

Digital Commodities Consumer Protection Act of 2022 (S.4760)
Section-by-Section

Section 1. Short Title.

Provides that the short title of the bill is the “*Digital Commodities Consumer Protection Act of 2022.*”

Section 2. Definitions.

- Defines “digital commodity,” which includes Bitcoin and Ether and excludes certain financial instruments including securities; amends the definition of “commodity” in the Commodity Exchange Act (“Act”) to include “digital commodity.”
- Introduces new categories of registration including “digital commodity broker,” “digital commodity custodian,” “digital commodity dealer,” “digital commodity trading facility” (collectively, “digital commodity platforms”) and associated persons of digital commodity brokers and digital commodity dealers. Mining activity, alone, is not sufficient to trigger registration as a digital commodity platform.

Section 3. Commission Jurisdiction.

Grants the Commodity Futures Trading Commission (“Commission”) exclusive jurisdiction over digital commodity trades, except for transactions in which a merchant or consumer is using a digital commodity solely for the purchase or sale of a good or service. Prohibits fraud with respect to any digital commodity trade.

Section 4. Digital Commodity Platforms.

- Subsection (a) Registration—Mandates that any entity acting as a digital commodity platform must register with the Commission in one or more of the applicable categories (i.e., digital commodity broker, digital commodity custodian, digital commodity dealer, and digital commodity trading facility).
- Subsection (b) Core Principles for Digital Commodity Platforms—Requires that a digital commodity platform comply with all applicable core principles, which are designed to protect customers and the integrity of the digital commodity marketplace.
 - *Digital commodity trading facilities* must only permit transactions in digital commodities that are not readily susceptible to manipulation; provide a competitive, open, and efficient market for executing transactions; monitor digital commodity trading and protect market participants from abuse; and capture and publish trading information in a timely manner.
 - *Digital commodity dealers and brokers* must establish fair and objective prices; keep records of all digital commodity transactions and provide information to the Commission upon request; conform with business conduct standards; and establish risk management

systems. In addition, all digital commodity platforms must, among other things, implement conflict of interest procedures; maintain adequate financial resources; establish system safeguards to minimize cybersecurity and other operational risks; and comply with Commission requirements for the treatment of customer assets.

- Subsection (c) Rules Governing Margined or Leveraged Trading—Authorizes the Commission to make rules governing margined, leveraged, or financed digital commodity trades.
- Subsection (d) Contract Listings, Rules, and Rule Amendments for Digital Commodity Trading Facilities—Establishes the process by which digital commodity trading facilities may list for trading digital commodity contracts and implement new rules or rule amendments. A digital commodity trading facility may self-certify a contract or rule, or may seek prior approval. Under either process, the Commission may disapprove or revoke a contract listing or rule if it is inconsistent with the Act. Subsection (d) also requires that digital commodity trading facilities disclose certain information about digital commodity contracts listed for trading, including the operating structure and system of the digital commodity; the trading volume and volatility of the digital commodity; and certain information relating to digital commodities purporting to have a fixed value.
- Subsection (e) Product Listing for Digital Commodity Brokers and Digital Commodity Dealers—Provides that digital commodity dealers and digital commodity brokers may not trade, or arrange a trade, in a contract for a digital commodity that is readily susceptible to manipulation or that is determined to be inconsistent with the Act; and that digital commodity brokers and digital commodity dealers are subject to the same listing and disclosure requirements as are applicable to digital commodity trading facilities for contracts on digital commodities.
- Subsection (f) Customer Protection—Requires the Commission to adopt customer protection rules, including requiring a digital commodity platform to disclose to customers material conflicts of interest and material risks of trading digital commodities; communicate in a fair and balanced manner; and establish standards for the platform’s marketing and advertising.
- Subsection (g) Examination and Publication of Energy Consumption in Digital Commodity Markets—Requires the Commission complete a report studying the energy consumption and sources of energy used in connection with the creation and transfer of digital commodities and to publish on its website, and update on a timely basis, this information.
- Subsection (h) Prohibition on Fraud, Deception and Manipulation—Prohibits any digital commodity platform to engage in any act, practice, or course of business in connection with its business as a digital commodity platform that is fraudulent, deceptive, or manipulative.
- Subsection (i) Self-Regulation—Requires digital commodity brokers, digital commodity custodians, and digital commodity dealers to be members of a registered futures association (“RFA”) and authorizes the Commission to delegate registration functions to an RFA.

- Subsection (j) Dual Registration—Permits a digital commodity platform registered with the Commission to also be registered with the Securities and Exchange Commission.
- Subsection (k) Fees for Registration—Requires all digital commodity platforms registered with the Commission pay a fee to fund annual costs of registration, oversight, and education and outreach in connection with digital commodity markets (“digital commodity activities”). Annual fees will be based on the amount necessary to offset appropriations set by Congress. Fees can only be assessed on digital commodity platforms and may only fund digital commodity activities.
- Subsection (l) Customer Education and Outreach—Requires the Commission to provide education and outreach to customers participating in digital commodity markets.
- Subsection (m) Inspection—Authorizes the Commission to inspect and monitor digital commodity platforms.
- Subsection (n) Preemption of State Laws—Preempts registration requirements under state law relating to money transmission, virtual currency, and commodity brokers.
- Subsection (o) Regulations—Authorizes the Commission write rules and regulations to implement this section.

Section 5. Additional Amendments.

- Subsection (a) Retail Commodity Transactions—Clarifies that a trade in a digital commodity will not be subject to the requirements of exchange trading applicable to retail, leveraged, non-spot commodity transactions under the Act.
- Subsection (b) Applicability—Establishes the extra-territorial application of the provisions of the Act relating to digital commodities.
- Subsection (c) Registration of Association Persons—Requires associated persons of digital commodity brokers and digital commodity dealers to register with the Commission.
- Subsection (d) Commodity Trading Advisers; Commodity Pool Operators—Includes digital commodity trades among the commodity interests that require a commodity trading advisor or commodity pool operator to register with the Commission.
- Subsection (e) Acceptable Business Practices under Core Principles—Authorizes the Commission to issue interpretations regarding acceptable business practices under the digital commodity platform core principles.
- Subsection (f) Public Disclosure—Amends Section 8(a)(1) of the Act, which provides the conditions under which the Commission may disclose information received from certain registered entities, to include information received from digital commodity platforms.

- Subsection (g) Anti-money Laundering—Establishes digital commodity platforms as financial institutions under the Bank Secrecy Act.
- Subsection (h) Registration of Commodity Dealers and Association Persons—Updates the list of entities that the Commission is authorized to register, and those subject to statutory disqualification, to include digital commodity brokers, digital commodity dealers, and their associated persons.
- Subsection (i) Amendments to Title 11—Extends the relevant provisions of the Bankruptcy Code to digital commodity trades, ensuring similar protections in insolvency as other commodity contracts.

Section 6. Applicability

Provides that this law shall not apply to registrants until the date of effectiveness of the final rule requiring registration of digital commodity platforms under this Act.

Section 7. Report on Historically Underserved Customers Participating in Digital Commodity Markets.

Directs the Commission to examine the racial, ethnic, and gender demographics of customers participating in digital commodity markets and complete a report regarding how these demographics will impact the Commission’s rulemaking, education and outreach efforts, and other related activities.