

Financial Innovation and Technology for the 21st Century Act
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 Securities Exchange Act of 1934.

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

Sec. 103. Definitions under the Commodity Exchange Act.

Section 103 provides for definitions under the Commodity Exchange Act.

Sec. 104. Definitions under this Act.

Section 104 provides for definitions under this Act.

Sec. 105. Joint rulemakings.

Section 105 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, the oversight of dually registered exchanges, and the oversight of mixed digital asset transactions. Section 105 also requires a joint rulemaking related to mixed digital asset transactions and prohibits the CFTC and SEC from making any rule limiting self-custody by an individual.

Section 712 of the Dodd-Frank Act required similar joint rulemakings over definitions and other cooperative oversight activities.

Sec. 106. Notice of intent to register for CFTC intermediaries.

Section 106 permits a digital commodity exchange, digital commodity broker, or a digital commodity dealer to file a notice of intent to register with the CFTC. The filer must submit information regarding its operations to the Commission, submit to inspection by the Commission, and provide risk disclosures to customers, and protect customer assets. Filing a notice provides the filer with and exemption from registration as an intermediary with the SEC with respect to transactions in digital commodities, until such time as the rules are written and permanent registration commences. It does not limit the authority of the CFTC or SEC to bring anti-fraud or anti-manipulation enforcement actions or to require a filer to delist a digital asset. Finally, Section 106 provides that it is unlawful for a filer to knowingly provide a false statement to CFTC.

Section 712(f) of the Dodd-Frank Act provided that the CFTC and SEC shall have the power to exempt persons from the requirements of DFA while rulemakings were being finalized.

Sec. 107. Notice of intent to register for SEC intermediaries.

Section 107 permits a digital asset broker, digital asset dealer, or digital asset trading system to file a notice of intent to register with the SEC. The filer must submit information regarding its operations to the Commission, submit to inspection by the Commission, and be a member of FINRA. As a member of FINRA, it must also apply with all applicable membership requirements, including risk disclosures for customers and segregation of customer assets. Filing a notice provides the filer with an exemption from registration as an intermediary with the SEC with respect to digital asset transactions, until such time as the rules are written and permanent registration commences. It does not limit the authority of the CFTC or SEC to bring anti-fraud or anti-manipulation enforcement actions or to require a filer to delist a digital asset. Finally, Section 107 provides that it is unlawful for a filer to knowingly provide a false statement to SEC.

Section 712(f) of the Dodd-Frank Act provided that the CFTC and SEC shall have the power to exempt persons from the requirements of DFA while rulemakings were being finalized.

Sec. 108. Commodity Exchange Act savings provisions.

Section 108 states that nothing in this Act shall apply to any agreement, contract, or transaction that is subject to regulation under the Commodity Exchange Act, including a futures contract, options on a futures contract, swaps, securities futures products, and certain leveraged transactions. It also clarifies that registration as a digital commodity exchange, digital commodity broker, and digital commodity dealer does not authorize a person to engage in such activities.

This section is similar to provisions in the Dodd-Frank Act, including section 712(b).

Sec. 109. International Harmonization.

Section 109 requires the CFTC and the SEC to work with foreign regulators to establish consistent international standards for the regulation of digital asset markets.

Section 752 of the Dodd-Frank Act provided similar authority to encourage cooperation with foreign regulators.

Sec. 110. Implementation; Effective Date.

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

Section 712(e) and (f) of the Dodd-Frank Act provided similar implantation and transition authorities to the CFTC and SEC.

TITLE II— OFFERS AND SALES OF DIGITAL ASSETS

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 10% of the purchaser's annual income or 10% 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 involves the sale of a digital asset as part of an investment contract.

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 system is certified as 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.

The new exemption incorporates requirements from two exemptions from registration for public offerings – Regulation Crowdfunding (Title III of the JOBS Act) and Regulation A (Title IV of the JOBS Act).

Sec. 202. Requirements for offers and sales of 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 a digital asset trading system 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. Related and affiliated persons are subject to more restrictions on when they may sell digital assets that they hold.

This section also exempts end user distributions – broad, non-discretionary distributions issued for no more than nominal consideration – from the securities laws.

This section incorporates themes from Rule 144 which provides an exemption to the Securities Act of 1933's registration requirements, and permits the public resale of restricted or control securities, if a number of conditions are met.¹ These conditions include how long the securities

¹ When an investor acquires restricted securities or holds control securities, the investor must find an exemption from the SEC's registration requirements to sell the security in the secondary market. Restricted securities are securities acquired in unregistered, private sales from the issuing company or from an affiliate of the issuer. Investors typically receive restricted securities through private placement offerings. Section 4(a)(1) of the Securities

are held, the way in which they are sold, and the amount that can be sold at any one time. Rule 144 imposes more stringent requirements on affiliates of the issuer including limitations on the amount of securities they can sell.

Sec. 203. Enhanced disclosure requirements.

Section 203 provides for a new disclosure regime for digital assets. 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 material risk factors.

Incorporates disclosures requirements from Chairman McHenry's Clarity for Digital Tokens Act, to provide a regulatory safe harbor for startup digital assets projects, and Chairman Thompson's Digital Commodity Exchange Act.

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. As part of this process, an individual will submit general information pertaining to the blockchain network and an analysis of the four factors on which decentralization is based. The certification is considered automatically approved after 30 days unless the Commission issues a stay. The SEC may rebut the certification, which may be appealed by the party making the certification to the U.S. Court of Appeals for the D.C. Circuit.

This section incorporates the certification concept from Chairman McHenry's Clarity for Digital Tokens Act.

Sec. 205. Effective Date.

Section 205 provides that the provisions under this title will take effect one year after enactment or, in the case of rulemakings under the title, not less than 60 days after publication of the final rule.

This section mirrors section 774 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

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

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

Act of 1933 exempts from registration transactions by a person who is not an issuer, underwriter, or dealer. Although investors may rely on this exemption to resell securities, they would need to ensure that they are not considered to be an “underwriter.”

Section 301 excludes digital commodities and permitted payment stablecoins from the definition of a security under the securities laws. It also specifies that digital asset trading systems shall not be deemed a “facility” of an exchange.

Sec. 302. Antifraud authority over payment stablecoins.

Section 302 provides the SEC with anti-fraud and anti-manipulation authority over transactions with or involving permitted payment stablecoins that occur on or with a SEC registered entity. It also provides the SEC with limited authority to transactions in permitted payment stablecoins, when transacted by or through an entity registered with the Commission. Finally, section 302 specifies that the SEC shall have no authority over the design, structure, issuance, redemption, financial resources, collateral, or any other aspect of a payment stablecoin’s operation.

Sec. 303. Registration of Digital Asset Trading Systems.

Section 303 establishes a registration framework for digital asset trading systems. It also provides for the dual registration of a digital asset trading system, either as another exchange or intermediary registered with the SEC or as a digital commodity exchange registered with the CFTC.

Section 304. Requirements for Digital Asset Trading Systems.

Section 304 establishes the requirements for digital asset trading systems. The SEC is instructed to prescribe rules in various areas including order display, fair access, security of automated systems, examinations, and reporting. Digital asset trading systems may not act as custodians and are required to hold customer restricted digital assets in a qualified digital asset custodian. Section 304 also sets out the rules for qualified digital asset custodians, including requirements that it be adequately supervised and appropriately regulated by a federal, state, or foreign banking regulator.

Section 305. Registration of Digital Asset Brokers and Digital Asset Dealers.

Section 305 establishes a registration framework for digital asset brokers and digital asset dealers. It requires digital asset brokers and dealers to be members of FINRA. Digital asset brokers and dealers may register with the CFTC as digital commodity brokers and dealers.

Section 306. Requirements of Digital Asset Brokers and Digital Asset Dealers.

Section 306 subjects digital asset brokers and dealers to the same antifraud authorities that currently exist within securities laws. The section also requires digital asset brokers and dealers to comply with requirements including capital, recordkeeping, segregation of customer funds, and use of a qualified digital asset custodian. Customers may waive customer segregation requirements so that digital asset brokers and dealers may use their digital assets to participate in a blockchain service. Digital asset brokers and digital asset dealers under this section are treated as financial institutions, requiring their compliance with the Bank Secrecy Act.

The SEC must promulgate rules regarding custody of digital assets within 180 days of the bill's enactment.

Sec. 307. Rules related to conflict of interest

Section 307 amends securities laws to ensure that each digital asset trading system, digital asset broker, digital asset dealer, and notice-registered digital asset clearing agency reasonably implement policies that mitigate any conflicts of interest and transactions or arrangements with affiliates.

Sec. 308. Treatment of certain digital assets in connection with federally regulated intermediaries.

Section 308 adds digital assets to “covered securities” which are exempt from state blue sky law registration requirements.

Sec. 309. Exclusion for ancillary activities.

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

Ancillary activities include 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.

Sec. 310. Registration and Requirements for Notice-Registered Digital Asset Clearing Agencies

Section 310 permits SEC-registered brokers and dealers whose operations do not involve digital commodities and banks providing custody of digital assets to register as a notice-registered digital asset clearing agency. SEC rules regarding this section shall not take effect until at least a year after enactment,

Sec. 311. Treatment of Custody Activities by Banking Institutions

Section 311 prevents federal regulators from imposing requirements on state and federal financial institutions to include customers' assets as liabilities on their balance sheets or from holding additional capital against these assets.

This section seeks to reverse the SEC's Staff Accounting Bulletin 121, which drastically alters the way in which all custodians must treat customer assets.

Section 312. Effective Date; Administration

Section 312 provides that the provisions under this title will take effect one year after enactment or, in the case of rulemakings under the title, not less than 60 days after publication of the final rule. Further, it limits, for three years, the deposit of fees in the SEC's Reserve Fund.

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 new CFTC registered entities created in this Act: digital commodity exchanges, digital commodity dealers, and digital commodity brokers. This new authority complements the Commission's existing anti-fraud and anti-manipulation authority over all cash or spot market commodity transactions, including cash or spot market transactions in digital assets.

Section 401 generally excludes mixed digital assets from the exclusive jurisdiction of the CFTC, but requires persons registered with the SEC to provide the CFTC access to their books and records related to mixed digital asset transactions upon request.

Section 401 provides the Commission with authority over transactions with or involving permitted payment stablecoins that occur on or with a CFTC registered entity. The CFTC shall have no authority over the design, issuance, redemption, structure, or operation of such permitted 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).

Section 4d of the Commodity Exchange Act provides that a Futures Commission Merchant shall hold all customer money, securities, and property in a bank, trust company, or clearinghouse organization.

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

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

The process requires a registered entity to submit a certification to the 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.

Section 5c of the Commodity Exchange Act provides that a registered entity certify any new product or rule as being in compliance with the requirements of the CEA.

Sec. 404. Registration of digital commodity exchanges.

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

Registered DCEs must comply with core principles that include listing standards, treatment of customer assets, trade surveillance, capital, conflicts of interest, reporting, and system safeguards. Subject to the core principles, 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, designate a chief compliance officer, be members of a registered futures association (RFA) if they hold customer funds, and comply with any additional rules the RFA imposes related to protecting such customer funds.

Non-eligible contract participants must access a DCE through a digital commodity broker (DCB). DCEs may either maintain an affiliated DCB or facilitate access to the DCE to non-affiliated DCBs. Additionally, a DCE or any affiliate of the DCE shall not act as a counterparty to any transaction on the DCE.

Customer funds held by a DCE are subject to comprehensive segregation and commingling restrictions. They are also required to be held in a separately licensed qualified digital commodity custodian. A DCE customer may elect, in writing, to participate in any blockchain services facilitated by the exchange, such as staking, subject to the requirements and limitations imposed by the CFTC.

Sections 5 and 5h of the Commodity Exchange Act prescribe similar core principles for the registration and regulation futures exchanges and swap execution facilities, respectively. Section 4d(f)(2) imposes similar customer fund segregation requirements. Sections 4d(d), 4s(k), 5b(i), 5h(15), and 21(e) impose similar requirements for chief compliance officers.

Sec. 405. Qualified digital commodity custodians.

Section 405 sets out the requirements for qualified digital commodity custodians (QDCC). The requirements include that the QDCC is subject to adequate supervision and appropriate regulation by certain federal, state, or foreign authorities. Section 405 further provides the CFTC authority to further define minimum standards for adequate supervision and appropriate regulation.

Sections 4(b)(1)(A)(i), 5b(h), and 6(g) of the Commodity Exchange Act provide the Commission with similar the authority to make comparability determinations between CFTC regulations and SEC or other foreign regulations.

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).

Registered DCBs and DCDs must comply with requirements pertaining to business conduct standards, fair dealing, customer disclosures, segregation of customer funds, conflicts of interest, minimum capital requirements, reporting and recordkeeping, and other requirements.

Customer funds held by a DCB or DCD are subject to comprehensive segregation and commingling restrictions. They are also required to be held in a separately licensed qualified digital commodity custodian. A DCB or DCD customer may elect, in writing, to participate in any blockchain services facilitated by the exchange, such as staking, subject to the requirements and limitations imposed by the CFTC.

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

Sections 4d and 4s of the Commodity Exchange Act provide the Commission with similar authority to register and regulate intermediaries such as futures commission merchants, introducing brokers, and swap dealers. Section 4s prescribes similar requirements for swap dealers.

Sec. 407. Registration of Associated Persons

Section 407 requires associated persons of digital commodity brokers and digital commodity dealers to register with the CFTC.

Sections 4k of the Commodity Exchange Act provides similar registration requirements for associated persons of other CFTC registrants.

Sec. 408. Registration of Commodity Pool Operators and Commodity Trading Advisors

Section 408 codifies the treatment of certain Commodity Pool Operators (CPO) dually registered with the SEC as investment advisors to match the statutory treatment granted to certain Commodity Trading Advisors similarly dually registered.

CFTC Regulation 4.5 provides CPOs with similar treatment.

Sec. 409. 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 include 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.

Sec. 410. Funding for implementation, administration, and enforcement.

Section 410 provides the Commission with \$120 million for the implementation, administration, and enforcement of the requirements of the Act. The funds will remain available for five years.

Sec. 411 Effective date.

Section 411 requires the CFTC to promulgate all rules required by this title no later than 360 days after enactment of this title or the date of effectiveness of the CFTC's final rules requiring registration of digital commodity exchanges, digital commodity brokers, and digital commodity dealers.

This section is similar to section 754 of the Dodd-Frank Act.

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 be managed and overseen by a Director who will be appointed by the Commission. The Director will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office. FinHub shall submit an annual report to Congress on its activity.

FinHub was first established within the SEC's Division of Corporation Finance in October 2018 and was elevated to a stand-alone office in December 2020.

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. It will ensure the CFTC is more accessible to FinTech innovators and bolster the CFTC's understanding of new technologies. LabCFTC

will also serve as a forum for innovators seeking a better understanding of the CFTC’s regulatory framework.

LabCFTC will be managed and overseen by a Director who will be appointed by the Commission. The Director will report to the Commission to ensure that each Commissioner can avail themselves of the expertise of the office. Section 502 further requires LabCFTC to submit an annual report to Congress on its activity.

LabCFTC was first established by the CFTC in June 2017. It was reorganized into the Office of Technology Innovation in July 2022.

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.

In response to the 2010 Flash Crash, the CFTC and SEC established the joint CFTC-SEC Advisory Committee on Emerging Regulatory Issues. This joint advisory committee met five times in 2010 and 2011, and published a report and recommendations. It has been dormant since 2014.

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 CFTC and the SEC 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 agencies must submit a report 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 GAO to conduct a study on non-fungible digital assets (NFT), which will include an analysis of the size, scope, role, nature, and use of NFTs, the similarities and differences between NFTs and other digital assets, the benefits and risks of NFTs, how NFTs have integrated into traditional marketplaces, including the risks of such integration, and the levels and types of illicit activities in NFT markets. GAO must make the report publicly available one year after enactment.

Sec. 507. Study on Financial Market Infrastructure Improvements

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