



(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. THOMPSON of Pennsylvania (for himself, Mr. KHANNA, Mr. SOTO, and
Mr. EMMER) introduced the following bill; which was referred to the
Committee on _____

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Commodity Ex-
5 change Act of 2022”.

1 **SEC. 2. AMENDMENTS TO THE COMMODITY EXCHANGE**
2 **ACT.**

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

5 (1) in paragraph (28)(A)(i)—

6 (A) in subclause (I)—

7 (i) in item (aa)—

8 (I) by striking “or” at the end of
9 subitem (EE); and

10 (II) by adding at the end the fol-
11 lowing:

12 “(GG) the purchase or
13 sale of a unit of a digital
14 commodity that is traded on
15 or subject to the rules of a
16 registered entity;”;

17 (ii) in item (bb), by striking “and”
18 and inserting “or”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(cc) acting as a
22 counterparty to any cash or spot
23 agreement, contract, or trans-
24 action involving a digital com-
25 modity with a person who is not

1 an eligible contract participant,
2 unless the activity is—

3 “(AA) conducted in
4 compliance with the laws of
5 the State in which the activ-
6 ity occurs;

7 “(BB) subject to regu-
8 lation by another Federal
9 authority; or

10 “(CC) separately regu-
11 lated under this Act; and”;

12 and

13 (B) in subclause (II), by striking “(aa) or
14 (bb)” and inserting “(aa), (bb), or (cc)”;

15 (2) in paragraph (40)—

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

18 (B) by redesignating subparagraph (F) as
19 subparagraph (G) and inserting after subpara-
20 graph (E) the following:

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

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

24 “(52) DIGITAL COMMODITY.—

1 “(A) IN GENERAL.—The term ‘digital com-
2 modity’ means any form of fungible intangible
3 personal property that can be exclusively pos-
4 sessed and transferred person to person without
5 necessary reliance on an intermediary.

6 “(B) EXCLUSIONS.—The term ‘digital
7 commodity’ does not include any asset that con-
8 veys—

9 “(i) an equity or debt interest in a
10 company, partnership, or fund;

11 “(ii) a profit or revenue share derived
12 solely from the managerial efforts of oth-
13 ers; or

14 “(iii) an entitlement to any interest or
15 dividend payment.

16 “(C) FURTHER EXCLUSIONS.—The Com-
17 mission, by rule or regulation, may exclude
18 from the term ‘digital commodity’ any intan-
19 gible personal property that can be exclusively
20 possessed and transferred person to person
21 without necessary reliance on an intermediary
22 that is not of the nature of a digital asset, if
23 the Commission determines that the rule or reg-
24 ulation will effectuate the purposes of this Act.

1 “(53) DIGITAL COMMODITY CUSTODIAN.—The
2 term ‘digital commodity custodian’ means an entity
3 that holds, maintains, or safeguards digital commod-
4 ities and other assets on behalf of digital commodity
5 market participants.

6 “(54) DIGITAL COMMODITY EXCHANGE.—The
7 term ‘digital commodity exchange’ means a trading
8 facility that lists for trading at least one digital com-
9 modity.

10 “(55) DIGITAL COMMODITY PRESALE.—The
11 term ‘digital commodity presale’ means the delivery
12 of a unit of a digital commodity, or any promise or
13 right to a future unit of a digital commodity, before
14 the listing of the digital commodity for trading on
15 a registered digital commodity exchange, to—

16 “(A) a participant in a securities offering
17 that is—

18 “(i) intended to finance the develop-
19 ment of the digital commodity; and

20 “(ii) conducted in compliance with the
21 Securities Act of 1933;

22 “(B) a founder, promoter, developer, man-
23 ager, affiliated organization, or other person di-
24 rectly associated with the development of the
25 digital commodity; or

1 “(C) any other person the Commission de-
2 termines has personal knowledge of the activi-
3 ties of individuals directly associated with the
4 development of the digital commodity.”.

5 (b) COMMISSION JURISDICTION OVER RETAIL DIG-
6 ITAL COMMODITY TRANSACTIONS.—

7 (1) IN GENERAL.—Section 2(c)(2) of such Act
8 (7 U.S.C. 2(c)(2)) is amended—

9 (A) in subparagraph (D)(ii)—

10 (i) in subclause (III), in the matter
11 that precedes item (aa), by inserting “of a
12 commodity, other than a digital com-
13 modity,” before “that”; and

14 (ii) by redesignating subclauses (IV)
15 and (V) as subclauses (V) and (VI) and in-
16 serting after subclause (III) the following:

17 “(IV) a contract of sale of a dig-
18 ital commodity that—

19 “(aa) results in actual deliv-
20 ery within 2 days or such other
21 period as the Commission may
22 determine by rule or regulation
23 based upon the typical commer-
24 cial practice in cash or spot mar-

1 kets for the digital commodity in-
2 volved; or

3 “(bb) is executed on or sub-
4 ject to the rules of a registered
5 digital commodity exchange or
6 with a registered futures commis-
7 sion merchant;”; and

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

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

11 “(i) IN GENERAL.—Subject to sections 6d and
12 12(e), the Commission shall have exclusive jurisdic-
13 tion over any agreement, contract, or transaction in-
14 volving a contract of sale of a digital commodity in
15 interstate commerce.

16 “(ii) WITHHOLDING OF RULEMAKING AUTHOR-
17 ITY OVER CERTAIN TRANSACTIONS.—Notwith-
18 standing clause (i), this subparagraph shall not be
19 interpreted to permit the Commission to issue any
20 rule or regulation regarding any agreement, con-
21 tract, or transaction that is not offered, solicited,
22 traded, facilitated, executed, cleared, reported, or
23 otherwise dealt in—

24 “(I) on or subject to the rules of a reg-
25 istered entity;

1 “(II) by any other entity registered by the
2 Commission; or

3 “(III) for the purpose of transferring a
4 digital commodity, or any promise or right to a
5 future unit of a digital commodity, obtained
6 through a digital commodity presale and subject
7 to section 4c(h).

8 “(iii) LIMITATIONS.—Clause (i) shall not apply
9 with respect to—

10 “(I) custodial or depository activities for a
11 digital commodity, or custodial or depository ac-
12 tivities for any promise or right to a future dig-
13 ital commodity, of an entity regulated by a
14 State or other Federal regulatory agency; or

15 “(II) a securities offering or transaction
16 associated with—

17 “(aa) a digital commodity presale; or

18 “(bb) a sale described in section
19 4c(h)(3)(A).”.

20 (2) CONFORMING AMENDMENT.—Section
21 2(a)(1)(A) of such Act (7 U.S.C. 2(a)(1)(A)) is
22 amended in the 1st sentence by inserting “sub-
23 section (c)(2)(F) of this section or” before “section
24 19”.

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

4 “(h) PROHIBITED DIGITAL COMMODITY TRANS-
5 ACTIONS.—

6 “(1) IN GENERAL.—It shall be a violation of
7 this Act for any person who owns or controls a unit
8 of a digital commodity, or any promise or right to
9 a future unit of a digital commodity, obtained
10 through a digital commodity presale and subject to
11 the restrictions in this subsection, to offer to enter
12 into, to enter into, or to execute a contract for the
13 purchase or sale of the unit, promise, or right, ex-
14 cept as provided in paragraph (3).

15 “(2) UNLAWFUL FACILITATION OF PROHIBITED
16 TRANSACTIONS.—It shall be a violation of this Act
17 for any person willfully to execute, confirm the exe-
18 cution of, or conduct any office or business for the
19 purpose of soliciting, accepting any order for, or oth-
20 erwise dealing in, any transaction in, or in connec-
21 tion with, a contract for the purchase or sale of a
22 unit of a digital commodity, or any promise or right
23 to a future unit of a digital commodity, which such
24 person has reason to believe is obtained through a
25 digital commodity presale and subject to the restric-

1 tions in this subsection, except as provided in para-
2 graph (3).

3 “(3) EXCEPTIONS.—

4 “(A) OFF-EXCHANGE TRANSACTIONS.—

5 “(i) SALE OF A PROMISE OR RIGHT.—

6 A promise or right to a future unit of a
7 digital commodity obtained through a dig-
8 ital commodity presale may be sold pursu-
9 ant to a securities transaction conducted in
10 compliance with the Securities Act of
11 1933.

12 “(ii) SALE OF A DIGITAL COM-
13 MODITY.—A unit of a digital commodity
14 obtained through a digital commodity
15 presale may be sold—

16 “(I) pursuant to a securities
17 transaction conducted in compliance
18 with the Securities Act of 1933; or

19 “(II) to an accredited investor
20 (as defined in section 2(a)(15) of such
21 Act).

22 “(iii) TREATMENT.—For purposes of
23 this subsection, a unit of a digital com-
24 modity or any promise or right to a future
25 unit of a digital commodity obtained

1 through a transaction utilizing this excep-
2 tion shall continue to be considered to be
3 obtained through a digital commodity
4 presale.

5 “(B) ON-EXCHANGE TRANSACTIONS.—

6 “(i) IN GENERAL.—A unit of a digital
7 commodity that is obtained through a dig-
8 ital commodity presale or a transaction de-
9 scribed in subparagraph (A) may be of-
10 fered for sale or exchange on a registered
11 digital commodity exchange, subject to any
12 limitations imposed by the exchange.

13 “(ii) TREATMENT.—For purposes of
14 this subsection, a unit of a digital com-
15 modity obtained through a transaction uti-
16 lizing this exception shall not be considered
17 to be obtained though a digital commodity
18 presale.

19 “(C) UTILIZATION OF PRESOLD DIGITAL
20 COMMODITIES.—

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

24 “(I) utilized for the purposes of
25 receiving the non-financial rights or

1 services associated with the digital
2 commodity; or

3 “(II) exchanged or sold in such
4 limited quantities as the Commission
5 determines support the public use and
6 functioning of services and rights as-
7 sociated with the digital commodity.

8 “(ii) TREATMENT.—For purposes of
9 this subsection, a unit of a digital com-
10 modity obtained through a transaction uti-
11 lizing this exception shall not be considered
12 to be obtained through a digital commodity
13 presale.

14 “(D) PRIOR DIGITAL COMMODITIES.—A
15 unit of a digital commodity shall not be subject
16 to this subsection if, before the date of the en-
17 actment of this subsection, the digital com-
18 modity was publicly available for trading on a
19 trading facility licensed as a money services
20 business with the Department of the Treasury.

21 “(4) TRANSITION RULES.—

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

1 “(i) the trading facility—

2 “(I) has been continuously li-
3 censed as a money services business
4 with the Department of the Treasury
5 since August 1, 2019;

6 “(II) is a registered designated
7 contract market; or

8 “(III) is a registered swap execu-
9 tion facility;

10 “(ii) the trading facility submits a no-
11 tice to the Commission containing—

12 “(I) documentation dem-
13 onstrating its licensing referred to in
14 clause (i)(I); and

15 “(II) an assessment of the digital
16 commodity and all units of the digital
17 commodity to be permitted to trade,
18 in accordance with section 5i(c)(3);
19 and

20 “(iii) the Commission has not issued a
21 notice of disapproval.

22 “(B) DISAPPROVAL PROCESS.—In making
23 a disapproval under subparagraph (A), the
24 Commission shall—

1 “(i) issue any disapproval within 20
2 business days after receipt of a completed
3 notice; and

4 “(ii) identify the specific deficiencies
5 with the notice that necessitated the dis-
6 approval.

7 “(C) EXTENSIONS.—The Commission may
8 extend the time for consideration under sub-
9 paragraph (B)—

10 “(i) once, for 20 business days,
11 through written notice to the digital com-
12 modity exchange; and

13 “(ii) once, for an additional 90 busi-
14 ness days, through notice to the digital
15 commodity exchange which includes a de-
16 scription of any deficiencies with the listing
17 notice, including any—

18 “(I) novel or complex issues
19 which require additional time to ana-
20 lyze;

21 “(II) missing information or in-
22 adequate explanations; or

23 “(III) potential inconsistencies
24 with this Act.

1 “(D) EXPIRATION.—The authority pro-
2 vided by this subparagraph shall expire 1 year
3 after the date of the final promulgation of the
4 digital commodity exchange registration re-
5 quirements, or on the first registration of a dig-
6 ital commodity exchange, whichever occurs ear-
7 lier.”.

8 (d) SEGREGATION OF DIGITAL COMMODITIES.—Sec-
9 tion 4d of such Act (7 U.S.C. 6d) is amended by adding
10 at the end the following:

11 “(i) SEGREGATION OF DIGITAL COMMODITIES.—

12 “(1) HOLDING OF CUSTOMER ASSETS.—

13 “(A) IN GENERAL.—Each futures commis-
14 sion merchant shall hold customer money, as-
15 sets, and property in a manner to minimize the
16 customer’s risk of loss or unreasonable delay in
17 the access to the money, assets, and property of
18 the customer.

19 “(B) QUALIFIED DIGITAL COMMODITY
20 CUSTODIAN.—A futures commission merchant
21 shall hold in a qualified digital commodity cus-
22 todian each unit of a digital commodity that
23 is—

24 “(i) the property of a customer of the
25 futures commission merchant; or

1 “(ii) otherwise so required by the
2 Commission to reasonably protect cus-
3 tomers or promote the public interest.

4 “(2) SEGREGATION OF FUNDS.—

5 “(A) IN GENERAL.—A futures commission
6 merchant shall treat and deal with all money,
7 assets, and property of any digital commodity
8 customer received as belonging to the customer.

9 “(B) COMMINGLING PROHIBITED.—Money,
10 assets, and property of a customer described in
11 subparagraph (A) shall be separately accounted
12 for, and shall not be commingled with the funds
13 of the futures commission merchant or be used
14 to margin, secure, or guarantee any trades or
15 accounts of any customer or person other than
16 the person for whom the same are held.

17 “(C) DIGITAL COMMODITY CUSTOMER DE-
18 FINED.—For the purposes of this paragraph,
19 the term ‘digital commodity customer’ means a
20 customer involved in a cash or spot, leveraged,
21 margined, or financed digital commodity trans-
22 action in which the futures commission mer-
23 chant is acting as the counterparty.

24 “(3) EXCEPTIONS.—

25 “(A) USE OF FUNDS.—

1 “(i) IN GENERAL.—Notwithstanding
2 paragraph (2), money, assets, and property
3 of customers of a futures commission mer-
4 chant described in paragraph (2) may, for
5 convenience, be commingled and deposited
6 in the same account or accounts with any
7 bank, trust company, derivatives clearing
8 organization, or qualified digital com-
9 modity custodian.

10 “(ii) WITHDRAWAL.—Notwithstanding
11 paragraph (2), the share of the money, as-
12 sets, and property described in clause (i)
13 as in the normal course of business shall
14 be necessary to margin, guarantee, secure,
15 transfer, adjust, or settle a digital com-
16 modity transaction with a registered entity
17 may be withdrawn and applied to such
18 purposes, including the payment of com-
19 missions, brokerage, interest, taxes, stor-
20 age, and other charges, lawfully accruing
21 in connection with the digital commodity
22 transaction.

23 “(B) COMMISSION ACTION.—Notwith-
24 standing paragraph (2), in accordance with
25 such terms and conditions as the Commission

1 may prescribe by rule, regulation, or order, any
2 money, assets, or property of the customers of
3 a futures commission merchant described in
4 paragraph (2) may be commingled and depos-
5 ited in customer accounts with any other
6 money, assets, or property received by the fu-
7 tures commission merchant and required by the
8 Commission to be separately accounted for and
9 treated and dealt with as belonging to the cus-
10 tomer of the futures commission merchant.

11 “(4) PERMITTED INVESTMENTS.—Money de-
12 scribed in paragraph (2) may be invested in obliga-
13 tions of the United States, in general obligations of
14 any State or of any political subdivision of a State,
15 and in obligations fully guaranteed as to principal
16 and interest by the United States, or in any other
17 investment that the Commission may by rule or reg-
18 ulation prescribe, and the investments shall be made
19 in accordance with such rules and regulations and
20 subject to such conditions as the Commission may
21 prescribe.

22 “(5) PROHIBITION.—It shall be unlawful for
23 any person, including any derivatives clearing orga-
24 nization or depository institution that has received
25 any money, securities, or property for deposit in a

1 separate account or accounts as provided in para-
2 graph (2) to hold, dispose of, or use any of the
3 money, assets, or property that belongs to the depos-
4 iting futures commission merchant or any person
5 other than the digital commodity customer of the fu-
6 tures commission merchant.

7 “(6) CUSTOMER RIGHT TO OPT OUT.—

8 “(A) IN GENERAL.—A customer shall have
9 the right to waive the restrictions in this sub-
10 section, by affirmatively electing, in writing to
11 the futures commission merchant, to waive the
12 restrictions.

13 “(B) LIMITATIONS.—The Commission
14 may, by rule, establish notice and disclosure re-
15 quirements, segregation requirements, invest-
16 ment limitations, and other rules related to the
17 waiving of any restrictions under this sub-
18 section that are reasonably necessary to protect
19 customers, including eligible contract partici-
20 pants, non-eligible contract participants, or any
21 other class of customers.

22 “(7) CUSTOMER PROTECTION DURING BANK-
23 RUPTCY.—

24 “(A) CUSTOMER PROPERTY.—All money,
25 assets, or property described in paragraph (2)

1 shall be considered customer property for pur-
2 poses of section 761 of title 11, United States
3 Code.

4 “(B) TRANSACTIONS.—A cash or spot, le-
5 veraged, margined, or financed digital com-
6 modity transaction in which the futures com-
7 mission merchant is acting as the counterparty
8 shall be considered a ‘contract for the purchase
9 or sale of a commodity for future delivery on,
10 or subject to the rules of, a contract market or
11 board of trade’ for purposes of the definition of
12 ‘commodity contract’ in section 761 of title 11,
13 United States Code.

14 “(C) ASSETS REMOVED FROM SEGREGA-
15 TION.—Assets removed from segregation due to
16 a customer election under paragraph (6) shall
17 not be considered customer property for pur-
18 poses of section 761 of title 11, United States
19 Code.”.

20 (e) LIMITATION ON FUTURES COMMISSION MER-
21 CHANT ACTING AS A COUNTERPARTY IN DIGITAL COM-
22 MODITY TRANSACTIONS.—Section 4d of such Act (7
23 U.S.C. 6d) is further amended by adding at the end the
24 following:

1 “(j) LIMITATION ON FUTURES COMMISSION MER-
2 CHANT ACTING AS A COUNTERPARTY IN DIGITAL COM-
3 MODITY TRANSACTIONS.—A registered futures commis-
4 sion merchant shall not act as a counterparty in any
5 agreement, contract, or transaction involving a digital
6 commodity that has not been listed for trading on a reg-
7 istered digital commodity exchange.”.

8 (f) COMMON PROVISIONS APPLICABLE TO REG-
9 ISTERED ENTITIES.—Section 5c of such Act (7 U.S.C.
10 7a–2) is amended—

11 (1) in subsection (a), by striking “5(d) and
12 5b(c)(2)” and inserting “5(d), 5b(c)(2), and 5i(e)”;

13 (2) in subsection (b)—

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

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

20 (3) in subsection (c)—

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

23 (B) in paragraph (4)(B), by striking
24 “1a(10)” and inserting “1a(9)”; and

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

3 “(D) SPECIAL RULES FOR THE LISTING OF
4 CERTAIN DIGITAL COMMODITIES.—

5 “(i) IN GENERAL.—In the case of list-
6 ing a digital commodity for trading which
7 has not yet been listed for trading on an-
8 other registered entity, paragraphs (2) and
9 (3) shall apply as if the listing were a rule,
10 and paragraph (2) shall be applied by sub-
11 stituting ‘20 business days’ for ‘10 busi-
12 ness days’.

13 “(ii) TRANSITIONAL EXTENSION.—
14 For 1 year after the registration of the
15 first digital commodity exchange, the Com-
16 mission shall have an additional 20 busi-
17 ness days to review any certification under
18 clause (i).

19 “(iii) DIGITAL COMMODITY
20 PRESALES.—

21 “(I) IN GENERAL.—In conjunc-
22 tion with listing a digital commodity
23 in which any unit of the digital com-
24 modity was obtained through a digital
25 commodity presale, a registered entity

1 shall prohibit any transaction with
2 any unit of the digital commodity ob-
3 tained in violation of section 4c(h).

4 “(II) RELIANCE ON DISCLOSURE
5 BY REGISTERED DEVELOPER.—In
6 complying with subclause (I), a reg-
7 istered entity may rely on the records
8 and disclosures of a registered digital
9 commodity developer submitted to the
10 Commission or its designee under sec-
11 tion 4v in determining whether a unit
12 of a digital commodity was obtained
13 in violation of section 4c(h).

14 “(iv) CONSIDERATION OF COM-
15 MENTS.—In conducting a review under
16 clause (i), the Commission shall consider
17 any comments provided by the Securities
18 and Exchange Commission regarding any
19 inconsistencies with this Act posed by the
20 potential listing of an asset that is not a
21 digital commodity.”.

22 (g) REGISTRATION OF DIGITAL COMMODITY EX-
23 CHANGES; QUALIFIED DIGITAL COMMODITY
24 CUSTODIANS.—

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

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

6 “(a) IN GENERAL.—

7 “(1) REGISTRATION.—

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

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

19 “(2) DEEMED REGISTRATION.—A registered
20 designated contract market or registered swap exe-
21 cution facility which fulfills the requirements of this
22 section may elect to be considered a registered dig-
23 ital commodity exchange, in such form and manner
24 as the Commission shall prescribe.

1 “(3) ADDITIONAL REGISTRATIONS.—A reg-
2 istered digital commodity exchange shall be—

3 “(A) a member of a registered futures as-
4 sociation; and

5 “(B) registered with the Secretary of the
6 Treasury as a Money Services Business.

7 “(b) TRADING.—

8 “(1) IN GENERAL.—A digital commodity ex-
9 change that is registered under subsection (a) may
10 make available for trading any digital commodity
11 that is not readily susceptible to manipulation, sub-
12 ject to this subsection.

13 “(2) RULES GOVERNING MARGINED OR LEVER-
14 AGED TRADING.—The Commission may make, pro-
15 mulgate, and enforce such additional rules governing
16 margined, leveraged, or financed transactions as are
17 reasonably necessary to protect market participants
18 and promote the orderly settlement of transactions
19 with respect to—

20 “(A) disclosure;

21 “(B) recordkeeping;

22 “(C) capital, margin, and other financial
23 resources;

24 “(D) reporting;

25 “(E) business conduct;

1 “(F) documentation; and

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

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

10 “(4) PROHIBITION ON TRADING DERIVATIVES
11 PRODUCTS.—Registration as a digital commodity ex-
12 change shall not permit a trading facility to offer
13 any contract of sale of a commodity for future deliv-
14 ery, option, or swap for trading without also being
15 registered as a designated contract market or swap
16 execution facility.

17 “(5) RULES FOR DIGITAL COMMODITY
18 PRESALES.—The digital commodity exchange shall
19 have in place such rules as may be necessary to rea-
20 sonably ensure the orderly sale of any unit of a dig-
21 ital commodity obtained through a digital commodity
22 presale.

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

25 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

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

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

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

10 “(B) REASONABLE DISCRETION OF A DIG-
11 ITAL COMMODITY EXCHANGE.—Unless other-
12 wise determined by the Commission by rule or
13 regulation, a digital commodity exchange de-
14 scribed in subparagraph (A) shall have reason-
15 able discretion in establishing the manner in
16 which the digital commodity exchange complies
17 with the core principles described in this sub-
18 section.

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

21 “(A) establish and enforce compliance with
22 any rule of the digital commodity exchange, in-
23 cluding—

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

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

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

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

13 “(ii) to capture information that may
14 be used in establishing whether rule viola-
15 tions have occurred; and

16 “(C) establish rules governing the oper-
17 ation of the exchange, including rules specifying
18 trading procedures to be used in entering and
19 executing orders traded or posted on the facil-
20 ity.

21 “(3) DIGITAL COMMODITIES NOT READILY SUS-
22 CEPTIBLE TO MANIPULATION.—

23 “(A) IN GENERAL.—The digital commodity
24 exchange shall permit trading in only digital

1 commodities that are not readily susceptible to
2 manipulation.

3 “(B) LISTING RESTRICTIONS.—A digital
4 commodity exchange shall not permit trading
5 in—

6 “(i) a unit of a digital commodity, if
7 it is reasonably likely that the transaction
8 history of the digital commodity can be
9 fraudulently altered by any person or
10 group of persons acting collectively; or

11 “(ii) a unit of a digital commodity
12 subject to the restrictions in section 4e(h),
13 if it is reasonably likely that the
14 functionality or operation of the digital
15 commodity can be materially altered by
16 any person or group of persons under com-
17 mon control.

18 “(C) CONSIDERATIONS.—In assessing a
19 digital commodity under this paragraph, the ex-
20 change shall consider, with respect to the digital
21 commodity—

22 “(i) its purpose and use;

23 “(ii) its unit creation or release proc-
24 ess;

25 “(iii) its consensus mechanism;

- 1 “(iv) its governance structure;
- 2 “(v) its participation and distribution;
- 3 “(vi) its current and proposed
- 4 functionality; and
- 5 “(vii) any other factor required by the
- 6 Commission.

7 “(D) RULES FOR FIXED-VALUE DIGITAL

8 COMMODITIES.—A fixed-value digital com-

9 modity shall be determined to be not readily

10 susceptible to manipulation under this section if

11 the issuer of the fixed-value digital commodity

12 is registered as a fixed-value digital commodity

13 operator or subject to comparable, comprehen-

14 sive supervision and regulation by another Fed-

15 eral regulator or an appropriate government au-

16 thority in the home country of the fixed-value

17 digital commodity operator.

18 “(4) TREATMENT OF CUSTOMER ASSETS.—

19 “(A) REQUIRED STANDARDS AND PROCE-

20 DURES.—Each digital commodity exchange

21 shall establish standards and procedures that

22 are designed to protect and ensure the safety of

23 customer money, assets, and property.

24 “(B) HOLDING OF CUSTOMER ASSETS.—

1 “(i) IN GENERAL.—Each digital com-
2 modity exchange shall hold customer
3 money, assets, and property in a manner
4 to minimize the customer’s risk of loss or
5 unreasonable delay in the access to the
6 money, assets, and property of the cus-
7 tomer.

8 “(ii) SEGREGATION OF FUNDS.—

9 “(I) IN GENERAL.—A digital
10 commodity exchange shall treat and
11 deal with all money, assets, and prop-
12 erty of any customer received as be-
13 longing to the customer.

14 “(II) COMMINGLING PROHIB-
15 ITED.—Money, assets, and property of
16 a customer described in subclause (I)
17 shall be separately accounted for and
18 shall not be commingled with the
19 funds of the digital commodity ex-
20 change or be used to margin, secure,
21 or guarantee any trades or accounts
22 of any customer or person other than
23 the person for whom the same are
24 held.

25 “(iii) EXCEPTIONS.—

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“(I) USE OF FUNDS.—

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

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

1 fully accruing in connection with
2 the digital commodity trans-
3 action.

4 “(II) COMMISSION ACTION.—
5 Notwithstanding clause (ii), in accord-
6 ance with such terms and conditions
7 as the Commission may prescribe by
8 rule, regulation, or order, any money,
9 assets, or property of the customers of
10 a digital commodity exchange de-
11 scribed in clause (ii) may be commin-
12 gled and deposited in customer ac-
13 counts with any other money, assets,
14 or property received by the digital
15 commodity exchange and required by
16 the Commission to be separately ac-
17 counted for and treated and dealt
18 with as belonging to the customer of
19 the digital commodity exchange.

20 “(C) PERMITTED INVESTMENTS.—Money
21 described in clause (ii) may be invested in obli-
22 gations of the United States, in general obliga-
23 tions of any State or of any political subdivision
24 of a State, and in obligations fully guaranteed
25 as to principal and interest by the United

1 States, or in any other investment that the
2 Commission may by rule or regulation pre-
3 scribe, and such investments shall be made in
4 accordance with such rules and regulations and
5 subject to such conditions as the Commission
6 may prescribe.

7 “(D) CUSTOMER PROTECTION DURING
8 BANKRUPTCY.—

9 “(i) CUSTOMER PROPERTY.—All as-
10 sets held on behalf of a customer by a dig-
11 ital commodity exchange registered under
12 section 5i of this Act, and all money, as-
13 sets, and property of any customer re-
14 ceived by a digital commodity exchange
15 registered under section 5i of this Act for
16 trading or custody, or to facilitate, margin,
17 guarantee, or secure digital commodity
18 transactions (including money, assets, or
19 property accruing to the customer as the
20 result of the transactions), shall be consid-
21 ered customer property for purposes of sec-
22 tion 761 of title 11, United States Code.

23 “(ii) TRANSACTIONS.—A transaction
24 involving a unit of a digital commodity oc-
25 ccurring on or subject to the rules of a dig-

1 ital commodity exchange registered under
2 section 5i of this Act shall be considered a
3 ‘contract for the purchase or sale of a com-
4 modity for future delivery, on or subject to
5 the rules of, a contract market or board of
6 trade’ for the purposes of the definition of
7 a ‘commodity contract’ in section 761 of
8 title 11, United States Code.

9 “(iii) EXCHANGES.—A digital com-
10 modity exchange registered under section
11 5i of this Act shall be considered a futures
12 commission merchant for purposes of sec-
13 tion 761 of title 11, United States Code.

14 “(iv) ASSETS REMOVED FROM SEG-
15 REGATION.—Notwithstanding clause (i),
16 assets that have been removed from seg-
17 regation due to a customer election under
18 subparagraph (F) shall not be considered
19 customer property for purposes of section
20 761 of title 11, United States Code.

21 “(E) MISUSE OF CUSTOMER PROPERTY.—

22 It shall be unlawful—

23 “(i) for any digital commodity ex-
24 change that has received any customer
25 money, assets, or property for custody to

1 dispose of, or use any such money, assets,
2 or property as belonging to the digital
3 commodity exchange; or

4 “(ii) for any other person, including
5 any depository, other digital commodity ex-
6 change, or digital commodity custodian
7 that has received any customer money, as-
8 sets, or property for deposit, to hold, dis-
9 pose of, or use any such money, assets, or
10 property as belonging to the depositing
11 digital commodity exchange or any person
12 other than the customers of the digital
13 commodity exchange.

14 “(F) CUSTOMER RIGHT TO OPT OUT.—

15 “(i) IN GENERAL.—A customer shall
16 have the right to waive the restrictions in
17 subparagraph (B), by affirmatively elect-
18 ing, in writing to the digital commodity ex-
19 change, to waive the restrictions.

20 “(ii) LIMITATIONS.—The Commission
21 may, by rule, establish notice and disclo-
22 sure requirements, segregation require-
23 ments, investment limitations, and other
24 rules related to the waiving of any restric-
25 tions under this paragraph that are rea-

1 sonably necessary to protect customers, in-
2 cluding eligible contract participants, non-
3 eligible contract participants, or any other
4 class of customers.

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

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

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

15 “(i) to protect markets and market
16 participants from abusive practices com-
17 mitted by any party, including abusive
18 practices committed by a party acting as
19 an agent for a participant; and

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

22 “(C) The digital commodity exchange
23 shall—

1 “(i) establish and enforce rules or
2 terms and conditions defining, or specifica-
3 tions detailing—

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

8 “(II) procedures for trade proc-
9 essing of digital commodities on or
10 through the facilities of the digital
11 commodity exchange; and

12 “(ii) monitor trading in digital com-
13 modities to prevent manipulation, price
14 distortion, and disruptions of the delivery
15 or cash settlement process through surveil-
16 lance, compliance, and disciplinary prac-
17 tices and procedures, including methods
18 for conducting real-time monitoring of
19 trading and comprehensive and accurate
20 trade reconstructions.

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

23 “(A) establish and enforce rules that will
24 allow the facility to obtain any necessary infor-

1 mation to perform any of the functions de-
2 scribed in this section;

3 “(B) provide the information to the Com-
4 mission on request; and

5 “(C) have the capacity to carry out such
6 international information-sharing agreements as
7 the Commission may require.

8 “(7) EMERGENCY AUTHORITY.—The digital
9 commodity exchange shall adopt rules to provide for
10 the exercise of emergency authority, in consultation
11 or cooperation with the Commission or a registered
12 entity, as is necessary and appropriate, including the
13 authority to facilitate the liquidation or transfer of
14 open positions in any digital commodity or to sus-
15 pend or curtail trading in a digital commodity.

16 “(8) REPORTING REQUIREMENTS.—

17 “(A) DUTY OF DIGITAL COMMODITY EX-
18 CHANGE.—Each digital commodity exchange
19 shall provide to the Commission all information
20 that is determined by the Commission to be
21 necessary to perform each responsibility of the
22 Commission under this Act.

23 “(B) TIMELY PUBLICATION OF TRADING
24 INFORMATION.—

1 “(i) IN GENERAL.—The digital com-
2 modity exchange shall make public timely
3 information on price, trading volume, and
4 other trading data on digital commodities
5 to the extent prescribed by the Commis-
6 sion.

7 “(ii) CAPACITY OF DIGITAL COM-
8 MODITY EXCHANGE.—The digital com-
9 modity exchange shall be required to have
10 the capacity to electronically capture and
11 transmit trade information with respect to
12 transactions executed on the exchange.

13 “(9) RECORDKEEPING AND REPORTING.—

14 “(A) IN GENERAL.—A digital commodity
15 exchange shall—

16 “(i) maintain records of all activities
17 relating to the business of the facility, in-
18 cluding a complete audit trail, in a form
19 and manner acceptable to the Commission
20 for a period of 5 years;

21 “(ii) report to the Commission, in a
22 form and manner acceptable to the Com-
23 mission, such information as the Commis-
24 sion determines to be necessary or appro-
25 priate for the Commission to perform the

1 duties of the Commission under this Act;
2 and

3 “(iii) keep any such records of digital
4 commodities which relate to a security
5 open to inspection and examination by the
6 Securities and Exchange Commission.

7 “(B) INFORMATION-SHARING.—Subject to
8 section 8, and on request, the Commission shall
9 share information collected under subparagraph
10 (A) with—

11 “(i) the Board;

12 “(ii) the Securities and Exchange
13 Commission;

14 “(iii) each appropriate Federal bank-
15 ing agency;

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

19 “(v) the Financial Stability Oversight
20 Council;

21 “(vi) the Department of Justice; and

22 “(vii) any other person that the Com-
23 mission determines to be appropriate, in-
24 cluding—

1 “(I) foreign financial supervisors
2 (including foreign futures authorities);

3 “(II) foreign central banks; and

4 “(III) foreign ministries.

5 “(C) CONFIDENTIALITY AGREEMENT.—Be-
6 fore the Commission may share information
7 with any entity described in subparagraph (B),
8 the Commission shall receive a written agree-
9 ment from each entity stating that the entity
10 shall abide by the confidentiality requirements
11 described in section 8 relating to the informa-
12 tion on digital commodity transactions that is
13 provided.

14 “(D) PROVIDING INFORMATION.—Each
15 digital commodity exchange shall provide to the
16 Commission (including any designee of the
17 Commission) information under subparagraph
18 (A) in such form and at such frequency as is
19 required by the Commission.

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

23 “(A) adopt any rules or take any actions
24 that result in any unreasonable restraint of
25 trade; or

1 “(B) impose any material anticompetitive
2 burden on trading.

3 “(11) CONFLICTS OF INTEREST.—The digital
4 commodity exchange shall—

5 “(A) establish and enforce rules to mini-
6 mize conflicts of interest in its decision-making
7 process; and

8 “(B) establish a process for resolving the
9 conflicts of interest.

10 “(12) FINANCIAL RESOURCES.—

11 “(A) IN GENERAL.—Each digital com-
12 modity exchange shall have adequate financial,
13 operational, and managerial resources, as deter-
14 mined by the Commission, to discharge each re-
15 sponsibility of the digital commodity exchange.

16 “(B) MINIMUM AMOUNT OF FINANCIAL RE-
17 SOURCE.—Each digital commodity exchange
18 shall possess financial resources that, at a min-
19 imum, exceed the total amount that would en-
20 able the digital commodity exchange to conduct
21 an orderly wind-down of its activities.

22 “(C) ADDITIONAL FINANCIAL RESOURCES
23 FOR LEVERAGE TRADING.—The Commission
24 may require such additional financial resources
25 as are necessary to enable a digital commodity

1 exchange which offers margined, leveraged, or
2 financed transactions to fulfill its customer obli-
3 gations.

4 “(13) GOVERNANCE FITNESS STANDARDS.—

5 “(A) GOVERNANCE ARRANGEMENTS.—

6 Each digital commodity exchange shall establish
7 governance arrangements that are transparent
8 to fulfill public interest requirements.

9 “(B) FITNESS STANDARDS.—Each digital
10 commodity exchange shall establish and enforce
11 appropriate fitness standards for—

12 “(i) directors;

13 “(ii) any individual or entity with di-
14 rect access to the settlement activities of
15 the digital commodity exchange;

16 “(iii) any individual or entity with di-
17 rect access to any affiliated digital com-
18 modity custodian;

19 “(iv) any entity offering affiliated
20 services for the digital commodity ex-
21 change; and

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

24 “(14) SYSTEM SAFEGUARDS.—The digital com-
25 modity exchange shall—

- 1 “(A) establish and maintain a program of
2 risk analysis and oversight to identify and mini-
3 mize sources of operational and security risks,
4 through the development of appropriate controls
5 and procedures, and automated systems, that—
6 “(i) are reliable and secure; and
7 “(ii) have adequate scalable capacity;
8 “(B) establish and maintain emergency
9 procedures, backup facilities, and a plan for dis-
10 aster recovery that allow for—
11 “(i) the timely recovery and resump-
12 tion of operations; and
13 “(ii) the fulfillment of the responsibil-
14 ities and obligations of the digital com-
15 modity exchange; and
16 “(C) periodically conduct tests to verify
17 that the backup resources of the digital com-
18 modity exchange are sufficient to ensure contin-
19 ued—
20 “(i) order processing and trade
21 matching;
22 “(ii) price reporting;
23 “(iii) market surveillance; and
24 “(iv) maintenance of a comprehensive
25 and accurate audit trail.

1 “(d) APPOINTMENT OF TRUSTEE.—

2 “(1) IN GENERAL.—If a proceeding under sec-
3 tion 5e results in the suspension or revocation of the
4 registration of a digital commodity exchange, or if a
5 digital commodity exchange withdraws from registra-
6 tion, the Commission, on notice to the digital com-
7 modity exchange, may apply to the appropriate
8 United States district court where the digital com-
9 modity exchange is located for the appointment of a
10 trustee.

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

14 “(A) the court may take exclusive jurisdic-
15 tion over the digital commodity exchange and
16 the records and assets of the digital commodity
17 exchange, wherever located; and

18 “(B) if the court takes jurisdiction under
19 subparagraph (A), the court shall appoint the
20 Commission, or a person designated by the
21 Commission, as trustee with power to take pos-
22 session and continue to operate or terminate
23 the operations of the digital commodity ex-
24 change in an orderly manner for the protection

1 of customers subject to such terms and condi-
2 tions as the court may prescribe.

3 “(e) QUALIFIED DIGITAL COMMODITY CUSTO-
4 DIAN.—A digital commodity exchange shall hold in a
5 qualified digital commodity custodian each unit of a digital
6 commodity that is—

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

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

12 “(3) otherwise so required by the Commission
13 to reasonably protect customers or promote the pub-
14 lic interest.

15 “(f) EXEMPTIONS.—In order to promote responsible
16 economic or financial innovation and fair competition, or
17 protect customers, the Commission may (on its own initia-
18 tive or on application of the registered digital commodity
19 exchange) exempt, either unconditionally or on stated
20 terms or conditions or for stated periods and either retro-
21 actively or prospectively, or both, a registered digital com-
22 modity exchange from the requirements of this section, if
23 the Commission determines that—

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

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

5 “(2) the digital commodity exchange is subject
6 to comparable, comprehensive supervision and regu-
7 lation by the appropriate government authorities in
8 the home country of the organization.

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

16 “(h) FEDERAL PREEMPTION.—Notwithstanding any
17 other provision of law, the Commission shall have exclusive
18 jurisdiction over any digital commodity exchange reg-
19 istered under this section.

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

21 “(a) IN GENERAL.—The Commission shall designate
22 a digital commodity custodian as a qualified digital com-
23 modity custodian, if—

24 “(1) the Commission finds the digital com-
25 modity custodian is subject to adequate supervision

1 and appropriate regulation by the Commission, the
2 Securities and Exchange Commission, an appro-
3 priate Federal banking agency, a State bank super-
4 visor (within the meaning of section 3 of the Federal
5 Deposit Insurance Act), or an appropriate foreign
6 governmental authority in the home country of the
7 digital commodity custodian; and

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

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

21 “(1) accessibility of customer assets;

22 “(2) financial resources;

23 “(3) risk management requirements;

24 “(4) governance arrangements;

25 “(5) fitness standards;

1 “(6) recordkeeping;

2 “(7) information-sharing; and

3 “(8) conflicts of interest.

4 “(c) AUTHORITY TO TEMPORARILY SUSPEND STAND-
5 ARDS.—The Commission may, by rule or order, tempo-
6 rarily suspend, in whole or in part, any requirement im-
7 posed under, or any standard referred to in, this section
8 if the Commission determines that the suspension would
9 be consistent with the public interest and the purposes of
10 this Act.”.

11 (2) CERTAIN DIGITAL COMMODITY EXCHANGE
12 FUNCTIONS NOT SUFFICIENT TO TRIGGER REQUIRE-
13 MENT TO REGISTER AS FUTURES COMMISSION MER-
14 CHANT.—Section 4f(c) of the Commodity Exchange
15 Act (7 U.S.C. 6f(c)) is amended by adding at the
16 end the following:

17 “(12) CLARIFICATION OF SCOPE OF REGISTRA-
18 TION REQUIREMENT.—A registered digital com-
19 modity exchange shall not be required to register as
20 a futures commission merchant for any activity for
21 which the exchange is regulated under section 5i.”.

22 (h) REGISTRATION AND REGULATION OF FIXED-
23 VALUE DIGITAL COMMODITY OPERATORS.—

1 (1) DEFINITIONS.—Section 1a of the Com-
2 modity Exchange Act (7 U.S.C. 1a) is further
3 amended by adding at the end the following:

4 “(56) FIXED-VALUE DIGITAL COMMODITY.—

5 “(A) IN GENERAL.—The term ‘fixed-value
6 digital commodity’ means a digital commodity
7 which is redeemable for a fixed amount of fiat
8 currency or another commodity, or the value
9 thereof.

10 “(B) FURTHER DEFINITION.—The Com-
11 mission, by rule or regulation, may include
12 within, or exclude from, the term ‘fixed-value
13 digital commodity’ any digital commodity if the
14 Commission determines that the rule or regula-
15 tion will effectuate the purposes of this Act.

16 “(57) FIXED-VALUE DIGITAL COMMODITY OP-
17 ERATOR.—

18 “(A) IN GENERAL.—The term ‘fixed-value
19 digital commodity operator’ means any per-
20 son—

21 “(i) engaged in a business that solici-
22 its, accepts, or receives funds, property, or
23 other assets from others for the purpose of
24 issuing units of a fixed-value digital com-
25 modity; or

1 “(3) APPLICATION CONTENTS.—The application
2 shall include—

3 “(A) a description of the operation of the
4 fixed-value digital commodity, including the
5 process for issuing, redeeming, and calculating
6 the value of the outstanding redeemable units
7 of the fixed-value digital commodity;

8 “(B) the process by which the fixed-value
9 digital commodity operator would wind-down its
10 business, including—

11 “(i) transferring the funds and prop-
12 erty available for the redemption of units
13 of the fixed-value digital commodity to an-
14 other fixed-value digital commodity oper-
15 ator; or

16 “(ii) redeeming outstanding units of
17 the fixed-value digital commodity in an or-
18 derly manner; and

19 “(C) such other information as the Com-
20 mission considers necessary concerning the
21 business in which the applicant is or will be en-
22 gaged.

23 “(b) PROHIBITIONS; ENFORCEMENT.—

24 “(1) STATUTORY DISQUALIFICATION.—Except
25 to the extent otherwise specifically provided by rule,

1 regulation, or order, it shall be unlawful for a reg-
2 istered fixed-value digital commodity operator to
3 permit any person who is associated with the oper-
4 ator and is subject to a statutory disqualification, to
5 take any action in relation to the fixed-value digital
6 commodity on behalf of the operator, if the operator
7 knew, or in the exercise of reasonable care should
8 have known, of the statutory disqualification.

9 “(2) REVOCATION.—

10 “(A) IN GENERAL.—The failure of a reg-
11 istered fixed-value digital commodity operator
12 to comply with any provision of this Act or any
13 regulation or order of the Commission under
14 this Act shall be cause for the suspension for a
15 period not to exceed 180 days, or revocation, of
16 the registration of the operator as a fixed-value
17 digital commodity operator, in accordance with
18 the procedures and subject to the judicial re-
19 view provided in section 6(b).

20 “(B) TRUSTEE.—If a proceeding under
21 subparagraph (A) results in the suspension or
22 revocation of the registration of a fixed-value
23 digital commodity operator, or if such an oper-
24 ator withdraws from registration, the Commis-
25 sion, on notice to the operator, may apply to

1 the appropriate United States district court for
2 the judicial district in which the operator is lo-
3 cated for the appointment of a trustee.

4 “(C) ASSUMPTION OF JURISDICTION.—If
5 the Commission applies for appointment of a
6 trustee under subparagraph (B)—

7 “(i) the court may take exclusive ju-
8 risdiction over the fixed-value digital com-
9 modity operator and the records and assets
10 of the operator, wherever located; and

11 “(ii) if the court takes jurisdiction
12 under clause (i), the court shall appoint
13 the Commission, or a person designated by
14 the Commission, as trustee with power to
15 take possession and continue to operate or
16 terminate the operations of the fixed-value
17 digital commodity operator in an orderly
18 manner for the protection of participants,
19 subject to such terms and conditions as the
20 court may prescribe.

21 “(c) DUTIES OF A REGISTERED FIXED-VALUE DIG-
22 ITAL COMMODITY OPERATOR.—A registered fixed-value
23 digital commodity operator shall comply, in such manner
24 as the Commission shall by rule or order determine, with
25 the following requirements:

1 “(1) DISCLOSURE OF GENERAL INFORMA-
2 TION.—For each fixed-value digital commodity it op-
3 erates, such an operator shall—

4 “(A) disclose to the Commission informa-
5 tion concerning—

6 “(i) the terms and conditions of the
7 fixed-value digital commodity transactions;

8 “(ii) the fixed-value digital commodity
9 operations, mechanisms, and practices;

10 “(iii) the process for the issuance and
11 redemption of units of the fixed-value dig-
12 ital commodity;

13 “(iv) the financial integrity protec-
14 tions relating to the fixed-value digital
15 commodity; and

16 “(v) other information relevant to
17 transacting in the fixed-value digital com-
18 modity; and

19 “(B) continue to submit to the Commission
20 reports that contain such information per-
21 taining to the business of the operator as the
22 Commission may require.

23 “(2) PUBLICLY AVAILABLE INFORMATION.—
24 For each fixed-value digital commodity it operates,

1 such an operator shall make available to the public,
2 information concerning—

3 “(A) the fixed-value digital commodity op-
4 erations, mechanisms, and practices;

5 “(B) the process for the issuance and re-
6 demption of the units of the fixed-value digital
7 commodity;

8 “(C) information about the material risks
9 and characteristics of the fixed-value digital
10 commodity;

11 “(D) the total value of the outstanding
12 units of the fixed-value digital commodity;

13 “(E) the total value of funds and other
14 property held by the operator for redemption;

15 “(F) any material incentives or conflicts of
16 interest that the operator may have in connec-
17 tion with the fixed-value digital commodity; and

18 “(G) any other information the Commis-
19 sion determines is relevant to the public’s un-
20 derstanding of the operation of the fixed-value
21 digital commodity.

22 “(3) RECORD OF ASSETS AND LIABILITIES.—
23 For each fixed-value digital commodity it operates,
24 such an operator shall maintain daily redemption
25 fund records reflecting the total amount of funds or

1 property held by the operator for redemption and
2 the total value of outstanding redeemable units of
3 the fixed-value digital commodity.

4 “(4) ABILITY TO OBTAIN INFORMATION.—Such
5 an operator shall—

6 “(A) establish and enforce internal systems
7 and procedures to obtain any necessary infor-
8 mation to perform any of the functions de-
9 scribed in this section; and

10 “(B) provide the information to the Com-
11 mission, as applicable, on request.

12 “(5) CONFLICTS OF INTEREST.—Such an oper-
13 ator shall implement conflict-of-interest systems and
14 procedures that address such issues as the Commis-
15 sion determines to be appropriate.

16 “(6) RISK MANAGEMENT PROCEDURES.—Such
17 an operator shall establish robust and professional
18 risk management systems adequate for managing
19 the day-to-day business of the operator.

20 “(7) REPORTING AND RECORDKEEPING.—Such
21 an operator shall—

22 “(A) make such reports as are required by
23 the Commission by rule or regulation regarding
24 the issuance and redemption transactions, and

1 positions and financial condition of the reg-
2 istered fixed-value digital commodity operator;

3 “(B) keep books and records in such form
4 and manner and for such period as may be pre-
5 scribed by the Commission by rule or regula-
6 tion; and

7 “(C) keep the books and records referred
8 to in subparagraph (B) open to inspection and
9 examination by any representative of the Com-
10 mission.

11 “(8) BUSINESS CONDUCT STANDARDS.—Such
12 an operator shall conform with such business con-
13 duct standards as the Commission may prescribe, re-
14 lated to—

15 “(A) fraud, manipulation, and other abu-
16 sive practices involving the issuance and re-
17 demption of any unit of the fixed-value digital
18 commodity;

19 “(B) diligent supervision of the business of
20 the operator;

21 “(C) communicating with the public in a
22 fair and balanced manner based on principles of
23 fair dealing and good faith; and

24 “(D) such other standards and require-
25 ments as the Commission may determine are

1 appropriate in the public interest, for the pro-
2 tection of participants in the fixed-value digital
3 commodity, or otherwise in furtherance of the
4 purposes of this section.

5 “(9) REQUIREMENTS FOR ISSUANCE AND RE-
6 DEMPTION TRANSACTION RECORDS.—

7 “(A) IN GENERAL.—For each fixed-value
8 digital commodity it operates, such an operator
9 shall maintain daily transaction records of the
10 units of the fixed-value digital commodity
11 issued or redeemed by the operator for such pe-
12 riod as may be required by the Commission by
13 rule or regulation.

14 “(B) COUNTERPARTY RECORDS.—For each
15 fixed-value digital commodity it operates, such
16 an operator shall maintain daily transaction
17 records for each counterparty to an issuance or
18 redemption transaction in a manner and form
19 that is identifiable with each fixed-value digital
20 commodity transaction.

21 “(C) AUDIT TRAIL.—For each fixed-value
22 digital commodity it operates, such an operator
23 shall maintain a complete audit trail for con-
24 ducting comprehensive and accurate issuance
25 and redemption transaction reconstructions.

1 “(D) INFORMATION REQUIREMENTS.—

2 Such a daily transaction record shall include
3 such information as the Commission shall re-
4 quire by rule or regulation.

5 “(d) FUNDS HELD FOR REDEMPTION.—

6 “(1) AMOUNT OF FUNDS.—For each fixed-value
7 digital commodity it operates, a registered fixed-
8 value digital commodity operator shall maintain
9 funds or other property equal to the total value of
10 any outstanding redeemable fixed-value digital com-
11 modities issued by the operator, as determined in ac-
12 cordance with such requirements and limitations on
13 valuation as the Commission shall, by rule, pre-
14 scribe.

15 “(2) SEGREGATION REQUIREMENTS.—

16 “(A) FUNDS HELD FOR REDEMPTION.—
17 For each fixed-value digital commodity it oper-
18 ates, a registered fixed-value digital commodity
19 operator shall—

20 “(i) segregate the funds or other
21 property held for redemption; and

22 “(ii) in accordance with such rules
23 and regulations as the Commission may
24 promulgate, maintain the funds or other
25 property in a segregated account separate

1 from the assets and other interests of the
2 operator.

3 “(B) APPLICABILITY.—Subparagraph (A)
4 shall not preclude any commercial arrangement
5 regarding the investment of segregated funds or
6 other property that may only be invested in
7 such investments as the Commission may per-
8 mit by rule or regulation.

9 “(C) CUSTODIANS.—The segregated ac-
10 count referred to in subparagraph (A) shall be
11 carried by a qualified digital commodity custo-
12 dian for any digital commodity held for redemp-
13 tion.

14 “(e) FINANCIAL RESOURCES.—

15 “(1) IN GENERAL.—A registered fixed-value
16 digital commodity operator shall meet such min-
17 imum capital requirements as the Commission shall
18 by rule or regulation prescribe, pursuant to the
19 standards in paragraph (2).

20 “(2) STANDARDS FOR CAPITAL REQUIRE-
21 MENTS.—

22 “(A) The requirements imposed under
23 paragraph (1) shall—

1 “(i) help ensure the safety and sound-
2 ness of the fixed-value digital commodity
3 operator;

4 “(ii) be appropriate for the risk asso-
5 ciated with the funds for redemption held
6 by such an operator; and

7 “(iii) be sufficient for the operator to
8 comply with its plan for an orderly wind-
9 down of its activities.

10 “(B) ADJUSTMENTS.—In setting capital
11 requirements for a registered fixed-value digital
12 commodity operator, the Commission shall take
13 into account—

14 “(i) the risks associated with other ac-
15 tivities conducted by the operator or affili-
16 ated entity for activities not subject to reg-
17 ulations providing for a minimum capital
18 standard; and

19 “(ii) any other capital requirement
20 imposed on the operator or affiliated entity
21 for activities subject to regulations pro-
22 viding for a minimum capital standard.

23 “(f) EXEMPTIONS.—In order to promote responsible
24 economic or financial innovation and fair competition, or
25 protect customers, the Commission may (on its own initia-

1 tive or on application of the registered fixed-value digital
2 commodity operator) exempt, either unconditionally or on
3 stated terms or conditions or for stated periods and either
4 retroactively or prospectively, or both, a registered fixed-
5 value digital commodity operator from the requirements
6 of this section, if the Commission determines that—

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

9 “(2) the exemption will not have a material ad-
10 verse effect on the ability of the Commission or the
11 operator to discharge any duty of the Commission or
12 the operator, respectively, under this Act.

13 “(g) RULEMAKING.—

14 “(1) IN GENERAL.—The Commission shall
15 adopt rules for registered fixed-value digital com-
16modity operators and to effectuate the requirements
17 of this section.

18 “(2) PROHIBITION ON THE COLLECTION OF
19 CERTAIN INFORMATION.—This section shall not be
20 construed to—

21 “(A) require a registered fixed-value digital
22 commodity operator to solicit, collect, maintain,
23 report, or otherwise make available to the Com-
24 mission, any other State or Federal agency, or
25 any foreign authority, any record or informa-

1 tion relating to any person, counterparty,
2 amount, or account utilizing a unit of the fixed-
3 value digital commodity in a transaction which
4 does not involve the issuance or redemption of
5 a unit of the fixed-value digital commodity, or
6 to cause any other person to do the same; or

7 “(B) permit the Commission to require
8 such an operator to solicit, collect, maintain, re-
9 port, or otherwise make available to the Com-
10 mission, any other State or Federal agency, or
11 any foreign authority, any record or informa-
12 tion relating to any person, counterparty,
13 amount, or account utilizing a unit of the fixed-
14 value digital commodity in a transaction which
15 does not involve the issuance or redemption of
16 a unit of the fixed-value digital commodity, or
17 to cause any other person to do the same.”.

18 (i) VOLUNTARY REGISTRATION AND DISCLOSURES
19 BY DIGITAL COMMODITY DEVELOPERS.—

20 (1) DEFINITION.—Section 1a of the Commodity
21 Exchange Act (7 U.S.C. 1a) is further amended by
22 adding at the end the following:

23 “(58) DIGITAL COMMODITY DEVELOPER.—The
24 term ‘digital commodity developer’ means a person
25 who creates or develops a digital commodity.”.

1 “(B) when the applicant fails to comply
2 with the requirements of this section; or

3 “(C) at such other time as the Commission
4 may prescribe by rule or regulation.

5 “(c) DISCLOSURES.—For each digital commodity, a
6 registered digital commodity developer shall submit to the
7 Commission or its designee, and maintain on a publicly
8 available website, in such form and manner as prescribed
9 by the Commission, the following:

10 “(1) INITIAL DISCLOSURES.—

11 “(A) PROJECT DISCLOSURES.—A general
12 description of the digital commodity, includ-
13 ing—

14 “(i) its purpose and use;

15 “(ii) its unit creation or release proc-
16 ess;

17 “(iii) its consensus mechanism;

18 “(iv) its governance structure;

19 “(v) its participation and distribution;

20 “(vi) its current and proposed
21 functionality; and

22 “(vii) any other such information the
23 Commission determines will effectuate the
24 purposes of this Act.

1 “(B) DEVELOPMENT DISCLOSURES.—A
2 list of all individuals who are—

3 “(i) participants in a related digital
4 commodity presale;

5 “(ii) holders of units of the digital
6 commodity subject to the limitations in
7 section 4c(h);

8 “(iii) holders of rights or promises to
9 future units of the digital commodity; or

10 “(iv) compensated in any fashion for
11 providing material support for the develop-
12 ment of the digital commodity.

13 “(C) TECHNICAL DISCLOSURES.—Tech-
14 nical documentation related to the digital com-
15 modity, including any—

16 “(i) whitepaper;

17 “(ii) source code;

18 “(iii) development guide; or

19 “(iv) other similar material.

20 “(2) PERIODIC DISCLOSURES.—The digital
21 commodity developer shall periodically update the
22 disclosures made pursuant to subsection (c)(1), at
23 such frequency as prescribed by the Commission.

24 “(3) POST-FILING DIGITAL COMMODITY SALE
25 DISCLOSURES.—

1 “(A) IN GENERAL.—The digital commodity
2 developer shall publicly disclose the sale or
3 transfer of any unit, or any promise or right to
4 any future unit, of the digital commodity, that
5 is subject to the restrictions in section 4c(h).

6 “(B) CONTENTS.—Each disclosure re-
7 quired under subparagraph (A) shall include
8 the date of sale, number of digital commodities
9 sold, number of purchasers if identifiable, any
10 limitations or restrictions on the transferability
11 of the digital commodities sold, price per digital
12 commodity, and the type and amount of consid-
13 eration received.

14 “(4) SUBSTITUTE DISCLOSURES.—The Com-
15 mission may exempt, conditionally or uncondition-
16 ally, a digital commodity developer from the disclo-
17 sure requirements under this section if the Commis-
18 sion determines that the digital commodity developer
19 complies with the comparable disclosure require-
20 ments of another federal regulator.

21 “(d) NO REQUIREMENT TO REGISTER.—The creator
22 or developer of a digital commodity shall not be required
23 to be registered under this section in order for a digital
24 commodity created or developed by the creator or devel-

- 1 oper to be listed for trading on a registered digital com-
- 2 modity exchange.”.