBLE, AND OTHER NON-COMMODITY ASSET.—A digital asset that has inherent value, utility, or significance beyond its mere existence as a digital asset, including the digital

equivalent of a tangible or intangible good, such as—

(aa) a work of art, a musical composition, a literary work, or other intellectual property;

(bb) collectibles, merchandise, virtual land, and video game assets;

(cc) affinity, rewards, or loyalty points, including airline miles or credit card points, that are not primarily speculative in nature; or

(dd) rights, licenses, and tickets.

(iv) RULE OF CONSTRUCTION.—No presumption shall exist that a digital asset is a security, nor shall a digital asset be excluded from being a digital commodity pursuant to clause (iii)(I), solely due to—

(I) the digital asset providing voting or economic rights with respect to the blockchain system to which the digital asset relates or the decentralized governance system of the blockchain system;

(II) the value of the digital asset having the potential to appreciate or depreciate in response to the efforts, operations, or financial performance of the decentralized governance system of the blockchain system to which the digital asset relates; or

(III) the value of the digital asset appreciating or depreciating due to the adoption and use of the blockchain system to which the digital asset relates or the decentralized governance system of the blockchain system.

(G) DIGITAL COMMODITY BROKER.—

(i) IN GENERAL.—The term "digital commodity broker" means any person who, as a regular business—

(I) is engaged in—

(aa) soliciting or accepting an order from a customer for—

(AA) the purchase or sale of a digital commodity; or

(BB) an agreement, contract, or transaction described in section 2(c)(2)(D)(iv); and

(bb) in conjunction with the activities in item (aa), accepts or maintains control over—

(AA) the funds of any customer; or

(BB) the execution of any transaction of a customer;

(II) is engaged in soliciting or accepting orders from a customer for the purchase or sale of a unit of a digital commodity on or subject to the rules of a registered entity; or

(III) is registered with the Commission as a digital commodity broker.

(ii) EXCEPTIONS.—The term 'digital commodity broker' does not include a person solely because the person—

(I) solicits or accepts an order described in clause (i)(I)(aa)(AA) from a customer who is an eligible contract participant;

(II) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or

(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 or a similar manner as a bank is excluded from the definition of a broker under such section, as determined by the Commission.

(iii) FURTHER DEFINITION.—The Commission, by rule or regulation, may exclude from the term "digital commodity broker" any person or class of persons if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(H) DIGITAL COMMODITY DEALER.—

(i) IN GENERAL.—The term "digital commodity dealer" means any person who, as a regular business—

(I) is, or offers to be a counterparty to a person for the purchase or sale of a digital commodity as a regular business, and in conjunction with the activities, accepts or maintains control over the funds of any counterparty; or

(II) is registered with the Commission as a digital commodity dealer.

(ii) EXCEPTION.—The term "digital commodity dealer" does not include a person solely because the person—

(I) is or offers to be a counterparty to a person who is an eligible contract participant;

(II) enters into a digital commodity transaction with an eligible contract participant;

(III) enters into a digital commodity transaction on or through a registered digital commodity exchange, with a registered digital commodity broker, or through a decentralized finance trading protocol;

(IV) 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;

(V) enters into a digital commodity transaction the primary purpose of which is to make, send, receive, or facilitate payments, whether involving a payment service provider or on a peer-to-peer basis; or

(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 or a similar manner as a

bank is excluded from the definition of a dealer under section 3(a)(5) of such Act, as determined by the Commission.

(iii) FURTHER DEFINITION.—The Commission, by rule or regulation, may exclude from the term "digital commodity dealer" any person or class of persons if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

(I) 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.

(J) MIXED DIGITAL ASSET TRANSACTION.—The term "mixed digital asset transaction" means a transaction in which a digital commodity is traded for a security.

(K) TERMS DEFINED UNDER THE SECURITIES ACT OF 1933.—The terms "blockchain system", "decentralized governance system", "digital asset", "digital commodity issuer", "digital commodity affiliated person", "digital commodity related person", "end user distribution", "mature blockchain system", and "permitted payment stablecoin" have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

[(16)**]** *(17)* ELECTRONIC TRADING FACILITY.—The term "electronic trading facility" means a trading facility that—

(A) operates by means of an electronic or telecommunications network; and

(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

[(17)**]** *(18)* ELIGIBLE COMMERCIAL ENTITY.—The term "eligible commercial entity" means, with respect to an agreement, contract or transaction in a commodity—

(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (18)(A) that, in connection with its business—

(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;

(ii) incurs risks, in addition to price risk, related to the commodity; or

(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

(ii) either—

(I) in the case of a collective investment vehicle whose participants include persons other than—

(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 CFR 4.7(a));

(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 (17 CFR 230.501(a)), with total assets of $2,000,000; or

(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940;

in each case as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, $1,000,000,000 in total assets; or

(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, $100,000,000 in total assets; or

(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

[(18)**]** *(19)* ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

(iv) a commodity pool that—

(I) has total assets exceeding $5,000,000; and

(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term "eligible contract participant" shall not include a commodity pool in which any participant is not otherwise an eligible contract participant;

(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

(I) that has total assets exceeding $10,000,000;

(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

(III) that—

(aa) has a net worth exceeding $1,000,000; and

(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

(I) that has total assets exceeding $5,000,000; or

(II) the investment decisions of which are made by—

(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this Act;

(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

(cc) a financial institution; or

(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

(II) a multinational or supranational government entity; or

(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (17)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii);

(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));

(ix) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—

(I) $10,000,000; or

(II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in sub-

paragraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

[(19)] *(20)* EXCLUDED COMMODITY.—The term "excluded commodity" means—

(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;

(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or

(II) based solely on one or more commodities that have no cash market;

(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

(II) associated with a financial, commercial, or economic consequence.

[(20)] *(21)* EXEMPT COMMODITY.—The term "exempt commodity" means a commodity that is not an excluded commodity or an agricultural commodity.

[(21)] *(22)* FINANCIAL INSTITUTION.—The term "financial institution" means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as "an agreement corporation";

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an "Edge Act corporation";

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

(G) any financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

(H) a trust company; or

(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).

[(22)] *(23)* FLOOR BROKER.—

(A) IN GENERAL.—The term "floor broker" means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person—

(I) any commodity for future delivery, security futures product, or swap; or

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

(ii) who is registered with the Commission as a floor broker.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term "floor broker" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

[(23)] *(24)* FLOOR TRADER.—

(A) IN GENERAL.—The term "floor trader" means any person—

(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account—

(I) any commodity for future delivery, security futures product, or swap; or

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

(ii) who is registered with the Commission as a floor trader.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term "floor trader" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

[(24)] *(25)* FOREIGN EXCHANGE FORWARD.—The term "foreign exchange forward" means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.

[(25)] *(26)* FOREIGN EXCHANGE SWAP.—The term "foreign exchange swap" means a transaction that solely involves—

(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and

(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.

[(26)] *(27)* FOREIGN FUTURES AUTHORITY.—The term "foreign futures authority" means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

[(27)] *(28)* FUTURE DELIVERY.—The term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery.

[(28)] *(29)* FUTURES COMMISSION MERCHANT.—

(A) IN GENERAL.—The term "futures commission merchant" means an individual, association, partnership, corporation, or trust—

(i) that—

(I) is—

(aa) engaged in soliciting or in accepting orders for—

(AA) the purchase or sale of a commodity for future delivery;

(BB) a security futures product;

(CC) a swap;

(DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

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

(FF) any leverage transaction authorized under section 19; or

(bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and

(II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) that is registered with the Commission as a futures commission merchant.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term "futures commission merchant" any person who engages in soliciting or accepting orders for, or acting as a

counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

[(29)] *(30)* HYBRID INSTRUMENT.—The term "hybrid instrument" means a security having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities.

[(30)] *(31)* INTERSTATE COMMERCE.—The term "interstate commerce" means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

[(31)] *(32)* INTRODUCING BROKER.—

(A) IN GENERAL.—The term "introducing broker" means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

(i) who—

(I) is engaged in soliciting or in accepting orders for—

(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

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

(dd) any leverage transaction authorized under section 19; and

(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) who is registered with the Commission as an introducing broker.

(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term "introducing broker" any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this Act, and who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.

[(32)] *(33)* MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term "major security-based swap participant" has the meaning

given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

[(33)] *(34)* MAJOR SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "major swap participant" means any person who is not a swap dealer, and—

(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding—

(I) positions held for hedging or mitigating commercial risk; and

(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(iii)(I) is a financial entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

(D) EXCLUSIONS.—The definition under this paragraph shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

[(34)] *(35)* MEMBER OF A REGISTERED ENTITY; MEMBER OF A DERIVATIVES TRANSACTION EXECUTION FACILITY.—The term "member" means, with respect to a registered entity or derivatives transaction execution facility, an individual, association, partnership, corporation, or trust—

(A) owning or holding membership in, or admitted to membership representation on, the registered entity or derivatives transaction execution facility; or

(B) having trading privileges on the registered entity or derivatives transaction execution facility.

A participant in an alternative trading system that is designated as a contract market pursuant to section 5f is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

[(35)] *(36)* NARROW-BASED SECURITY INDEX.—

(A) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(B) Notwithstanding subparagraph (A), an index is not a narrow-based security index if—

(i)(I) it has at least 9 component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of the enactment of the Commodity Futures Modernization Act of 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

(v) no more than 18 months have passed since the date of the enactment of the Commodity Futures Modernization Act of 2000 and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

(C) Within 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

(E) For purposes of subparagraphs (A) and (B)—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

[(36)**]** *(37)* OPTION.—The term "option" means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an "option", "privilege", "indem-

nity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty".

[(37)] *(38)* ORGANIZED EXCHANGE.—The term "organized exchange" means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

[(38)] *(39)* PERSON.—The term "person" imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

[(39)] *(40)* PRUDENTIAL REGULATOR.—The term "prudential regulator" means—

(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a State-chartered bank that is a member of the Federal Reserve System;

(ii) a State-chartered branch or agency of a foreign bank;

(iii) any foreign bank which does not operate an insured branch;

(iv) any organization operating under section 25A of the Federal Reserve Act or having an agreement with the Board under section 225 of the Federal Reserve Act;

(v) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1965 (12 U.S.C. 1841)), any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7)) that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and any subsidiary of such a company or foreign bank (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be registered with the Commission as a swap dealer or major swap participant under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant);

(vi) after the transfer date (as defined in section 311 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), any savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)) and any subsidiary of such company (other than a subsidiary that is described in subparagraph (A) or (B) or that is required to be reg-

istered as a swap dealer or major swap participant with the Commission under this Act or with the Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant); or

(vii) any organization operating under section 25A of the Federal Reserve Act (12U.S.C. 611 et seq.) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a national bank;

(ii) a federally chartered branch or agency of a foreign bank; or

(iii) any Federal savings association;

(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

(i) a State-chartered bank that is not a member of the Federal Reserve System; or

(ii) any State savings association;

(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

[(40)**]** *(41)* REGISTERED ENTITY.—The term "registered entity" means—

(A) a board of trade designated as a contract market under section 5;

(B) a derivatives clearing organization registered under section 5b;

(C) a board of trade designated as a contract market under section 5f;

(D) a swap execution facility registered under section 5h;

(E) a swap data repository registered under section 21; **[**and**]**

(F) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded**[**.**]***; and*

(G) a digital commodity exchange registered under section 5i.

[(41)**]** *(42)* SECURITY.—The term "security" means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15

U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

[(42)] *(43)* SECURITY-BASED SWAP.—The term "security-based swap" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

[(43)] *(44)* SECURITY-BASED SWAP DEALER.—The term "security-based swap dealer" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

[(44)] *(45)* SECURITY FUTURE.—The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 as in effect on the date of the enactment of the Futures Trading Act of 1982). The term "security future" does not include any agreement, contract, or transaction excluded from this Act under section 2(c), 2(d), 2(f), or 2(g) of this Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

[(45)] *(46)* SECURITY FUTURES PRODUCT.—The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

[(46)] *(47)* SIGNIFICANT PRICE DISCOVERY CONTRACT.—The term "significant price discovery contract" means an agreement, contract, or transaction subject to section 2(h)(5).

[(47)] *(48)* SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "swap" means any agreement, contract, or transaction—

(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between

the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

(I) an interest rate swap;
(II) a rate floor;
(III) a rate cap;
(IV) a rate collar;
(V) a cross-currency rate swap;
(VI) a basis swap;
(VII) a currency swap;
(VIII) a foreign exchange swap;
(IX) a total return swap;
(X) an equity index swap;
(XI) an equity swap;
(XII) a debt index swap;
(XIII) a debt swap;
(XIV) a credit spread;
(XV) a credit default swap;
(XVI) a credit swap;
(XVII) a weather swap;
(XVIII) an energy swap;
(XIX) a metal swap;
(XX) an agricultural swap;
(XXI) an emissions swap; and
(XXII) a commodity swap;

(iv) that is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap;

(v) including any security-based swap agreement which meets the definition of "swap agreement" as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

(B) EXCLUSIONS.—The term "swap" does not include—

(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of

securities, including any interest therein or based on the value thereof, that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

(viii) any agreement, contract, or transaction that is—

(I) based on a security; and

(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

(i) IN GENERAL.—Except as provided in clause (ii), the term "swap" includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without re-

gard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination under section 1b that either foreign exchange swaps or foreign exchange forwards or both—

(I) should be not be regulated as swaps under this Act; and

(II) are not structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of that Act.

(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

(iv) BUSINESS STANDARDS.—Notwithstanding a written determination by the Secretary pursuant to clause (i), any party to a foreign exchange swap or forward

that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

(v) SECRETARY.—For purposes of this subparagraph, the term "Secretary" means the Secretary of the Treasury.

(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization, shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

[(48)] *(49)* SWAP DATA REPOSITORY.—The term "swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

[(49)] *(50)* SWAP DEALER.—

(A) IN GENERAL.—The term "swap dealer" means any person who—

(i) holds itself out as a dealer in swaps;

(ii) makes a market in swaps;

(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps,

provided however, in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.

(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

(C) EXCEPTION.—The term "swap dealer" does not include a person that enters into swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connec-

tion with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.

[(50)] *(51)* SWAP EXECUTION FACILITY.—The term "swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of swaps between persons; and

(B) is not a designated contract market.

[(51)] *(52)* TRADING FACILITY.—

(A) IN GENERAL.—The term "trading facility" means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—

(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

(ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.

(B) EXCLUSIONS.—The term "trading facility" does not include—

(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms "government securities dealer", "government securities broker", and "government securities" are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term "trading facility" for the purposes of this Act

without any prior specific approval, certification, or other action by the Commission.

(C) SPECIAL RULE.—A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.

* * * * * * *

SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—

(1) JURISDICTION OF COMMISSION.—

(A) IN GENERAL.—The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and subparagraphs (C), (D), and (I) of this paragraph and subsections (c) and (f), with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), and transactions involving swaps or contracts of sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a contract market designated pursuant to section 5 or a swap execution facility pursuant to section 5h or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to *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.

(B) LIABILITY OF PRINCIPAL FOR ACT OF AGENT.—The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(C) Notwithstanding any other provision of law—

(i)(I) Except as provided in subclause (II), this Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put,

call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

(II) This Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 5c(c) of, a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.

(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however*, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to

causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 and section 1a of this Act subject to all rules and regulations applicable to security futures products under this Act and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934.

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the delegation of authority under subclause III, under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(D)(i) Notwithstanding any other provision of this Act, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934, section 2(a)(16) of the Securities Act of 1933, section 2(a)(52) of the Investment Company Act of 1940, and section 202(a)(27) of the Investment Advisers Act of 1940, options on security futures, and persons effecting transactions in security futures and options thereon, and this Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), contracts, and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this Act: *Provided, however,* That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934.

(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product.

(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

(VI) The security futures product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act

of 1934 of which such alternative trading system is a member has in place such procedures.

(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.

(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.

(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

(I) the transaction is conducted on or subject to the rules of a board of trade that—

(aa) has been designated by the Commission as a contract market in such security futures product; or

(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which

record shall at all times be open to the inspection of any duly authorized representative of the Commission.

(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934.

(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ⟦section 4k(6)⟧ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ⟦section 4k(6)⟧ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ⟦section 4k(6)⟧ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to ⟦section 4k(6)⟧ *section 4k(7)*, or board of trade designated as a contract market in a security futures product pursuant to section 5f, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(III) For purposes of this clause, the term "compliance date" means the later of—

(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and any national securities associations registered pursuant to section 15A(a) of such Act; or

(bb) 2 years after the date on which trading in any security futures product commences under this Act.

(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).

(E)(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Ex-

change Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.

(F)(i) Nothing in this Act is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

(ii) Nothing in this Act is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.

(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements as defined pursuant to section 3(a)(78) of the Securities Exchange Act of 1934, and security-based swaps.

(ii) In addition to the authority of the Securities and Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

(H) Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to, any security other than a security-based swap.

(I)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

(I) not executed, traded, or cleared on a registered entity or trading facility; or

(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator.

(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority de-

scribed in clause (i), nothing in this subparagraph shall limit or affect—

(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).

(J) Except as expressly provided in this Act, nothing in the CLARITY Act of 2025 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; or

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

(2)(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this Act; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas. Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall

expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6)(A) Except as otherwise provided in this [paragraph and in] *paragraph,* paragraphs (4) and (5) of this subsection, *and section 18(c)(3),* the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7) APPOINTMENT AND COMPENSATION.—

(A) IN GENERAL.—The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out the functions of the Commission under this Act.

(B) RATES OF PAY.—Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(C) COMPARABILITY.—

(i) IN GENERAL.—The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are provided by any agency referred to in section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) or could be provided by such an agency under applicable provisions of law (including rules and regulations).

(ii) CONSULTATION.—In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to in section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)).

(8) No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this Act during his term of office, nor shall he participate, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the Commission.

(9)(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission.

The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation or registration as a contract market or derivatives transaction execution facility involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate or register a board of trade as a contract market or derivatives transaction execution facility based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9)) with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, registration, suspension, revocation, or action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(10)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the

President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.

(11) The Commission shall have an official seal, which shall be judicially noticed.

(12) The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(13) PUBLIC AVAILABILITY OF SWAP TRANSACTION DATA.—

(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—In this paragraph, the term "real-time public reporting" means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

(B) PURPOSE.—The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) GENERAL RULE.—The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

(i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(1) (including those swaps that are excepted from the requirement pursuant to subsection (h)(7)), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(1), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which

are reported to a swap data repository or the Commission under subsection (h)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to swaps that are determined to be required to be cleared under subsection (h)(2) but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) TIMELINESS OF REPORTING.—Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) REPORTING OF SWAPS TO REGISTERED SWAP DATA REPOSITORIES.—Each swap (whether cleared or uncleared) shall be reported to a registered swap data repository.

(14) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

(i) the trading and clearing in the major swap categories; and

(ii) the market participants and developments in new products.

(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

(i) use information from swap data repositories and derivatives clearing organizations; and

(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) AUTHORITY OF THE COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public re-

porting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(15) ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—An Energy and Environmental Markets Advisory Committee is hereby established.

(ii) MEMBERSHIP.—The Committee shall have 9 members.

(iii) ACTIVITIES.—The Committee's objectives and scope of activities shall be—

(I) to conduct public meetings;

(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and

(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

(B) REQUIREMENTS.—

(i) IN GENERAL.—The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.

(ii) MEMBERS.—Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

(C) APPOINTMENT.—The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

(D) REIMBURSEMENT.—Members shall be entitled to per diem and travel expense reimbursement by the Commission.

(E) CHAPTER 10 OF TITLE 5, UNITED STATES CODE.—The Committee shall not be subject to chapter 10 of title 5, United States Code.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word

"State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act (other than section, 5b, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—

(A) foreign currency;

(B) government securities;

(C) security warrants;

(D) security rights;

(E) resales of installment loan contracts;

(F) repurchase transactions in an excluded commodity; **[**or**]**

(G) mortgages or mortgage purchase commitments**[**.**]***; or*

(H) permitted payment stablecoins.

(2) COMMISSION JURISDICTION.—

(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

(i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange;

(ii) a swap; or

(iii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.

(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—

(i) This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

(I) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a))); and

(II) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

(aa) a United States financial institution;

(bb)(AA) a broker or dealer registered under section 15(b) (except paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5); or

(BB) an associated person of a broker or dealer registered under section 15(b) (except

paragraph (11) thereof) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) concerning the financial or securities activities of which the broker or dealer makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

(cc)(AA) a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this Act, is registered under this Act, is not a person described in item (bb) of this subclause, and maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph; or

(BB) an affiliated person of a futures commission merchant that is primarily or substantially engaged in the business activities described in section 1a of this Act, is registered under this Act, and is not a person described in item (bb) of this subclause, if the affiliated person maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is not a person described in such item (bb), and the futures commission merchant makes and keeps records under section 4f(c)(2)(B) of this Act concerning the futures and other financial activities of the affiliated person;

(dd) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

(ff) a retail foreign exchange dealer that maintains adjusted net capital equal to or in excess of the dollar amount that applies for purposes of clause (ii) of this subparagraph and is registered in such capacity with the Commission, subject to such terms and conditions as the Commission shall prescribe, and is a member of a futures association registered under section 17.

(ii) The dollar amount that applies for purposes of this clause is—

(I) $10,000,000, beginning 120 days after the date of the enactment of this clause;

(II) $15,000,000, beginning 240 days after such date of enactment; and

(III) $20,000,000, beginning 360 days after such date of enactment.

(iii) Notwithstanding items (cc) and (gg) of clause (i)(II) of this subparagraph, agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles de-

scribed in clause (vi), shall be subject to subsection (a)(1)(B) of this section and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b) if the agreements, contracts, or transactions are offered, or entered into, by a person that is registered as a futures commission merchant or retail foreign exchange dealer, or an affiliated person of a futures commission merchant registered under this Act that is not also a person described in any of item (aa), (bb), (ee), or (ff) of clause (i)(II) of this subparagraph.

(iv)(I) Notwithstanding items (cc) and (gg) of clause (i)(II), a person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of clause (i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of clause (i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of clause (i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee), or (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effec-

tuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in any of item (aa) through (ff) of clause (i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(v) Notwithstanding items (cc) and (gg) of clause (i)(II), the Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of, or to accomplish any of the purposes of, this Act in connection with agreements, contracts, or transactions described in clause (i) which are offered, or entered into, by a person described in item (cc) or (gg) of clause (i)(II).

(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(C)(i)(I) This subparagraph shall apply to any agreement, contract, or transaction in foreign currency that is—

(aa) offered to, or entered into with, a person that is not an eligible contract participant (except that this subparagraph shall not apply if the counterparty, or the person offering to be the counterparty, of the person that is not an eligible contract participant is a person described in any of item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II)); and

(bb) offered, or entered into, on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

(II) Subclause (I) of this clause shall not apply to—

(aa) a security that is not a security futures product; or

(bb) a contract of sale that—

(AA) results in actual delivery within 2 days; or

(BB) creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

(ii)(I) Agreements, contracts, or transactions described in clause (i) of this subparagraph, and accounts or pooled investment vehicles described in clause (vii), shall be subject to subsection (a)(1)(B) of this section and sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d) (except to the extent that sections

6(c) and 6(d) prohibit manipulation of the market price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, 8(a), 13(a), and 13(b).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in any of item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II); or

(bb) any such person's associated persons.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of or to accomplish any of the purposes of this Act in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph if the agreements, contracts, or transactions are offered, or entered into, by a person that is not described in item (aa) through (ff) of subparagraph (B)(i)(II).

(iii)(I) A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 17, shall not—

(aa) solicit or accept orders from any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II);

(bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II); or

(cc) operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II).

(II) Subclause (I) of this clause shall not apply to—

(aa) any person described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(III) The Commission may make, promulgate, and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of

the provisions of, or to accomplish any of the purposes of, this Act in connection with the activities of persons subject to subclause (I).

(IV) Subclause (III) of this clause shall not apply to—

(aa) any person described in item (aa) through (ff) of subparagraph (B)(i)(II);

(bb) any such person's associated persons; or

(cc) any person who would be exempt from registration if engaging in the same activities in connection with transactions conducted on or subject to the rules of a contract market or a derivatives transaction execution facility.

(iv) Sections 4(b) and 4b shall apply to any agreement, contract, or transaction described in clause (i) of this subparagraph as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

(vi) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provision of this Act with respect to security futures products and persons effecting transactions in security futures products.

(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).

(D) RETAIL COMMODITY TRANSACTIONS.—

(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

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

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

(II) any security;

(III) a contract of sale that—

(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

(IV) 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) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C.27(b)).

(iii) ENFORCEMENT.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

(iv) Notwithstanding clause (iii), a digital commodity broker may, subject to the requirements of section 4u(c)(3), offer to or enter into an agreement for margin financing with a customer for the purchase or sale of a digital commodity.

[(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.

(E) PROHIBITION.—

(i) DEFINITION OF FEDERAL REGULATORY AGENCY.—In this subparagraph, the term "Federal regulatory agency" means—

(I) the Commission;

(II) the Securities and Exchange Commission;

(III) an appropriate Federal banking agency;

(IV) the National Credit Union Association; and

(V) the Farm Credit Administration.

(ii) PROHIBITION.—

(I) IN GENERAL.—Except as provided in subclause (II), a person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and condi-

tions as the Federal regulatory agency shall prescribe.

(II) EFFECTIVE DATE.—With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to the date of enactment of this subclause, subclause (I) shall take effect 90 days after the date of enactment of this subclause.

(iii) REQUIREMENTS OF RULES AND REGULATIONS.—

(I) IN GENERAL.—The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

(aa) disclosure;
(bb) recordkeeping;
(cc) capital and margin;
(dd) reporting;
(ee) business conduct;
(ff) documentation; and
(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

(II) TREATMENT.—The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.

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

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

(I) on or subject to the rules of a registered entity or an entity that is required to be registered as a registered entity; or

(II) by any other entity registered, or required to be registered, with the Commission.

(ii) LIMITATIONS.—Clause (i) shall not apply with respect to—

(I) custodial or depository activities for a 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); or

(II) an offer or sale of an investment contract involving a digital commodity or of a securities offer or sale involving a digital commodity.

(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 commodity issuer, digital commodity related person, digital commodity affiliated person, or other person registered with the Securities and Exchange Commission that engages in a mixed digital asset transaction, shall, on request of the Commission, open to inspection and examination by the 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.

(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and (h) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities or Commission registrants) governs or applies to a swap.

(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.

(f) EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.—

(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security.

(2) PREDOMINANCE.—A hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this Act.

(3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(g) APPLICATION OF COMMODITY FUTURES LAWS.—

(1) No provision of this Act shall be construed as implying or creating any presumption that—

(A) any agreement, contract, or transaction that is excluded from this Act under section 2(c), 2(d), 2(e), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act; or

(B) any agreement, contract, or transaction, not otherwise subject to this Act, that is not so excluded or exempted,

is or would otherwise be subject to this Act.

(2) No provision of, or amendment made by, the Commodity Futures Modernization Act of 2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 5b of this Act.

(h) CLEARING REQUIREMENT.—

(1) IN GENERAL.—

(A) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.

(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

(i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are eco-

nomically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

(ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

(2) COMMISSION REVIEW.—

(A) COMMISSION-INITIATED REVIEW.—

(i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

(B) SWAP SUBMISSIONS.—

(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

(iii) The Commission shall—

(I) make available to the public submissions received under clauses (i) and (ii);

(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

(D) DETERMINATION.—

(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

(IV) The effect on competition, including appropriate fees and charges applied to clearing.

(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(E) RULES.—Not later than 1 year after the date of the enactment of this subsection, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

(3) STAY OF CLEARING REQUIREMENT.—

(A) IN GENERAL.—After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category,

type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

(D) RULES.—Not later than 1 year after the date of the enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

(4) PREVENTION OF EVASION.—

(A) IN GENERAL.—The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

(i) investigate the relevant facts and circumstances;

(ii) within 30 days issue a public report containing the results of the investigation; and

(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

(C) EFFECT ON AUTHORITY.—Nothing in this paragraph—

(i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and

(ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.

(5) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap data repository or the Commission no later than the later of—

(i) 90 days after such effective date; or

(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

(6) CLEARING TRANSITION RULES.—

(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

(7) EXCEPTIONS.—

(A) IN GENERAL.—The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

(i) is not a financial entity;

(ii) is using swaps to hedge or mitigate commercial risk; and

(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

(B) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

(C) FINANCIAL ENTITY DEFINITION.—

(i) IN GENERAL.—For the purposes of this paragraph, the term "financial entity" means—

(I) a swap dealer;

(II) a security-based swap dealer;

(III) a major swap participant;

(IV) a major security-based swap participant;

(V) a commodity pool;

(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

(ii) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

(I) depository institutions with total assets of $10,000,000,000 or less;

(II) farm credit system institutions with total assets of $10,000,000,000 or less; or

(III) credit unions with total assets of $10,000,000,000 or less.

(iii) LIMITATION.—Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

(D) TREATMENT OF AFFILIATES.—

(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

(I) enters into the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;

(II) is directly and wholly-owned by another affiliate qualified for the exception under this subparagraph or an entity that is not a financial entity;

(III) is not indirectly majority-owned by a financial entity;

(IV) is not ultimately owned by a parent company that is a financial entity; and

(V) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010).

(ii) LIMITATION ON QUALIFYING AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

(I) a swap dealer;

(II) a security-based swap dealer;

(III) a major swap participant;

(IV) a major security-based swap participant;

(V) a commodity pool;

(VI) a bank holding company;

(VII) a private fund, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

(VIII) an employee benefit plan or government plan, as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(IX) an insured depository institution;

(X) a farm credit system institution;

(XI) a credit union;

(XII) a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010); or

(XIII) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

(iii) LIMITATION ON AFFILIATES' AFFILIATES.—Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in clause (i) shall not apply with respect to an affiliate if the affiliate is itself affiliated with—

(I) a major security-based swap participant;

(II) a security-based swap dealer;

(III) a major swap participant; or

(IV) a swap dealer.

(iv) CONDITIONS ON TRANSACTIONS.—With respect to an affiliate that qualifies for the exception in clause (i)—

(I) the affiliate may not enter into any swap other than for the purpose of hedging or mitigating commercial risk; and

(II) neither the affiliate nor any person affiliated with the affiliate that is not a financial entity may enter into a swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under clause (i).

(v) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this clause.

(vi) RISK MANAGEMENT PROGRAM.—Any swap entered into by an affiliate that qualifies for the exception in clause (i) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the swap and to identify each of the affiliates on whose behalf a swap was entered into.

(E) ELECTION OF COUNTERPARTY.—

(i) SWAPS REQUIRED TO BE CLEARED.—With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(ii) SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

(I) may elect to require clearing of the swap; and

(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

(8) TRADE EXECUTION.—

(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

(i) execute the transaction on a board of trade designated as a contract market under section 5; or

(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).

(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was en-

acted by the Wall Street Transparency and Accountability Act of 2010.

(j) COMMITTEE APPROVAL BY BOARD.—Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.

* * * * * * *

SEC. 4c. PROHIBITED TRANSACTIONS.

(a) IN GENERAL.—

(1) PROHIBITION.—It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) or swap if the transaction is used or may be used to—

(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

(2) TRANSACTION.—A transaction referred to in paragraph (1) is a transaction that—

(A)(i) is, of the character of, or is commonly known to the trade as, a "wash sale" or "accommodation trade"; or

(ii) is a fictitious sale; or

(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

(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—

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

(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—

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

(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—

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

(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—

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

(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* 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 [clauses (i), (ii), or (iii)] *any of clauses (i) through (iv).*

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

(5) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that—

(A) violates bids or offers;

(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or

(C) is, is of the character of, or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

(6) RULEMAKING AUTHORITY.—The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.

(7) USE OF SWAPS TO DEFRAUD.—It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.

(b) No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act 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", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

(c) Not later than 90 days after the date of the enactment of the Futures Trading Act of 1986, the Commission shall issue regulations—

(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.

(d) Notwithstanding the provisions of subsection (c) of this section—

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity, other than a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974, and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided,* That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section, other than a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974, if—

(A) the grantor is a person domiciled in the United States who—

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least $5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the

grantor knows or has reason to believe that the grantor's net worth has fallen below $5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who—

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection, other than options on a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974, under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided,* That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

(e) The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the

granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.

(f) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

(g) The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market or derivatives transaction execution facility placed by a member of the contract market or derivatives transaction execution facility who is present on the floor at the time such order is placed.

SEC. 4d. (a) It shall be unlawful for any person to be a futures commission merchant unless—

(1) such person shall have registered, under this Act, with the Commission as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however,* That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with [any bank or trust company] *any bank, trust company, or qualified digital asset custodian, as applicable,* 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 clearinghouse 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 asset shall be held in a qualified digital asset custodian.

(b) It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

(2) address such other issues as the Commission determines to be appropriate.

(d) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 17.

(e) Consistent with this Act, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act (except paragraph (11) thereof), involving the application of—

(1) section 8, section 15(c)(3), and section 17 of the Securities Exchange Act of 1934 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 3(a)(40) of the Securities Exchange Act of 1934), involving security futures products; and

(2) similar provisions of this Act and the rules and regulations thereunder involving security futures products.

(f) SWAPS.—

(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

(2) CLEARED SWAPS.—

(A) SEGREGATION REQUIRED.—A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or though a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

(3) EXCEPTIONS.—

(A) USE OF FUNDS.—

(i) IN GENERAL.—Notwithstanding paragraph (2), money, securities, and property of swap customers of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same account or accounts with [any bank or trust company] *any bank, trust company, or qualified digital asset custodian* or with a derivatives clearing organization.

(ii) WITHDRAWAL.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customers of a futures commission merchant described in paragraph (2) may be commingled and deposited in customer accounts with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated

and dealt with as belonging to the swaps customer of the futures commission merchant.

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

(5) COMMODITY CONTRACT.—A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

(6) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.

(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.

(h) Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 4(c) of this Act or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section 4f(a)(1) of this Act and also registered as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934, hold in a portfolio margining account carried as a securities account subject to section 15(c)(3) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.

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SEC. 4k. (1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or em-

ployee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection.

(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this subsection. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in

any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this subsection. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

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

[(4)**]** *(5)* Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, **[**or of a commodity trading advisor**]** *of a commodity trading advisor, or a digital commodity broker, or of a digital commodity dealer* shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

[(5)**]** *(6)* Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this Act and the rules thereunder:

(A) Subsections (b), (d), (e), and (g) of section 4c.
(B) Sections 4d, 4e, and 4h.
(C) Subsections (b) and (c) of section 4f.
(D) Section 4j.
(E) Paragraph (1) of this section.
(F) Section 4p.
(G) Section 6d.
(H) Subsections (d) and (g) of section 8.
(I) Section 16.

[(6)**]** *(7)* It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant,

if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

* * * * * * *

SEC. 4m. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided,* That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided,* That such person shall be subject to proceedings under section 14 of this Act.

(2) Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

(3) EXCEPTION.—

(A) IN GENERAL.—Paragraph (1) shall not apply to **[**any commodity trading advisor**]** *a commodity pool operator or commodity trading advisor* that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of **[**acting as a commodity trading advisor**]** *acting as a commodity pool operator or commodity trading advisor*, as defined in section 1a, and that does not act as a commodity trading advisor to any commodity pool that is engaged primarily in trading commodity interests.

(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be "engaged primarily" in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, *digital commodities,* and any monies held in an account used for trading commodity interests.

(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.

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SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

(a) REGISTRATION.—

(1) SWAP DEALERS.—It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) MAJOR SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) REQUIREMENTS.—

(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) CONTENTS.—

(A) IN GENERAL.—The application shall be made in such form and manner as 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 swap dealer or major swap participant 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) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

(5) TRANSITION.—Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap partici-

pant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) DUAL REGISTRATION.—

(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.

(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.

(d) RULEMAKINGS.—

(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) IN GENERAL.—

(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—Each registered swap dealer and major swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) RULES.—

(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

(i) capital requirements; and

(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer or a major swap participant for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

(3) STANDARDS FOR CAPITAL AND MARGIN.—

(A) IN GENERAL.—To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall—

(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

(ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) (except for section 4f(a)(3)) in accordance with section 4f(b); or

(II) 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 that Act (15 U.S.C. 78o(b)(11)) in accordance with section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).

(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or deal-

er is subject to under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to swap dealers and major swap participants for which it is the prudential regulator and the Commission with respect to swap dealers and major swap participants for which there is no prudential regulator shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

(i) preserving the financial integrity of markets trading swaps; and

(ii) preserving the stability of the United States financial system.

(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

(I) swap dealers; and

(II) major swap participants.

(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii), including the initial and variation margin requirements imposed by rules adopted pursuant to paragraphs (2)(A)(ii) and (2)(B)(ii), shall not apply to a swap in which a counterparty qualifies for an exception under section 2(h)(7)(A), or an exemption issued under section 4(c)(1) from the requirements of section 2(h)(1)(A) for cooperative entities as defined in such exemption, or satisfies the criteria in section 2(h)(7)(D).

(f) REPORTING AND RECORDKEEPING.—

(1) IN GENERAL.—Each registered swap dealer and major swap participant—

(A) shall make such reports as are required by the Commission by rule or regulation regarding the transactions and positions and financial condition of the registered swap dealer or major swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, 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;

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission; and

(D) shall keep any such books and records relating to swaps defined in section [1a(47)(A)] *1a(48)(A)*(v) open to inspection and examination by the Securities and Exchange Commission.

(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

(g) DAILY TRADING RECORDS.—

(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

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

(3) COUNTERPARTY RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) RULES.—The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

(h) BUSINESS CONDUCT STANDARDS.—

(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered swap dealer and major swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

(A) ADVISING SPECIAL ENTITIES.—A swap dealer or major swap participant that acts as an advisor to a special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) ENTERING OF SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A swap dealer that enters into or offers to enter into swap with a Special Entity shall comply with the re-

quirements of subparagraph (5) with respect to such Special Entity.

(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term "special entity" means—

(i) a Federal agency;

(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the swap;

(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;

(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(4) SPECIAL REQUIREMENTS FOR SWAP DEALERS ACTING AS ADVISORS.—

(A) IN GENERAL.—It shall be unlawful for a swap dealer or major swap participant—

(i) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any

Special Entity or prospective customer who is a Special Entity; or

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

(B) DUTY.—Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(C) REASONABLE EFFORTS.—Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

(i) the financial status of the Special Entity;

(ii) the tax status of the Special Entity;

(iii) the investment or financing objectives of the Special Entity; and

(iv) any other information that the Commission may prescribe by rule or regulation.

(5) SPECIAL REQUIREMENTS FOR SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

(A) Any swap dealer or major swap participant that offers to enter or enters into a swap with a Special Entity shall—

(i) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section [1a(18)] *1a(19)* of this Act, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the swap dealer or major swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

(B) the Commission may establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of in-

vestors, or otherwise in furtherance of the purposes of this Act.

(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

(7) APPLICABILITY.—This section shall not apply with respect to a transaction that is—

(A) initiated by a Special Entity on an exchange or swap execution facility; and

(B) one in which the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.

(i) DOCUMENTATION STANDARDS.—

(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

(2) RULES.—The Commission shall adopt rules governing documentation standards for swap dealers and major swap participants.

(j) DUTIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

(2) RISK MANAGEMENT PROCEDURES.—The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.

(3) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

(A) terms and conditions of its swaps;

(B) swap trading operations, mechanisms, and practices;

(C) financial integrity protections relating to swaps; and

(D) other information relevant to its trading in swaps.

(4) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant 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 and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.

(5) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate infor-

mational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, 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.

(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap dealer or major swap participant 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.

(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.

(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each swap dealer and major swap participant 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 swap dealer or major swap participant;

(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant 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) relating to swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) ANNUAL REPORTS.—

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

(i) the compliance of the swap dealer or major swap participant with respect to this Act (including regulations); and

(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

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

(l) SEGREGATION REQUIREMENTS.—

(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SWAP TRANSACTIONS.—

(A) NOTIFICATION.—A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall—

(i) segregate the funds or other property for the benefit of the counterparty; and

(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.

(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and

(B)(i) not apply to variation margin payments; or

(ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1) shall be—

(A) carried by an independent third-party custodian; and

(B) designated as a segregated account for and on behalf of the counterparty.

(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

SEC. 4t. LARGE SWAP TRADER REPORTING.

(a) PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

(B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

(2) EXCEPTION.—Paragraph (1) shall not apply if—

(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any designated contract market or swap execution facility, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Books and records described in subsection (a)(2)(B) shall—

(A) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;

(B) be open at all times to inspection and examination by any representative of the Commission; and

(C) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in swaps (as that term is defined in section [1a(47)(A)(v)] *1a(48)(A)(v)*), and consistent with the confidentiality and disclosure requirements of section 8.

(2) JURISDICTION.—Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe record-

keeping and reporting requirements for large swap traders under this section.

(c) APPLICABILITY.—For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 4a(a)(3).

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

(a) REGISTRATION.—

(1) REQUIREMENT.—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.

(2) ADDITIONAL REGISTRATION.—

(A) RULES.—In order to foster the development of fair and orderly markets, protect customers, and promote responsible innovation, the Commission—

(i) shall prescribe rules to exempt an entity registered with the Commission under more than 1 section of this Act from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act;

(ii) shall prescribe rules to address conflicts of interests and the activities of the entity; and

(iii) may after an analysis of the risks and benefits, prescribe rules to provide for portfolio margining.

(B) 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.

(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.

(c) 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) FINANCING AGREEMENTS.—

(A) IN GENERAL.—The Commission shall prescribe rules and regulations applicable to digital commodity brokers or digital commodity dealers which shall set forth minimum requirements related to disclosure, recordkeeping, margin and financing arrangements, rehypothecation, capital, reporting, business conduct, documentation, and supervision of employees and agents, in connection with—

(i) an agreement described in section 2(c)(2)(D)(iv); or

(ii) any other margined, leveraged, or financing arrangement for the purchase or sale of a digital commodity with an eligible contract participant.

(B) SPECIFIC AUTHORITY.—Except as prohibited in section 2(c)(2)(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 an agreement referred to in subparagraph (A) of this paragraph, which may include, without limitation, requirements regarding registration with the Commission and membership in a registered futures association.

(d) 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, at all times, to—

(A) meet, and continue to meet the obligations of such a registrant; and

(B) fulfill obligations to customers or counterparties for any margined, leveraged, or financed transactions.

(2) 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.).

(e) 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.

(f) 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.

(g) 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 appropriate for the protection of customers.

(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.

(h) 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 establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the person,

to mitigate any conflicts of interest in transactions or arrangements with affiliates.

(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.

(i) 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 noncompliance issues.

(3) ANNUAL REPORTS.—

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

(i) the compliance of the registered digital commodity broker or registered digital commodity dealer with this Act (including regulations); and

(ii) each policy and procedure of the registered digital commodity broker or registered digital commodity dealer followed by the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) REQUIREMENTS.—The chief compliance officer shall ensure that a compliance report under subparagraph (A)—

(i) accompanies each appropriate financial report of the registered digital commodity broker or registered digital commodity dealer that is required to be furnished to the Commission pursuant to this section; and

(ii) includes a certification that, under penalty of law, the compliance report is accurate and complete.

(j) 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 ASSET CUSTODIAN.—Each digital commodity broker and digital commodity dealer shall hold in a qualified digital asset custodian each unit of a digital asset 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 asset 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 broker or 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 broker and a digital commodity dealer 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 (2) for any unit of a digital commodity to be used under subparagraph (B) of this paragraph, 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 shall, by rule, establish notice and disclosure requirements, and may, by rule, establish 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 re-

lating 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.

(k) 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 with respect to activities subject to this Act, except as provided in section 5k.

(l) EXEMPTIONS.—In order to promote responsible 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.

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 trading protocol:

(1) Compiling network transactions or relaying, searching, sequencing, validating, or acting in a similar capacity.

(2) Providing computational work, operating a node or oracle service, or procuring, offering, or utilizing network bandwidth, or other similar incidental services.

(3) Providing a user-interface that enables a user to read, and access data about a blockchain system.

(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or a decentralized finance trading protocol.

(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a decentralized finance messaging system or operating or participating in a liquidity pool for the purpose of executing a contract of sale of a digital commodity.

(6) 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 assets 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. 4w. LIMITATION ON TRANSACTIONS BY BLOCKCHAIN CONTROL PERSONS.

(a) LIMITATION.—It shall be unlawful for a blockchain control person with respect to a blockchain system certified as a mature blockchain system in accordance with section 42 of the Securities Exchange Act of 1934 to sell a unit of a digital commodity related to the blockchain system unless the person files notice with the Commission, in a form and manner determined by the Commission, that the person has or intends to obtain an authority described in subsection (b)(1) with respect to the blockchain system, and complies with rules adopted by the Commission that require—

(1) disclosure of information to the Commission and the public about the material activities, as determined by the Commission, of the blockchain control person; and

(2)(A) the use of a digital commodity broker to effect the sale; or

(B) such other sales restrictions applicable to blockchain control person, or any of its digital commodity affiliated persons, to prevent manipulation and distortion of the value of the digital commodity and promote further maturity of the blockchain system to which the digital commodity relates.

(b) DEFINITIONS.—In this section:

(1) BLOCKCHAIN CONTROL PERSON.—The term "blockchain control person" means, with respect to a blockchain system, any person or group of persons under common control who—

(A) has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system or its related digital commodity; or

(B) has the unilateral authority to direct the voting, in the aggregate, of 20 percent or more of the outstanding voting power of the blockchain system by means of a related digital commodity, nodes or validators, a decentralized governance system, or otherwise, in a blockchain system which can be altered by a voting system.

(2) DIGITAL COMMODITY AFFILIATED PERSON.—The term "digital commodity affiliated person" means any person directly or indirectly controlling, controlled by, or under common control with a blockchain control person, as the Commission by rule or regulation, may determine will effectuate the purposes of this section.

SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

(a) APPLICATIONS.—A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.

(c) EXISTING CONTRACT MARKETS.—A board of trade that is designated as a contract market on the date of the enactment of the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

(1) DESIGNATION AS CONTRACT MARKET.—

(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

(i) any core principle 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 CONTRACT MARKET.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

(2) COMPLIANCE WITH RULES.—

(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

(i) access requirements;

(ii) the terms and conditions of any contracts to be traded on the contract market; and

(iii) rules prohibiting abusive trade practices on the contract market.

(B) CAPACITY OF CONTRACT MARKET.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

(A) methods for conducting real-time monitoring of trading; and

(B) comprehensive and accurate trade reconstructions.

(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and ap-

propriate, position limitations or position accountability for speculators.

(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(6) EMERGENCY AUTHORITY.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

(A) to liquidate or transfer open positions in any contract;

(B) to suspend or curtail trading in any contract; and

(C) to require market participants in any contract to meet special margin requirements.

(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

(A) the terms and conditions of the contracts of the contract market; and

(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

(ii) the rules and specifications describing the operation of the contract market's—

(I) electronic matching platform; or

(II) trade execution facility.

(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) EXECUTION OF TRANSACTIONS.—

(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

(i) transfer trades or office trades;

(ii) an exchange of—

(I) futures in connection with a cash commodity transaction;

(II) futures for cash commodities; or

(III) futures for swaps; or

(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe stor-

age of all identifying trade information in a manner that enables the contract market to use the information—

(A) to assist in the prevention of customer and market abuses; and

(B) to provide evidence of any violations of the rules of the contract market.

(11) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce—

(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

(B) rules to ensure—

(i) the financial integrity of any—

(I) futures commission merchant; and

(II) introducing broker; and

(ii) the protection of customer funds.

(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules—

(A) 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

(B) to promote fair and equitable trading on the contract market.

(13) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(14) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

(15) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

(16) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

(A) to minimize conflicts of interest in the decision-making process of the contract market; and

(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to permit consideration of the views of market participants.

(18) RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

(A) in a form and manner that is acceptable to the Commission; and

(B) for a period of at least 5 years.

(19) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not—

(A) adopt any rule or taking any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading on the contract market.

(20) SYSTEM SAFEGUARDS.—The board of trade shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

(21) FINANCIAL RESOURCES.—

(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(22) DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(23) SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section ⟦1a(47)(A)(v)⟧ *1a(48)(A)(v)* open to inspection and examination by the Securities and Exchange Commission.

(e) CURRENT AGRICULTURAL COMMODITIES.—

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(9) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

(a) REGISTRATION REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or

(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(B) a swap.

(2) EXCEPTION.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

(b) VOLUNTARY REGISTRATION.—A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.

(c) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

(1) APPLICATION.—A person desiring to register as a derivatives clearing organization 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 under paragraph (2).

(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

(A) COMPLIANCE.—

(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

(B) FINANCIAL RESOURCES.—

(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

(i) IN GENERAL.—Each derivatives clearing organization shall establish—

(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

(I) be objective;

(II) be publicly disclosed; and

(III) permit fair and open access.

(D) RISK MANAGEMENT.—

(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(ii) MEASUREMENT OF CREDIT EXPOSURE.—Each derivatives clearing organization shall—

(I) not less than once during each business day of the derivatives clearing organization, measure

the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

(I) the operations of the derivatives clearing organization would not be disrupted; and

(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

(I) risk-based; and

(II) reviewed on a regular basis.

(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

(i) complete money settlements on a timely basis (but not less frequently than once each business day);

(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

(iii) ensure that money settlements are final when effected;

(iv) maintain an accurate record of the flow of funds associated with each money settlement;

(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

(F) TREATMENT OF FUNDS.—

(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and

ensure the safety of member and participant funds and assets.

(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

(G) DEFAULT RULES AND PROCEDURES.—

(i) IN GENERAL.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

(I) become insolvent; or

(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

(ii) DEFAULT PROCEDURES.—Each derivatives clearing organization shall—

(I) clearly state the default procedures of the derivatives clearing organization;

(II) make publicly available the default rules of the derivatives clearing organization; and

(III) ensure that the derivatives clearing organization may take timely action—

(aa) to contain losses and liquidity pressures; and

(bb) to continue meeting each obligation of the derivatives clearing organization.

(H) RULE ENFORCEMENT.—Each derivatives clearing organization shall—

(i) maintain adequate arrangements and resources for—

(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

(II) the resolution of disputes;

(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that

are reliable, secure, and have adequate scalable capacity;

(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

(i) in a form and manner that is acceptable to the Commission; and

(ii) for a period of not less than 5 years.

(L) PUBLIC INFORMATION.—

(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(iii) PUBLIC DISCLOSURE.—Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and

(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

(N) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden.

(O) GOVERNANCE FITNESS STANDARDS.—

(i) GOVERNANCE ARRANGEMENTS.—Each derivatives clearing organization shall establish governance arrangements that are transparent—

(I) to fulfill public interest requirements; and

(II) to permit the consideration of the views of owners and participants.

(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

(I) directors;

(II) members of any disciplinary committee;

(III) members of the derivatives clearing organization;

(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(V) any party affiliated with any individual or entity described in this clause.

(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall—

(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and

(ii) establish a process for resolving conflicts of interest described in clause (i).

(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.

(3) ORDERS CONCERNING COMPETITION.—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the

least anticompetitive means of achieving the objectives, purposes, and policies of this Act.

(d) EXISTING DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of the enactment of this section.

(e) APPOINTMENT OF TRUSTEE.—

(1) IN GENERAL.—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization 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 derivatives clearing organization and the records and assets of the derivatives clearing organization, 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 derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

(f) LINKING OF REGULATED CLEARING FACILITIES.—

(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.

(2) COORDINATION.—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

(g) EXISTING DEPOSITORY INSTITUTIONS AND CLEARING AGENCIES.—

(1) IN GENERAL.—A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before the date of enactment of this subsection—

(A) the depository institution cleared swaps as a multilateral clearing organization; or

(B) the clearing agency cleared swaps.

(2) CONVERSION OF DEPOSITORY INSTITUTIONS.—A depository institution to which this subsection applies may, by the vote of

the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

(3) SHARING OF INFORMATION.—The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).

(h) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

(i) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each derivatives clearing organization 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 derivatives clearing organization;

(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing 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) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) ANNUAL REPORTS.—

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

(i) the compliance of the derivatives clearing organization of the compliance officer with respect to this Act (including regulations); and

(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).

(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and

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

(k) REPORTING REQUIREMENTS.—

(1) DUTY OF DERIVATIVES CLEARING ORGANIZATIONS.—Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.

(2) DATA COLLECTION AND MAINTENANCE REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for—

(A) swaps data reported to swap data repositories; and

(B) swaps traded on swap execution facilities.

(3) REPORTS ON SECURITY-BASED SWAP AGREEMENTS TO BE SHARED WITH THE SECURITIES AND EXCHANGE COMMISSION.—

(A) IN GENERAL.—A derivatives clearing organization that clears security-based swap agreements (as defined in section ⟦1a(47)(A)(v)⟧ *1a(48)(A)(v)*) shall, upon request, open to inspection and examination to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and disclosure requirements of section 8.

(B) JURISDICTION.—Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is registered with the Commission.

(4) INFORMATION SHARING.—Subject to section 8, and upon request, the Commission shall share information collected under paragraph (2) with—

(A) the Board;

(B) the Securities and Exchange Commission;

(C) each appropriate prudential regulator;

(D) the Financial Stability Oversight Council;

(E) the Department of Justice; and

(F) 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.

(5) CONFIDENTIALITY AGREEMENT.—Before the Commission may share information with any entity described in paragraph (4), the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided.

(6) PUBLIC INFORMATION.—Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).

SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

(a) ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.—

(1) IN GENERAL.—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections ⟦5(d) and 5b(c)(2)⟧ *5(d), 5b(c)(2), and 5i(c)*, to describe what would constitute an acceptable business practice under such sections.

(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).

(b) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—

(1) IN GENERAL.—A contract market, *digital commodity exchange,* derivatives transaction execution facility, or electronic trading facility with respect to a significant price discovery contract may comply with any applicable core principle through delegation of any relevant function to a registered futures association or a registered entity that is not an electronic trading facility.

(2) RESPONSIBILITY.—A contract market, *digital commodity exchange,* derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

(3) NONCOMPLIANCE.—If a contract market, *digital commodity exchange,* derivatives transaction execution facility, or electronic trading facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this Act, the contract market, *digital commodity exchange,* derivatives transaction execution facility, or electronic trading facility shall promptly take steps to address the noncompliance.

(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—

(1) IN GENERAL.—A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Sec-

retary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

(2) RULE REVIEW.—The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity and notice of such certification to its members *or participants* (in a manner to be determined by the Commission), on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

(3) STAY OF CERTIFICATION FOR RULES.—

(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.

(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission—

(i) withdraws the stay prior to that time; or

(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this Act (including regulations under this Act).

(C) The Commission shall provide a not less than 30-day public comment period, within the 90-day period in which the stay is in effect as described in subparagraph (A), whenever the Commission reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.

(4) PRIOR APPROVAL.—

(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section ⟦1a(10)⟧ *1a(9)* (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(5) APPROVAL.—

(A) RULES.—The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this subtitle (including regulations).

(B) CONTRACTS AND INSTRUMENTS.—The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this Act (including regulations).

(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

(I) activity that is unlawful under any Federal or State law;

(II) terrorism;

(III) assassination;

(IV) war;

(V) gaming; or

(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

(iii) SWAPS CONTRACTS.—

(I) IN GENERAL.—In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.

(II) REQUIREMENTS.—Any such criteria, conditions, or rules shall consider—

(aa) the financial integrity of the derivatives clearing organization; and

(bb) any other factors which the Commission determines may be appropriate.

(iv) DEADLINE.—The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.

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

(d) CERTIFICATIONS FOR DIGITAL COMMODITY TRADING.—

(1) IN GENERAL.—Notwithstanding subsection (c), for the purposes of listing or offering a digital commodity for trading in a digital commodity cash or spot market, an eligible entity shall submit a written certification to the Commission 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 an analysis of how the digital commodity meets the requirements of section 5i(c)(3).

(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 digital commodity related person or a digital commodity 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 listing of the digital commodity is inconsistent with the requirements of this Act or the rules and regulations prescribed under this Act.

(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) 1 business day 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 Commission; and

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

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

(II) missing information or inadequate explanations; or

(III) potential inconsistencies with this Act.

(6) 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 sub-

mitting the request agrees to an extension of the time limitation established under this subparagraph.

(D) DISAPPROVAL.—

(i) IN GENERAL.—The Commission shall approve the listing of the digital commodity unless the Commission finds that the listing is inconsistent with this Act (including any regulation 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.

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

(e) RESERVATION OF EMERGENCY AUTHORITY.—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9).

(f) Consistent with this Act, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof) with respect to the application of—

(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 4d(e) involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and national securities exchanges registered pursuant to section 6(g) of such Act involving security futures products.

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SEC. 5h. SWAP EXECUTION FACILITIES.

(a) REGISTRATION.—

(1) IN GENERAL.—No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

(2) DUAL REGISTRATION.—Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.

(b) TRADING AND TRADE PROCESSING.—

(1) IN GENERAL.—Except as specified in paragraph (2), a swap execution facility that is registered under subsection (a) may—

(A) make available for trading any swap; and

(B) facilitate trade processing of any swap.

(2) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

(c) IDENTIFICATION OF FACILITY USED TO TRADE SWAPS BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.

(d) RULE-WRITING.—

(1) The Securities and Exchange Commission and Commodity Futures Trading Commission may promulgate rules defining the universe of swaps that can be executed on a swap execution facility. These rules shall take into account the price and nonprice requirements of the counterparties to a swap and the goal of this section as set forth in subsection (e).

(2) For all swaps that are not required to be executed through a swap execution facility as defined in paragraph (1), such trades may be executed through any other available means of interstate commerce.

(3) The Securities and Exchange Commission and Commodity Futures Trading Commission shall update these rules as necessary to account for technological and other innovation.

(e) RULE OF CONSTRUCTION.—The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.

(f) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

(1) COMPLIANCE WITH CORE PRINCIPLES.—

(A) IN GENERAL.—To be registered, and maintain registration, as a swap execution facility, the swap execution facility 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 SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

(2) COMPLIANCE WITH RULES.—A swap execution facility shall—

(A) establish and enforce compliance with any rule of the swap execution facility, including—

(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

(ii) any limitation on access to the swap execution facility;

(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;

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

(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8).

(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

(4) MONITORING OF TRADING AND TRADE PROCESSING.—The swap execution facility shall—

(A) 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 swap execution facility; and

(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(B) monitor trading in swaps 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.

(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility 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.

(6) POSITION LIMITS OR ACCOUNTABILITY.—

(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the

facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) POSITION LIMITS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall—

(i) set its position limitation at a level no higher than the Commission limitation; and

(ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1).

(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

(9) TIMELY PUBLICATION OF TRADING INFORMATION.—

(A) IN GENERAL.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

(B) CAPACITY OF SWAP EXECUTION FACILITY.—The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

(10) RECORDKEEPING AND REPORTING.—

(A) IN GENERAL.—A swap execution facility 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) shall keep any such records relating to swaps defined in section ⟦1a(47)(A)(v)⟧ *1a(48)(A)(v)* open to inspection and examination by the Securities and Exchange Commission.”

(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall not—

(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(12) CONFLICTS OF INTEREST.—The swap execution facility shall—

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

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

(13) FINANCIAL RESOURCES.—

(A) IN GENERAL.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

(14) SYSTEM SAFEGUARDS.—The swap execution facility shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, 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 swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the swap execution facility 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.

(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) DUTIES.—The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the facility;

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

(iii) in consultation with the board of the facility, a body performing a function similar to that of a board,

or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) 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

(vi) 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.

(C) REQUIREMENTS FOR PROCEDURES.—In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

(D) ANNUAL REPORTS.—

(i) 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 swap execution facility with this Act; and

(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.

(ii) REQUIREMENTS.—The chief compliance officer shall—

(I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility 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) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

(h) RULES.—The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.

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, as the Commission may determine by rule or regulation, in a digital commodity; or

(ii) serves only customers in a single State, territory, or possession of the United States.

(2) ADDITIONAL REGISTRATIONS.—

(A) WITH THE COMMISSION.—In order to foster the development of fair and orderly markets, protect customers, and promote responsible innovation, the Commission—

(i) shall prescribe rules to exempt an entity registered with the Commission under more than 1 section of this Act from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act;

(ii) shall prescribe rules to address conflicts of interests and activities of the entity; and

(iii) may, after an analysis of the risks and benefits, prescribe rules to provide for portfolio margining.

(B) 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.

(C) 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 the 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 credit, market, and liquidity risks associated with the digital commodity business of the exchange.

(iii) OPERATIONAL NEEDS.—A transaction related to the operational needs of the business of the digital commodity exchange or its affiliate.

(iv) FUNCTIONAL USE.—A transaction related to the functional operation of a blockchain system.

(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 purposes of this Act.

(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 not permit trading in a digital commodity unless—

(i) reports with respect to the digital commodity required under section 4B(b)(3) of the Securities Act of 1933 (or, with respect to a digital commodity not issued in reliance on section 4(a)(8) of the Securities Act of 1933, a comparable set of reports, where required by the Securities and Exchange Commission) have been filed with the Securities and Exchange Commission; or

(ii) the blockchain system to which the digital commodity relates, together with the digital commodity, is certified as a mature blockchain system under section 42 of the Securities Exchange Act of 1934.

(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 description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital commodity relates, to the extent any such independent access, search, and verification activities are technically feasible with respect to the blockchain system.

(III) DIGITAL COMMODITY ECONOMICS.—A narrative description of the purpose of any blockchain system to which the digital commodity 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 commodities to be created, the release schedule for the digital commodities, and the total number of digital commodities then outstanding;

(bb) information detailing any applicable consensus mechanism or process for validating transactions, method of generating or mining digital commodities, and any process for burning or destroying digital commodities 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 commodities; 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 on the exchange.

(V) ADDITIONAL INFORMATION.—Such additional information as the Commission may determine by rule to be necessary for a customer to understand the financial and operational risks of a digital commodity, and to be practically feasible to provide.

(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.

(iv) RELIANCE ON PREVIOUS DISCLOSURES.—In complying with this subparagraph, a digital commodity exchange may rely on and make available to the public relevant information publicly disclosed to the Commission, the Securities and Exchange Commission, or an appropriate Federal banking agency.

(C) DIGITAL COMMODITIES HELD BY RELATED AND DIGITAL COMMODITY AFFILIATED PERSONS.—A digital commodity exchange shall permit the trading of a unit of a digital commodity held by a digital commodity affiliated person or a digital commodity related person, only pursuant to section 4C of the Securities Act of 1933.

(4) TREATMENT OF CUSTOMER ASSETS.—A digital commodity exchange shall establish policies and procedures that are de-

signed 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, 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 relating to the operation of the exchange, 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.—The digital commodity exchange shall establish and enforce rules—

(A) to minimize conflicts of interest in the decision making processes of the contract market; and

(B) to establish a process for resolving conflicts of interest referred to in subparagraph (A).

(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—

(i) 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; and

(ii) the total amount necessary to meet the financial obligations of the digital commodity exchange to all customers of the digital commodity exchange.

(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 and designed to permit consideration of the views of market participants.

(B) FITNESS STANDARDS.—A digital commodity exchange shall establish and enforce appropriate fitness standards for—

(i) officers and 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 in accordance with industry standards, that—

(i) are reliable and secure; and

(ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup resources, 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 customer 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 asset custodian.

(II) WITHDRAWAL.—Notwithstanding subparagraph (A), such share of the money, assets, and property described in subclause (I) of this clause 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 the sale of 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 purposes of the definition of "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 asset 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 shall, by rule, establish notice and disclosure requirements, and may, by rule, establish 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.—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 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 conflicts 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 ASSET CUSTODIAN.—A digital commodity exchange shall hold in a qualified digital asset custodian each unit of a digital asset 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.

(i) EXEMPTIONS.—

(1) In order to promote responsible 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 of the facility.

(j) CUSTOMER DEFINED.—In this section, the term "customer" means any person that maintains an account for the trading of digital commodities directly with a digital commodity exchange (other than a person that is owned or controlled, directly or indirectly, by the digital commodity exchange) for its own behalf or on behalf of 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 with respect to activities and transactions subject to this Act.

SEC. 5j. QUALIFIED DIGITAL ASSET CUSTODIANS.

(a) IN GENERAL.—A person is a qualified digital asset custodian for purposes of this Act if the person—

(1) holds digital assets on behalf of a person registered under this Act or a customer of a person registered under this Act; and

(2) is in compliance with subsections (b) and (c).

(b) SUPERVISION REQUIREMENT.—A person is in compliance with this subsection if the person is subject to—

(1) supervision and examination for custody and safekeeping of digital assets by an appropriate Federal banking agency, the National Credit Union Administration, the Commission, or the Securities and Exchange Commission; or

(2) adequate supervision and appropriate regulation for custody and safekeeping of digital assets by—

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

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

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

(c) OTHER REQUIREMENTS.—A person shall be in compliance with this subsection if:

(1) NOT OTHERWISE PROHIBITED.—The person has not been prohibited by its supervisor from engaging in an activity with respect to the custody and safekeeping of digital assets.

(2) INFORMATION SHARING.—

(A) IN GENERAL.—The person shares information with the Commission on request and complies with such requirements for periodic sharing of information regarding customer accounts that the person 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.—If the person is subject to regulation and examination by an appropriate Federal banking agency, the person may satisfy any information request described in subparagraph (A) by providing the Commission with a detailed listing, in writing, of the digital assets of a customer in the custody of, or use by, the person.

(C) RULEMAKING FOR CFTC ENTITIES.—

(i) IN GENERAL.—The Commission shall prescribe rules to permit a person registered with the Commission to be a qualified digital asset custodian in compliance with this section.

(ii) CONTENT.—In prescribing the rules under subparagraph (A), the Commission shall require a person registered with the Commission to—

(I) implement requirement consistent with the requirements in subsection (d)(1);

(II) establish sufficient system safeguards;

(III) prevent or mitigate conflicts of interest, as appropriate; and

(IV) establish separate governance arrangements for the custodial function 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 assets held by a person registered under this Act, including standards relating to the licensing, examination, and supervisory processes that require the person 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 person;

(B) hold capital sufficient for the financial integrity of the person;

(C) protect customer assets;

(D) establish and maintain books and records regarding the business of the person;

(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 and appropriate for the protection of customers, 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 assets;

(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. 5k. EXEMPTION FOR CERTAIN REGISTERED ENTITIES ENGAGED IN DIGITAL COMMODITY ACTIVITIES.

(a) BY ALTERNATIVE TRADING SYSTEMS.—

(1) IN GENERAL.—On receipt by the Commission from an alternative trading system of a written or electronic notice that contains such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors, the alternative trading system shall be exempt from registration as a digital commodity exchange pursuant to section 5i if—

(A) the alternative trading system does not list any retail commodity transactions pursuant to section 2(c)(2)(D);

(B) the provider, or an affiliate person of the provider, of the alternative trading system is not otherwise registered under this Act;

(C) the alternative trading system lists or trades no other contracts of sale of commodities, except for digital commodities, currencies, and securities; and

(D) the registration of the alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

(2) FURTHER REQUIREMENTS.—An alternative trading system that provides notice to the Commission pursuant to paragraph (1) of this subsection shall be exempt from the requirements of section 5i to the extent that the alternative trading system—

(A) is in compliance with requirements consistent with the requirements of section 5i and imposed on the alternative trading system by the Securities and Exchange Commission;

(B) annually files with the Commission, in a form and manner acceptable to the Commission, a notice that demonstrates compliance with this paragraph and contains any other information the Commission determines to be necessary or appropriate to perform the duties of the Commission under this Act; and

(C) has total trading volume in digital commodities during any calendar quarter in either of its 2 most recently completed fiscal years that does not exceed the lesser of—

(i) 25 percent of the total trading volume for all transactions over the same period; or

(ii) $50,000,000,000.

(3) ENFORCEMENT.—This subsection shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act with respect to a contract of sale of a digital commodity or persons effecting contracts of sale of digital commodities.

(b) BY REGISTERED INTERMEDIARIES.—

(1) IN GENERAL.—On receipt by the Commission, from a broker or dealer that is registered with the Securities and Exchange Commission, of a written or electronic notice that contains such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors, the broker or dealer shall be exempt from registration as a digital commodity broker or digital commodity dealer pursuant to section 4u of this Act if—

(A) the broker or dealer does not offer or engage in any retail commodity transactions pursuant to section 2(c)(2)(D) of this Act or other contracts of sale of commodities, except for digital commodities, currencies, and securities;

(B) the broker or dealer is not otherwise registered under this Act;

(C) the broker or dealer is not subject to a statutory disqualification, as defined under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); and

(D) the broker or dealer is a member of a national securities association registered pursuant to section 15A of the Securities Exchange Act of 1934.

(2) FURTHER REQUIREMENTS.—A broker or dealer that provides notice to the Commission pursuant to paragraph (1) shall be exempt from the requirements of section 4u to the extent that the broker or dealer—

(A) is in compliance with requirements consistent with the requirements of section 4u and imposed on the broker or dealer by the Securities and Exchange Commission;

(B) annually files with the Commission, in a form and manner acceptable to the Commission, a notice that demonstrates compliance with this subsection and contains any other information the Commission determines to be necessary or appropriate to perform the duties of the Commission under this Act; and

(C) has consolidated annual gross financial revenues in either of its 2 most recently completed fiscal years from sales, commissions or other activities in digital commodities that do not exceed the lesser of—

(i) 10 percent of the total annual gross revenues during the same period; or

(ii) $100,000,000.

(3) ENFORCEMENT.—This subsection shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act with respect to a contract of sale of a digital commodity and persons effecting contracts of sale of digital commodities.

SEC. 6. (a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this Act, and with a sufficient assurance that it will continue to comply with the the requirements of this Act. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided,* That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed 6 months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a

showing that the contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government, made a condition of its designation or registration as set forth in sections 5 through 5b or section 5f, or that the contract market or derivatives transaction execution facility or electronic trading facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be made after a notice to the officers of the contract market or derivatives transaction execution facility or electronic trading facility affected and upon a hearing on the record: *Provided,* That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(c) PROHIBITION REGARDING MANIPULATION AND FALSE INFORMATION.—

(1) PROHIBITION AGAINST MANIPULATION.—It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING.—Unlawful manipulation for purposes of this

paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

(B) EFFECT ON OTHER LAW.—Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).

(C) GOOD FAITH MISTAKES.—Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).

(2) PROHIBITION REGARDING FALSE INFORMATION.—It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

(3) OTHER MANIPULATION.—In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

(4) ENFORCEMENT.—

(A) AUTHORITY OF COMMISSION.—If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.

(B) CONTENTS OF COMPLAINT.—A complaint under subparagraph (A) shall—

(i) contain a description of the charges against the person that is the subject of the complaint; and

(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

(C) HEARING.—A hearing described in subparagraph (B)(ii)—

(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);

(ii) shall require the person to show cause regarding why—

(I) an order should not be made—

(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and

(iii) may be held before—

(I) the Commission; or

(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

(5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

(6) WITNESSES.—The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

(7) SERVICE.—A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

(8) REFUSAL TO OBEY.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

(9) FAILURE TO OBEY.—Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district

wherein such person is an inhabitant or transacts business or wherever such person may be found.

(10) EVIDENCE.—On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

(C) assess such person—

(i) a civil penalty of not more than an amount equal to the greater of—

(I) $140,000; or

(II) triple the monetary gain to such person for each such violation; or

(ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of—

(I) $1,000,000; or

(II) triple the monetary gain to the person for each such violation; and

(D) require restitution to customers of damages proximately caused by violations of the person.

(11) ORDERS.—

(A) NOTICE.—The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

(i) registered mail;

(ii) certified mail; or

(iii) personal delivery.

(B) REVIEW.—

(i) IN GENERAL.—A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

(ii) PETITION.—To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

(I) for the circuit in which the petitioner carries out the business of the petitioner; or

(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

(C) PROCEDURE.—

(i) DUTY OF CLERK OF APPROPRIATE COURT.—The clerk of the appropriate court under subparagraph

(B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).

(ii) DUTY OF COMMISSION.—In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

(iii) JURISDICTION OF APPROPRIATE COURT.—Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.

(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of $140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): *Provided*, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c).

(e)(1) In determining the amount of the money penalty assessed under subsection (c), the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under subsection (c) shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by subsection (c) has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under subsection (c) takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).

(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).

(f)(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(g) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to ⟦section 4k(6)⟧ *section 4k(7)*, or any board of trade designated as a contract market pursuant to section 5f.

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SEC. 8. (a)(1) For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided,* That except as otherwise specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further,* That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this Act; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding involving a receiver appointed in a judicial proceeding commenced by the United States or the Commission, or in any proceeding under title 11 of the United States Code in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this Act, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover operations by such agencies. The Commission and the Department of Justice shall assess the effectiveness of such undercover operations and, within two years of the date of enactment of the Futures Trading Practices Act of 1992, shall recommend to Congress any additional undercover or other authority for the Commission that the Commission or the Department of Justice believes to be necessary.

(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to [section 4k(6)] *section 4k(7)*, or any board of trade designated as a contract market pursuant to section 5f.

(b) The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, in an administrative or judicial proceeding brought under this Act, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code. This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.

(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any registered entity or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

(d) The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and by-products, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to whom the Commission has information, and any other information in the possession of the

Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. However, any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such foreign futures authority, department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a foreign futures authority or to a department, central bank and ministries, or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department, central bank and ministries, or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority is a party.

(f) The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpoena or summons to such person, and

(2) at least fourteen days have expired from the date of such mailing of the subpoena or summons, or such other notice.

This subsection shall not apply to congressional subpoenas or congressional requests for information.

(g) The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

(h) The Commission shall submit to Congress a written report within one hundred and twenty days after the end of each fiscal year detailing the operations of the Commission during such fiscal year. The Commission shall include in such report such information, data, and legislative recommendations as it deems advisable with respect to the administration of this Act and its powers and functions under this Act.

(i) The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

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SEC. 18. (a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this Act.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

(c) LABCFTC.—

(1) ESTABLISHMENT.—There is established in the Commission LabCFTC.

(2) PURPOSE.—The purposes of LabCFTC are to—

(A) promote responsible financial technology innovation and fair competition for the benefit of the American public;

(B) serve as an information platform to inform the Commission about new financial technology innovation; and

(C) provide outreach to financial technology innovators to discuss their innovations and the regulatory framework established by this Act and the regulations promulgated thereunder.

(3) DIRECTOR.—LabCFTC shall have a Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. Notwithstanding section 2(a)(6)(A), the Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(4) DUTIES.—LabCFTC shall—

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

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

(C) advise the Commission regarding financial technology that would bolster the Commission's oversight functions;

(D) engage with academia, students, and professionals on financial technology issues, ideas, and technology relevant to activities under this Act;

(E) provide persons working in emerging technology fields with information on the Commission, its rules and regulations, and the role of a registered futures association; and

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

(5) REPORT TO CONGRESS.—

(A) IN GENERAL.—Not later than October 31 of each year after 2025, 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.

(6) RECORDS AND ENGAGEMENT.—The Commission shall—

(A) maintain systems of records to track engagements with the public through LabCFTC;

(B) store communications and materials received in connection with any such engagement in accordance with Commission policies and procedures on data retention and confidentiality; and

(C) take reasonable steps to protect any confidential or proprietary information received through LabCFTC engagement.

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SEC. 21. SWAP DATA REPOSITORIES.

(a) REGISTRATION REQUIREMENT.—

(1) REQUIREMENT; AUTHORITY OF DERIVATIVES CLEARING ORGANIZATION.—

(A) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

(B) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization may register as a swap data repository.

(2) INSPECTION AND EXAMINATION.—Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

(3) COMPLIANCE WITH CORE PRINCIPLES.—

(A) IN GENERAL.—To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

(i) the requirements and core principles described in this section; and

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

(B) REASONABLE DISCRETION OF SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this section.

(b) STANDARD SETTING.—

(1) DATA IDENTIFICATION.—

(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

(B) REQUIREMENT.—In carrying out subparagraph (A), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

(c) DUTIES.—A swap data repository shall—

(1) accept data prescribed by the Commission for each swap under subsection (b);

(2) confirm with both counterparties to the swap the accuracy of the data that was submitted;

(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13);

(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities;

(6) maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity; and

(7) on a confidential basis pursuant to section 8, upon request, and after notifying the Commission of the request, make available swap data obtained by the swap data repository, including individual counterparty trade and position data, to—

(A) each appropriate prudential regulator;

(B) the Financial Stability Oversight Council;

(C) the Securities and Exchange Commission;

(D) the Department of Justice; and

(E) any other person that the Commission determines to be appropriate, including—

(i) foreign financial supervisors (including foreign futures authorities);

(ii) foreign central banks;

(iii) foreign ministries; and

(iv) other foreign authorities; and

(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.

(d) CONFIDENTIALITY AGREEMENT.—Before the swap data repository may share information with any entity described in subsection (c)(7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided.

(e) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each swap data repository 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 swap data repository;

(B) review the compliance of the swap data repository with respect to the requirements and core principles described in this section;

(C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, 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) relating to agreements, contracts, or transactions,

including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) ANNUAL REPORTS.—

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

(i) the compliance of the swap data repository of the chief compliance officer with respect to this Act (including regulations); and

(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and

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

(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA REPOSITORIES.—

(1) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap data repository shall not—

(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

(2) GOVERNANCE ARRANGEMENTS.—Each swap data repository shall establish governance arrangements that are transparent—

(A) to fulfill public interest requirements; and

(B) to support the objectives of the Federal Government, owners, and participants.

(3) CONFLICTS OF INTEREST.—Each swap data repository shall—

(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and

(B) establish a process for resolving conflicts of interest described in subparagraph (A).

(4) ADDITIONAL DUTIES DEVELOPED BY COMMISSION.—

(A) IN GENERAL.—The Commission may develop 1 or more additional duties applicable to swap data repositories.

(B) CONSIDERATION OF EVOLVING STANDARDS.—In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

(C) ADDITIONAL DUTIES FOR COMMISSION DESIGNEES.—The Commission shall establish additional duties for any registrant described in section [1a(48)] *1a(49)* in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the swap data repository.

(g) REQUIRED REGISTRATION FOR SWAP DATA REPOSITORIES.—Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

(h) RULES.—The Commission shall adopt rules governing persons that are registered under this section.

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WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010

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TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

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Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

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SEC. 712. REVIEW OF REGULATORY AUTHORITY.

(a) CONSULTATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this subtitle, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(2) SECURITIES AND EXCHANGE COMMISSION.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(3) PROCEDURES AND DEADLINE.—Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code, and shall be issued in final form not later than 360 days after the date of enactment of this Act.

(4) APPLICABILITY.—The requirements of paragraphs (1) and (2) shall not apply to an order issued—

(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5, United States Code.

(5) EFFECT.—Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act").

(6) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

(7) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(8) MIXED SWAPS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, shall jointly prescribe such regulations regarding mixed swaps, as described in section ⟦1a(47)(D)⟧ *1a(48)(D)* of the Commodity Exchange Act (7 U.S.C. ⟦1a(47)(D)⟧ *1a(48)(D)*) and in section 3(a)(68)(D) of

the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(D)), as may be necessary to carry out the purposes of this title.

(b) LIMITATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap data repositories;

(iv) associated persons of a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities with respect to security-based swaps.

(2) SECURITIES AND EXCHANGE COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to its activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap data repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities with respect to swaps.

(3) PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS AND NATIONAL SECURITIES ASSOCIATIONS.—

(A) FUTURES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that this subparagraph shall not limit the authority of a registered futures association to examine for compliance with, and enforce, its rules on capital adequacy.

(B) NATIONAL SECURITIES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap, except that this subparagraph shall not limit the au-

thority of a national securities association to examine for compliance with, and enforce, its rules on capital adequacy.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—

(A) IN GENERAL.—If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(7) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) EXPEDITED PROCEEDING.—A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) TRANSMITTAL OF PETITION AND RECORD.—

(A) IN GENERAL.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) DUTY OF RESPONDING COMMISSION.—On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and

(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.

(3) STANDARD OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall—

(A) give deference to the views of neither Commission; and

(B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(7) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order until the date on which the determination of the United States Court of Appeals for the District of Columbia Circuit is final (including any appeal of the determination).

(d) JOINT RULEMAKING.—

(1) IN GENERAL.—Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall further define the terms "swap", "security-based swap", "swap dealer", "security-based swap dealer", "major swap partici-

pant", "major security-based swap participant", "eligible contract participant", and "security-based swap agreement" in section [1a(47)(A)(v)] *1a(48)(A)(v)* of the Commodity Exchange Act (7 U.S.C. [1a(47)(A)(v)] *1a(48)(A)(v)*) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).

(2) AUTHORITY OF THE COMMISSIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall jointly adopt such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) TRADE REPOSITORY RECORDKEEPING.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(C) BOOKS AND RECORDS.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and security-based swap participants.

(D) COMPARABLE RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(E) TRACKING UNCLEARED TRANSACTIONS.—Any rules prescribed under subparagraph (A) shall require the maintenance of records of all activities relating to security-based swap agreement transactions defined under subparagraph (A) that are not cleared.

(F) SHARING OF INFORMATION.—The Commodity Futures Trading Commission shall make available to the Securities and Exchange Commission information relating to security-based swap agreement transactions defined in subparagraph (A) that are not cleared.

(3) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) or (2) in a timely manner, at

the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with 1 of the Commissions regarding the entirety of the matter or by determining a compromise position.

(4) JOINT INTERPRETATION.—Any interpretation of, or guidance by either Commission regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

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

(f) RULES AND REGISTRATION BEFORE FINAL EFFECTIVE DATES.—Beginning on the date of enactment of this Act and notwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

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

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

(3) register persons under the provisions of this Act; and

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

provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.

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PART II—REGULATION OF SWAP MARKETS

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SEC. 752. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators (as that term is defined in section [1a(39)] *1a(40)* of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the es-

tablishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection of users of contracts of sale of a commodity for future delivery.

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LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000

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TITLE IV—REGULATORY RESPONSIBILITY FOR BANK PRODUCTS

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SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and

(2) the definitions of "security-based swap" in section 3(a)(68) of the Securities Exchange Act of 1934 and "security-based swap agreement" in section ⟦1a(47)(A)(v)⟧ *1a(48)(A)(v)* of the Commodity Exchange Act and section 3(a)(78) of the Securities Exchange Act of 1934 do not include any identified bank product.

(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

(1) would meet the definition of a "swap" under section ⟦1a(47)⟧ *1a(48)* of the Commodity Exchange Act (7 U.S.C. 1a) or a "security-based swap" under that section 3(a)(68) of the Securities Exchange Act of 1934; and

(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of

the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified bank product that—

(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

(2) meets the definition of swap in section [1a(47)] *1a(48)* of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and

(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

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TITLE 31, UNITED STATES CODE

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SUBTITLE IV—MONEY

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CHAPTER 53—MONETARY TRANSACTIONS

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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§ 5312. Definitions and application

(a) In this subchapter—

(1) "financial agency" means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, a transaction in money, credit, securities or gold, or a service provided with respect to money, securities, futures, precious metals, stones and jewels, or value that substitutes for currency.

(2) "financial institution" means—

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) any credit union;

(F) a thrift institution;

(G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange, or a business engaged in the exchange of currency, funds, or value that substitutes for currency or funds;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money or any other person who engages as a business in the transmission of currency, funds, or value that substitutes for currency, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) "monetary instruments" means—

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material;

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form; and

(D) as the Secretary shall provide by regulation, value that substitutes for any monetary instrument described in subparagraph (A), (B), or (C).

(4) NONFINANCIAL TRADE OR BUSINESS.—The term "nonfinancial trade or business" means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.

(5) "person", in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(6) "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter—

(1) "domestic financial agency" and "domestic financial institution" apply to an action in the United States of a financial agency or institution.

(2) "foreign financial agency" and "foreign financial institution" apply to an action outside the United States of a financial agency or institution.

(c) ADDITIONAL DEFINITIONS.—For purposes of this subchapter, the following definitions shall apply:

(1) CERTAIN INSTITUTIONS INCLUDED IN DEFINITION.—The term "financial institution" (as defined in subsection (a)) includes the following:

(A) Any futures commission merchant, *digital commodity broker, digital commodity dealer,* commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act *and any digital commodity exchange registered, or required to register, under the Commodity Exchange Act which permits direct customer access*.

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INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

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DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) "Assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) "Bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 2(4) of the Home Owners' Loan Act, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934.

(4) "Commission" means the Securities and Exchange Commission.

(5) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term "dealer" has the same meaning as given in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

(8) "Director" means any director of a corporation or any person performing similar functions, with respect to any organization, whether incorporated or unincorporated.

(9) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(10) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; (F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others;; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) "Investment company", affiliated person, and "insurance company" have the same meanings as in the Investment Company Act of 1940. "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) "Investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(15) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934.

(16) "Person" means a natural person or a company.

(17) The term "person associated with an investment adviser" means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion or portions of this title, persons, including employees controlled by an investment adviser.

(18) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing. *The term "investment contract" does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933). The term does not include a digital commodity or permitted payment stablecoin.*

(19) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(20) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not

include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", and "Trust Indenture Act of 1939", mean those Acts, respectively, as heretofore or hereafter amended.

(22) "Business development company" means any company which is a business development company as defined in section 2(a)(48) of title I of this Act and which complies with section 55 of title I of this Act, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 2(a)(48) and 55 of title I of this Act shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 55 through 65 of title I of this Act; and

(C) the securities which may be purchased pursuant to section 55(a) of title I of this Act may be purchased from any person.

For purposes of this paragraph, all terms in sections 2(a)(48) and 55 of title I of this Act shall have the same meaning set forth in such title as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 55 through 65 of title I of this Act shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

(23) "Foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(24) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(25) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(26) The term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.

(27) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(28) The term "credit rating agency" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(29) The term "private fund" means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

(30) The term "foreign private adviser" means any investment adviser who—

(A) has no place of business in the United States;

(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

(D) neither—

(i) holds itself out generally to the public in the United States as an investment adviser; nor

(ii) acts as—

(I) an investment adviser to any investment company registered under the Investment Company Act of 1940; or

(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.

[(29)**]** *(31)* The terms "commodity pool", "commodity pool operator", "commodity trading advisor", "major swap participant", "swap", "swap dealer", and "swap execution facility" have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

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

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, *INNOVATION,* COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, *innovation,* competition, and capital formation.

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INVESTMENT COMPANY ACT OF 1940

TITLE I—INVESTMENT COMPANIES

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GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) "Advisory board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) "Affiliated company" means a company which is an affiliated person.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other per-

son is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) "Assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) "Bank" means (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

(6) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this title. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until

a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term "dealer" has the same meaning as given in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) "Employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.

(14) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(15) "Face-amount certificate" means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the "installment type"); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a "fully paid" face-amount certificate).

(16) "Government security" means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) any affiliated person of such company,

(ii) any member of the immediate family of any natural person who is an affiliated person of such company,

(iii) any interested person of any investment adviser of or principal underwriter for such company,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment com-

pany or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment advisor or principal underwiter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagaph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

(20) "Investment adviser" of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) regularly performs substantially all of the duties undertaken by such person described in clause (A); but does not include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and

trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) "Investment banker" means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) "Lend" includes a purchase coupled with an agreement by the vendor to repurchase; "borrow" includes a sale coupled with a similar agreement.

(24) "Majority-owned subsidiary" of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(26) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934.

(27) "Periodic payment plan certificate" means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in clause (A) have upon completing the periodic payments for which such securities provide.

(28) "Person" means a natural person or a company.

(29) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end

company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) "Prospectus", as used in section 22, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933.

(32) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) "Sales load" means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fee, insurance premiums,

issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subsciption, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. *The term "investment contract" does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933). The term does not include a digital commodity or permitted payment stablecoin.*

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) "Short-term paper" means any note, draft, bill of exchange, or banker's acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(40) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include, in addition to an

issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 28 of this title, means—

(A) as used in sections 3, 5, and 12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this title, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this title, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided,* That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 5(b)(1), the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this title. For purposes of sections 5 and 12, in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be following by any such company, as provided in sections 8, 30, and 31.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) "Securities Act of 1933", "Securities Exchange Act of 1934", and "Trust Indenture Act of 1939" means those Acts, respectively, as heretofore or hereafter amended.

(45) "Savings and loan association" means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) "Eligible portfolio company" means any issuer which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 3 (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 3(c); and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934;

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and,

as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

(iii) it has total assets of not more than $4,000,000, and capital and surplus (shareholders' equity less retained earnings) of not less than $2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this title.

(47) "Making available significant managerial assistance" by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) "Business development company" means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 55(a), and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of

the value of its total assets condition of section 55; and provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this title; and

(C) has elected pursuant to section 54(a) to be subject to the provisions of sections 55 through 65.

(49) "Foreign securities authority" means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) "Qualified purchaser" means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are nec-

essary or appropriate in the public interest or for the protection of investors.

(C) The term "qualified purchaser" does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c), would be an investment company (hereafter in this paragraph referred to as an "excepted investment company"), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 3(c)(1)(A), that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as "pre-amendment beneficial owners"), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(53) The term "credit rating agency" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(54) The terms "commodity pool", "commodity pool operator", "commodity trading advisor", "major swap participant", "swap", "swap dealer", and "swap execution facility" have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).".

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

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, *INNOVATION,* COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, *innovation,* competition, and capital formation.

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SECURITIES INVESTOR PROTECTION ACT OF 1970

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SEC. 16. DEFINITIONS.

For purposes of this Act, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(2) CUSTOMER.—

(A) IN GENERAL.—The term "customer" of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

(B) INCLUDED PERSONS.—The term "customer" includes—

(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

(C) EXCLUDED PERSONS.—The term "customer" does not include any person, to the extent that—

(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(3) CUSTOMER NAME SECURITIES.—The term "customer name securities" means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(4) CUSTOMER PROPERTY.—The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term "customer property" includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 15(c)(3) of the 1934 Act and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 6(d);

(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and

(E) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(5) DEBTOR.—The term "debtor" means a member of SIPC with respect to whom an application for a protective decree has been filed under section 5(a)(3) or a direct payment procedure has been instituted under section 10(b).

(6) EXAMINING AUTHORITY.—The term "examining authority" means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 13(c).

(7) FILING DATE.—The term "filing date" means the date on which an application for a protective decree is filed under section 5(a)(3), except that—

(A) if a petition under title 11 of the United States Code concerning the debtor was filed before such date, the term "filing date" means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term "filing date" means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 10(f), the term "filing date" means the date on which notice of such direct payment procedure was published under section 10(b).

(8) FOREIGN SUBSIDIARY.—The term "foreign subsidiary" means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(9) GROSS REVENUES FROM THE SECURITIES BUSINESS.—The term "gross revenues from the securities business" means the sum of (but without duplication)—

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups with respect to purchases or sales of securities as principal;

(B) charges for executing or clearing transactions in securities for other brokers and dealers;

(C) the net realized gain, if any, from principal transactions in securities in trading accounts;

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;

(E) interest earned on customers' securities accounts;

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;

(H) income from service charges or other surcharges with respect to securities;

(I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;

(J) fees in connection with put, call, and other option transactions in securities;

(K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and

(L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(10) LIQUIDATION PROCEEDING.—The term "liquidation proceeding" means any proceeding for the liquidation of a debtor under this Act in which a trustee has been appointed under section 5(b)(3).

(11) NET EQUITY.—The term "net equity" means the dollar amount of the account or accounts of a customer, to be determined by—

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission, including all property collateralizing such positions, to the extent that such property is not otherwise included herein; minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 8(a)).

A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(12) PERSONS REGISTERED AS BROKERS OR DEALERS.—The term "persons registered as brokers or dealers" includes any person who is a member of a national securities exchange other than a government securities broker or government securities dealer registered under section 15C(a)(1)(A) of the 1934 Act.

(13) PROTECTIVE DECREE.—The term "protective decree" means a decree, issued by a court upon application of SIPC under section 5(a)(3), that the customers of a member of SIPC are in need of the protection provided under this Act.

(14) SECURITY.—The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, or any security future as that term is defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such in-

vestment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term "security" does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing. *The term "investment contract" does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933). The term does not include a digital commodity or permitted payment stablecoin, as such terms are defined, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))*

(15) TREATMENT OF PERMITTED PAYMENT STABLECOINS.—A permitted payment stablecoin, as defined in section 2(a) of the Securities Act of 1933, shall not qualify as "cash" and a claim for a permitted payment stablecoin shall not qualify as a "claim for cash".

BANK HOLDING COMPANY ACT OF 1956

* * * * * * *

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) Except as otherwise provided in this Act, no bank holding company shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the

conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided,* That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this Act, the period ending December 31,

1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

(b) After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company if, in its judgment, such an extension would not be detrimental to the public interest, and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares

during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which had been determined by the Board by regulation or order under this paragraph as of the day before the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation or order, unless modified by the Board);

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and sound-

ness of any subsidiary bank of such bank holding company, or

(III) the bank holding company fails to furnish the information required under clause (iii).

(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term "export trading company" means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

(ii) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests

in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

(G) DETERMINATION OF STATUS AS EXPORT TRADING COMPANY.—

(i) TIME PERIOD REQUIREMENTS.—For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in subclause (I)) shall be taken into account in making any such determination.

(ii) EXPORT REVENUE REQUIREMENTS.—A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

(II) at least ⅓ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the United States by persons not affiliated with such company.

(H) INVENTORY.—

(i) NO GENERAL LIMITATION.—The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

(ii) SPECIFIC LIMITATION BY ORDER.—Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.

The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Except as provided in paragraph (9), any company which—

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

(2) LOSS OF EXEMPTION.—Subject to paragraph (3), a company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

(A) such company directly or indirectly—

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) or (12) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or a savings association other than—

(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

(III) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(IV) shares held in an account solely for trading purposes;

(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(VI) loans or other accounts receivable acquired in the normal course of business;

(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11);

(X) shares issued in a qualified stock issuance under section 10(q) of the Home Owners' Loan Act; and

(XI) assets that are derived from, or incidental to, activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) are permitted to engage;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association;

(B) any bank subsidiary of such company—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

(ii) engages in the business of making commercial loans (except that, for purposes of this clause, loans

made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

(C) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in the account of the bank at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).

(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(C), an overdraft is described in this paragraph if—

(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate;

(B) such overdraft—

(i) is permitted or incurred on behalf of an affiliate that is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations that are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system; or

(C) such overdraft—

(i) is permitted or incurred by, or on behalf of, an affiliate in connection with an activity that is financial in nature or incidental to a financial activity; and

(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a bank that is a member of the Federal Reserve System, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a bank that is not a member of the Federal Reserve System.

(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

(A) either—

(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

(5) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a bank holding company under section 5(a) of this Act;

(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

(6) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

(7) EXAMINATION.—The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

(8) ENFORCEMENT.—

(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

(B) APPLICATION OF OTHER ACT.—Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

(9) TYING PROVISIONS.—A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection

with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

(10) EXEMPTION UNAFFECTED BY CERTAIN EMERGENCY ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if—

(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act; and

(B) either—

(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

(ii) the insured institution has total assets of $500,000,000 or more at the time of such acquisition.

(11) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.

(12) EXEMPTION UNAFFECTED BY CERTAIN OTHER ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority.

(13) SPECIAL RULE RELATING TO SHARES ACQUIRED IN A QUALIFIED STOCK ISSUANCE.—A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 10(q) of the Home Owners' Loan Act with respect to such shares; or

(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(14) FOREIGN BANK SUBSIDIARIES OF LIMITED PURPOSE CREDIT CARD BANKS.—

(A) IN GENERAL.—An institution described in section 2(c)(2)(F) may control a foreign bank if—

(i) the investment of the institution in the foreign bank meets the requirements of section 25 or 25A of the Federal Reserve Act and the foreign bank qualifies under such sections;

(ii) the foreign bank does not offer any products or services in the United States; and

(iii) the activities of the foreign bank are permissible under otherwise applicable law.

(B) OTHER LIMITATIONS INAPPLICABLE.—The limitations contained in any clause of section 2(c)(2)(F) shall not apply to a foreign bank described in subparagraph (A) that is controlled by an institution described in such section.

(g) LIMITATIONS ON CERTAIN BANKS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

(A) an application for such acquisition were filed under section 3(a) of this Act; and

(B) such bank were treated as an additional bank (under section 3(d)).

(h) TYING PROVISIONS.—

(1) APPLICABLE TO CERTAIN EXEMPT INSTITUTIONS AND PARENT COMPANIES.—An institution described in subparagraph (D), (F), (G), or (H) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

(2) APPLICABLE WITH RESPECT TO CERTAIN TRANSACTIONS.—A company that controls an institution described in subparagraph (D), (F), (G), or (H) of section 2(c)(2) and any of such

company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—The Board may approve an application by any bank holding company under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section.

(2) PROHIBITION ON TANDEM RESTRICTIONS.—In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.

(3) ACQUISITION OF INSOLVENT SAVINGS ASSOCIATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, any qualified savings association which became a federally chartered stock company in December of 1986 and which is acquired by any bank holding company without Federal financial assistance after June 1, 1991, and before March 1, 1992, and any subsidiary of any such association, may after such acquisition continue to engage within the home State of the qualified savings association in insurance agency activities in which any Federal savings association (or any subsidiary thereof) may engage in accordance with the Home Owners' Loan Act and regulations pursuant to such Act if the qualified savings association or subsidiary thereof was continuously engaged in such activity from June 1, 1991, to the date of the acquisition.

(B) DEFINITION OF QUALIFIED SAVINGS ASSOCIATION.—For purposes of this paragraph, the term "qualified savings association" means any savings association that—

(i) was chartered or organized as a savings association before June 1, 1991;

(ii) had, immediately before the acquisition of such association by the bank holding company referred to in subparagraph (A), negative tangible capital and total insured deposits in excess of $3,000,000,000; and

(iii) will meet all applicable regulatory capital requirements as a result of such acquisition.

(4) SOLICITATION OF VIEWS.—

(A) NOTICE.—Upon receiving any application or notice by a bank holding company to acquire, directly or indirectly, a savings association under subsection (c)(8), the Board shall solicit comments and recommendations from—

(i) the Comptroller of the Currency, with respect to the acquisition of a Federal savings association; and

(ii) the Federal Deposit Insurance Corporation, with respect to the acquisition of a State savings association.

(B) COMMENT PERIOD.—The comments and recommendations of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board not later than 30 days after the receipt by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, that an emergency exists that requires expeditious action).

(5) EXAMINATION.—

(A) SCOPE.—The Board shall consult with the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that directly or indirectly controls a savings association.

(B) ACCESS TO INSPECTION REPORTS.—Upon the request of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, the Board shall furnish the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company that directly or indirectly controls a savings association.

(6) COORDINATION OF ENFORCEMENT EFFORTS.—The Board and the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, shall cooperate in any enforcement action against any bank holding company that controls a savings association, if the relevant conduct involves such association.

(8) INTERSTATE ACQUISITIONS.—

(A) IN GENERAL.—The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this Act if—

(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) EXCEPTION.—Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).

(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

(1) GENERAL NOTICE PROCEDURE.—

(A) NOTICE REQUIREMENT.—Except as provided in paragraph (3), no bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) or in any complementary activity under subsection (k)(1)(B) without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

(B) CONTENTS OF NOTICE.—The notice submitted to the Board shall contain such information as the Board shall prescribe by regulation or by specific request in connection with a particular notice.

(C) PROCEDURE FOR AGENCY ACTION.—

(i) NOTICE OF DISAPPROVAL.—Any notice filed under this subsection shall be deemed to be approved by the Board unless, before the end of the 60-day period beginning on the date the Board receives a complete notice under subparagraph (A), the Board issues an order disapproving the transaction or activity and setting forth the reasons for disapproval.

(ii) EXTENSION OF PERIOD.—The Board may extend the 60-day period referred to in clause (i) for an additional 30 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(iii) DETERMINATION OF PERIOD IN CASE OF PUBLIC HEARING.—In the event a hearing is requested or the Board determines that a hearing is warranted, the Board may extend the notice period provided in this subsection for such time as is reasonably necessary to conduct a hearing and to evaluate the hearing record. Such extension shall not exceed the 91-day period beginning on the date that the hearing record is complete.

(D) APPROVAL BEFORE END OF PERIOD.—

(i) IN GENERAL.—Any transaction or activity may commence before the expiration of any period for disapproval established under this paragraph if the Board issues a written notice of approval.

(ii) SHORTER PERIODS BY REGULATION.—The Board may prescribe regulations which provide for a shorter notice period with respect to particular activities or transactions.

(E) EXTENSION OF PERIOD.—In the case of any notice to engage in, or to acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) or (a)(2) or in any complementary activity under subsection (k)(1)(B) that has not been previously approved by regulation, the Board may extend the notice period under this subsection for an additional 90 days. The Board may further extend the period with the agreement of the bank holding company submitting the notice pursuant to this subsection.

(2) GENERAL STANDARDS FOR REVIEW.—

(A) CRITERIA.—In connection with a notice under this subsection, the Board shall consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.

(B) GROUNDS FOR DISAPPROVAL.—The Board may deny any proposed transaction or activity for which notice has been submitted pursuant to this subsection if the bank holding company submitting such notice neglects, fails, or refuses to furnish the Board all the information required by the Board.

(C) CONDITIONAL ACTION.—Nothing in this subsection limits the authority of the Board to impose conditions in connection with an action under this section.

(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) of this subsection or under subsection (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity, other than any complementary activity under subsection (k)(1)(B), or acquire the shares or assets of any company, other than an insured depository institution or a company engaged in any complementary activity under subsection (k)(1)(B), if the proposal qualifies under paragraph (4).

(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

(i) the acquiring bank holding company is well capitalized;

(ii) the lead insured depository institution of such holding company is well capitalized;

(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

(iv) no insured depository institution controlled by such holding company is undercapitalized.

(B) MANAGERIAL CRITERIA.—

(i) WELL MANAGED.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—Except as provided in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 low-

est composite ratings at the later of the institution's most recent examination or subsequent review.

(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

(i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms, and conditions of such subsection and such regulation or order; and

(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

(D) SIZE OF ACQUISITION.—

(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company.

(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against the bank holding company or any depository institution subsidiary of the holding company, and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

(5) NOTIFICATION.—

(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the Board and must provide written notification to the Board not later than 10 business days after commencing the activity.

(B) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

(i) IN GENERAL.—At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A) of this paragraph) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding

company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) DESCRIPTION OF ACTIVITIES AND TERMS.—A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

(6) RECENTLY ACQUIRED INSTITUTIONS.—Any insured depository institution which has been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

(7) ADJUSTMENT OF PERCENTAGES.—The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.

(k) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

(1) IN GENERAL.—Notwithstanding subsection (a), a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order)—

(A) to be financial in nature or incidental to such financial activity; or

(B) is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

(2) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

(A) PROPOSALS RAISED BEFORE THE BOARD.—

(i) CONSULTATION.—The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection for a determination of whether an activity is financial in nature or incidental to a financial activity.

(ii) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in clause (i) (or such longer period as the Board determines to be appropriate under the circumstances) that the Secretary of the Treasury be-

lieves that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

(B) PROPOSALS RAISED BY THE TREASURY.—

(i) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

(ii) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under clause (i) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, if the Board determines not to seek public comment on the proposal, the reasons for that determination.

(3) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to a financial activity, the Board shall take into account—

(A) the purposes of this Act and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to—

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(4) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—For purposes of this subsection, the following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money [or securities]*, securities, or digital commodities*.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(E) Underwriting, dealing in, or making a market in securities *or digital commodities*.

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(G) Engaging, in the United States, in any activity that—

(i) a bank holding company may engage in outside of the United States; and

(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) (as in effect on the day before the date of the enactment of the Gramm-Leach-Bliley Act) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by—

(I) a securities affiliate or an affiliate thereof; or

(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940, or an affiliate of such investment adviser;

as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

(5) ACTIONS REQUIRED.—

(A) IN GENERAL.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity.

(B) ACTIVITIES.—The activities described in this subparagraph are as follows:

(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(ii) Providing any device or other instrumentality for transferring money or other financial assets.

(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(6) REQUIRED NOTIFICATION.—

(A) IN GENERAL.—A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the

company acquired not later than 30 calendar days after commencing the activity or consummating the acquisition, as the case may be.

(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—

(i) IN GENERAL.—Except as provided in subsection (j) with regard to the acquisition of a savings association and clause (ii), a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

(ii) EXCEPTION.—A financial holding company may not acquire a company, without the prior approval of the Board, in a transaction in which the total consolidated assets to be acquired by the financial holding company exceed $10,000,000,000.

(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if the approval of the Board is not required.

(7) MERCHANT BANKING ACTIVITIES.—

(A) JOINT REGULATIONS.—The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this Act and the Gramm-Leach-Bliley Act and to protect depository institutions.

(B) SUNSET OF RESTRICTIONS ON MERCHANT BANKING ACTIVITIES OF FINANCIAL SUBSIDIARIES.—The restrictions contained in paragraph (4)(H) on the ownership and control of shares, assets, or ownership interests by or on behalf of a subsidiary of a depository institution shall not apply to a financial subsidiary (as defined in section 5136A of the Revised Statutes of the United States) of a bank, if the Board and the Secretary of the Treasury jointly authorize financial subsidiaries of banks to engage in merchant banking activities pursuant to section 122 of the Gramm-Leach-Bliley Act.

(l) CONDITIONS FOR ENGAGING IN EXPANDED FINANCIAL ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding subsection (k), (n), or (o), a bank holding company may not engage in any activity, or directly or indirectly acquire or retain shares of any company engaged in any activity, under subsection (k), (n), or (o), other than activities permissible for any bank holding company under subsection (c)(8), unless—

(A) all of the depository institution subsidiaries of the bank holding company are well capitalized;

(B) all of the depository institution subsidiaries of the bank holding company are well managed;

(C) the bank holding company is well capitalized and well managed; and

(D) the bank holding company has filed with the Board—

(i) a declaration that the company elects to be a financial holding company to engage in activities or acquire and retain shares of a company that were not permissible for a bank holding company to engage in or acquire before the enactment of the Gramm-Leach-Bliley Act; and

(ii) a certification that the company meets the requirements of subparagraphs (A), (B), and (C).

(2) CRA REQUIREMENT.—Notwithstanding subsection (k) or (n) of this section, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act, the appropriate Federal banking agency shall prohibit a financial holding company or any insured depository institution from—

(A) commencing any new activity under subsection (k) or (n) of this section, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act; or

(B) directly or indirectly acquiring control of a company engaged in any activity under subsection (k) or (n) of this section, section 5136A(a) of the Revised Statutes of the United States, or section 46(a) of the Federal Deposit Insurance Act (other than an investment made pursuant to subparagraph (H) or (I) of subsection (k)(4), or section 122 of the Gramm-Leach-Bliley Act, or under section 46(a) of the Federal Deposit Insurance Act by reason of such section 122, by an affiliate already engaged in activities under any such provision);

if any insured depository institution subsidiary of such financial holding company, or the insured depository institution or any of its insured depository institution affiliates, has received in its most recent examination under the Community Reinvestment Act of 1977, a rating of less than "satisfactory record of meeting community credit needs".

(3) FOREIGN BANKS.—For purposes of paragraph (1), the Board shall apply comparable capital and management standards to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, giving due regard to the principle of national treatment and equality of competitive opportunity.

(m) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET CERTAIN REQUIREMENTS.—

(1) IN GENERAL.—If the Board finds that—

(A) a financial holding company is engaged, directly or indirectly, in any activity under subsection (k), (n), or (o), other than activities that are permissible for a bank holding company under subsection (c)(8); and

(B) such financial holding company is not in compliance with the requirements of subsection (l)(1);

the Board shall give notice to the financial holding company to that effect, describing the conditions giving rise to the notice.

(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after the date of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the financial holding company shall execute an agreement with the Board to comply with the requirements applicable to a financial holding company under subsection (l)(1).

(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of that financial holding company or any affiliate of that company as the Board determines to be appropriate under the circumstances and consistent with the purposes of this Act.

(4) FAILURE TO CORRECT.—If the conditions described in a notice to a financial holding company under paragraph (1) are not corrected within 180 days after the date of receipt by the financial holding company of a notice under paragraph (1), the Board may require such financial holding company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the discretion of the Board, either—

(A) to divest control of any subsidiary depository institution; or

(B) at the election of the financial holding company instead to cease to engage in any activity conducted by such financial holding company or its subsidiaries (other than a depository institution or a subsidiary of a depository institution) that is not an activity that is permissible for a bank holding company under subsection (c)(8).

(5) CONSULTATION.—In taking any action under this subsection, the Board shall consult with all relevant Federal and State regulatory agencies and authorities.

(n) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

(1) IN GENERAL.—Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Gramm-Leach-Bliley Act may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1999;

(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1999, and other activities permissible under this Act.

(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding

company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity under subsection (k) represent at least 85 percent of the consolidated annual gross revenues of the company.

(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company that is engaged in any activity that the Board has not determined to be financial in nature or incidental to a financial activity under subsection (k), except this paragraph shall not apply with respect to a company that owns a broadcasting station licensed under title III of the Communications Act of 1934 and the shares of which are under common control with an insurance company since January 1, 1998, unless such company is acquired by, or otherwise becomes an affiliate of, a bank holding company that, at the time such acquisition or affiliation is consummated, is 1 of the 5 largest domestic bank holding companies (as determined on the basis of the consolidated total assets of such companies).

(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).

(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—

(A) IN GENERAL.—A depository institution controlled by a financial holding company shall not—

(i) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (k)(4); or

(ii) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in clause (i).

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as prohibiting an arrangement between a depository institution and a company owned or controlled pursuant to subparagraph (H) or (I) of subsection (k)(4) for the marketing of products or services through statement inserts or Internet websites if—

(i) such arrangement does not violate section 106 of the Bank Holding Company Act Amendments of 1970; and

(ii) the Board determines that the arrangement is in the public interest, does not undermine the separation of banking and commerce, and is consistent with the safety and soundness of depository institutions.

(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—A depository institution controlled by a financial holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection.

(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

(o) REGULATION OF CERTAIN FINANCIAL HOLDING COMPANIES.—Notwithstanding subsection (a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of enactment of the Gramm-Leach-Bliley Act, may continue to engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of September 30, 1997, if—

(1) the holding company, or any subsidiary of the holding company, lawfully was engaged, directly or indirectly, in any of such activities as of September 30, 1997, in the United States;

(2) the attributed aggregate consolidated assets of the company held by the holding company pursuant to this subsection, and not otherwise permitted to be held by a financial holding company, are equal to not more than 5 percent of the total consolidated assets of the bank holding company, except that the Board may increase that percentage by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act; and

(3) the holding company does not permit—

(A) any company, the shares of which it owns or controls pursuant to this subsection, to offer or market any product or service of an affiliated depository institution; or

(B) any affiliated depository institution to offer or market any product or service of any company, the shares of which are owned or controlled by such holding company pursuant to this subsection.

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MINORITY VIEWS

H.R. 3633, the crypto market structure bill Democrats call the "CALAMITY Act," would legitimize the numerous crypto scams of President Trump and his family. The bill also creates new loopholes of other crypto companies not owned by the President to avoid investor protections and national security guardrails. Notably, this legislation impedes, blocks or restricts oversight, funding, and resources to enforce provisions related to national security, conflict of interests, and fraud. The CALAMITY Act would also threaten overall financial stability, as exemptions in the bill are broad enough to create loopholes for participants to migrate from our securities markets to this new crypto one.

Throughout the 2024 campaign trail, President Trump promised to make America the "crypto capital of the planet and the Bitcoin superpower of the world."[1] What he didn't mention was that he and his family were also planning to create several new crypto companies and offer crypto products directly to the public, including foreign governments. For example, in the days before his inauguration and during his Presidency, the President and his family launched a decentralized finance (defi) platform,[2] memecoins,[3] a stablecoin,[4] a Bitcoin mining company,[5] a Bitcoin treasury,[6] Bitcoin ETF,[7] and more.[8] Purchases of Trump's crypto products have also enabled access to the President, and have been used by foreign governments to facilitate commercial deals, all generating Trump and his family more than a billion dollars. Separately, Trump has asserted unprecedented control over what were formerly understood to be independent financial regulators, by firing Commissioners and Directors, and asserting approval over the rulewriting process. And notably, President Trump has directed Republicans in Congress[9] to pass stablecoin and crypto market structure legislation

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[1] *Trump pledges national Bitcoin stockpile, to make US 'crypto capital of the planet'*, USA Today (July 28, 2024); *Trump calls for US to be 'crypto capital of the planet' in appeal to Nashville bitcoin conference*, AP News (July 27, 2024).

[2] *Trump Made $57.4 Million From World Liberty Financial, New Filing Discloses*, Forbes (June 14, 2025); *Trump Rolls Out His New Cryptocurrency Business*, New York Times (Sept. 16, 2024).

[3] *Donald and Melania Trump launch a pair of meme coins ahead of inauguration, raising serious ethics concerns*, CNN (Jan. 20, 2025); *Trump faces crypto world backlash after launch of meme coin*, The Hill (Jan. 20, 2025).

[4] *Trump's Crypto Venture Introduces New Digital Currency*, New York Times (Mar. 25, 2025).

[5] *Trump family's bitcoin mining venture to go public—as Trump crypto interests grow*, CBS News (May 12, 2025).

[6] *Trump Media's Bitcoin treasury registration 'declared effective' by SEC*, CoinTelegraph (June 14, 2025).

[7] *Trump Media seeks to launch 'Truth Social bitcoin ETF'*, Financial Times (June 5, 2025).

[8] *Trump reports more than $600 million in income from crypto, golf, licensing fees*, Reuters (June 14, 2025).

[9] President Trump's AI and Crypto Czar, David Sacks, as well House-Senate Bicameral Working Group on Digital Assets announced the target goal of having stablecoin and market structure legislation through the Senate within the first 100 days of the new Administration. *See President Trump's Crypto Czar Outlines Federal Government's New Approach to Digital Assets*, wiley (Feb. 5, 2025); Senate Committee on Banking, Housing, and Urban Affairs, *Scott: Con-*

before August recess, even as he and his family roll out new crypto products.[10]

It is in this context that on May 5, 2025, Chair Hill released a revised version of crypto market structure legislation, H.R. 3633. In his testimony before the House Financial Services Committee, Timothy Massad, a former Commodity Futures Trading Commission (CFTC) Chairman and current Research Fellow and Director of the Digital Assets Policy Project at Harvard University, summarized major challenges facing the bill:

> With over 200 pages of detailed, complicated provisions, the implications of which are difficult to assess, I fear the Clarity Act is likely to have two principal effects: first, it will guarantee its own obsolescence, because the technology will evolve and the particulars of provisions will become outdated or not relevant. Second, and of far greater danger . . . it will generate massive exploitation of its provisions and regulatory arbitrage.[11]

The loopholes in this bill coupled with a self-profiteering President, captured agencies, and non-existent enforcement of current law under the Trump Administration, would allow fraud to proliferate and result in devastating losses for not just crypto consumers, but also for non-crypto investors who are trying to save for college, home ownership, retirement, or other milestones. Passing this bill into law would make Congress complicit in Trump's numerous crypto scams and cause lasting harm to the American economy and public.

PRESIDENT TRUMP'S CRYPTO CONFLICTS OF INTEREST

The CALAMITY Act would not just enable large-scale conflicts of interest from Trump and his family, it would send a message that Congress approves and validates the way he is selling access to the White House, both domestically and abroad. Existing executive branch ethics requirements contain loopholes and gaps that can be easily exploited, and certain conflicts of interest laws exempt the President and Vice President. This has paved the way for unprecedented corruption and unchecked self-profiteering. For example, according to ethics and anti-corruption experts, Democracy Defenders Action:

> If President Trump were subject to the same criminal conflict of interest statute, 18 U.S.C. 208, that applies to other executive branch employees, he would have been prohibited from signing the March 23 Executive Order . . . [And] if he were subject to section 208 like other executive branch employee who may have interests in

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gress, Trump Administration Committed to Securing U.S. Leadership in Digital Assets (Feb. 4, 2025).

[10] *Trump holds long-awaited crypto summit, calls for bill 'on his desk' before August*, Fortune (Mar. 7, 2025).

[11] House Committee on Financial Services, *Testimony of Timothy G. Massad, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework*, 119th Cong. (June 6, 2025).

> stablecoins, he would be barred from working on legislation that would be viewed as a particular matter . . .[12]

The Trump family's high-profile conflicts of interest were elevated a few days before the presidential inauguration. President Trump and First Lady Melania Trump launched their own memecoins ($TRUMP and $MELANIA), with $TRUMP earning a staggering $350 million in the three weeks after it was launched, from sales and fees alone.[13] While early, likely inside investors profited off of the memecoins, most investors lost a staggering $2 billion as the coins value plummeted.[14] Later on, Trump announced that the 220 largest holders would be invited to an exclusive memecoin dinner at his luxury golf resort on May 22nd, for which attendees, including foreign investors, spent millions of dollars to secure a seat.[15] The CALAMITY Act exempts memecoins from regulation, leaving them, including Trump's memecoin, to operate with no oversight at all. One Committee hearing witness, Professor Timothy Massad, raised a critical point during his testimony:

> In the words of Vitalik Buterin, [memecoins] are vehicles for 'unlimited political bribery,' because those seeking to curry favor with the Administration—whether they be individuals, companies or countries—may purchase the coins, knowing the President will profit from their actions, while they can still deny that seeking government favoritism was their purpose. Instead, they can claim they were merely speculating on a digital asset.[16]

In addition to dropping or pausing ongoing enforcement cases against Trump's donors and crypto investors,[17] the SEC has also issued statements declaring that certain digital assets, which include crypto products issued or backed by the Trump family, are not subject to SEC oversight.[18] More recently, on June 13, the SEC approved the Trump Media and Technology Group's (Trump Media) $2.3 billion Bitcoin treasury deal, one of the largest Bitcoin treasury deals for a public company.[19] On Monday, June 16, President Trump's social media company, Truth Social, also filed a registration form with the SEC to launch a dual exchange-traded fund (ETF) for Bitcoin and Ether.[20]

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[12] Democracy Defenders Fund, *Trump's Crypto Conflicts of Interest: A Growing Concern* (Apr. 23, 2025).

[13] Helen Partz, *Donald Trump's memecoin generated $350M for creators: Report*, CoinTelegraph (Mar. 07, 2025).

[14] *Early Crypto Traders Had Speedy Profit on Trump Coin as Others Suffered Losses*, New York Times (Feb. 9, 2025).

[15] Democracy Defenders Fund, *Trump's Crypto Conflicts of Interest: A Growing Concern* (Apr. 23, 2025).

[16] House Committee on Financial Services, *Testimony of Timothy G. Massad, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework*, 119th Cong. (June 6, 2025).

[17] Matthew Goldstein, *S.E.C. Drops Lawsuit Against Binance, a Crypto Exchange*, New York Times (May 29, 2025); Rebecca Balhaus, et. al., *Trump Family Has Held Deal Talks With Binance Following Crypto Exchange's Guilty Plea*, Wall Street Journal (Mar. 13, 2025).

[18] *Crypto group Tron to go public after US pauses probe into billionaire founder*, Financial Times (June 16, 2025); Securities and Exchange Commission, *Statement on Stablecoins* (Apr. 4, 2025); Securities and Exchange Commission, *Statement on certain proof-of-work mining activities* (Mar. 20, 2025); Securities and Exchange Commission, *Staff Statement on Meme Coins* (Feb. 27, 2025).

[19] *Trump Media's Bitcoin treasury registration 'declared effective' by SEC*, CoinTelegraph (June 14, 2025).

[20] *Trump's Truth Social files S–1 for dual Bitcoin and Ether ETF*, CoinTelegraph (June 16, 2025).

Not only is Trump and his family, personally and financially involved in the crypto space through their numerous crypto businesses, the President also stands to be the largest direct competitor in the ecosystem. In addition to flouting ethics standards, Trump has continued to undermine the independence of the historically bipartisan independent federal financial agencies. Trump has targeted Democratic appointees who are protected from removal by the president and can only be terminated for cause and fired the Democratic Directors of the National Credit Union Administration, and Commissioners of the Federal Trade Commission. In her testimony before the House Financial Services Committee, Amanda Fischer, Policy Director and COO at Better Markets, discussed this issue:

> Federal financial regulatory agencies are under siege in the current Administration. Democratic commissioners, dually nominated by the President and confirmed by the Senate, have been fired without cause, with the Supreme Court in a two-page decision declining to place an injunction on the firings. [Soon], the CFTC will only have one Commissioner, with no further Commissioner nominations on the horizon. Absent a nomination by the President, the SEC is separately set to have a three-member Republican-only commission by the end of 2025, despite the statutory requirement and long history of being bipartisan.[21]

This represents an attack on critical democratic safeguards and sends a message to both Democratic and Republican leaders at two regulators overseeing this market, the SEC and CFTC.

President Trump also released an executive order stating that rules drafted by Federal financial regulators must be reviewed and approved by the Office of Information and Regulatory Affairs (OIRA) within the White House's Office of Management and Budget (OMB).[22] Financial agencies like the Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), the National Credit Union Association (NCUA), the SEC, and the CFTC have traditionally issued regulations independent of the political influence of the White House. However, when conducting these reviews, OIRA must now run an interagency review process to allow other agencies to provide feedback as well.[23] As a result, Trump and others in his Administration would also have a direct hand in reviewing and modifying the rules implementing the CALAMITY Act to maximize profits for the crypto companies they own. The CALAMITY Act does nothing to address these massive conflicts of interest, allowing the President and his family, along with others in his Administration, to gain from their government positions, ensuring the new regulatory framework works best for their digital assets, if not outright undermining competing digital asset products. Testifying before the Committee, one panelist, Bartlett Naylor, a Financial Policy Advocate

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[21] House Committee on Financial Services, *Testimony of Amanda Fischer, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework*, 119th Cong. (June 6, 2025).

[22] Federal Register, *Executive Order 14215—Ensuring Accountability for All Agencies* (Feb. 18, 2025).

[23] *See* Obama White House Archives, *About OIRA* (accessed Apr. 10, 2025).

at Public Citizen, urged Congress to "not abdicate any powers to hold Trump accountable. Without conflict-of-interest guardrails, approving these bills effectively endorses Trump's conflicts. The bills will integrate crypto into mainstream banking, serving to fatten his grift." [24]

INCREASED INVESTOR HARM

The CALAMITY Act includes several sections that will increase and create new harm to investors. A few of these provisions include:

1. Section 106 creates a provisional registration process that would allow entities to escape regulation and oversight while the rules of the bill are written. To make matters worse, the provisional registration process is silent on whether the SEC or state regulators may bring enforcement actions against an entity that has filed a statement of provisional registration, so harmed investors would have little recourse from these entities.

2. Section 202 would bring unprecedented risk to investors through a new exemption at the SEC, labeled the 4(a)(8) exemption. It would allow crypto firms to raise $75 million per year for four years, if they *intend* to become a "mature blockchain system" (which is explained below). This exemption allows firms to engage in general solicitation of retail investors, which means that everyday investors could be peddled securities, which would not include audited financials or issuer obligations to continually disclose material facts about the project. Non-accredited investors (i.e., retail investors) would be able to purchase crypto assets up to all of their net worth or annual income, which is a stark contrast to the Regulation A ("Reg A") exemption, which limits non-accredited investors to investing up to 10% of their income or net worth.[25] Firms taking advantage of Reg A must provide audited financials,[26] a business description, material risk factors, use of proceeds, and other disclosures.[27] They also are subject to ongoing reporting requirements [28] and SEC approval [29] for the offering.[30] Most worryingly, state securities regulators are explicitly barred from regulating this new exempt offering even though the SEC rarely brings enforcement actions when harms are small. And inexplicably, there are no requirements that the funds raised by a crypto company must go towards developing the crypto business or its blockchain, as is required of other securities offerings.

3. Section 205 creates a mechanism for "digital commodity issuer, digital commodity related person, digital commodity af-

[24] House Committee on Financial Services, *Testimony of Bartlett Collins Naylor, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework*, 119th Cong. (June 6, 2025).

[25] 17 CFR § 230.251(d)(2)(C).

[26] 17 CFR § 230.252(d) ("An offering statement must contain audited financial statements for Tier 2 offerings.").

[27] 17 CFR § 239.90—Form 1-A content requirements.

[28] 17 CFR § 230.257—Ongoing reporting obligations for Tier 2 issuers.

[29] SEC approval is also referred to as the term, "qualification."

[30] 17 CFR § 230.251(d)(2)(i) ("No sale of securities may be made until the offering statement has been qualified by order of the Commission.").

filiated person, or decentralized governance system of the blockchain system" to escape SEC oversight by self-certifying that their blockchain is a "mature blockchain." Section 205 defines a "mature blockchain system" as—among other criteria related to its functions—a blockchain that "is not controlled by any person or group of persons under common control."[31] However, this threshold raises various issues. According to testimony from Lee Reiners, a Lecturing Fellow at Duke University, "There have been several examples of venture capital firms controlling less than 20% of governance tokens and still exerting considerable influence over a digital asset."[32] This section also allows a loophole for unilateral control to carry out "regular maintenance" and "cyber security." Furthermore, there is an exemption for "preexisting blockchains'" that existed before the enactment of the bill, where "at least 50 percent of the units of the digital commodity related to the blockchain system are held by persons other than the digital commodity issuer, a digital commodity related person, or a digital commodity affiliated person." Once an entity self-certifies to the SEC that its blockchain is mature, the SEC only has 60 days to stay this self-certification (there being no proper oversight mechanisms for the SEC to be able to confirm that information in the self-certification application is materially true). If the SEC is unable to institute a stay, the blockchain is deemed as "mature" and any existing assets issued on that blockchain, or future assets, would not be subject to SEC's rules. Finally, SEC's resources are not what they used to be: the Trump Administration's SEC Budget request for FY2026 is lower than Biden Administration's enacted FY2024 levels and the SEC has already suffered an unprecedented level of exodus of seasoned staff (by some estimates, over 15% of its workforce has left the Commission)[33] and so its engagement with potentially hundreds of entities rushing to submit their self-certifications would be impracticable.

4. Section 404 and Section 406 allow customers to waive segregation requirements, related to how the entity must hold the assets of multiple customers, for participating in certain blockchain services. If this waiver is not clarified, it could be buried in small print terms and conditions, where investors would waive their protections without fully understanding how their assets could be put at risk.

Additionally, there are no criminal penalties for violations of the new prohibitions included in the bill or a private right of action for harmed individuals to recover losses. Without incentives to comply with the bill, innovation in this space may not move towards productive use cases but towards memecoins, rug pulls, and pump and dump schemes.[34] To make matters worse, under Section 302, the

[31] Section 205, ANS to *H.R. 3633*.

[32] House Committee on Financial Services, *Testimony of Lee Reiners, Dazed and Confused: Breaking Down the SEC's Politicized Approach to Digital Assets*, 118th Cong. (Sept. 18, 2024).

[33] *US SEC's new chief says 15% of staff have left, contract cuts to come, sources say*, Reuters (May 6, 2025).

[34] *See, e.g.*, Lin William Cong, et. al., *Crypto Wash Trading*, NBER Working Paper Series (Dec. 2022). ("wash trading on each unregulated exchange . . . averaged over 70% of the reported vol-

Continued

SEC's ability to proactively address investor protection concerns would be limited to responding to fraud after it happens. In fact, the SEC is prohibited from issuing reporting requirements, procedures, or standards to prevent fraud, manipulation, or insider trading.

NATIONAL SECURITY

The CALAMITY Act endangers our country's national security and ignores Trump's elimination of important defenses against criminal activity facilitated by crypto. Since taking office, Trump has undone Congress' decades-long crime-fighting laws and enforcement rules, effectively removing the resources and examiners that serve our national security but which could also check presidents' self-profiteering.[35] Trump has fired examiners, Inspector Generals, gutted the Corporate Transparency Act, frozen enforcement of the Foreign Corrupt Practices Act, and disbanded the Department of Justice (DOJ) National Cryptocurrency Enforcement Team.[36] Further, in line with Trump's executive orders, the SEC and other agencies are rescinding regulations and intentionally failing to carry out critical enforcement actions, including suspending several cases for Trump donors and Trump's crypto investors.[37]

Exacerbating the harm done by this bill and despite repeated warnings to the contrary, the text fails to include authorization for an increase in the CFTC examiners corps. This is despite the considerable number that would be required to adequately enforce the bill's provisions, especially given the projected flood of registrations; Republicans have chosen to send this segment of the crypto industry to an agency that they know cannot sufficiently manage the workload and have refused to provide additional resources to do so. Hilary Allen, a law professor at American University, described the CFTC's resource challenges in her testimony:

> The CFTC is widely regarded to be the crypto industry's preferred regulator. It is a much smaller agency with a much smaller budget than the SEC, and unlike the SEC, it has no statutory investor protection mandate and limited experience regulating retail-dominated markets.[38]

The bill is also devoid of any meaningful national security provisions. Timothy Massad, emphasized this during his testimony, stating, "it is surprising to me how little is said about the risks of illicit finance in the Clarity Act."[39] And separately, Carole House, Senior

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ume"); Molly White, *Web3 is Going Just Great* (accessed June 1, 2025). Crypto grifts and disasters stand at $78 billion.

[35] *Trump Staffed his Cabinet with wealthy advisers. Some stand to gain even more from recent policy shifts*, CNN (Apr. 24, 2025).

[36] Global Financial Integrity, *Global Financial Integrity Expresses Deep Concern Over the Suspension of Enforcement of the Corporate Transparency Act* (Mar. 13, 2025); National Law Review, *10 Reasons Why FCPA Compliance Is Critically Important for Businesses* (July 24, 2020); *Law Enforcement, Members of Congress Protest Gutting of Corporate Transparency Act: Just the FACTs*, FACT Coalition (Apr. 3, 2025).

[37] White House, *Ensuring Lawful Governance and Implementing the President's "Department Of Government Efficiency" Deregulatory Initiative* (Feb. 19, 2025).

[38] House Committee on Financial Services, *Testimony of Hilary J. Allen, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework* , 119th Cong. (June 6, 2025).

[39] House Committee on Financial Services, *Testimony of Timothy G. Massad, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework*, 119th Cong. (June 6, 2025).

Fellow, Atlantic Council, GeoEconomics Center echoed these concerns at the Democratic Minority Day Hearing, highlighting that:

> There is limited discussion of either illicit finance or cybersecurity in the Clarity Act—many more pages are honed on establishing large regulatory carve-outs than on establishing expectations, driving needed industry standards or sponsoring research and development, or appropriating necessary resources to ensure appropriately scaled and timely enforcement of these critical requirements. Also important to note, especially in light of recent changes in enforcement posture—beyond just creating the policy framework, the government and industry must work to apply and enforce the framework. A policy that isn't enforced or implemented does nothing to benefit consumers nor U.S. firms . . .[40]

The CALAMITY Act does say that the new category of entities would be "financial institutions" (FIs) for the Bank Secrecy Act (BSA), but that is simply stating the status quo: these entities are already regulated under the BSA as FIs. Democrats pointed out that there are many FIs under the BSA that have little or no compliance requirements, thus adding specificity to ensure that they're expected to comply at least to the same level as other FIs under the CFTC would be warranted (i.e., at a higher level than they are currently regulated), yet that was rejected. Given the criminal activity facilitated by digital assets,[41] (such as ransomware, pig butchering, investment scams, etc.), as crypto adoption increases, so will the prevalence of those crimes; unfortunately, Republicans also rejected any provisions that would bolster related transparency, guidance, investigations, and even victim support, and thus, these obvious threat vectors are effectively ignored. Section 110 of the CALAMITY Act prevents blockchain developers and other providers from being classified as "money transmitters" thus stopping any application of the BSA[56] among other laws and regulations. This includes not only individual software developers, but also companies that are already supporting billions of dollars in crypto activity each year, using "defi" applications on the blockchain. Along with the bill's broad exemption for the *entirety* of the decentralized finance (DeFi) industry, found in Sections 309 and 409, this is alarming.[42] In addition to affecting the application of economic and trade sanctions, it could prevent tax, consumer protection, disclosure, whistleblower, anti-corruption and other laws or regulations from applying. It is effectively a permanent safe harbor allowing them to avoid liabilities from future law or regulation, no matter how the blockchain and blockchain services change.

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[40] House Committee on Financial Services, *Testimony of Carole House, Democratic Minority Day: Continuation of American Innovation and the Future of Digital Assets: From Blueprint to a Functional Framework*, 119th Cong. (June 6, 2025).

[41] U.S. Secret Service, *Combating the Illicit Use of Digital Assets* (accessed June 8, 2025).

[42] Number Analytics, S. Lee, *10 Revolutionary Stats on DeFi Applications in 2023 Market* (Mar. 25, 2025).

STATE PREEMPTION

This legislation also takes the state securities regulators off the frontlines of fighting fraud. The CALAMITY Act is silent on whether state securities regulators have antifraud, investigation, and examination authorities, as well as the authority to regulate the brokerage and investment advisory industries.

At best, states would be forced to spend enormous resources litigating and proving in courts that the states still have these authorities to help prevent and fight fraud.[43] The CALAMITY Act's silence could also result in multiple de facto regulatory gaps that foster fraud and leave victims without recourse. For example, the U.S. federal government almost never takes on cases where the harmed investor's losses are small. By contrast, state securities regulators regularly pursue cases under $1 million to help the victim recover what may amount to their entire lifesavings.

ANTICOMPETITIVE BUSINESS PRACTICES

Anticompetitive business practices restrict competition in the market and can lead to monopolies or dominant firms that leave smaller businesses with high barriers to entry. This bill bakes in the harmful practices by dominant crypto firms, allowing them to consolidate power within one company, known as vertical integration. The CALAMITY Act would allow the same entity, and affiliates it controls, to comingle the following functions, that are separate under today's securities laws to avoid clear conflicts of interest: running an exchange facility; operating an alternative trading system; conducting broker-dealer activity; settling and clearing trades; custodying assets; and offering wallet services. This legislation also does not include best execution requirements, which require brokers to carry out customer orders under the most favorable conditions to customers.[44] Under this bill, exchanges would also not have to post the National Best Bid or Offer (NBBO), which is a stock quote available market wide that represents the highest buy price and the lowest sell price for a security trading on various exchanges.[45] The NBBO was created by the SEC to ensure customers get the best available price at the time of a trade, no matter where they execute their trade.[46]

Additionally, the biggest traditional finance entities, including the big banks, will be empowered by the complexities of this bill because they will be the best equipped to game the loopholes created by this bill and ensure all of their activity comes under the light touch regulation the bill provides. This means less investment for crypto entrepreneurs. This bill would also codify the dominance of the largest crypto firms, at the expense of startups in the space.

Democrats offered over 27 amendments aimed at addressing the deficiencies with the CALAMITY Act, all of which were rejected by Republicans or withdrawn:[47]

- The Ranking Member's amendment (#1) adds the "Stop TRUMP in Crypto Act", which blocks the President, Vice Presi-

[43] See, CRS "*Federal Preemption: A Legal Primer*."
[44] *Best Execution Rule: What it is, Requirements and FAQ*, Investopedia (Mar. 18, 2024).
[45] *NBBO: What It Is and How It's Calculated*, SoFi Learn (Sept. 1, 2023).
[46] *NBBO: What It Is and How It's Calculated*, SoFi Learn (Sept. 1, 2023).
[47] House Committee on Financial Services, *Committee Markup*, 119th Cong. (June 10, 2025).

dent, Members of Congress, and their immediate families from engaging crypto corruption and blatant conflicts of interest.

- Rep. Casten's amendment (#1) would prohibit the SEC and CFTC from finalizing joint rulemakings required under the bill unless the agencies can meet quorum (i.e., 3 confirmed commissioners) and there is representation from both political parties.
- The Ranking Member's amendment (#3) establishes a crypto investors and consumers bill of rights.
- The Ranking Member's amendment (#2) ensures states maintain power to address fraud in the crypto industry.
- Rep. Sherman's amendment (#1) prevents federal bailouts if a stablecoin or crypto issuer fails or goes bankrupt.
- Rep. Sherman's amendment (#2) prevents the federal government and the Federal Reserve Banks from purchasing crypto and Trump from enriching himself through the crypto strategic reserve.
- Rep. Sherman's amendment (#3) bans digital assets from being used in campaign contributions.
- Rep. Sherman's amendment (#4) ensures wallets comply with Anti-Money Laundering requirements, including Know Your Customer rules.
- Rep. Lynch's amendment (#2) reconstitutes the Department of Justice's National Cryptocurrency Enforcement Team and calls on them to investigate Trump's crypto companies.
- Rep. Foster's amendment (#2) requires the SEC and CFTC to establish a Senior Scam Hotline to provide assistance to older Americans in avoiding fraud, scams, and other abuse related to digital assets. This amendment would also require all Bitcoin ATMs to clearly display information about the Senior Scam Hotline on the Bitcoin ATM.
- Rep. Garcia's amendment (#1) ensures parity with traditional financial institutions under the Bank Secrecy Act. It creates a clear, enforceable obligation for custodians to monitor and report illicit financing. This approach helps to bridge the gap that the bill provides by bringing cross-border digital asset flows back under the same scrutiny that the traditional banking system must adhere to.
- Rep. Pressley's amendment requires that the U.S. Government Accountability Office (GAO) conduct a study on the financial abuse and exploitation of vulnerable populations, including elderly individuals and individuals who are victims of domestic violence.
- Rep Casten's amendment (#2) directs the Treasury's Financial Crimes Enforcement Network (FinCEN) to finalize its rule on cryptocurrency mixers within one year of enactment of the CALAMITY Act. A mixer is an anonymity enhancing service that obfuscates transactional information that would otherwise be visible on a public blockchain. For example, while transactions under a traditional financial system are private

by default, most digital assets operate on public blockchains and can, therefore, be seen by anyone.[48]

• Rep. Tlaib's amendment prohibits crypto issued by a company owned, affiliated, or controlled by the President or their family members from being required to be used to conduct transactions with the government.

• Rep. Lynch's amendment (#1) requires the Inspector Generals of the Treasury and the SEC to conduct an annual report on any presidential crypto holdings.

• Rep. Lynch's amendment (#2) amends the Patriot Act and permits financial institutions to share information about cyber-enabled financial crime and fraud. This would allow financial institutions to identify and report to the federal government activities that may involve money laundering or terrorist activities.

• Rep. Lynch's amendment (#4) strikes language in the bill that adds innovation to the Securities and Exchange Commission's mission. Adding an innovation mandate is unnecessary because the SEC's long-held mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation already has innovation built in.

• Rep. Himes amendment (#1) prohibits federally elected officials from issuing any digital assets or owning a financial stake in an issuer.

• Rep. Himes' amendment (#2) strikes the provision which creates a new exemption for crypto issuers to raise capital from retail investors without needing to provide them with reliable financial disclosures or even requiring the proceeds to be used to develop the blockchain project.

• Rep. Himes' amendment (#3) this amendment would strike a paragraph in Section 205 of the bill, the unworkable review process by the SEC to determine the maturity of a blockchain. This amendment would then authorize the SEC to receive the necessary information to determine whether a blockchain is mature.

• Rep. Foster's amendment (#3) establishes a joint Financial Influencer Task Force between the SEC and CFTC to consult with the Federal Trade Commission, financial influencers, and social media firms to oversee online financial advice, track complaints, educate investors, and coordinate global standards.

• Rep. Garcia's amendment (#2) ensures blockchain systems follow the same recordkeeping rules as traditional systems, supporting the Bank Secrecy Act's Travel Rule, with basic standards for collecting and keeping records.

• Rep. Fields' amendment requires any trading platform offering digital commodities or related investment contracts to provide users with educational materials that are approved by the SEC.

• Rep. Liccardo's amendment (#1) prohibits digital asset exchanges, brokers, or dealers and alternative trading systems from listing or otherwise trading digital assets issued by the

[48] FinCEN, FinCEN Proposes New Regulation to Enhance Transparency in Convertible Virtual Currency Mixing and Combat Terrorist Financing (Oct. 19, 2023); *What is a cryptocurrency mixer and how does it work?*, CoinTelegraph (May 27, 2025).

President, Vice President, and public officials (including Members of Congress).

- Rep. Liccardo's amendment (#2) requires the DeFi study in the "CALAMITY Act" bill to look at the feasibility to deanonymize users of a sandboxed DeFi system through a court order.
- Rep. Gonzalez's amendment directs the Treasury to review the use of digital assets by transnational criminal organizations and foreign terrorist organizations and provide input to Congress, financial institutions, and the SEC and CFTC.
- Rep. Foster's amendment (#1) requires the federal financial regulators to conduct a study on the application of digital identity credentials in the blockchain ecosystem, with emphasis on the technology's ability to facilitate Bank Secrecy Act compliance, preserve privacy, and promote market integrity.

The CALAMITY Act passed out of Committee, with a final vote of 32–19.[49] The Committee previously approved a different version of this bill last Congress[50] on a 35–15 vote and later passed out of the House on a 279–136 vote.[51]

Finally, this bill is opposed by the following groups: Accountable.US/Accountable.NOW, American Association for Justice, Americans for Financial Reform, Center for American Progress, Center for Responsible Lending, Chastity Murphy (Visiting Research Fellow, University of Manchester Law and Technology Initiative), Consumer Federation of America, Consumer Reports, Demand Progress, Democracy Defenders Action, Hilary Allen (Professor of Law, American University Washington College of Law), Lee Reiners (Lecturing Fellow, Duke University), National Consumer Law Center on behalf of its low-income clients, North American Securities Administrators Association, Office of the Attorney General of the State of New York, Public Citizen, Raúl Carrillo (Kellis E. Parker Teaching Fellow, Academic Fellow, Lecturer in Law, Columbia Law School), Revolving Door Project, Richard Painter (S. Walter Richey Professor of Corporate Law, University of Minnesota Law School; White House ethics lawyer for President George W. Bush), Rohan Grey (Assistant Professor of Law, Willamette University College of Law).

For these reasons, we oppose H.R. 3633.

Sincerely,

MAXINE WATERS,
Ranking Member.
NYDIA M. VELÁZQUEZ,
AL GREEN,
BRAD SHERMAN,
EMANUEL CLEAVER, II,
BILL FOSTER,
JUAN VARGAS,
AYANNA PRESSLEY,
NIKEMA WILLIAMS,
JOYCE BEATTY,
SEAN CASTEN,

[49] House Committee on Financial Services, Committee Markup, 119th Cong. (June 10, 2025).
[50] House Committee on Financial Services, Committee Markup, 118th Cong. (Jul. 26, 2023).
[51] House Vote on H.R. 4763 (May 22, 2024) (279 yeas, 136 nays).

SYLVIA R. GARCIA,
Members of Congress.

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