Davis Polk

Amendments to the Securities Exchange Act of 1934 as made by the Financial Innovation and Technology for the 21st Century Act (May 10, 2024)

AN ACT To provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—REGULATION OF SECURITIES EXCHANGES

…

DEFINITIONS AND APPLICATION OF TITLE

Sec. 3. [78c]

(a) When used in this title, unless the context otherwise requires—

(1) The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange. The term 'exchange' does not include a digital asset trading system or a blockchain protocol offering digital assets, or any person or group of persons solely because of their development of such a blockchain protocol.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. A digital asset trading system is not a 'facility' of an exchange.

…

(4) Broker.—

(A) In general.—The term "broker" means any person engaged in the

business of effecting transactions in securities, other than restricted digital assets or for the account of others.

…

(5) Dealer.—

(A) In general.—The term "dealer" means any person engaged in the business of buying and selling securities (not including restricted digital assets or security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

…

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited. The term 'security' does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933). The term does not include a digital commodity or permitted payment stablecoin.

…

(23)

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, digital asset broker, digital asset dealer, building and loan, savings and loan,

or homestead association, or cooperative bank if such bank, broker, dealer, digital asset broker, digital asset dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

…

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency (other than a notice-registered digital asset clearing agency), or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

…

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency (other than a notice-registered digital asset clearing agency), or the rules of the Municipal Securities Rulemaking Board.

…

(~~80~~81)[1] Funding portal.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the

[1] Two paragraph s designated as paragraph (80) so in law. See amendments made by sections 101(b)(2) and 304(b) of Public Law 112-106. Note that a paragraph (79) exists after paragraph (64).

account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(82) Bank Secrecy Act.—The term 'Bank Secrecy Act' means—

(A) section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

(B) chapter 2 of title I of Public Law 91- 508 (12 U.S.C. 1951 et seq.); and

(C) subchapter II of chapter 53 of title 31, United States Code.

(83) Digital asset broker.—The term 'digital asset broker'—

(A) means any person engaged in the business of effecting transactions in restricted digital assets for the account of others; and

(B)does not include—

(i) a blockchain protocol or a person or group of persons solely because of their development of a block chain protocol; or

(ii) a bank engaging in certain banking activities with respect to a restricted digital asset in the same manner as a bank is excluded from the definition of a broker under paragraph (4).

(84) Digital asset custodian.—The term 'digital asset custodian' means an entity in the business of providing custodial or safekeeping services for restricted digital assets for others.

(85) Digital asset dealer.—The term 'digital asset dealer'—

(A) means any person engaged in the business of buying and selling restricted digital assets for such person's own account through a broker or otherwise; and

(B) does not include—

(i) a person that buys or sells restricted digital assets for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business;

(ii) a block chain protocol or a person or group of persons solely because of their development of a blockchain protocol; or

(iii) a bank engaging in certain banking activities with respect to a restricted digital asset in the same manner as a bank is excluded from the definition of a dealer under paragraph (5).

(86) Digital asset trading system.—The term 'digital asset trading system'—

(A) means any organization, association, person, or group of persons, whether incorporated or unincorporated, that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of restricted digital assets or for otherwise performing with respect to restricted digital assets the functions commonly performed by a stock exchange within the meaning of section 240.3b— 16 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph; and

(B) does not include a blockchain protocol or a person or group of persons solely because of their development of a blockchain protocol.

(87) Notice-registered digital asset clearing agency.—The term 'notice-registered digital asset clearing agency' means a clearing agency that has registered with the Commission pursuant to section 17A(b)(9).

(88) Additional digital asset-related terms.—

(A) Securities Act Of 1933.—The terms 'affiliated person', 'blockchain system', 'decentralized governance system', 'decentralized system', 'digital asset', 'digital asset issuer', 'digital asset maturity date', 'end user distribution', 'functional system', 'permitted payment stablecoin', 'related person', 'restricted digital asset', and 'source code' have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(B) Commodity Exchange Act.—The terms 'digital commodity', 'digital commodity broker', 'digital commodity dealer', and 'digital commodity exchange' have the meaning given those terms, respectively, under section la of the Commodity Exchange Act (7 U.S.C. 1a).

Sec. 4. [78d]

(a)

…

(l) Strategic Hub For Innovation And Financial Technology.—

(1) Office established.—There is established within the Commission the Strategic Hub for Innovation and Financial Technology (referred to in this section as the 'FinHub').

(2) Purposes.—The purposes of FinHub are as follows:

(A) To assist in shaping the approach of the Commission to technological advancements.

(B) To examine financial technology innovations among market participants.

(C) To coordinate the response of the Commission to emerging technologies in financial, regulatory, and supervisory systems.

(3) Director of FinHub.—FinHub shall have a Director who shall be appointed by the Commission, from among individuals having experience in both emerging technologies and Federal securities laws and serve at the pleasure of the Commission. The Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(4) Responsibilities.—FinHub shall—

(A) foster responsible technological innovation and fair competition within the Commission, including around financial technology, regulatory technology, and supervisory technology;

(B) provide internal education and training to the Commission regarding financial technology;

(C) advise the Commission regarding financial technology that would serve the Commission's functions;

(D) analyse technological advancements and the impact of regulatory requirements on financial technology companies;

(E) advise the Commission with respect to rulemakings or other agency7 or staff action regarding financial technology;

(F) provide businesses working in emerging financial technology fields with information on the Commission, its rules and regulations; and

(G) encourage firms working in emerging technology fields to engage with the Commission and obtain feedback from the Commission on potential regulatory issues.

(5) Access to documents.—The Commission shall ensure that FinHub has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of FinHub.

(6) Report to Congress.—

(A) In general.—Not later than October 31 of each year after 2024, FinHub shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of FinHub during the immediately preceding fiscal year.

(B) Contents.—Each report required under subparagraph (A) shall include—

(i) the total number of persons that met with FinHub;

(ii) the total number of market participants FinHub met with, including the classification of those participants;

(iii) a summary of general issues discussed during meetings with persons;

(iv) information on steps FinHub has taken to improve Commission services, including' responsiveness to the concerns of persons;

(v) recommendations—

(I) with respect to the regulations of the Commission and the guidance and orders of the Commission; and

(II) for such legislative actions as FinHub determines appropriate; and

(vi) any other information, as determined appropriate by the Director of FinHub.

(C) Confidentiality.—A report under subparagraph (A) may not contain confidential information.

(7) Systems of records.—

(A) In general.—The Commission shall establish a detailed system of records (as defined under section 552a of title 5, United States Code) to assist FinHub in communicating with interested parties.

(B) Entities covered by the system.—Entities covered by the system required under subparagraph (A) include entities or persons submitting requests or inquiries and other information to Commission through FinHub.

(C) SECURITY AND STORAGE OF RECORDS.—FinHub shall store—

(i) electronic records—

(I) in the system required under subparagraph (A); or

(II) on the secure network or other electronic medium, such as encrypted hard drives or back-up media, of the Commission; and "(ii) paper records in secure facilities.

(8) Effective date.—This subsection shall take effect on the date that is 180 days after the date of the enactment of this subsection.

Sec. 6. [78f]

(l) Security-based Swaps.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

(m) Digital asset trading system.—

(1) In general.—It shall be unlawful for any digital asset trading system to make use of the mails or any means or instrumentality of interstate commerce within or subject to the jurisdiction of the United States to effect any transaction in a restricted digital asset, unless such digital asset trading system is registered with the Commission.

(2) Application.—A person desiring to register as a digital asset trading system shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

(3) Exemptions.—A digital asset trading system that offers or seeks to offer at least one restricted digital asset shall not be required to register under this section (and paragraph (1) shall not apply to such digital asset trading system) if the trading system satisfies any exemption contained on a list of exemptions prepared by the Commission to be as close as practicable to those exemptions set forth in section 240.3b-l 6(b) of title 17, Code of Federal Regulations, applicable to the definition of an exchange.

(4) Additional registrations.—

(A) With the commission.—

(i) In general.—A registered digital asset trading system shall be permitted to maintain any other registration with the Commission relating to the other activities of the registered digital asset trading system, including as a—

(I) national securities exchange;

(II) broker;

(III) dealer;

(IV) alternative trading system, pursuant to part 242 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this subsection;

(V) digital asset broker; or

(VI) digital asset dealer.

(ii) Rulemaking.—The Commission shall prescribe rules for an entity with multiple registrations described under clause (i) to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(B) With the Commodity Futures Trading Commission.—A registered digital asset trading system shall be permitted to maintain a registration with the Commodity Futures Trading Commission as a digital commodity exchange to offer contracts of sale for digital commodities.

Sec. 6a. Requirements for digital asset trading systems.

(a) Holding of customer assets.—

(1) Qualified digital asset custodian required.—A digital asset trading system shall hold customer restricted digital assets with a qualified digital asset custodian described under section 6B.

(2) Custody prohibited.—A digital asset trading system, in its capacity as

such, may not hold custody of customer money, assets, or property.

(3) Custody in other capacity.—Nothing in this Act may be construed to prohibit a person registered as a digital asset trading system from holding custody of customer money, assets, or property in any other permitted capacity, including as a digital asset broker, digital asset dealer, or qualified digital asset custodian in compliance with the requirements of this Act.

(b) Rulemaking.—The Commission shall prescribe rules for digital asset trading systems relating to the following:

(1) Notice.—Notice to the Commission of the initial operation of a digital asset trading system or any material change to the operation of the digital asset trading system.

(2) Order display.—The thresholds at which a digital asset trading system is required to display the orders of the digital asset trading system, and the manner of such display.

(3) Fair access.—The thresholds at which a digital asset trading system is required to have policies regarding providing fair access to the digital asset trading system.

(4) Capacity, integrity, and security of automated systems.—Policies and procedures reasonably designed to ensure the capacity, integrity, and security of the digital asset trading system, taking into account the particular nature of digital asset trading systems.

(5) Examinations, inspections, and investigations.—The examination and inspection of the premises, systems, and records of the digital asset trading system by the Commission or by a self-regulatory organization of which such digital asset trading system is a member.

(6) Recordkeeping.—The making, keeping current, and preservation of records related to trading activity on the digital asset trading system.

(7) Reporting.—The reporting of transactions in digital assets that occur through the digital asset trading system.

(8) Procedures.—The establishment of adequate written safeguards and written procedures to protect confidential trading information.

(c) Name requirement.—A digital asset trading system may not use the word 'exchange' in the name of the digital asset trading system, unless the digital asset trading system—

(1) is operated by a registered national securities exchange; and

(2) is clearly indicated as being provided outside of the system's capacity as a national securities exchange.

(d) Treatment under the Bank Secrecy Act.—A digital asset trading system shall be treated as a financial institution for purposes of the Bank Secrecy Act.

Sec. 6b. Requirements for qualified digital asset custodians.

(a) In general.—A digital asset custodian is a qualified digital asset custodian if the digital asset custodian complies with the requirements of this section.

(b) Supervision requirement.—A digital asset custodian that is not subject to supervision and examination by an appropriate Federal banking agency, the National Credit Union Administration, the Commodity Futures Trading Commission, or the Securities and Exchange Commission shall be subject to adequate supervision and appropriate regulation by—

(1) a State bank supervisor (within the meaning of section 3 of the Federal Deposit Insurance Act);

(2) a State credit union supervisor, as defined under section 6003 of the Anti-Money Laundering Act of 2020; or

(3) an appropriate foreign governmental authority in the home country of the digital asset custodian.

(c) Other requirements.—

(1) Not otherwise prohibited.—The digital asset custodian has not been prohibited by a supervisor of the digital asset custodian from engaging in an activity with respect to the custody and safekeeping of digital assets.

(2) Information sharing.—

(A) In general.—A digital asset custodian shall share information with the Commission on request and comply with such requirements for periodic sharing of information regarding customer accounts that the digital asset custodian holds on behalf of an entity registered with the Commission as the Commission determines by rule are reasonably necessary to effectuate any of the provisions, or to accomplish any of the purposes, of this Act.

(B) Provision of information.—Any entity that is subject to regulation and examination by an appropriate Federal banking agency may satisfy any information request described in subparagraph (A) by providing the Commission with a detailed listing, in writing, of the restricted digital assets of a customer within the custody or use of the entity.

(d) Adequate supervision and appropriate regulation.—

(1) In general.—For purposes of subsection (b), the terms 'adequate supervision' and 'appropriate regulation' mean such minimum standards for supervision and regulation as are reasonably necessary to protect the digital

assets of customers of an entity registered with the Commission, including standards relating to the licensing, examination, and supervisory processes that require the digital asset custodian to, at a minimum—

(A) receive a review and evaluation of ownership, character and fitness, conflicts of interest, business model, financial statements, funding resources, and policies and procedures of the digital asset custodian;

(B) hold capital sufficient for the financial integrity of the digital asset custodian;

(C) protect customer assets;

(D) establish and maintain books and records regarding the business of the digital asset custodian;

(E) submit financial statements and audited financial statements to the applicable supervisor described in subsection (b);

(F) provide disclosures to the applicable supervisor described in subsection (b) regarding actions, proceedings, and other items as determined by such supervisor;

(G) maintain and enforce policies and procedures for compliance with applicable State and Federal laws, including those related to anti-money laundering and cybersecurity;

(H) establish a business continuity plan to ensure functionality in cases of disruption; and

(I) establish policies and procedures to resolve complaints.

(2) Rulemaking with respect to definitions.—

(A) In general.—For purposes of this section, the Commission may, by rule, further define the terms Adequate supervision' and 'appropriate regulation' as necessary in the public interest, as appropriate for the protection of investors, and consistent with the purposes of this Act.

(B) Conditional treatment of certain custodians before rulemaking.—Before the effective date of a rulemaking under subparagraph (A), a trust company is deemed subject to adequate supervision and appropriate regulation if—

(i) the trust company is expressly permitted by a State bank supervisor to engage in the custody and safekeeping of digital assets;

(ii) the State bank supervisor has established licensing, examination, and supervisory processes that require the trust company to, at a minimum, meet the conditions described in subparagraphs (A) through (I) of paragraph (1); and

(iii) the trust company is in good standing with its State bank supervisor.

(C) Transition period for certain custodians.—In implementing the rulemaking under subparagraph (A), the Commission shall provide a transition period of not less than two years for any trust company which is deemed subject to adequate supervision and appropriate regulation under subparagraph (B) on the effective date of the rulemaking.

Sec. 6c. Treatment of transactions in permitted payment stablecoins.

(a) Authority to broker, trade, and custody permitted payment stablecoins.—Permitted payment stablecoins may be brokered, traded, or custodied by a broker, dealer, digital asset broker, or digital asset dealer or through an alternative trading system or digital asset trading system.

(b) Commission jurisdiction.—The Commission shall only have jurisdiction over a transaction in a permitted payment stablecoin with respect to those circumstances in which a permitted payment stablecoin is brokered, traded, or custodied—

(1) by a broker, dealer, digital asset broker, or digital asset dealer; or

(2) through an alternative trading system or digital asset trading system.

(c) Limitation.—Subsection (b) shall only apply to a transaction described in subsection (b) for the purposes of regulating the offer, execution, solicitation, or acceptance of a permitted payment stablecoin in those circumstances in which the permitted payment stablecoin is brokered, traded, or custodied—

(1) by a broker, dealer, digital asset broker, or digital asset dealer; or

(2) through an alternative trading system or digital asset trading system.

Sec. 10. [78j] It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

…

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c)

(1)[2] To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

(d) Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements to the same extent as they apply to securities. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements to the same extent as they apply to securities.

(e)

(1) Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply with respect to permitted payment stablecoin transactions and restricted digital assets transactions engaged in by a broker, dealer, digital asset broker, or digital asset dealer or through an alternative trading system or digital asset trading system to the same extent as they apply to securities transactions.

(2) Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents

[2] Placement of paragraph (c) (as added by section 984(a) of Public Law 111-203) reflects the probable intent of Congress. Such amendment inserts this new provision at the end of section 10.

decided under applicable rules promulgated under such sections, shall apply to permitted payment stablecoins and restricted digital assets with respect to those circumstances in which the permitted payment stablecoins or restricted digital assets are brokered, traded, or custodied by a broker, dealer, digital asset broker, digital asset dealer, or through an alternative trading system or digital asset trading system to the same extent as they apply to securities.

(3) Nothing in this subsection may be construed to provide the Commission authority to make any rule, regulation, or requirement or impose any obligation or limitation on a permitted payment stablecoin issuer or a digital asset issuer regarding any aspect of the operations of a permitted payment stablecoin issuer, a digital asset issuer, a permitted payment stablecoin, or a restricted digital asset.

Sec. 10d. [78j-4] recovery of erroneously awarded compensation policy.

…

Sec. 10e. Conflicts of interest related to digital assets.

Each registered digital asset trading system, registered digital asset broker, registered digital asset dealer, and notice-registered digital asset clearing agency shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such person's business, to mitigate any conflicts of interest and transactions or arrangements with affiliates.

Sec. 12. [78l]

(g)

(6) Exclusion for persons holding certain securities.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(a)(6) or 4(a)(8) of the Securities Act of 1933 from the provisions of this subsection.

Sec. 15g. [78o-ll] Credit risk retention.

…

Sec. 15h. Registration of digital asset brokers and digital asset dealers.

(a) Registration.—

(1) In general.—It shall be unlawful for any digital asset broker or digital asset dealer (other than a natural person associated with a registered digital asset broker or registered digital asset dealer, and other than such a digital asset broker or digital asset dealer whose business is exclusively intrastate and who

does not make use of a digital asset trading system) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any restricted digital asset unless such digital asset broker or digital asset dealer is registered in accordance with this section.

(2) Application.—A person desiring to register as a digital asset broker or digital asset dealer shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval.

(b) National Securities Association membership.—

(1) In general.—A digital asset broker or digital asset dealer may not register or maintain registration under this section unless such digital asset broker or digital asset dealer is a member of a national securities association registered under section 15A.

(2) Treatment under Section 15A.—

(A) In general.—For purposes of section 15A—

(i) the term 'broker' includes a digital asset broker and the term 'registered broker' includes a registered digital asset broker;

(ii) the term 'dealer' includes a digital asset dealer and the term 'registered dealer' includes a registered digital asset dealer; and

(iii) the term 'security' includes a restricted digital asset.

(B) Clarification.—Notwithstanding subparagraph (A), a national securities association shall, with respect to the restricted digital asset activities of a digital asset broker or a digital asset dealer, only examine for and enforce against such digital asset broker or digital asset dealer—

(i) rules of such national securities association written specifically for digital asset brokers or digital asset dealers;

(ii) the provisions of the Financial Innovation and Technology for the 21st Century Act and rules issued thereunder applicable to digital asset brokers and digital asset dealers; and

(iii) the provisions of the securities laws and the rules thereunder applicable to digital asset brokers and digital asset

dealers.

(c) Additional registrations with the Commission.—

(1) In general.—A registered digital asset broker or registered digital asset dealer shall be permitted to maintain any other registration with the Commission relating to the other activities of the registered digital asset broker or registered digital asset dealer, including as—

(A) a national securities exchange;

(B) a broker;

(C) a dealer;

(D) an alternative trading system, pursuant to part 242 of' title 17, Code of Federal Regulations, as in effect on the date of enactment of this section; or

(E) a digital asset trading system.

(2) Rulemaking.—The Commission shall prescribe rules for an entity with multiple registrations described under paragraph (1) to exempt the entity from duplicative, conflicting, or unduly burdensome provisions of this Act and the rules under this Act, to the extent such an exemption would protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(3) Self-regulatory organizations.—The Commission shall require any self-regulatory organization with a registered digital asset broker or registered digital asset dealer as a member to provide such rules as may be necessary to further compliance with this section, protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(d) Additional registrations with the Commodity Futures Trading Commission.—A registered digital asset broker or registered digital asset dealer shall be permitted to maintain a registration with the Commodity Futures Trading Commission as a digital commodity broker or digital commodity dealer, to list or trade contracts of sale for digital commodities.

(e) Anti-fraud.—No digital asset broker or digital asset dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any restricted digital asset by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(f) Holding of customer assets.—

(1) In general.—A digital asset broker or digital asset dealer shall hold customer money, assets, and property in a manner to minimize the risk of loss to the customer or unreasonable delay in the access to the money, assets, and property of the customer.

(2) Qualified digital asset custodian required.—A digital asset broker or digital asset dealer shall hold customer restricted digital assets described in paragraph (1) with a qualified digital asset custodian described under section 6B.

(3) Segregation of funds.—

(A) In general.—A digital asset broker or digital asset dealer shall treat and deal with all money, assets, and property held for a customer of the digital asset broker or digital asset dealer, or that accrues to a customer as a result of trading in restricted digital assets, as belonging to the customer.

(B) Commingling prohibited.—Money, assets, and property of a customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the digital asset broker or digital asset dealer or be used to margin, secure, or guarantee any trades of any person other than the customer of the digital asset broker or digital asset dealer for whom the same are held.

(4) Exceptions.—

(A) Use of funds.—

(i) In general.—Notwithstanding paragraph (4), money, assets, and property of customers of a digital asset broker or digital asset dealer described in paragraph (4) may be maintained and deposited in the same account or accounts with any bank, trust company, or qualified digital asset custodian described under section 6B, if the money, assets, and property remain segregated from the money, assets, and property of the digital asset broker or digital asset dealer.

(ii) Withdrawal.—Notwithstanding paragraph (4), such share of the money, assets, and property described in paragraph (4) as in the normal course of business shall be necessary to transfer, adjust, or settle a restricted digital asset transaction pursuant to a customer's instruction (standing or otherwise) may be withdrawn and applied to such purposes, including the withdrawal and payment of commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with a restricted digital asset transaction.

(iii) Commission action.—In accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, assets, or property of a customer of a digital asset broker or digital asset dealer described in paragraph (4) may be commingled and deposited as provided in this section with any other money, assets, or property received by the digital asset broker or digital asset dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customer of the digital asset broker or digital asset dealer.

(B) Participation in blockchain services.—

(i) In general.—A customer shall have the right to waive the restrictions in paragraph (4) for any unit of a digital asset to be used under clause (ii), by affirmatively electing, in writing to the digital asset broker or digital asset dealer, to waive the restrictions.

(ii) Use of funds.—Customer digital assets removed from segregation under clause (i) may be pooled and used by the digital asset broker or digital asset dealer or its designee to provide a blockchain service for a blockchain system to which the unit of the digital asset removed from segregation under clause (i) relates.

(iii) Limitations.—

(I) In general.—The Commission may, by rule, establish notice and disclosure requirements, and any other limitations and rules related to the waiving of any restrictions under this subparagraph that are reasonably necessary to protect customers.

(II) Customer choice.—A digital asset broker or digital asset dealer may not require a waiver from a customer described in clause (i) as a condition of doing business with the digital asset broker or digital asset dealer.

(iv) Blockchain service defined.—In this subparagraph, the term 'blockchain service' means any activity relating to validating transactions on a blockchain system, providing security for a blockchain system, or other similar activity required for the ongoing operation of a blockchain system.

(5) Further limitations.—No person shall treat or deal with a restricted digital asset held on behalf of any customer pursuant to paragraph (4) by utilizing any unit of such restricted digital asset to participate in a blockchain

service (as defined in paragraph (5)(B)(iv)) or a decentralized governance system associated with the restricted digital asset or the blockchain system to which the restricted digital asset relates in any manner other than that which is expressly directed by the customer from which such unit of a restricted digital asset was received.

(g) Capital requirements.—

(1) In general.—Each registered digital asset broker and registered digital asset dealer shall meet such minimum capital requirements as the Commission may prescribe to ensure that the digital asset broker or digital asset dealer is able to—

(A) conduct an orderly wind-down of the activities of the digital asset broker or digital asset dealer; and

(B) fulfill the customer obligations of the digital asset broker or digital asset dealer.

(2) Calculation.—For purposes of any Commission rule or order adopted under this section or any interpretation thereof regulating a digital asset broker or digital asset dealer's financial responsibility obligations and capital requirements, a registered digital asset broker or digital asset dealer that maintains control of customer digital assets in a manner that satisfies the rules issued by the Commission under subsection (f)(2) shall not be required to include the custodial obligation with respect to such digital assets as liabilities or such digital assets as assets of the digital asset broker or digital asset dealer.

(h) Reporting and recordkeeping.—Each registered digital asset broker and digital asset dealer—

(1) shall make such reports as are required by the Commission by rule or regulation regarding the transactions, positions, and financial condition of the digital asset broker or digital asset dealer;

(2) shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and "(3) shall keep the books and records open to inspection and examination by any representative of the Commission.

(i) Treatment under the Bank Secrecy Act.—A digital asset broker and a digital asset dealer shall be treated as a financial institution for purposes of the Bank Secrecy Act.

Sec. 15i. Decentralized finance activities not subject to this act.

(a) In general.—Notwithstanding any other provision of this Act, a person shall not be subject to this Act and the regulations thereunder based on the person directly or indirectly engaging in any of the following activities, whether singly or in combination thereof, in relation to the operation of a blockchain system or in relation to decentralized finance (as defined in section 605(d) of the Financial Innovation and Technology for the 21st Century Act):

(1) Compiling network transactions, operating or participating in a liquidity pool, relaying, searching, sequencing, validating, or acting in a similar capacity with respect to a digital asset.

(2) Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth, or other similar incidental services with respect to a digital asset.

(3) Providing a user-interface that enables a user to read and access data about a blockchain system, send messages, or otherwise interact with a blockchain system.

(4) Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system.

(5) Developing, publishing, constituting, administering, maintaining, or otherwise distributing software or systems that create or deploy a hardware or software wallet or other system facilitating an individual user's own personal ability to keep, safeguard, or custody such user's digital assets or related private keys.

(b) Exceptions.—Subsection (a) shall not be construed to apply to the anti-fraud and anti-manipulation authorities of the Commission.

Sec. 17A. [78q-l]

(b)

(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The previous sentence shall not apply to a

notice-registered digital asset clearing agency with respect to a restricted digital asset. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(9) Registration and requirements for notice-registered digital asset clearing agency.—

(A) Eligibility.—A person may register with the Commission as a notice-registered digital asset clearing agency if the person—

(i) is otherwise registered as a digital asset broker or digital asset dealer with the Commission and is engaging in a business involving restricted digital assets, in compliance with Commission rules pursuant to section 15H(f);

(ii) is a bank; or

(iii) is a clearing agency already registered with the Commission pursuant to this section.

(B) Registration.—A person may register with the Commission as a notice-registered digital asset clearing agency by filing with the Commission a notice of the activities of the person or planned activities in such form as the Commission determines appropriate.

(C) Effectiveness of registration.—

(i) In general.—The registration of a person filing- a notice described under subparagraph (B) as a notice-registered digital asset clearing agency shall be effective upon publication by the Commission of such notice, which shall occur no later than 14 days after the date of such filing.

(ii) Initial registrations.—

(I) In general.—A person registered as a notice-registered digital asset clearing agency before the date on which the Commission adopts rules under subparagraph (D) shall, after such rules are adopted, renew the person's registration pursuant to such rules.

(II) Exception.—Notwithstanding subclause (I), a person

registered as a notice-registered digital asset clearing agency before the end of the 2-year period beginning on the date of the enactment of this section shall have such registration remain in effect until the end of such 2-year period.

(D) Rulemaking.—The Commission may adopt rules, which may not take effect until at least 360 days following the date of enactment of this paragraph, with regard to the activities of notice-registered digital asset clearing agencies, taking into account the nature of restricted digital assets.

Sec. 21A. Civil penalties for insider trading [78u-1]

(i) Participation in Initial Public Offerings.—An individual described in section 13103(f) of title 5, United States Code, may not purchase securities that are the subject of an initial public offering (within the meaning given such term in section 12(f)(l)(G)(i)) in any manner other than is available to members of the public generally.

(j) Duty of members and federal employees related to digital assets.—

(1) In general.—Solely for purposes of the insider trading prohibitions arising under this Act, including section 10 and Rule 10b—5 thereunder, each individual who is a Member of Congress, an employee of Congress, or an employee or agent of any department or agency of the Federal Government owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States with respect to material, nonpublic information related to a restricted digital asset that is derived from such individual's position as a Member of Congress, employee of Congress, or as an employee or agent of a department or agency of the Federal Government or gained from the performance of such individual's official responsibilities.

(2) Definitions.—In this subsection, the terms 'Member of Congress' and 'employee of Congress' have the meaning given those terms, respectively, under subsection (g)(2).

Sec. 41. [78rr] Data standards for security-based swap reporting.

...

Sec. 42. Requirements for offers and sales of certain digital assets.

(a) Offers and sales of certain restricted digital assets.—

(1) In general.—Notwithstanding any other provision of law, subject to

paragraph (2), a restricted digital asset may be offered and sold on a digital asset trading system by any person other than a digital asset issuer if, at the time of such offer or sale, any blockchain system to which the restricted digital asset relates is a functional system and the information described in section 43 has been certified and made publicly available for any blockchain system to which the restricted digital asset relates.

(2) Additional rules for related persons and affiliated persons.—Except as provided under subsection (c), a restricted digital asset owned by a related person or an affiliated person may only be offered or sold after 12 months after the later of—

(A) the date on which such restricted digital asset was acquired; or

(B) the digital asset maturity date.

(b) Offers and sales of certain digital commodities.—

(1) In general.—Subject to paragraph (2), a digital commodity may be offered and sold by any person.

(2) Rules for related and affiliated persons.—Except as provided under subsection (c), a digital commodity may only be offered or sold by a related person or an affiliated person if—

(A) the holder of the digital commodity originally acquired the digital asset while it was a restricted digital asset not less than 12 months after the later of—

(i) the date on which such restricted digital asset was acquired; or

(ii) the digital asset maturity date;

(B) any blockchain system to which the digital commodity relates is certified to be a decentralized system under section 44; and

(C) the digital commodity is offered or sold on or subject to the rules of a digital commodity exchange registered under section 5i of the Commodity Exchange Act.

(3) Not an investment contract.—For purposes of the securities laws, an offer or sale of a digital commodity that does not violate paragraph (2) shall not lie a transaction in an investment contract.

(c) Sales restrictions for affiliated persons.—A digital asset may lie offered and sold

by an affiliated person under subsection (a) or (b) if—

(1) the aggregate amount of such digital assets sold in any 3-month period by the affiliated person is not greater than one percent of the digital assets then outstanding; or

(2) the affiliated person promptly, following the placement of an order to sell one percent or more of the digital assets then outstanding during any 3-month period, reports the sale to—

(A) the Commodity Futures Trading Commission, in the case of an order to sell a digital commodity on or subject to the rules of a digital commodity exchange; or

(B) the Securities and Exchange Commission, in the case of a sell order for a restricted digital asset placed with a digital asset trading system.

(d) Treatment of certain end user distributions under the securities laws.—

(1) In general.—With respect to a digital asset, an end user distribution is described under this paragraph if—

(A) each blockchain system to which such digital asset relates is a functional system; and

(B) with respect to the digital asset and each blockchain system to which such digital asset relates, the information described in section 43 has been certified and made publicly available.

(2) Not an investment contract.—For purposes of the securities laws, an end user distribution described under paragraph (1) shall not be a transaction in an investment contract.

(3) Exemption.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) shall not apply to an end user distribution described under paragraph (1) or a transaction in a unit of digital asset issued in such a distribution.”.

(b) Rule of Construction.—Nothing in this Act or the amendments made by this Act may be construed to restrict the use of a digital asset, except as expressly provided in connection with—

(1) the offer or sale of a restricted digital asset or digital commodity; or

(2) an intermediary’s custody of a restricted digital asset or digital

commodity.

Sec. 43. Enhanced disclosure requirements with respect to digital assets.

(a) Disclosure information.—With respect to a digital asset and any blockchain system to which the digital asset relates, the information described under this section is as follows:

(1) Source code.—The source code for any blockchain system to which the digital asset relates.

(2) Transaction history.—A description of the steps necessary to independently access, search, and verify the transaction history of any blockchain system to which the digital asset relates.

(3) Digital asset economics.—A description of the purpose of any blockchain system to which the digital asset relates and the operation of any such blockchain system, including—

(A) information explaining the launch and supply process, including the number of digital assets to be issued in an initial allocation, the total number of digital assets to be created, the release schedule for the digital assets, and the total number of digital assets then outstanding;

(B) information on any applicable consensus mechanism or process for validating transactions, method of generating or mining digital assets, and any process for burning or destroying digital assets on the blockchain system;

(C) an explanation of governance mechanisms for implementing changes to the blockchain system or forming consensus among holders of such digital assets; and

(D) sufficient information for a third party to create a tool for verifying the transaction history of the digital asset.

(4) Plan of development.—The current state and timeline for the development of any blockchain system to which the digital asset relates, showing how and when the blockchain system intends or intended to be considered a functional system and decentralized system.

(5) Development disclosures.—A list of all persons who are related persons or

affiliated persons who have been issued a unit of a digital asset by a digital asset issuer or have a right to a unit of a digital asset from a digital asset issuer.

(6) Risk factor disclosures.—A description of the material risks surrounding ownership of a unit of a digital asset.

(b) Certification.—

(1) In general.—With respect to a digital asset and any blockchain system to which the digital asset relates, the information described under this section has been certified if the digital asset issuer, an affiliated person, a decentralized governance system, or a digital commodity exchange certifies on a quarterly basis to the Commodity Futures Trading Commission and the Securities and Exchange Commission that the information is true and correct.

(2) Prior disclosures.—Information described under this section which was made available to the public prior to the date of enactment of this section may be certified as true and correct on the date such information was published in final form.

(3) Rulemaking.—The Commission and the Commodity Futures Trading Commission may jointly issue rules regarding the certification process described under paragraph (1).

Sec. 44. Certification of certain digital assets.

(a) Certification.—Any person may certify to the Securities and Exchange Commission that the blockchain system to which a digital asset relates is a decentralized system.

(b) Filing requirements.—A certification described under subsection (a) shall be filed with the Commission, and include—

(1) information regarding' the person making the certification;

(2) a description of the blockchain system and the digital asset which relates to such blockchain system, including—

(A) the operation of the blockchain system;

(B) the functionality of the related digital asset;

(C) any decentralized governance system which relates to the blockchain

system; and

(D) the process to develop consensus or agreement within such decentralized governance system;

(3) a description of the development of the blockchain system and the digital asset which relates to the blockchain system, including—

(A) a history of the development of the blockchain system and the digital asset which relates to such blockchain system;

(B) a description of the issuance process for the digital asset which relates to the block chain system;

(C) information identifying the digital asset issuer of the digital asset which relates to the blockchain system; and

(D) a list of any affiliated person related to the digital asset issuer;

(4) an analysis of the factors on which such person based the certification that the blockchain system is a decentralized system, including—

(A) an explanation of the protections and prohibitions available during the previous 12 months against any one person being able to—

(i) control or materially alter the blockchain system;

(ii) exclude any other person from using or participating on the blockchain system; and

(iii) exclude any other person from participating in a decentralized governance system;

(B) information regarding the beneficial ownership of the digital asset which relates to such blockchain system and the distribution of voting power in any decentralized governance system during the previous 12 months;

(C) information regarding the history of upgrades to the source code for such blockchain system during the previous 3 months, including—

(i) a description of any consensus or agreement process utilized to process or approve changes to the source code;

(ii) a list of any material changes to the source code, the purpose and effect of the changes, and the contributor of the changes, if known; and

(iii) any changes to the source code made by the digital asset issuer, a

related person, or an affiliated person;

(D) information regarding any activities conducted to market the digital asset which relates to the blockchain system during the previous 3 months by the digital asset issuer or an affiliated person of the digital asset issuer; and

(E) information regarding any issuance of a unit of the digital asset which relates to such blockchain system during the previous 12 months; and

(5) with respect to a blockchain system for which a certification has previously been rebutted under this section or withdrawn under section 5i(m) of the Commodity Exchange Act, specific information relating to the analysis provided in subsection (f)(2) in connection with such rebuttal or such section 5i(m)(l)(C) in connection with such withdrawal.

(c) Rebuttable presumption.—the Commission may rebut a certification described under subsection (a) with respect to a blockchain system if the Commission, within 60 days of receiving such certification, determines that the blockchain system is not a decentralized system.

(d) Certification review.—

(1) In general.—Any blockchain system that relates to a digital asset for which a certification has been made under subsection (a) shall be considered a decentralized system 60 days after the date on which the Commission receives a certification under subsection (a), unless the Commission notifies the person who made the certification within such time that the Commission is staying the certification due to—

(A) an inadequate explanation by the person making the certification; or

(B) any novel or complex issues which require additional time to consider.

(2) Public notice.—The Commission shall make the following available to the public and provide a copy to the Commodity Futures Trading Commission:

(A) Each certification received under subsection (a).

(B) Each stay of the Commission under this section, and the reasons therefore.

(C) Any response from a person making a certification under subsection (a) to a stay of the certification by the Commission.

(3) Consolidation.—The Commission may consolidate and treat as one submission multiple certifications made under subsection (a) for the same blockchain system which relates to a digital asset which are received during the review period provided under this subsection.

(e) Stay of certification.—

(1) In general.—A notification by the Commission pursuant to subsection (d)(1) shall stay the certification once for up to an additional 120 days from the date of the notification.

(2) Public comment period.—Before the end of the 60-day period described under subsection (d)(1), the Commission may begin a public comment period of at least 30 days in conjunction with a stay under this section.

(f) Disposition of certification.—

(1) In general.—A certification made under subsection (a) shall—

(A) become effective—

(i) upon the publication of a notification from the Commission to the person who made the certification that the Commission does not object to the certification; or

(ii) at the expiration of the certification review period; and

(B) not become effective upon the publication of a notification from the Commission to the person who made the certification that the Commission has rebutted the certification.

(2) Detailed analysis included with rebuttal.—The Commission shall include, with each publication of a notification of rebuttal described under paragraph (1)(B), a detailed analysis of the factors on which the decision was based.

(g) Recertification.—With respect to a blockchain system for which a certification has been rebutted under this section, no person may make a certification under subsection (a) with respect to such blockchain system during the 90-day period beginning on the date of such rebuttal.

(h) Appeal of rebuttal.—

(1) In general.—If a certification is rebutted under this section, the person making such certification may appeal the decision to the United States Court of

Appeals for the District of Columbia, not later than 60 days after the notice of rebuttal is made.

(2) Review.—In an appeal under paragraph (1), the court shall have de novo review of the determination to rebut the certification.