

117TH CONGRESS
2D SESSION

S. 4760

To amend the Commodity Exchange Act to provide the Commodity Futures Trading Commission jurisdiction to oversee the spot digital commodity market, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2022

Ms. STABENOW (for herself, Mr. BOOZMAN, Mr. BOOKER, and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to provide the Commodity Futures Trading Commission jurisdiction to oversee the spot digital commodity market, 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 Commodities
5 Consumer Protection Act of 2022”.

6 **SEC. 2. DEFINITIONS.**

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

1 (1) by redesignating paragraphs (3) through
2 (15) and paragraphs (16) through (51) as para-
3 graphs (5) through (17) and paragraphs (25)
4 through (60), respectively;

5 (2) by inserting after paragraph (2) the fol-
6 lowing:

7 “(3) ASSOCIATED PERSON OF A DIGITAL COM-
8 MODITY BROKER.—

9 “(A) IN GENERAL.—The term ‘associated
10 person of a digital commodity broker’ means a
11 person who is associated with a digital com-
12 modity broker as a partner, officer, employee,
13 or agent (or any person occupying a similar sta-
14 tus or performing similar functions) in any ca-
15 pacity that involves—

16 “(i) the solicitation or acceptance of a
17 digital commodity trade; or

18 “(ii) the supervision of any person en-
19 gaged in the solicitation or acceptance of a
20 digital commodity trade.

21 “(B) EXCLUSION.—The term ‘associated
22 person of a digital commodity broker’ does not
23 include any person associated with a digital
24 commodity broker the functions of which are
25 solely clerical or ministerial.

1 “(4) ASSOCIATED PERSON OF A DIGITAL COM-
2 MODITY DEALER.—

3 “(A) IN GENERAL.—The term ‘associated
4 person of a digital commodity dealer’ means a
5 person who is associated with a digital com-
6 modity dealer as a partner, officer, employee, or
7 agent (or any person occupying a similar status
8 or performing similar functions) in any capacity
9 that involves—

10 “(i) the solicitation or acceptance of a
11 digital commodity trade; or

12 “(ii) the supervision of any person en-
13 gaged in the solicitation or acceptance of a
14 digital commodity trade.

15 “(B) EXCLUSION.—The term ‘associated
16 person of a digital commodity dealer’ does not
17 include any person associated with a digital
18 commodity dealer the functions of which are
19 solely clerical or ministerial.”;

20 (3) in paragraph (11) (as so redesignated), by
21 striking “and frozen concentrated orange juice” and
22 inserting “frozen concentrated orange juice, and dig-
23 ital commodities,”;

24 (4) in paragraph (12)(A) (as so redesignated)—

1 (A) by redesignating clauses (iii) and (iv)
2 as clauses (iv) and (v), respectively; and

3 (B) by inserting after clause (ii) the fol-
4 lowing:

5 “(iii) digital commodity;”;

6 (5) in paragraph (13)(A)(i) (as so redesign-
7 nated)—

8 (A) by redesignating subclauses (III) and
9 (IV) as subclauses (IV) and (V), respectively;
10 and

11 (B) by inserting after subclause (II) the
12 following:

13 “(III) digital commodity;”;

14 (6) in paragraph (14)(A)(i) (as so redesign-
15 nated)—

16 (A) in subclause (II), by adding a semi-
17 colon at the end;

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

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

23 “(III) a digital commodity;”;

24 (7) by inserting after paragraph (17) (as so re-
25 designated) the following:

1 “(18) DIGITAL COMMODITY.—

2 “(A) IN GENERAL.—The term ‘digital com-
3 modity’ means a fungible digital form of per-
4 sonal property that can be possessed and trans-
5 ferred person-to-person without necessary reli-
6 ance on an intermediary.

7 “(B) INCLUSIONS.—The term ‘digital com-
8 modity’ includes property commonly known as
9 cryptocurrency or virtual currency, such as
10 Bitcoin and Ether.

11 “(C) EXCLUSIONS.—The term ‘digital
12 commodity’ does not include—

13 “(i) an interest in a physical com-
14 modity;

15 “(ii) a security;

16 “(iii) a digital form of currency
17 backed by the full faith and credit of the
18 United States;

19 “(iv) except as provided in subpara-
20 graph (D), an instrument regulated by the
21 Commission pursuant to any provision of
22 this Act other than section 2(e)(2)(F); or

23 “(v) any other instrument that the
24 Commission determines not to be a digital
25 commodity.

1 “(D) EXCEPTION.—The exclusion de-
2 scribed in subparagraph (C)(iv) shall not apply
3 to a commodity transaction that is subject only
4 to Commission antimanipulation, antifraud, or
5 false reporting authority.

6 “(19) DIGITAL COMMODITY BROKER.—

7 “(A) IN GENERAL.—The term ‘digital com-
8 modity broker’ means a person that is engaged,
9 as an identifiable business, in—

10 “(i) soliciting or accepting orders on
11 behalf of another person for a digital com-
12 modity trade;

13 “(ii) accepting digital commodities
14 from another person for the purpose of en-
15 tering into digital commodity trades;

16 “(iii) arranging digital commodity
17 trades on behalf of another person; or

18 “(iv) a similar activity, as determined
19 by the Commission.

20 “(B) EXCLUSION.—The term ‘digital com-
21 modity broker’ does not include a person solely
22 because that person validates digital commodity
23 transactions.

24 “(20) DIGITAL COMMODITY CUSTODIAN.—

1 “(A) IN GENERAL.—The term ‘digital com-
2 modity custodian’ means a person that, as an
3 identifiable business, maintains possession, cus-
4 tody, or control over digital commodities on be-
5 half of another person.

6 “(B) EXCLUSIONS.—The term ‘digital
7 commodity custodian’ does not include—

8 “(i) an insured depository institution
9 (as defined in section 3 of the Federal De-
10 posit Insurance Act (12 U.S.C. 1813)); or

11 “(ii) an insured credit union (as de-
12 fined in section 101 of the Federal Credit
13 Union Act (12 U.S.C. 1752)).

14 “(21) DIGITAL COMMODITY DEALER.—

15 “(A) IN GENERAL.—The term ‘digital com-
16 modity dealer’ means a person that—

17 “(i) has an identifiable business of
18 dealing in a digital commodity as principal
19 for its own account;

20 “(ii) makes a market in a digital com-
21 modity;

22 “(iii) holds itself out as a dealer in a
23 digital commodity;

24 “(iv) has as an identifiable business of
25 buying or selling digital commodities for

1 conversion into other digital commodities,
2 currency, or other consideration;

3 “(v) has as an identifiable business of
4 accepting digital commodities from another
5 person (referred to in this clause as a ‘de-
6 positor’) with an obligation to return the
7 digital commodities, consideration linked to
8 the digital commodities, or both to the de-
9 positor; or

10 “(vi) engages in a similar activity, as
11 determined by the Commission.

12 “(B) EXCLUSION.—The term ‘digital com-
13 modity dealer’ does not include a person solely
14 because that person validates digital commodity
15 transactions.

16 “(22) DIGITAL COMMODITY PLATFORM.—

17 “(A) IN GENERAL.—The term ‘digital com-
18 modity platform’ means a person that is 1 or
19 more of the following:

20 “(i) A digital commodity broker.

21 “(ii) A digital commodity custodian.

22 “(iii) A digital commodity dealer.

23 “(iv) A digital commodity trading fa-
24 cility.

1 “(B) CATEGORY.—The term ‘category’,
2 with respect to a digital commodity platform,
3 means 1 or more categories described in clauses
4 (i) through (iv) of subparagraph (A) of that
5 digital commodity platform.

6 “(23) DIGITAL COMMODITY TRADE.—

7 “(A) IN GENERAL.—The term ‘digital com-
8 modity trade’ means a purchase or sale of a
9 digital commodity in exchange for—

10 “(i) another digital commodity; or

11 “(ii) any other consideration.

12 “(B) INCLUSIONS.—The term ‘digital com-
13 modity trade’ includes—

14 “(i) an offer to enter into a purchase
15 or sale described in subparagraph (A); and

16 “(ii) a loan of a digital commodity, an
17 offer to enter into a loan of a digital com-
18 modity, or a similar activity, as determined
19 by the Commission.

20 “(C) EXCLUSION.—Except as provided in
21 subparagraph (D), the term ‘digital commodity
22 trade’ excludes a transaction regulated by the
23 Commission pursuant to any provision of this
24 Act except section 2(c)(2)(F).

1 “(D) EXCEPTION.—The exclusion de-
 2 scribed in subparagraph (C) shall not apply to
 3 a commodity transaction that is subject only to
 4 Commission antimanipulation, antifraud, or
 5 false reporting authority.

6 “(24) DIGITAL COMMODITY TRADING FACIL-
 7 ITY.—

8 “(A) IN GENERAL.—The term ‘digital com-
 9 modity trading facility’ means a trading facility
 10 that facilitates the execution or trading of dig-
 11 ital commodity trades between persons.

12 “(B) EXCLUSION.—The term ‘digital com-
 13 modity trading facility’ does not include a per-
 14 son solely because that person validates digital
 15 commodity transactions.”;

16 (8) in paragraph (43) (as so redesignated)—

17 (A) in the paragraph heading, by striking
 18 “; MEMBER OF A DERIVATIVES TRANSACTION
 19 EXECUTION FACILITY”;

20 (B) in the matter preceding subparagraph
 21 (A), by striking “entity or derivatives trans-
 22 action execution facility,” and inserting “enti-
 23 ty,”;

1 (C) in subparagraph (A), by striking “enti-
2 ty” and all that follows through the semicolon
3 and inserting “entity;”; and

4 (D) in subparagraph (B), by striking “en-
5 tity” and all that follows through the period at
6 the end and inserting “entity.”; and

7 (9) in paragraph (49) (as so redesignated)—

8 (A) by redesignating subparagraphs (E)
9 and (F) as subparagraphs (F) and (G), respec-
10 tively; and

11 (B) by inserting after subparagraph (D)
12 the following:

13 “(E) a digital commodity trading facility
14 registered under section 5i;”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 1a of the Commodity Exchange Act
17 (7 U.S.C. 1a) is amended—

18 (A) in paragraph (26)(A) (as redesignated
19 by subsection (a)(1)), in the matter preceding
20 clause (i), by striking “(18)(A)” and inserting
21 “(27)(A)”; and

22 (B) in paragraph (27)(A)(vii)(III)(aa) (as
23 redesignated by subsection (a)(1)), by striking
24 “(17)(A)” and inserting “(26)(A)”.

1 (2) Section 4(c)(1)(A)(i)(I) of the Commodity
2 Exchange Act (7 U.S.C. 6(c)(1)(A)(i)(I)) is amended
3 by striking “paragraphs (2), (3), (4), (5), and (7),
4 paragraph (18)(A)(vii)(III), paragraphs (23), (24),
5 (31), (32), (38), (39), (41), (42), (46), (47), (48),
6 and (49) of section 1a” and inserting “paragraphs
7 (2), (5), (6), (7), (9), (27)(A)(vii)(III), (32), (33),
8 (40), (41), (47), (48), (50), (51), (55), (56), (57),
9 and (58) of section 1a”.

10 (3) Section 4q(a)(1) of the Commodity Ex-
11 change Act (7 U.S.C. 6q(a)(1)) is amended by strik-
12 ing “1a(9)” and inserting “1a(11)”.

13 (4) Section 4s of the Commodity Exchange Act
14 (7 U.S.C. 6s) is amended—

15 (A) in subsection (f)(1)(D), by striking
16 “1a(47)(A)(v)” and inserting “1a(56)(A)(v)”;
17 and

18 (B) in subsection (h)(5)(A)(i), in the mat-
19 ter preceding subclause (I), by striking
20 “1a(18)” and inserting “1a(27)(A)”.

21 (5) Section 4t(b)(1)(C) of the Commodity Ex-
22 change Act (7 U.S.C. 6t(b)(1)(C)) is amended by
23 striking “1a(47)(A)(v),” and inserting
24 “1a(56)(A)(v),”.

1 (6) Section 5 of the Commodity Exchange Act
2 (7 U.S.C. 7) is amended—

3 (A) in subsection (d)(23), by striking
4 “1a(47)(A)(v)” and inserting “1a(56)(A)(v)”;
5 and

6 (B) in subsection (e)(1), by striking
7 “1a(9)” and inserting “1a(11)”.

8 (7) Section 5b(k)(3)(A) of the Commodity Ex-
9 change Act (7 U.S.C. 7a–1(k)(3)(A)) is amended by
10 striking “1a(47)(A)(v)” and inserting
11 “1a(56)(A)(v)”.

12 (8) Section 5c(e)(4)(B) of the Commodity Ex-
13 change Act (7 U.S.C. 7a–2(c)(4)(B)) is amended by
14 striking “1a(10)” and inserting “1a(11)”.

15 (9) Section 5h(f)(10)(A)(iii) of the Commodity
16 Exchange Act (7 U.S.C. 7b–3(f)(10)(A)(iii)) is
17 amended by striking “1a(47)(A)(v)” and inserting
18 “1a(56)(A)(v)”.

19 (10) Section 21(f)(4)(C) of the Commodity Ex-
20 change Act (7 U.S.C. 24a(f)(4)(C)) is amended by
21 striking “1a(48)” and inserting “1a(57)”.

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

1 (A) in subsection (a)(2), by striking
2 “1a(47)(A)(v)” and inserting “1a(56)(A)(v)”;
3 and

4 (B) in subsection (b)(1), by striking
5 “1a(47)” and inserting “1a”.

6 (12) Section 5(e) of the Securities Act of 1933
7 (15 U.S.C. 77e(e)) is amended by striking “section
8 1a(18) of the Commodity Exchange Act (7 U.S.C.
9 1a(18))” and inserting “section 1a of the Com-
10 modity Exchange Act (7 U.S.C. 1a)”.

11 (13) Section 3C(g)(3)(A)(v) of the Securities
12 Exchange Act of 1934 (15 U.S.C. 78c-
13 3(g)(3)(A)(v)) is amended by striking “section
14 1a(10) of the Commodity Exchange Act;” and in-
15 serting “section 1a of the Commodity Exchange Act
16 (7 U.S.C. 1a);”.

17 (14) Section 6(g)(5)(B)(i) of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is
19 amended—

20 (A) in subclause (I), by striking “section
21 1a(18)(B)(ii) of the Commodity Exchange Act”
22 and inserting “subparagraph (B)(ii) of section
23 1a(27) of the Commodity Exchange Act (7
24 U.S.C. 1a(27))”; and

1 (B) in subclause (II), by striking “such
2 section 1a(18))” and inserting “that section)”.

3 (15) Section 712(a)(8) of the Dodd-Frank Wall
4 Street Reform and Consumer Protection Act (15
5 U.S.C. 8302(a)(8)) is amended by striking “section
6 1a(47)(D) of the Commodity Exchange Act (7
7 U.S.C. 1a(47)(D))” and inserting “section
8 1a(56)(D) of the Commodity Exchange Act (7
9 U.S.C. 1a(56)(D))”.

10 (16) Section 752(a) of the Dodd-Frank Wall
11 Street Reform and Consumer Protection Act (15
12 U.S.C. 8325(a)) is amended by striking “section
13 1a(39) of the Commodity Exchange Act),” and in-
14 serting “section 1a of the Commodity Exchange Act
15 (7 U.S.C. 1a)),”.

16 **SEC. 3. COMMISSION JURISDICTION OVER DIGITAL COM-**
17 **MODITY TRADES.**

18 Section 2 of the Commodity Exchange Act (7 U.S.C.
19 2) is amended—

20 (1) in subsection (a)(1)(A), in the first sen-
21 tence, by striking “section 19 of this Act” and in-
22 serting “subsection (c)(2)(F) or section 19”; and

23 (2) in subsection (c)(2), by adding at the end
24 the following:

1 “(F) COMMISSION JURISDICTION OVER
2 DIGITAL COMMODITY TRADES.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), this Act applies to, and
5 the Commission shall have exclusive juris-
6 diction over, any account, agreement, con-
7 tract, or transaction involving a digital
8 commodity trade.

9 “(ii) EXCEPTION.—Nothing in this
10 Act applies to, and the Commission shall
11 not have jurisdiction over, any digital com-
12 modity transaction by a merchant or con-
13 sumer that uses a digital commodity solely
14 for the purchase or sale of a good or serv-
15 ice.

16 “(iii) PROHIBITION ON CERTAIN
17 TRADING PRACTICES.—Sections 4b, 4c,
18 and 6(c) shall apply to any digital com-
19 modity trade as if the digital commodity
20 trade were a contract of sale of a com-
21 modity for future delivery.”.

22 **SEC. 4. DIGITAL COMMODITY PLATFORMS.**

23 The Commodity Exchange Act is amended by insert-
24 ing after section 5h (7 U.S.C. 7b–3) the following:

1 **“SEC. 5i. DIGITAL COMMODITY PLATFORMS.**

2 “(a) REGISTRATION.—

3 “(1) REQUIREMENT.—It shall be unlawful for
4 any person to act as any category of digital com-
5 modity platform unless the person is registered
6 under this section as that category of digital com-
7 modity platform.

8 “(2) APPLICATIONS.—A person desiring to reg-
9 ister as any category of digital commodity platform
10 shall submit to the Commission an application in
11 such form and containing such information as the
12 Commission may require for the purpose of deter-
13 mining whether the applicant is in compliance with
14 subsection (b) and the other requirements of this
15 Act.

16 “(3) MULTIPLE REGISTRATIONS.—As appro-
17 priate to further the purposes of this Act and avoid
18 duplicative or unnecessary requirements, and taking
19 into consideration potential conflicts of interest or
20 other risks, the Commission may prescribe rules or
21 regulations permitting, or may otherwise authorize—

22 “(A) registration by a person in more than
23 1 category of digital commodity platform;

24 “(B) a registered entity, a swap dealer, or
25 a futures commission merchant registered
26 under this Act to register under this section in

1 1 or more categories of digital commodity plat-
2 form; and

3 “(C) exemptions or additional require-
4 ments applicable to persons with multiple reg-
5 istrations under this Act.

6 “(b) CORE PRINCIPLES FOR DIGITAL COMMODITY
7 PLATFORMS.—

8 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

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

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

15 “(ii) any requirement that the Com-
16 mission may impose by rule or regulation.

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

1 “(2) CORE PRINCIPLES APPLICABLE TO DIG-
2 ITAL COMMODITY TRADING FACILITIES.—

3 “(A) COMPLIANCE WITH RULES.—A digital
4 commodity trading facility shall—

5 “(i) establish and enforce compliance
6 with any rule of the digital commodity
7 trading facility, including—

8 “(I) the terms and conditions of
9 the transactions in digital commod-
10 ities traded or processed on or
11 through the digital commodity trading
12 facility; and

13 “(II) any limitation on access to
14 the digital commodity trading facility;

15 “(ii) establish and enforce trading,
16 trade processing, and participation rules
17 that will deter abuses and have the capac-
18 ity to detect, investigate, and enforce those
19 rules, including means—

20 “(I) to provide market partici-
21 pants with impartial access to the
22 market; and

23 “(II) to capture information that
24 may be used in establishing whether
25 rule violations have occurred; and

1 “(iii) establish rules governing the op-
2 eration of the digital commodity trading
3 facility.

4 “(B) DIGITAL COMMODITY TRANSACTIONS
5 NOT READILY SUSCEPTIBLE TO MANIPULA-
6 TION.—A digital commodity trading facility
7 shall permit trading only in transactions in dig-
8 ital commodities that are not readily susceptible
9 to manipulation.

10 “(C) MONITORING OF TRADING AND
11 TRADE PROCESSING.—

12 “(i) MARKETS AND MECHANISMS.—

13 “(I) IN GENERAL.—A digital
14 commodity trading facility shall pro-
15 vide a competitive, open, and efficient
16 market and mechanism for executing
17 transactions that protects the price
18 discovery process of trading on the
19 digital commodity trading facility.

20 “(II) CENTRALIZED MARKET.—A
21 digital commodity trading facility
22 shall provide a centralized market for
23 executing transactions.

24 “(ii) PROTECTION OF MARKETS AND
25 MARKET PARTICIPANTS.—A digital com-

1 commodity trading facility shall establish and
2 enforce rules—

3 “(I) to protect markets and mar-
4 ket participants from abusive prac-
5 tices committed by any party, includ-
6 ing abusive practices committed by a
7 party acting as an agent for a partici-
8 pant; and

9 “(II) to promote fair and equi-
10 table trading on the digital commodity
11 trading facility.

12 “(iii) PROCEDURES AND MONI-
13 TORING.—A digital commodity trading fa-
14 cility shall—

15 “(I) establish and enforce rules
16 or terms and conditions defining, or
17 specifications detailing—

18 “(aa) trading procedures to
19 be used in entering and executing
20 orders traded on or through the
21 facilities of the digital commodity
22 trading facility; and

23 “(bb) procedures for trade
24 processing of digital commodities
25 on or through the facilities of the

1 digital commodity trading facil-
2 ity; and

3 “(II) monitor trading in digital
4 commodities to prevent manipulation,
5 price distortion, and disruptions of the
6 delivery or settlement process through
7 surveillance, compliance, and discipli-
8 nary practices and procedures, includ-
9 ing investigations, sanctions, and
10 methods for conducting real-time
11 monitoring of trading and comprehen-
12 sive and accurate trade reconstruc-
13 tions.

14 “(D) ABILITY TO OBTAIN INFORMATION.—

15 A digital commodity trading facility shall—

16 “(i) establish and enforce rules that
17 will allow the digital commodity trading fa-
18 cility to obtain any necessary information
19 to perform any of the functions described
20 in this section;

21 “(ii) provide the information to the
22 Commission on request; and

23 “(iii) have the capacity to carry out
24 such international information-sharing

1 agreements as the Commission may re-
2 quire.

3 “(E) FINANCIAL INTEGRITY OF TRANS-
4 ACTIONS.—A digital commodity trading facility
5 shall establish and enforce rules and procedures
6 for ensuring the financial integrity of digital
7 commodity trades entered on or through the fa-
8 cilities of the digital commodity trading facility.

9 “(F) EMERGENCY AUTHORITY.—A digital
10 commodity trading facility shall adopt rules to
11 provide for the exercise of emergency authority,
12 in consultation or cooperation with the Commis-
13 sion, as is necessary and appropriate, including
14 the authority to liquidate or transfer open posi-
15 tions in any digital commodity or to suspend or
16 curtail trading in a digital commodity.

17 “(G) TIMELY PUBLICATION OF TRADING
18 INFORMATION.—

19 “(i) IN GENERAL.—A digital com-
20 modity trading facility shall make public
21 timely information on price, trading vol-
22 ume, and other trading data on digital
23 commodities to the extent prescribed by
24 the Commission.

1 “(ii) CAPACITY OF DIGITAL COM-
2 MODITY TRADING FACILITY.—A digital
3 commodity trading facility shall be re-
4 quired to have the capacity to electronically
5 capture and transmit trade information
6 with respect to transactions executed on
7 the digital commodity trading facility.

8 “(H) AVAILABILITY OF GENERAL INFOR-
9 MATION.—A digital commodity trading facility
10 shall make available to market authorities, mar-
11 ket participants, and the public accurate infor-
12 mation concerning—

13 “(i) the terms and conditions of the
14 contracts for transactions in digital com-
15 modities;

16 “(ii) the rules and mechanisms for
17 executing digital commodity trades on or
18 through the facilities of the digital com-
19 modity trading facility; and

20 “(iii) the rules and specifications de-
21 scribing the operation of the electronic
22 matching platform or trade execution facil-
23 ity of the digital commodity trading facil-
24 ity.

1 “(I) DISCIPLINARY PROCEDURES.—A dig-
2 ital commodity trading facility shall establish
3 and enforce—

4 “(i) disciplinary procedures that au-
5 thorize the digital commodity trading facil-
6 ity to discipline, suspend, or expel market
7 participants that violate the rules of the
8 digital commodity trading facility; or

9 “(ii) similar methods for performing
10 the functions described in clause (i), in-
11 cluding delegation to third parties.

12 “(J) DISPUTE RESOLUTION.—A digital
13 commodity trading facility shall establish and
14 enforce rules regarding, and provide facilities
15 for alternative dispute resolution, as appro-
16 priate, for, market participants and market
17 intermediaries.

18 “(3) CORE PRINCIPLES APPLICABLE TO DIG-
19 ITAL COMMODITY DEALERS AND DIGITAL COM-
20 MODITY BROKERS.—

21 “(A) EXECUTION.—A digital commodity
22 dealer or digital commodity broker—

23 “(i) shall establish prices fairly and
24 objectively;

1 “(ii) shall disclose the basis for those
2 prices; and

3 “(iii) shall not disrupt market func-
4 tioning or hinder the price discovery proc-
5 ess.

6 “(B) DAILY TRADING RECORDS.—

7 “(i) IN GENERAL.—A digital com-
8 modity dealer or digital commodity broker
9 shall keep full, complete, and systematic
10 records (including all pertinent data and
11 memoranda) of all transactions relating to
12 its business of dealing or brokerage in dig-
13 ital commodity transactions.

14 “(ii) INCLUDED COMMUNICATIONS.—
15 A digital commodity dealer or digital com-
16 modity broker shall keep all oral and writ-
17 ten communications provided or received
18 concerning quotes, solicitations, bids, of-
19 fers, instructions, trading, and prices that
20 lead to the execution of a transaction in a
21 digital commodity.

22 “(C) BUSINESS CONDUCT STANDARDS.—A
23 digital commodity dealer or digital commodity
24 broker shall conform with such business con-
25 duct standards as may be prescribed by the

1 Commission by rule or regulation that relate
2 to—

3 “(i) fraud, manipulation, and other
4 abusive practices involving digital com-
5 modity trades (including digital commodity
6 trades that are offered but not entered
7 into);

8 “(ii) diligent supervision of the busi-
9 ness of the digital commodity dealer or
10 digital commodity broker; and

11 “(iii) such other matters as the Com-
12 mission determines to be appropriate.

13 “(D) DUTIES.—A digital commodity dealer
14 or digital commodity broker shall comply with
15 the following requirements:

16 “(i) RISK MANAGEMENT PROCEDURE-
17 DURES.—The digital commodity dealer or
18 digital commodity broker shall establish ro-
19 bust and professional risk management
20 systems adequate for managing the day-to-
21 day business of the digital commodity deal-
22 er or digital commodity broker.

23 “(ii) DISCLOSURE OF GENERAL IN-
24 FORMATION.—The digital commodity deal-
25 er or digital commodity broker shall dis-

1 close to the Commission, as applicable, in-
2 formation concerning—

3 “(I) terms and conditions of its
4 digital commodity trades;

5 “(II) trading operations, mecha-
6 nisms, and practices;

7 “(III) financial integrity protec-
8 tions relating to transactions in digital
9 commodity trades; and

10 “(IV) other information relevant
11 to its digital commodity trades.

12 “(E) ABILITY TO OBTAIN INFORMATION.—
13 A digital commodity dealer or digital com-
14 modity broker shall—

15 “(i) establish and enforce internal sys-
16 tems and procedures to obtain any nec-
17 essary information to perform any of the
18 functions described in this section; and

19 “(ii) provide the information described
20 in clause (i) to the Commission on request.

21 “(4) CORE PRINCIPLES APPLICABLE TO ALL
22 DIGITAL COMMODITY PLATFORMS.—

23 “(A) RECORDKEEPING AND REPORTING.—
24 A digital commodity platform shall—

1 “(i)(I) maintain records of all activi-
2 ties relating to the business of the digital
3 commodity platform, including a complete
4 audit trail, in a form and manner accept-
5 able to the Commission for a period of 5
6 years; and

7 “(II) keep the records described in
8 subclause (I) open to inspection by the
9 Commission;

10 “(ii) provide to the Commission, in a
11 form and manner acceptable to the Com-
12 mission, such information as the Commis-
13 sion determines to be necessary or appro-
14 priate for the Commission to perform the
15 duties of the Commission under this Act;
16 and

17 “(iii) make such reports as are re-
18 quired by the Commission relating to the
19 transactions and positions of the customers
20 of the digital commodity platform.

21 “(B) ANTITRUST CONSIDERATIONS.—Un-
22 less necessary or appropriate to achieve the
23 purposes of this Act, a digital commodity plat-
24 form shall not—

1 “(i) adopt any rules or take any ac-
2 tions that result in any unreasonable re-
3 straint of trade; or

4 “(ii) impose any material anticompeti-
5 tive burden on trading or custody.

6 “(C) CONFLICTS OF INTEREST.—The
7 Commission shall require conflict of interest
8 systems and procedures that—

9 “(i) establish structural and institu-
10 tional safeguards—

11 “(I) to minimize conflicts of in-
12 terest that might potentially bias the
13 judgment or supervision of a digital
14 commodity platform and contravene
15 the core principles of fair and equi-
16 table trading and the business con-
17 duct standards described in this Act,
18 including conflicts arising out of
19 transactions or arrangements with af-
20 filiates (including affiliates acting as
21 issuers, market-makers, or
22 custodians); and

23 “(II) which may include, as the
24 Commission determines to be appro-
25 priate, information partitions and the

1 legal separation of different categories
2 of digital commodity platforms;

3 “(ii) establish a process for resolving
4 conflicts of interest described in clause (i);

5 “(iii) require disclosure by a digital
6 commodity platform of any material incen-
7 tives or conflicts of interest that the digital
8 commodity platform is unable to resolve;
9 and

10 “(iv) address such other issues as the
11 Commission determines to be appropriate.

12 “(D) FINANCIAL RESOURCES.—

13 “(i) IN GENERAL.—A digital com-
14 modity platform shall have adequate finan-
15 cial, operational, and managerial resources
16 to discharge each responsibility of the dig-
17 ital commodity platform.

18 “(ii) FINANCIAL RESOURCES FOR
19 MARGIN TRADING.—The Commission shall
20 require such additional financial resources
21 as are necessary to enable a digital com-
22 modity platform to fulfill obligations of the
23 digital commodity platform arising from
24 margined, leveraged, or financed trans-
25 actions.

1 “(E) SYSTEM SAFEGUARDS.—A digital
2 commodity platform shall—

3 “(i) establish and maintain a program
4 of risk analysis and oversight to identify
5 and minimize sources of operational risk
6 (including cybersecurity risk), through the
7 development of appropriate controls and
8 procedures, and automated systems, that—

9 “(I) are reliable and secure; and

10 “(II) have adequate scalable ca-
11 pacity;

12 “(ii) establish and maintain emer-
13 gency procedures, backup facilities, and a
14 plan for disaster recovery that allow for—

15 “(I) the timely recovery and re-
16 sumption of operations; and

17 “(II) the fulfillment of the re-
18 sponsibilities and obligations of the
19 digital commodity platform; and

20 “(iii) periodically conduct tests to
21 verify that the backup resources of the dig-
22 ital commodity platform are sufficient to
23 ensure continued—

24 “(I) order processing and trade
25 matching;

- 1 “(II) price reporting;
2 “(III) market surveillance; and
3 “(IV) maintenance of a com-
4 prehensive and accurate audit trail.

5 “(F) DESIGNATION OF CHIEF COMPLIANCE
6 OFFICER.—

7 “(i) IN GENERAL.—A digital com-
8 modity platform shall designate an indi-
9 vidual to serve as a chief compliance officer
10 (referred to in this paragraph as a ‘chief
11 compliance officer’).

12 “(ii) DUTIES.—A chief compliance of-
13 ficer shall—

14 “(I) report directly to the board
15 or to the senior officer of the digital
16 commodity platform;

17 “(II) review compliance with the
18 core principles described in this sub-
19 section;

20 “(III) in consultation with the
21 board of the digital commodity plat-
22 form, a body performing a function
23 similar to that of a board, or the sen-
24 ior officer of the digital commodity

1 platform, resolve any conflicts of in-
2 terest that may arise;

3 “(IV) be responsible for estab-
4 lishing and administering the policies
5 and procedures required to be estab-
6 lished pursuant to this section;

7 “(V) ensure compliance with this
8 Act and the rules and regulations
9 issued under this Act, including rules
10 prescribed by the Commission pursu-
11 ant to this section; and

12 “(VI) establish procedures for
13 the remediation of noncompliance
14 issues found during compliance office
15 reviews, look backs, internal or exter-
16 nal audit findings, self-reported er-
17 rors, or through validated complaints.

18 “(iii) REQUIREMENTS FOR PROCE-
19 DURES.—In establishing procedures under
20 clause (ii)(VI), a chief compliance officer
21 shall design the procedures to establish the
22 handling, management response, remedi-
23 ation, retesting, and closing of noncompli-
24 ance issues.

25 “(iv) ANNUAL REPORTS.—

1 “(I) IN GENERAL.—In accord-
2 ance with rules prescribed by the
3 Commission, a chief compliance offi-
4 cer shall annually prepare and sign a
5 report that contains a description of—

6 “(aa) the compliance of the
7 digital commodity platform with
8 this Act; and

9 “(bb) the policies and proce-
10 dures, including the code of eth-
11 ics and conflict of interest poli-
12 cies, of the digital commodity
13 platform.

14 “(II) REQUIREMENTS.—A chief
15 compliance officer shall—

16 “(aa) submit each report de-
17 scribed in subclause (I) with the
18 appropriate financial report of
19 the digital commodity platform
20 that is required to be submitted
21 to the Commission pursuant to
22 this section; and

23 “(bb) include in the report a
24 certification that, under penalty

1 of law, the report is accurate and
2 complete.

3 “(G) GOVERNANCE; FITNESS STAND-
4 ARDS.—

5 “(i) GOVERNANCE ARRANGEMENTS.—
6 A digital commodity platform shall estab-
7 lish governance arrangements that are
8 transparent to fulfill public interest re-
9 quirements.

10 “(ii) FITNESS STANDARDS.—A digital
11 commodity platform shall establish and en-
12 force appropriate fitness standards for—

13 “(I) directors; and

14 “(II) any entity offering affiliated
15 services for the digital commodity
16 platform.

17 “(H) TREATMENT OF CUSTOMER AS-
18 SETS.—

19 “(i) IN GENERAL.—A digital com-
20 modity platform shall hold customer prop-
21 erty (including digital commodities) in a
22 manner that minimizes the risk of loss of,
23 or unreasonable delay in access to, the cus-
24 tomer property.

25 “(ii) SEGREGATION OF FUNDS.—

1 “(I) IN GENERAL.—A digital
2 commodity platform shall treat and
3 deal with all customer property that is
4 received by the digital commodity
5 platform as belonging to the cus-
6 tomer.

7 “(II) COMMINGLING PROHIB-
8 ITED.—Customer property described
9 in subclause (I)—

10 “(aa) shall be separately ac-
11 counted for; and

12 “(bb) shall not be commin-
13 gled with the assets of the digital
14 commodity platform.

15 “(iii) EXCEPTIONS.—

16 “(I) USE OF FUNDS.—Notwith-
17 standing clause (ii), customer prop-
18 erty described in that clause may, for
19 convenience, be commingled in the
20 same account or accounts with—

21 “(aa) an insured depository
22 institution (as defined in section
23 3 of the Federal Deposit Insur-
24 ance Act (12 U.S.C. 1813));

1 “(bb) an insured credit
2 union (as defined in section 101
3 of the Federal Credit Union Act
4 (12 U.S.C. 1752)); or

5 “(cc) a digital commodity
6 platform.

7 “(II) WITHDRAWAL.—Notwith-
8 standing clause (ii), such share of the
9 customer property described in that
10 clause as, in the normal course of
11 business, is necessary to margin,
12 guarantee, secure, transfer, adjust, or
13 settle a digital commodity transaction
14 with a digital commodity platform, or
15 with any customer of a digital com-
16 modity platform, may be withdrawn
17 and applied to such purposes lawfully
18 accruing in connection with the digital
19 commodity transaction, including the
20 payment of commissions, taxes, and
21 brokerage, interest, storage, and other
22 charges.

23 “(III) COMMISSION ACTION.—
24 Notwithstanding clause (ii)—

1 “(aa) the Commission may
2 adopt rules or regulations permit-
3 ting the lending of digital com-
4 modities by a digital commodity
5 platform holding those digital
6 commodities for customers, sub-
7 ject to such conditions as the
8 Commission may prescribe to
9 protect customers and achieve
10 the purposes of this Act; and

11 “(bb) in accordance with
12 such terms and conditions as the
13 Commission may prescribe by
14 rule, regulation, or order, any
15 customer property described in
16 that clause may be commingled
17 and deposited in customer ac-
18 counts with any other money, se-
19 curities, or property received by
20 the digital commodity platform
21 and required by the Commission
22 to be separately accounted for,
23 treated, and dealt with as belong-
24 ing to customers.

25 “(iv) PERMITTED INVESTMENTS.—

1 “(I) IN GENERAL.—Customer
2 property described in clause (ii) in the
3 form of money may be invested in—

4 “(aa) obligations of the
5 United States;

6 “(bb) obligations the prin-
7 cipal and interest of which are
8 fully guaranteed by the United
9 States; and

10 “(cc) any other investment
11 that the Commission may by rule
12 or regulation prescribe.

13 “(II) RULES AND CONDITIONS.—
14 Investments under subclause (I) shall
15 be made in accordance with such rules
16 and regulations, and subject to such
17 conditions, as the Commission may
18 prescribe.

19 “(v) PROHIBITION.—It shall be un-
20 lawful for any person, including a digital
21 commodity platform or a depository insti-
22 tution, that has received any customer
23 property for deposit in a separate account
24 or accounts in accordance with clause (ii)
25 to hold, dispose of, or use that customer

1 property as belonging to the depositing
2 digital commodity platform or any person
3 other than the customers of the digital
4 commodity platform.

5 “(c) RULES GOVERNING MARGINED OR LEVERAGED
6 TRADING.—The Commission may make, promulgate, and
7 enforce such rules governing margined, leveraged, or fi-
8 nanced digital commodity trades on digital commodity
9 platforms as are reasonably necessary to protect the public
10 interest and promote the orderly settlement of trans-
11 actions.

12 “(d) CONTRACT LISTINGS, RULES, AND RULE
13 AMENDMENTS FOR DIGITAL COMMODITY TRADING FA-
14 CILITIES.—

15 “(1) IN GENERAL.—Subject to the require-
16 ments under this subsection, a digital commodity
17 trading facility may—

18 “(A) list for trading a contract for a dig-
19 ital commodity; and

20 “(B) approve and implement a new rule or
21 rule amendment.

22 “(2) CERTIFICATION FROM DIGITAL COM-
23 MODITY TRADING FACILITY.—A digital commodity
24 trading facility that elects to carry out an activity
25 described in subparagraph (A) or (B) of paragraph

1 (1) shall, prior to carrying out that activity, provide
2 to the Commission a written certification that the
3 contract, new rule, or rule amendment, as applica-
4 ble, complies with this Act (including regulations
5 under this Act).

6 “(3) EFFECTIVE DATE OF LISTING, RULE, AND
7 RULE AMENDMENT.—Subject to paragraph (4), a
8 listing, rule, or rule amendment described in para-
9 graph (1) shall become effective on the date that
10 is—

11 “(A) in the case of a listing of a contract
12 that has not previously been listed on any dig-
13 ital commodity trading facility, 30 business
14 days after the date on which the Commission
15 receives the certification (or such shorter period
16 as determined by the Commission by rule or
17 regulation); or

18 “(B) in any other case, 10 business days
19 after the date on which the Commission receives
20 the certification (or such shorter period as de-
21 termined by the Commission by rule or regula-
22 tion).

23 “(4) STAY OF CERTIFICATION.—

24 “(A) IN GENERAL.—The Commission may
25 stay a certification for a listing, rule, or rule

1 amendment described in paragraph (1) by noti-
2 fying the digital commodity trading facility that
3 the Commission is staying the certification be-
4 cause there exists—

5 “(i) a novel or complex issue that re-
6 quires additional time to analyze;

7 “(ii) an inadequate explanation by the
8 submitting digital commodity trading facil-
9 ity; or

10 “(iii) a potential inconsistency with
11 this Act (including regulations under this
12 Act).

13 “(B) DURATION OF STAY.—A stay of cer-
14 tification by the Commission under subpara-
15 graph (A) shall be for a period of not more
16 than 90 days, beginning on the date of the noti-
17 fication by the Commission under that subpara-
18 graph.

19 “(C) EFFECTIVE DATE AFTER STAY.—A
20 listing, rule, or rule amendment subject to a
21 stay under subparagraph (A) shall become ef-
22 fective on the expiration of the period described
23 in subparagraph (B), unless the Commission—

24 “(i) withdraws the stay prior to that
25 time; or

1 “(ii) notifies the digital commodity
2 trading facility during such period that the
3 Commission objects to the proposed certifi-
4 cation and disapproves a listing, rule, or
5 rule amendment pursuant to paragraph
6 (5).

7 “(D) PUBLIC COMMENT.—The Commission
8 may provide a public comment period of not
9 less than 30 days, within the period in which a
10 stay is in effect under subparagraph (B), when-
11 ever the Commission reviews a listing, rule, or
12 rule amendment pursuant to a notification by
13 the Commission under subparagraph (A).

14 “(5) DISAPPROVAL.—

15 “(A) IN GENERAL.—The Commission may
16 disapprove a listing, rule, or rule amendment
17 described in paragraph (1) if the Commission
18 determines that the listing, rule, or rule amend-
19 ment is inconsistent with this Act (including the
20 considerations in subparagraph (B) and regula-
21 tions under this Act).

22 “(B) CONSIDERATIONS.—In making a de-
23 termination described in subparagraph (A) with
24 respect to a listing for a digital commodity, the

1 Commission may consider, among other
2 things—

3 “(i) whether the operating structure
4 and system of the digital commodity is se-
5 cure from cybersecurity threats, including
6 the possibility of material alterations by
7 persons acting collectively;

8 “(ii) whether the functionality of the
9 digital commodity will protect holders from
10 operational failures;

11 “(iii) with respect to a digital com-
12 modity that purports to have a fixed
13 value—

14 “(I) an identification and de-
15 scription of the issuer of the digital
16 commodity;

17 “(II) the collateral or reserves
18 backing the digital commodity; and

19 “(III) the terms by which the
20 issuer will redeem the digital com-
21 modity; and

22 “(iv) whether the digital commodity
23 and the market for the digital commodity
24 are not readily susceptible to manipulation.

25 “(6) PRIOR APPROVAL.—

1 “(A) IN GENERAL.—A digital commodity
2 trading facility may request that the Commis-
3 sion grant prior approval to the listing of any
4 new contract for a digital commodity.

5 “(B) DEADLINE.—If prior approval is re-
6 quested under subparagraph (A), the Commis-
7 sion shall take final action on the request not
8 later than 90 days after submission of the re-
9 quest, unless the person submitting the request
10 agrees to an extension of the time limitation es-
11 tablished under this subparagraph.

12 “(C) DISAPPROVAL.—Paragraphs (4) and
13 (5) shall apply to Commission action on a re-
14 quest under this paragraph.

15 “(7) DELISTING; REVOCATION.—After the list-
16 ing of a contract for a digital commodity has taken
17 effect, the Commission may require the delisting of
18 the contract or disapprove the listing in accordance
19 with paragraph (5).

20 “(8) DISCLOSURES.—

21 “(A) IN GENERAL.—The Commission shall
22 require a digital commodity trading facility to
23 disclose to the public, on a timely basis, with re-
24 spect to a listing described in paragraph
25 (1)(A)—

1 “(i) the operating structure and sys-
2 tem of the digital commodity; and

3 “(ii) the trading volume and volatility
4 of the digital commodity.

5 “(B) FORMAT.—The Commission shall
6 prescribe rules and regulations for the stand-
7 ardization and simplification of disclosures
8 under subparagraph (A) and subsection
9 (f)(1)(A), including requiring that disclosures—

10 “(i) are conspicuous;

11 “(ii) use plain language comprehen-
12 sible to customers; and

13 “(iii) succinctly explain the informa-
14 tion that is required to be communicated
15 to the customer.

16 “(e) PRODUCT LISTING FOR DIGITAL COMMODITY
17 BROKERS AND DIGITAL COMMODITY DEALERS.—

18 “(1) IN GENERAL.—A digital commodity broker
19 and a digital commodity dealer may only trade, or
20 arrange a trade, in a contract for a digital com-
21 modity that is not readily susceptible to manipula-
22 tion.

23 “(2) DISCLOSURE, LISTING, AND CERTIFI-
24 CATION REQUIREMENTS.—A digital commodity
25 broker and a digital commodity dealer may only

1 trade, or arrange for trading, in digital commodities
2 that have met the requirements of subsection (d)
3 (including the listing and disclosure requirements).

4 “(f) CUSTOMER PROTECTION.—The Commission
5 shall adopt customer protection requirements that—

6 “(1) require disclosure by a digital commodity
7 platform to a customer (other than another digital
8 commodity platform registered under this section)
9 of—

10 “(A) information about the material risks
11 and characteristics of any applicable digital
12 commodity contracts; and

13 “(B) any material incentives or conflicts of
14 interest that the digital commodity platform
15 may have in connection with any applicable dig-
16 ital commodity contracts;

17 “(2) establish a duty for a digital commodity
18 platform to communicate in a fair and balanced
19 manner based on principles of fair dealing and good
20 faith;

21 “(3) establish standards governing digital com-
22 modity platform marketing and advertising, includ-
23 ing testimonials and endorsements; and

24 “(4) establish such other standards and re-
25 quirements as the Commission may determine are—

1 “(A) in the public interest;

2 “(B) appropriate for the protection of cus-
3 tomers; or

4 “(C) otherwise in furtherance of the pur-
5 poses of this Act.

6 “(g) EXAMINATION AND PUBLICATION OF ENERGY
7 CONSUMPTION IN DIGITAL COMMODITY MARKETS.—

8 “(1) IN GENERAL.—The Commission shall ex-
9 amine, in collaboration with other Federal regulatory
10 agencies as the Commission determines appropriate,
11 the energy consumption and sources of energy used
12 in connection with the creation and transfer of the
13 most widely traded digital commodities.

14 “(2) REPORT.—Not later than 180 days after
15 the date of enactment of the Digital Commodities
16 Consumer Protection Act of 2022, the Commission
17 shall submit to the Committee on Agriculture, Nutri-
18 tion, and Forestry of the Senate and the Committee
19 on Agriculture of the House of Representatives a re-
20 port describing—

21 “(A) an estimate of the energy consump-
22 tion and sources of energy used in connection
23 with the creation and transfer of the most wide-
24 ly traded digital commodities; and

1 “(B) the methodology used by the Com-
2 mission to generate the estimate described in
3 subparagraph (A).

4 “(3) PUBLICATION.—Using the methodology
5 described in paragraph (2)(B), the Commission shall
6 publish on the website of the Commission, and peri-
7 odically update on a timely basis, an estimate of the
8 energy consumption and sources of energy used in
9 connection with the creation and transfer of the
10 most widely traded digital commodities.

11 “(h) PROHIBITION ON FRAUD, DECEPTION, AND MA-
12 NIPULATION.—It shall be unlawful for any digital com-
13 modity platform to engage in any act, practice, or course
14 of business in connection with its business as a digital
15 commodity platform that is fraudulent, deceptive, or ma-
16 nipulative.

17 “(i) SELF-REGULATION.—

18 “(1) IN GENERAL.—A digital commodity
19 broker, digital commodity dealer, or digital com-
20 modity custodian shall be a member of a registered
21 futures association, regardless of whether such per-
22 son is separately registered as a digital commodity
23 trading facility.

24 “(2) DELEGATION OF REGISTRATION FUNC-
25 TIONS.—The Commission may authorize any reg-

1 istered futures association to perform any portion of
2 the registration functions with respect to digital
3 commodity platforms, associated persons of digital
4 commodity brokers, and associated persons of digital
5 commodity dealers—

6 “(A) in accordance with rules, notwith-
7 standing any other provision of law, adopted by
8 that registered futures association and sub-
9 mitted to the Commission for approval; and

10 “(B) subject to the provisions of this sec-
11 tion applicable to registrations granted by the
12 Commission.

13 “(j) DUAL REGISTRATION.—A digital commodity
14 platform registered under this section may also be reg-
15 istered with the Securities and Exchange Commission as
16 an exchange, broker, or dealer (as those terms are defined
17 in section 3 of the Securities Exchange Act of 1934 (15
18 U.S.C. 78c)) or another trading platform.

19 “(k) FEES FOR REGISTRATION.—

20 “(1) IN GENERAL.—The Commission shall, in
21 accordance with this subsection, assess and collect
22 fees, which shall be used to recover the annual costs
23 of—

24 “(A) registering digital commodity plat-
25 forms;

1 “(B) conducting oversight of digital com-
2 modity trades; and

3 “(C) carrying out education and outreach
4 under subsection (l).

5 “(2) DETERMINATION OF FEE RATES.—In de-
6 termining fee rates under paragraph (1), the Com-
7 mission shall consider—

8 “(A) the volume of business of the digital
9 commodity platform; and

10 “(B) the category of the digital commodity
11 platform.

12 “(3) PROHIBITIONS.—

13 “(A) COMMISSION.—The Commission shall
14 not require a digital commodity platform to col-
15 lect directly from customers a per-transaction
16 fee for each digital commodity trade.

17 “(B) DIGITAL COMMODITY PLATFORMS.—
18 A digital commodity platform shall not impose
19 directly on customers a per-transaction fee for
20 each digital commodity trade to pay the fees
21 under paragraph (1).

22 “(4) PUBLICATION.—Not later than 60 days
23 after the date of enactment of an Act making a reg-
24 ular appropriation to the Commission for a fiscal

1 year, the Commission shall publish in the Federal
2 Register a notice of—

3 “(A) the fee rates determined pursuant to
4 this subsection for that fiscal year; and

5 “(B) any estimates or projections on which
6 those fee rates are based.

7 “(5) RECORDS AND DISCLOSURE.—In carrying
8 out this subsection, the Commission shall not be re-
9 quired to comply with section 553 of title 5, United
10 States Code.

11 “(6) NO JUDICIAL REVIEW.—A fee rate pre-
12 scribed under this subsection shall not be subject to
13 judicial review.

14 “(7) DEPOSIT OF FEES.—Fees collected pursu-
15 ant to this subsection for any fiscal year shall be de-
16 posited and credited as offsetting collections to the
17 account providing appropriations to the Commission.

18 “(8) ANNUAL ADJUSTMENT.—For each fiscal
19 year, the Commission shall, by order, determine fee
20 rates pursuant to this subsection that are reasonably
21 likely to produce aggregate fee collections that are
22 equal to the annual appropriation to the Commission
23 by Congress for activities relating to the registration
24 of digital commodity platforms and the oversight of
25 digital commodity trades.

1 “(9) LAPSE OF APPROPRIATION.—If, on the
2 first day of a fiscal year, a regular appropriation to
3 the Commission has not been enacted, the Commis-
4 sion shall continue to collect (as offsetting collec-
5 tions) fees pursuant to this subsection at each of the
6 rates in effect during the preceding fiscal year.

7 “(10) BUDGET REQUESTS.—The Commission
8 shall itemize in each budget submitted to the Presi-
9 dent or the Office of Management and Budget the
10 estimated annual costs of—

11 “(A) registering digital commodity plat-
12 forms;

13 “(B) conducting oversight of digital com-
14 modity trades; and

15 “(C) carrying out education and outreach
16 under subsection (l).

17 “(11) LIMITATIONS.—

18 “(A) IN GENERAL.—Fees may only be as-
19 sessed and imposed pursuant to this subsection
20 on digital commodity platforms regulated by the
21 Commission pursuant to this section.

22 “(B) USE OF FEES.—Fees authorized
23 under this subsection are prohibited from fund-
24 ing any Commission activity not directly related
25 to the registration of digital commodity plat-

1 forms, the oversight of digital commodity
2 trades, and the education and outreach carried
3 out under subsection (l).

4 “(l) CUSTOMER EDUCATION AND OUTREACH.—The
5 Commission shall provide education and outreach to cus-
6 tomers participating in digital commodity markets.

7 “(m) INSPECTION.—The Commission may inspect
8 and monitor digital commodity platforms, on an ongoing
9 basis, for the purpose of ensuring compliance with this
10 Act.

11 “(n) PREEMPTION OF STATE LAWS.—

12 “(1) IN GENERAL.—The registration of a dig-
13 ital commodity platform, an associated person of a
14 digital commodity broker, or an associated person of
15 a digital commodity dealer under this section—

16 “(A) shall preempt any applicable registra-
17 tion requirements under State laws relating to
18 money transmission, virtual currency, and com-
19 modity brokers; and

20 “(B) shall not affect the applicability of
21 State antifraud laws.

22 “(2) COMPLIANCE.—Beginning on the effective
23 date of a registration of a digital commodity plat-
24 form under this section, the digital commodity plat-
25 form shall not be required to comply with applicable

1 State law requirements relating to money trans-
2 mission, virtual currency, and commodity brokerage.

3 “(o) REGULATIONS.—The Commission shall pre-
4 scribe such rules and regulations as are appropriate for
5 the implementation of this section.”.

6 **SEC. 5. ADDITIONAL AMENDMENTS.**

7 (a) RETAIL COMMODITY TRANSACTIONS.—Section
8 2(c)(2)(D)(ii) of the Commodity Exchange Act (7 U.S.C.
9 2(c)(2)(D)(ii)) is amended—

10 (1) in subclause (III)(bb), by striking “or” at
11 the end;

12 (2) by redesignating subclauses (IV) and (V) as
13 subclauses (V) and (VI), respectively; and

14 (3) by inserting after subclause (III) the fol-
15 lowing:

16 “(IV) a digital commodity
17 trade;”.

18 (b) APPLICABILITY.—Section 2(i) of the Commodity
19 Exchange Act (7 U.S.C. 2(i)) is amended—

20 (1) by redesignating paragraphs (1) and (2) as
21 subparagraphs (A) and (B), respectively, and indent-
22 ing appropriately;

23 (2) in the matter preceding subparagraph (A)
24 (as so redesignated), by striking “The provisions”
25 and inserting the following:

1 “(1) SWAPS.—The provisions”; and

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

3 “(2) DIGITAL COMMODITIES.—The provisions
4 of this Act (including any rule prescribed or regula-
5 tion promulgated under this Act) relating to digital
6 commodities shall not apply to activities outside the
7 United States unless those activities—

8 “(A) have a reasonably foreseeable signifi-
9 cant effect within the United States;

10 “(B) involve, for the purpose of soliciting
11 or accepting any order for, or otherwise dealing
12 in, digital commodities—

13 “(i) the offering to enter into, enter-
14 ing into, execution, or confirming the exe-
15 cution of digital commodities with any
16 United States person; or

17 “(ii) the conducting of any office or
18 business anywhere in the United States
19 (including any territory or possession of
20 the United States); or

21 “(C) contravene such rules or regulations
22 as the Commission may prescribe or promulgate
23 as are necessary or appropriate to prevent the
24 evasion of any provision of this Act.”.

25 (c) REGISTRATION OF ASSOCIATED PERSONS.—

1 (1) IN GENERAL.—Section 4k of the Com-
2 modity Exchange Act (7 U.S.C. 6k) is amended—

3 (A) by redesignating paragraphs (4)
4 through (6) as paragraphs (5) through (7);

5 (B) by inserting after paragraph (3) the
6 following:

7 “(4) It shall be unlawful for any person to act
8 as an associated person of a digital commodity
9 broker or an associated person of a digital com-
10 modity dealer unless such person is registered with
11 the Commission under this Act and such registration
12 shall not have expired, been suspended (and the pe-
13 riod of suspension has not expired), or been revoked.
14 It shall be unlawful for a digital commodity broker
15 or a digital commodity dealer to permit such a per-
16 son to become or remain associated with the digital
17 commodity broker or digital commodity dealer if
18 such digital commodity broker or digital commodity
19 dealer knew or should have known that such person
20 was not so registered or that such registration had
21 expired, been suspended (and the period of suspen-
22 sion has not expired), or been revoked.”; and

23 (C) in paragraph (5) (as so redesignated),
24 by striking “or of a commodity trading advisor”
25 and inserting “of a commodity trading advisor,

1 of a digital commodity broker, or of a digital
2 commodity dealer”.

3 (2) CONFORMING AMENDMENT.—The Com-
4modity Exchange Act (7 U.S.C. 1a et seq.) is
5 amended by striking “section 4k(6)” each place it
6 appears and inserting “section 4k(7)”.

7 (d) COMMODITY TRADING ADVISERS; COMMODITY
8 POOL OPERATORS.—

9 (1) IN GENERAL.—Section 4l of the Commodity
10 Exchange Act (7 U.S.C. 6l) is amended—

11 (A) in paragraph (2), by striking “deriva-
12tives transaction execution facilities” and in-
13serting “digital commodity trades on or subject
14to the rules of digital commodity trading facili-
15ties”; and

16 (B) in paragraph (3), by striking “deriva-
17tives transaction execution facilities” and in-
18serting “digital commodity trading facilities”.

19 (2) USE OF MAIL OR OTHER INTERSTATE COM-
20MERCE.—Section 4m(3)(C) of the Commodity Ex-
21change Act (7 U.S.C. 6m(3)(C)) is amended by in-
22serting “digital commodity trades,” before “and any
23monies”.

24 (3) REGISTRATION.—Section 4n(3)(B) of the
25 Commodity Exchange Act (7 U.S.C. 6n(3)(B)) is

1 amended by inserting “or digital commodity” after
2 “futures market”.

3 (e) ACCEPTABLE BUSINESS PRACTICES UNDER
4 CORE PRINCIPLES.—Section 5c(a)(1) of the Commodity
5 Exchange Act (7 U.S.C. 7a–2(a)(1)) is amended by strik-
6 ing “and 5b(c)(2),” and inserting “, 5b(c)(2), and 5i(b)”.

7 (f) PUBLIC DISCLOSURE.—Section 8(a)(1) of the
8 Commodity Exchange Act (7 U.S.C. 12(a)(1)) is amended,
9 in the first sentence of the matter preceding subparagraph
10 (A), by inserting “, digital commodity platforms,” after
11 “boards of trade”.

12 (g) ANTI-MONEY LAUNDERING.—

13 (1) AMENDMENT.—Section 5312(a)(2) of title
14 31, United States Code, is amended—

15 (A) by redesignating subparagraphs (Y)
16 and (Z) as subparagraphs (Z) and (AA), re-
17 spectively; and

18 (B) by inserting after subparagraph (X)
19 the following:

20 “(Y) a digital commodity platform (as de-
21 fined in section 1a of the Commodity Exchange
22 Act (7 U.S.C. 1a));”.

23 (2) REGULATIONS.—

24 (A) PROPOSED REGULATIONS.—Not later
25 than 180 days after the date of enactment of

1 this Act, the Secretary of the Treasury, after
2 consultation with the Commodity Futures Trad-
3 ing Commission, shall publish proposed regula-
4 tions in the Federal Register requiring a digital
5 commodity platform (as defined in section 1a of
6 the Commodity Exchange Act (7 U.S.C. 1a))
7 registered with the Commodity Futures Trading
8 Commission to submit a report of any sus-
9 picious transaction under section 5318(g) of
10 title 31, United States Code.

11 (B) FINAL REGULATIONS.—Not later than
12 180 days after the date of publication of the
13 proposed regulations under subparagraph (A),
14 the Secretary of the Treasury shall publish
15 those regulations in final form.

16 (h) REGISTRATION OF COMMODITY DEALERS AND
17 ASSOCIATED PERSONS.—Section 8a of the Commodity
18 Exchange Act (7 U.S.C. 12a) is amended—

19 (1) in paragraph (1), by inserting “digital com-
20 modity brokers, associated persons of digital com-
21 modity brokers, digital commodity dealers, associ-
22 ated persons of digital commodity dealers,” after “to
23 register”;

24 (2) in paragraph (2)—

25 (A) in subparagraph (C)—

1 (i) in clause (i), by inserting “digital
2 commodity broker, digital commodity deal-
3 er,” before “futures commission mer-
4 chant”; and

5 (ii) in clause (ii), by striking “con-
6 tracts of” and inserting “a digital com-
7 modity trade or a contract of”;

8 (B) in subparagraph (D)—

9 (i) in clause (i), by inserting “digital
10 commodity trade or” before “contract of
11 sale”; and

12 (ii) in clause (ii), by inserting “digital
13 commodity broker, digital commodity deal-
14 er,” before “futures commission mer-
15 chant”; and

16 (C) in subparagraph (E)(i), by striking
17 “Investors” and inserting “Investor”;

18 (3) in paragraph (3)—

19 (A) in subparagraph (B)(i), by striking
20 “Investors” and inserting “Investor”;

21 (B) in subparagraph (E)—

22 (i) in clause (i), by striking “contract
23 of sale of a commodity for future delivery
24 or” and inserting “contract of sale of a

1 commodity for future delivery, digital com-
2modity trade, or”; and

3 (ii) in clause (ii), by inserting “digital
4commodity broker, digital commodity deal-
5er,” before “futures commission mer-
6chant”; and

7 (C) in subparagraph (J)—

8 (i) by inserting “a digital commodity
9trading facility,” before “a registered enti-
10ty”; and

11 (ii) by striking “registered entity, as-
12sociation” and inserting “digital com-
13modity trading facility, registered entity,
14registered futures association”;

15 (4) in paragraph (4)—

16 (A) by striking “futures commission mer-
17chant” and inserting “digital commodity
18broker, digital commodity dealer, futures com-
19mission merchant,”;

20 (B) by inserting “digital commodity sub-
21ject to the rules of a digital commodity trading
22facility or” before “commodity”; and

23 (C) by inserting “digital commodity trad-
24ing facility or” before “registered entity” each
25place it appears;

1 (5) in paragraph (6), by inserting “digital com-
2 modity trading facility, digital commodity custo-
3 dian,” before “registered entity” each place it ap-
4 pears; and

5 (6) in paragraph (9)—

6 (A) by inserting “digital commodity trad-
7 ing facility or” before “registered entity” each
8 place it appears;

9 (B) by inserting “digital commodity or”
10 before “futures contract” each place it appears;
11 and

12 (C) by inserting “digital commodity or”
13 before “commodity” each place it appears.

14 (i) AMENDMENTS TO TITLE 11.—Title 11, United
15 States Code, is amended—

16 (1) in section 101(6), by inserting “digital com-
17 modity platform, as defined in section 1a of the
18 Commodity Exchange Act (7 U.S.C. 1a),” after “le-
19 verage transaction merchant,”; and

20 (2) in section 761—

21 (A) in paragraph (4)(F)—

22 (i) in clause (i), by striking “and” at
23 the end;

24 (ii) in clause (ii), by inserting “and”
25 after the semicolon; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(iii) with respect to a digital commodity
4 platform, a contract for a digital commodity
5 trade—

6 “(I) held at a digital commodity plat-
7 form; or

8 “(II) executed by or through a digital
9 commodity platform;”;

10 (B) in paragraph (9)—

11 (i) in subparagraph (D), by striking
12 “or” at the end;

13 (ii) in subparagraph (E)(ii)(II), by
14 adding “or” after the semicolon at the end;
15 and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(F) with respect to a digital commodity
19 platform—

20 “(i) entity for or with whom the dig-
21 ital commodity platform deals and that
22 holds a claim against the digital com-
23modity platform on account of a com-
24modity contract made, received, acquired,
25 or held by or through the digital com-

1 modity platform in the ordinary course of
2 the business of the digital commodity plat-
3 form as a digital commodity platform from
4 or for a commodity contract account of the
5 entity; or

6 “*(ii)* entity that holds a claim against
7 the digital commodity platform arising out
8 of—

9 “*(I)* the making, liquidation, or
10 change in the value of a commodity
11 contract of a kind specified in clause
12 *(i)* of this subparagraph;

13 “*(II)* a deposit or payment of
14 cash, a security, digital commodity, or
15 other property with the digital com-
16 modity platform for the purpose of—

17 “*(aa)* making or margining
18 the commodity contract; or

19 “*(bb)* holding in custody, or
20 accepting a deposit, of property
21 related to the making or mar-
22 gining of the commodity contract;
23 or

24 “*(III)* the making or taking of
25 delivery on the commodity contract.”;

1 (C) by redesignating paragraphs (11)
2 through (17) as paragraphs (12) through (18),
3 respectively; and

4 (D) by inserting after paragraph (10) the
5 following:

6 “(11) the terms ‘digital commodity’, ‘digital
7 commodity platform’, and ‘digital commodity trade’
8 have the meanings given those terms in section 1a
9 of the Commodity Exchange Act (7 U.S.C. 1a);”.

10 **SEC. 6. APPLICABILITY.**

11 The amendments made by this Act shall not apply
12 to any person regulated under the Commodity Exchange
13 Act (7 U.S.C. 1 et seq.), as amended by this Act, until
14 the date of effectiveness of the final rule of the Commodity
15 Futures Trading Commission requiring registration of
16 digital commodity platforms under section 5i of that Act.

17 **SEC. 7. REPORT ON HISTORICALLY UNDERSERVED CUS-**
18 **TOMERS PARTICIPATING IN DIGITAL COM-**
19 **MODITY MARKETS.**

20 Not later than 180 days after the date of enactment
21 of this Act, the Commodity Futures Trading Commission
22 (referred to in this section as the “Commission”) shall—

23 (1) examine the racial, ethnic, and gender de-
24 mographics of customers participating in digital
25 commodity markets; and

1 (2) submit to the Committee on Agriculture,
2 Nutrition, and Forestry of the Senate and the Com-
3 mittee on Agriculture of the House of Representa-
4 tives a report—

5 (A) describing how those demographics will
6 inform the rules and regulations of the Com-
7 mission relating to customer protection;

8 (B) proposing ways in which the Commis-
9 sion can provide outreach to historically under-
10 served customers participating in digital com-
11 modity markets; and

12 (C) containing recommendations relating
13 to any other activities the Commission deter-
14 mines to be necessary to provide appropriate
15 protection, outreach, or other similar activities
16 relating to historically underserved customers
17 participating in digital commodity markets.

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