

Digital Asset Market Structure Discussion Draft
House Committee on Financial Services & House Committee on Agriculture
Section-by-Section

TITLE I—DEFINITIONS; RULEMAKING; PROVISIONAL REGISTRATION

Sec. 101. Definitions under the Securities Act of 1933.

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

Sec. 102. Definitions under the Commodity Exchange Act.

Section 102 provides for definitions under the Commodity Exchange Act.

Sec. 103. Definitions under this Act.

Section 103 provides for definitions under this Act.

Sec. 104. Joint rulemakings.

Section 104 provides for joint rulemakings between the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), including joint rulemakings related to defining key terms in the Act and the oversight of dually registered exchanges.

Sec. 105. Provisional Registration of CFTC intermediaries.

Section 105 permits a digital commodity exchange, digital commodity broker, or a digital commodity dealer to file a provisional registration statement with the CFTC. Filing a provisional registration requires a filer to submit information regarding the company to the Commission, submit to inspection by the Commission, and provide disclosures and segregate customer assets. Filing a provisional registration provides limited relief from the requirements of this Act, until such time as the rules are written and permanent registration commences.

Sec. 106. Provisional registration of SEC intermediaries.

Section 106 permits a broker-dealer and alternative trading system (ATS) to file a provisional registration statement with the SEC. Filing a provisional registration requires a filer to submit information regarding the company to the Commission and submit to inspection by the Commission. Filing a provisional registration provides limited relief from the requirements of this Act, until such time as the rules are written and permanent registration commences.

TITLE II—DIGITAL ASSET EXEMPTIONS

Sec. 201. Exempted transactions in digital assets.

Section 201 establishes an exemption from the securities laws for a digital asset issuer's sale of digital assets that meet the following conditions: 1) the issuer's total sales of the digital asset over the prior 12 months does not exceed \$75 million; 2) a non-accredited investor's purchases of the digital asset from the issuer over the prior 12 months are less than the greater of 5% of the purchaser's annual income or 5% of their net worth; 3) the purchaser does not own more than 10% of the units of the digital asset after the completion of the transaction; and 4) the transaction does not involve equity or debt securities.

The digital asset issuer must file information with the Commission as prescribed by the Act. The digital asset issuer must file annual and semiannual reports until a defined period after the blockchain network is certified decentralized. Any intermediaries involved in the offer or sale of a unit of a digital asset under this exemption must be registered with the SEC. A unit of a digital asset acquired from the digital asset issuer in reliance on this exemption is deemed a restricted digital asset.

Sec. 202. Requirements to transact in certain digital assets.

Section 202 sets out the conditions under which certain persons are permitted to engage in restricted digital asset transactions and digital commodity transactions. Generally, restricted digital assets are permitted to trade on an ATS under the supervision of the SEC and digital commodities are permitted to trade on a Digital Commodity Exchange (DCE) under the supervision of the CFTC.

Sec. 203. Enhanced disclosure requirements.

Section 203 provides for a new disclosure regime to be completed by a digital asset issuer, affiliated person, related person, or other appropriate entity. The information required to be disclosed is focused on the nature of the risks surrounding digital assets, including source code, project economics, development plan, related and affiliated persons, and other risk factors.

Sec. 204. Certification of certain digital assets.

Section 204 provides for a process for a blockchain relating to a digital asset to be certified as decentralized. The certification process permits any person to certify to the SEC that the blockchain network meets the requirements of the Act. The SEC is then provided an opportunity to rebut the assertion that the network meets the decentralization test.

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

Sec. 301. Treatment of digital commodities and other digital assets.

Section 301 excludes digital commodities and payment stablecoins from the definition of a security under the securities laws. This section aligns the definition of bank in the Exchange Act

with the Advisers Act and Investment Company Act and clarifies the activities of trust companies engaging in custody and safekeeping services.

Sec. 302. Antifraud authority over payment stablecoins.

Section 302 provides the SEC with authority over transactions with or involving payment stablecoins that occur on or with a SEC registered entity, as though those payment stablecoins are a security solely for purposes of the Commission's anti-fraud or anti-manipulation enforcement authorities. The SEC shall have no authority over the design, structure, or operation of payment stablecoins.

Sec. 303. Eligibility of alternative trading systems.

Section 303 specifies that the SEC may not exclude a trading platform from operating pursuant to an exemption as an ATS solely on the basis that the assets traded are digital assets. It also requires the SEC to revise regulations to exempt ATSs that offer digital assets, digital commodities, and payment stablecoins from registration as a national securities exchange and revise the ATS framework to permit disintermediated trading and real-time settlement consistent with what is necessary or appropriate in the public interest or for the protection of investors.

Sec. 304. Customer protection rule modernization.

Section 304 requires the SEC within 270 days to revise the Customer Protection Rule to provide that a registered broker-dealer is considered to have control of digital assets if the broker-dealer holds digital assets with a bank, if certain conditions are met, or establishes written policies and procedures demonstrating that the broker has exclusive control over the digital asset.

Sec. 305. Modernization of recordkeeping requirements.

Section 305 requires the SEC to promulgate rules that enable cryptographically secured distributed ledgers to satisfy the books and records requirements and to specify that registered transfer agents are able to use cryptographically secured distributed ledgers to meet obligations.

Sec. 306. Modifications to existing rules for digital assets.

Section 306 requires the SEC to complete a study and revise rules under Regulation National Market System, Regulation Systems Compliance and Integrity, and the Market Access Rule, among others, to modernize such rules for digital assets.

Sec. 307. Treatment of certain digital assets in connection with federally regulated intermediaries.

Section 307 adds digital assets to "covered securities" which are exempt from state blue sky law registration requirements.

Sec. 308. Dual registration.

Section 308 requires SEC-registered intermediaries offering or seeking to offer a cash or spot market in at least one digital commodity to register with the CFTC.

Sec. 309. Exclusion for ancillary activities.

Section 309 defines certain ancillary activities related to the operations and maintenance of blockchain networks and exempts such activities from direct SEC regulation, although not from the Commission's anti-fraud or anti-manipulation enforcement authorities.

Ancillary activities are defined as validating or providing incidental services with respect to a restricted digital asset, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks.

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

Sec. 401. Commission jurisdiction over digital commodity transactions.

Section 401 sets out the new authority of the CFTC over certain transactions in digital assets. Specifically, the section provides the Commission with new exclusive regulatory jurisdiction over digital commodity cash or spot markets which occur on or with CFTC the new registered entities created in this Act: digital commodity exchanges, digital commodity dealers, and digital commodity brokers. This new authority complements the Commission's existing anti-fraud and anti-manipulation authority over all cash or spot market commodity transactions, including cash or spot market transactions in digital assets.

Section 401 provides the Commission with authority over transactions with or involving payment stablecoins that occur on or with a CFTC registered entity, as a payment stablecoin is a digital commodity. The CFTC shall have no authority over the design, structure, or operation of such payment stablecoins.

Sec. 402. Requiring futures commission merchants to use qualified digital commodity custodians.

Section 402 requires Future Commission Merchants (FCM) to hold customers' digital commodities in a qualified digital commodity custodian (QDCC).

Sec. 403. Trading certification and approval for digital commodities.

Section 403 establishes the process by which a registered entity may determine that digital commodities are eligible to be traded on CFTC registered entities and through other CFTC registered intermediaries.

The process requires a registered entity to submit a certification to the Commission that the digital commodity meets the requirements of the Commodity Exchange Act, including the listing

requirements under section 404, and to provide disclosures about the functionality and operations of the digital commodity. The Commission then has up to 80 days to review the certification for its accuracy, completeness, and veracity.

Sec. 404. Registration of digital commodity exchanges.

Section 404 provides for the registration and regulation of digital commodity exchanges (DCE).

Registration requires DCEs to comply with core principles, including listing standards, treatment of customer assets, trade surveillance, capital, conflicts of interest, reporting and system safeguards. Subject to the core principles, DCEs are allowed to list only those digital commodities that are not susceptible to manipulation and for which they have made public disclosures regarding source code, transaction history, and digital asset economics.

DCEs are also subject to comprehensive requirements to segregate customer funds, provide risk-appropriate disclosures to retail customers, and be members of a registered futures association and comply with any additional rules they impose.

Sec. 405. Qualified digital commodity custodians.

Section 405 sets out the requirements for custodians to be qualified digital asset custodians, and thus eligible to hold the digital assets of customers of entities registered with the CFTC. While the Commission is not given authority to directly regulate custodians, it is provided authority to set minimum standards for those custodians holding customer digital assets within the CFTC regulated perimeter.

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

Section 406 provides for the registration and regulation of digital commodity brokers (DCB) and digital commodity dealers (DCD).

Registration requires DCBs and DCDs to comply with requirements pertaining to business conduct standards, fair dealing, customer disclosures, segregation of customer funds, conflicts of interest, minimum capital requirements, reporting and record keeping, and other requirements.

In addition, DCBs and DCDs are required to be members of a registered futures association and comply with any additional rules they impose.

Sec. 407. Exclusion for ancillary activities.

Section 407 defines certain ancillary activities related to the operations and maintenance of blockchain networks and exempts such activities from direct CFTC regulation, although not from the Commission's anti-fraud, anti-manipulation, or false reporting enforcement authorities.

Ancillary activities are defined as validating or providing incidental services with respect to a digital commodity, providing user-interfaces for a blockchain network, publishing and updating software, or developing wallets for blockchain networks.

Title V – Innovation and Technology Improvements

Sec. 501. Codification of the SEC Strategic Hub for Innovation and Financial Technology (FinHub).

Section 501 establishes the SEC Strategic Hub for Innovation and Financial Technology (FinHub), which will assist the SEC with its approach to technological advancements, examine the impact that FinTech innovations have on capital markets, market participants, and investors, and coordinate the SEC's response to emerging technologies in financial, regulatory, and supervisory systems. FinHub will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office. The Office shall submit an annual report to Congress on its activity.

Sec. 502. Codification of LabCFTC.

Section 502 establishes LabCFTC in the CFTC, which will serve as an information source for the CFTC on financial technology (FinTech) innovation. The Office will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office.

The Office will ensure the CFTC is more accessible to FinTech innovators and bolster the CFTC's understanding of new technologies. The Office will also serve as a forum for innovators seeking a better understanding of the CFTC's regulatory framework. The Office shall submit an annual report to Congress on its activity.

Sec. 503. CFTC-SEC Joint Advisory Committee on Digital Assets.

Section 503 establishes a Joint CFTC-SEC Advisory Committee on Digital Assets composed of digital asset marketplace stakeholders. Among its many duties, the Joint Advisory Committee will provide recommendations to the CFTC and SEC regarding their respective promulgation of rules under the Act. The section also requires the CFTC and SEC to publicly respond to any recommendations made by the Joint Advisory Committee.

Sec. 504. Modernization of the Securities and Exchange Commission Mission.

Section 504 amends the Securities Act of 1933, the Securities Act of 1934, and the Investment Advisers Act of 1940 by adding “innovation” to the factors the SEC must consider when issuing a rulemaking.

Sec. 505. Study on decentralized finance.

Section 505 requires the SEC and the CFTC to conduct a study on decentralized finance (DeFi), which will include an analysis of the size, scope, role, nature, and use of DeFi protocols, the

benefits and risks of DeFi, how DeFi has integrated into the traditional financial markets, including the risks of DeFi integration, and the levels and types of illicit activities in DeFi compared to traditional financial markets. The report will be submitted to Congress one year after enactment. GAO shall also conduct a report on DeFi and submit it to Congress one year after enactment.

DeFi is defined as a system of software applications that (1) are created through smart contracts deployed to permissionless blockchain technology; and (2) allow users to engage in financial transactions in a self-directed manner such that no third-party intermediary effectuates such transactions or takes custody of a user's digital assets during any part of such transaction.

Sec. 506. Study on non-fungible digital assets.

Section 506 requires the Department of Commerce, in consultation with the White House Office of Science and Technology, the CFTC, and the SEC, to conduct a study on non-fungible digital assets (NFT), which will include an analysis of the size, scope, role, nature, and use of non-fungible digital assets, the similarities and differences between non-fungible digital assets and other digital assets, the benefits and risks of non-fungible digital assets, how non-fungible digital assets have integrated into traditional marketplaces, including the risks of such integration, and the levels and types of illicit activities in non-fungible digital asset markets. The report will be made publicly available one year after enactment.

Exhibit 1: Summary of Title 2

Digital Asset Holder	Primary Transactions	Digital Asset Received	Secondary Transactions Can Occur If
Ordinary Persons	End User Distributions	Digital Commodities	<p>Digital Commodity Exchange – Trades as Digital Commodities, subject to requirements:</p> <ul style="list-style-type: none"> • Functional Network • Current Information
	Sales pursuant to Title II digital asset exemption	Restricted Digital Assets	<p>Alternative Trading System – Trades as Restricted Digital Assets, subject to requirements:</p> <ul style="list-style-type: none"> • Current Information <p>Digital Commodity Exchange – Trades as Digital Commodities, subject to requirements:</p> <ul style="list-style-type: none"> • Functional Network • Decentralized Network • Current Information
Related Persons	Sales pursuant to Title II or applicable securities laws.	Restricted Digital Assets	<p>Alternative Trading System – Trades as Restricted Digital Assets, subject to requirements:</p> <ul style="list-style-type: none"> • Holding Period • Current Information
	Distributions pursuant to applicable securities laws.		<p>Digital Commodity Exchange – Trades as Digital Commodities, subject to requirements:</p> <ul style="list-style-type: none"> • Holding Period • Functional Network • Decentralized Network • Current Information
	End User Distributions		
Affiliated Persons	Sales pursuant to Title II or applicable securities laws.	Restricted Digital Assets	<p>Alternative Trading System - Trades as Restricted Digital Assets, subject to requirements:</p> <ul style="list-style-type: none"> • Holding Period • Current Information • Volume Limitation • Notice Requirement
	Distributions pursuant to applicable securities laws.		<p>Digital Commodity Exchange - Trades as Digital Commodities, subject to requirements:</p> <ul style="list-style-type: none"> • Holding Period • Functional Network • Decentralized Network • Current Information • Volume Limitation • Notice Requirement
	End User Distributions		

Exhibit 2: Digital Asset Project Lifecycle

