



UNITED STATES HOUSE COMMITTEE ON
FINANCIAL SERVICES
CHAIRMAN FRENCH HILL



HOUSE COMMITTEE ON
AGRICULTURE
CHAIRMAN GT THOMPSON

Section by Section: Digital Asset Market Structure Discussion Draft

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

Sec. 101. Definitions under the Securities Act of 1933

Section 101 provides for definitions under the Securities Act of 1933.

Sec. 102. Definitions under the Securities Exchange Act of 1934

Section 102 provides for definitions under the Securities Exchange Act of 1934.

Sec. 103. Definitions under the Commodity Exchange Act

Section 103 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, and the process to delist an asset for trading under section 106 of the Act; a rulemaking by the SEC related to mixed digital asset transactions; and a prohibition on the Secretary of the Treasury promulgating any rules that would prohibit self-custody.

Sec. 106. Notice of intent to register 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 notice of intent to register with the CFTC. The entity filing the notice must make publicly available detailed listing information for each digital asset listed or offered, keep its books and records open to the CFTC and the entity's registered futures association, file certain disclosures to customers, and treat customer assets as belonging to the customer. If the entity filing the notice of intent to register is not already registered with the CFTC or SEC, it must also file disclosures around the management and operations of the entity with the CFTC in addition to the other aforementioned requirements. After the CFTC has finalized its registration rules for digital commodity exchanges, digital commodity brokers, and digital commodity dealers, entities can no longer file a notice of intent to register.

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 commodities.

Sec. 110. Implementation

Section 110 requires the CFTC and the SEC to promulgate all rules required by the Act no later than 360 days after enactment of the Act.

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.

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. Treatment of secondary transactions in digital commodities

Section 202 provides that secondary market digital commodity transactions that do not provide or represent rights in the issuer or another business shall not be considered investment contracts under securities laws.

Sec. 203. Exempted transactions in digital commodities

Section 203 provides an exemption from securities laws for a digital commodity issuer’s sale of digital commodities in a capital raise that meet certain conditions related to the blockchain system and the sale, as well as satisfy disclosure requirements. Issuers are required to file certain disclosures until a defined period 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.

Sec. 204. Requirements for offers and sales of digital commodities by related and affiliated persons

Section 204 establishes requirements for project insiders to sell their digital commodities both before and after the maturity of the blockchain system and related digital commodity. The requirements include limitations on quarterly sales and pre- and post-sale disclosure obligations. The SEC is provided with rulemaking authority related to reporting obligations of issuers and insiders with respect to transactions in digital commodities.

Section 205. Mature blockchain system requirements

Section 205 provides for a process for a digital commodity issuer, related person, or affiliated person to certify to the SEC that the blockchain 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 a blockchain system can meet to be deemed mature. Finally, Section 205 requires the SEC to subject any person who asserts controls of a mature blockchain system to certain reporting requirements and restrictions.

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

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. Finally, section 302 specifies that nothing in the section may be construed to give the SEC authority to make any rule, regulation, or requirement or impose any obligation or limitation on a permitted payment stablecoin issuer regarding any aspect of the operations of a permitted payment stablecoin issuer.

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. This section also requires the SEC to revise its rules within 270 days of enactment to accommodate the trading of digital commodities and permitted payment stablecoins and allow for their real-time settlement. 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 national securities exchanges where such registrants are notice-registered with the CFTC. Section 304 directs the SEC to revise existing regulations to allow national securities exchanges and broker-dealers that are notice-registered 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, and exchanges under the Securities and Exchange Act of 1934 can refer to 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 and Securities and Exchange Act of 1934, allowing flexibility for the SEC to utilize its existing exemptive authorities.

Sec. 307. Additional registrations with the Commodity Futures Trading Commission

Section 307 permits an 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. Treatment of certain digital commodities in connection with federally regulated intermediaries

Section 308 adds digital commodities that are brokered, traded, or custodied by a registered broker or dealer 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. Digital commodity activities that are financial in nature

Section 311 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.

Sec. 312. Effective date; Administration

Section 312 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. 313. Studies on foreign adversary participation

Section 313 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 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 new 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.

Section 401 also provides the CFTC with authority over transactions with or involving a permitted payment stablecoin that occur 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 commodity custodians

Section 402 requires futures commission merchants to hold customers' digital commodities in a qualified digital commodity 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, treatment of customer assets, 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 that are not readily susceptible to manipulation and for which they have made public disclosures regarding source code, transaction history, and digital asset economics.

A digital commodity exchange or any affiliate of the exchange shall not act as a counterparty to any transaction on the exchange. 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 commodity custodian. 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 digital commodity exchange may not condition a customer's access to the exchange on the customer's election to participate in blockchain services.

Sec. 405. Qualified digital commodity custodians

Section 405 sets out the requirements for Qualified Digital Commodity Custodians. Qualified Digital Commodity 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 commodities.

Sec. 406. Registration and regulation of digital commodity brokers and dealers

Section 406 creates a comprehensive federal regulatory framework under the CEA 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.

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 commodity 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 under this Act 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 anti-fraud 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. Funding for implementation and enforcement

Section 410 authorizes the CFTC to charge and collect filing fees from entities that file a notice of intent to register as digital commodity exchanges, brokers, or dealers under the Act. The section requires the CFTC to publish a fee schedule annually in the Federal Register, including an analysis of its estimated operational costs. The fee schedule must be submitted to Congress prior to publication. The authority to collect fees under this section sunsets after four fiscal years.

Sec. 411. Digital commodity activities by SEC-registered entities

Section 411 creates a streamlined "notice registration" process that allows SEC-registered broker-dealers and alternative trading systems to also register with the CFTC as digital commodity brokers, dealers, or exchanges, provided they are compliant with their SEC registration requirements. If those requirements are satisfied, the registration is effective on receipt by the CFTC.

Sec. 412. Effective date

Section 412 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. 413. Sense of the Congress

Section 413 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. Incorporation of Office of Financial Innovation

Section 502 establishes offices of innovation within each division of the SEC. These offices will be responsible for shaping the SEC's approach to technological advancements, examining financial technology innovations among market participants, and coordinating the SEC's response to emerging technology in financial, regulatory, and supervisory systems.

Sec. 503. Codification of LabCFTC

Section 503 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 503 further requires LabCFTC to submit an annual report to Congress on its activity.

Sec. 504. Study on decentralized finance

Section 504 requires the CFTC and the SEC 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. 505. Study on non-fungible digital commodities

Section 505 requires GAO to conduct a study on non-fungible digital assets (NFTs). GAO must make the report publicly available one year after enactment.

Sec. 506. Study on expanding financial literacy amongst digital commodity holders

Section 506 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. 507. Study on financial market infrastructure improvements

Section 507 requires the CFTC and the SEC to conduct a study on whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products. The study will also examine if further rules would foster the development of fair and orderly financial markets, be appropriate for the public interest, and provide further investor protections. The agencies must submit the report to Congress one year after enactment.