

*Moran*  
1<sup>st</sup> Degree #1

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To prohibit interference in United States digital commodity markets by entities organized or established in a foreign adversary.

**IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.**

**S.** \_\_\_\_\_

To provide for a system of regulation of the offer and sale of digital commodities by the Commodity Futures Trading Commission, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MORAN

Viz:

1 At the end, add the following:

2 **SEC. 213. PROHIBITION ON BUSINESS AND CRITICAL IN-**  
3 **FRASTRUCTURE IN FOREIGN ADVERSARY JU-**  
4 **RISDICTIONS.**

5 Section 4(b) of the Commodity Exchange Act (7  
6 U.S.C. 6(b)) is amended by adding at the end the fol-  
7 lowing:

8 “(3) PROHIBITION ON BUSINESS AND CRITICAL  
9 INFRASTRUCTURE IN FOREIGN ADVERSARY JURIS-  
10 DICTIONS.—

11 “(A) DEFINITIONS.—In this paragraph:

1                     “(i) AFFILIATE.—

2                     “(I) IN GENERAL.—The term ‘af-  
3                     filiate’ means any person that directly  
4                     or indirectly controls, is controlled by,  
5                     or is under common control with a  
6                     digital commodity platform.

7                     “(II) CONTROL.—For purposes  
8                     of this clause, the term ‘control’ in-  
9                     cludes the power to determine, direct,  
10                     or decide important matters affecting  
11                     the management or policies of an enti-  
12                     ty.

13                     “(ii) COVERED ENTITY.—The term  
14                     ‘covered entity’ means—

15                     “(I) an entity that is established  
16                     or organized under the laws of, or the  
17                     principal place of business of which is  
18                     located in, a foreign adversary; and

19                     “(II) any subsidiary owned (in  
20                     whole or in part) or operated by an  
21                     entity described in subclause (I).

22                     “(iii) CRITICAL INFRASTRUCTURE.—  
23                     The term ‘critical infrastructure’ means  
24                     any facility, system, function, or dataset

1 essential to the secure operation of a dig-  
2 ital commodity platform, including—

25 " (I) A digital asset custodian.

1                         “(II) A digital commodity broker.

2                         “(III) A digital commodity deal-  
3                         er.

4                         “(IV) A digital commodity ex-  
5                         change.

6                         “(v) FOREIGN ADVERSARY.—The  
7                         term ‘foreign adversary’ means—

8                         “(I) the People’s Republic of  
9                         China, including the Hong Kong Spe-  
10                         cial Administrative Region and the  
11                         Macao Special Administrative Region;

12                         “(II) the Republic of Cuba;

13                         “(III) the Islamic Republic of  
14                         Iran;

15                         “(IV) the Democratic People’s  
16                         Republic of Korea; and

17                         “(V) the Russian Federation.

18                         “(vi) FOREIGN ADVERSARY JURISDIC-  
19                         TION.—The term ‘foreign adversary juris-  
20                         diction’ means the territory of a foreign  
21                         adversary, including any political subdivi-  
22                         sion or special administrative region there-  
23                         of.

24                         “(vii) MAINTAIN.—The term ‘main-  
25                         tain’ means to own, lease, contract for, op-

13 " (II) involves the lesser of—

17                             “(D) OUTSOURCING AND AFFILIATES.—A  
18                             digital commodity platform shall not, directly or  
19                             indirectly, cause, permit, or rely on an affiliate  
20                             or a third party service provider to conduct in  
21                             a foreign adversary jurisdiction any activity  
22                             prohibited with respect to the digital commodity  
23                             platform under subparagraph (B), including the  
24                             hosting or administration of critical infrastruc-

19                             “(G) DISCLOSURES.—Each digital com-  
20                             modity platform shall disclose to the Commis-  
21                             sion—

1                         “(ii) the jurisdictions in which em-  
2                         ployees or contractors perform critical in-  
3                         frastructure functions; and

4                         “(iii) the identities of all affiliates and  
5                         third-party service providers that host, ad-  
6                         minister, or support critical infrastructure  
7                         functions.

8                         “(H) UPDATES.—Each digital commodity  
9                         platform shall update the attestation and disclo-  
10                         sures required under subparagraphs (F) and  
11                         (G) not later than 30 days after any change  
12                         that renders the attestation or disclosures in-  
13                         complete or inaccurate.

14                         “(I) RECORDKEEPING.—Each digital com-  
15                         modity platform shall—

16                         “(i) maintain records sufficient to  
17                         substantiate compliance with subpara-  
18                         graphs (F), (G), and (H) for not less than  
19                         5 years; and

20                         “(ii) make records described clause (i)  
21                         available to the Commission on request.

22                         “(J) COMPLIANCE AND ENFORCEMENT.—

23                         “(i) DENIAL, REVOCATION, OR NON-  
24                         RENEWAL.—The Commission shall deny,  
25                         revoke, or refuse to renew an authorization

1 if the digital commodity platform violates  
2 subparagraph (B) or (C).

### 13                             “(K) RULEMAKING.—

“(I) specify documentation standards for attestations and disclosures under subparagraphs (F) and (G);

1 ing cloud and data hosting arrange-  
2 ments;

17 "(L) TRANSITION.—

1                         “(I) cease such substantial busi-  
2                         ness operations;

3                         “(II) terminate such critical in-  
4                         frastructure; and

5                         “(III) certify compliance with  
6                         this paragraph to the Commission.

7                         “(ii) PLAN.—Not later than 30 days  
8                         after the date of enactment of this para-  
9                         graph, a digital commodity platform sub-  
10                         ject to clause (i) shall submit to the Com-  
11                         mission a plan limited to a description of  
12                         activities strictly necessary to comply with  
13                         that clause.

14                         “(iii) REVOCATION.—Failure to com-  
15                         ply with clause (i) shall be grounds for im-  
16                         mediate revocation of registration under  
17                         this Act.

18                         “(M) PREEMPTION AND SAVINGS.—

19                         “(i) PREEMPTION.—If this paragraph  
20                         conflicts with any State law, this para-  
21                         graph preempts any State law that permits  
22                         the issuance, renewal, or maintenance of  
23                         an authorization for a digital commodity  
24                         platform that conducts substantial busi-  
25                         ness operations in, or maintains critical in-

1 infrastructure in, a foreign adversary jurisdiction.  
2