

Moran
1st 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

essential to the secure operation of a digital commodity platform, including—

“(I) custody systems and private keys or key management systems;

“(II) order books and matching engines;

“(III) customer identification, customer due diligence, sanctions screening, or transaction monitoring systems and datasets;

“(IV) books and records, ledgers, or settlement systems;

“(V) network operations or security operations centers;

“(VI) disaster recovery or backup systems; and

“(VII) any primary or backup servers, data centers, or cloud resources where such functions are performed or data are stored.

“(iv) DIGITAL COMMODITY PLATFORM.—The term ‘digital commodity platform’ means a person that is 1 or more of the following:

“(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-

1 erate, administer, host, or otherwise con-
2 trol, directly or indirectly.

3 “(viii) SUBSTANTIAL BUSINESS OPER-
4 ATIONS.—The term ‘substantial business
5 operations’ means ongoing commercial ac-
6 tivity in a foreign adversary jurisdiction
7 that—

8 “(I) generates 5 percent or more
9 of the consolidated gross revenue or
10 consolidated trading volume of a dig-
11 ital commodity platform in any of the
12 preceding 2 fiscal years;

13 “(II) involves the lesser of—

14 “(aa) 25 or more employees
15 or contractors; and

16 “(bb) 5 percent or more of
17 global headcount;

18 “(III) includes a branch, office,
19 or subsidiary that directs or materi-
20 ally influences management, risk,
21 compliance, market operations, or
22 product decisions; or

23 “(IV) requires licensure or reg-
24 istration with a governmental author-
25 ity in the foreign adversary jurisdic-

1 tion to provide digital asset exchange
2 services.

3 “(B) PROHIBITION ON OPERATION.—A
4 digital commodity platform shall not conduct
5 substantial business operations in, or maintain
6 critical infrastructure in, a foreign adversary ju-
7 risdiction.

8 “(C) PROHIBITION ON REGISTRATION.—
9 The Commission shall not approve, issue,
10 renew, or maintain any license, registration,
11 designation, or other authorization that permits
12 a digital commodity platform to operate in the
13 United States if the digital commodity platform
14 conducts substantial business operations in, or
15 maintains critical infrastructure in, a foreign
16 adversary jurisdiction.

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-

1 ture, if that activity is for the benefit of or on
2 behalf of the digital commodity platform.

3 “(E) CLOUD AND HOSTING.—For purposes
4 of this paragraph, the use of cloud or hosting
5 services shall be treated as maintaining critical
6 infrastructure in a foreign adversary jurisdic-
7 tion if the relevant data or systems are phys-
8 ically located in, primarily administered from,
9 or otherwise subject to the compulsory process
10 of a foreign adversary jurisdiction.

11 “(F) ATTESTATIONS.—Each digital com-
12 modity platform shall submit to the Commis-
13 sion an attestation, in such form and manner
14 as prescribed by the Commission, that the dig-
15 ital commodity platform does not conduct sub-
16 stantial business operations in, and does not
17 maintain critical infrastructure in, any foreign
18 adversary jurisdiction.

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

22 “(i) the locations of all critical infra-
23 structure maintained by the digital com-
24 modity platform;

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).

3 “(ii) PENALTIES.—A violation of this
4 paragraph shall be treated as a violation of
5 the applicable registration or licensing pro-
6 vision enforced by the Commission, and
7 penalties available under such provision
8 shall apply.

9 “(iii) INJUNCTIONS AND REMEDIES.—
10 The Commission may seek injunctive relief
11 or other appropriate remedies to enforce
12 this paragraph.

13 “(K) RULEMAKING.—

14 “(i) IN GENERAL.—Not later than
15 270 days after the date of enactment of
16 this paragraph, the Commission shall pro-
17 mulgate rules to carry out this paragraph.

18 “(ii) REQUIREMENTS.—The rules pro-
19 mulgated under clause (i) shall—

20 “(I) specify documentation stand-
21 ards for attestations and disclosures
22 under subparagraphs (F) and (G);

23 “(II) clarify the application of
24 subparagraph (D) to affiliates and
25 third party service providers, includ-

1 ing cloud and data hosting arrange-
2 ments;

3 “(III) provide risk-based meth-
4 ods—

5 “(aa) to verify the location
6 and administration of critical in-
7 frastructure; and

8 “(bb) to detect substantial
9 business operations; and

10 “(IV) provide for coordination
11 with State financial regulators to en-
12 sure consistent implementation.

13 “(iii) EFFECT.—Nothing in this sub-
14 paragraph shall be construed to expand the
15 authority of any Federal or State agency
16 beyond the requirements of this Act.

17 “(L) TRANSITION.—

18 “(i) IN GENERAL.—Each digital com-
19 modity platform that, on the date of enact-
20 ment of this paragraph, conducts substan-
21 tial business operations in, or maintains
22 critical infrastructure in, a foreign adver-
23 sary jurisdiction shall, not later than 90
24 days after such date—

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 frastructure in, a foreign adversary juris-
2 diction.

3 “(ii) SAVINGS.—Nothing in this para-
4 graph shall be construed to limit authori-
5 ties under any other applicable Federal
6 law.”.