



## *Digital Commodity Intermediaries Act*

### Section-by-Section

#### **Sec. 101 – Definitions under the Commodity Exchange Act**

Section 101 provides for definitions under the Commodity Exchange Act.

#### **Sec. 102 – Definitions under this Act**

Section 102 provides for definitions under the Act.

#### **Sec. 103 – Rulemakings**

Section 103 provides for several rulemakings by the Commodity Futures Trading Commission (CFTC) including definitions; relief for intermediaries also registered with the Securities and Exchange Commission (SEC); mixed digital asset transactions; the process to delist an asset for trading under section 104; portfolio margining determinations; and conflicts of interest.

#### **Sec. 104 – Expedited Registration for Digital Commodity Exchanges, Brokers, and Dealers; Provisional Status**

Section 104 requires the CFTC to provide an expedited registration process for digital commodity brokers, digital commodity dealers, and digital commodity exchanges within 180 days of enactment. The section further requires that a person must register with the CFTC as a digital commodity broker, digital commodity dealer, or digital commodity exchange no later than 90 days after the date the expedited registration process is finalized, unless the person is exempted from registration.

The section also provides that a person registered with the CFTC shall be in provisional status until all of the relevant rules for the person's registration category are complete. While in provisional status, the section clarifies that the statutory requirements and any applicable regulations apply to the person and that the person is required to pay all fees and penalties imposed by the CFTC pursuant to the authorities in Section 210.

Finally, Section 104 permits a person in provisional status to continue to list the digital assets it listed prior to registration, until such time as the definition of digital commodity is finalized through the joint rulemaking. Prior to the effective date of the joint rulemaking on definitions, the CFTC and SEC can jointly require the delisting of a digital asset through the joint delisting process established under Section 103.

### **Sec. 105 – Commodity Exchange Act Savings Provisions**

Section 105 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, an option on a futures contract, a swap, a securities futures product, and certain leveraged transactions). It also clarifies that registration as a digital commodity exchange, digital commodity broker, or digital commodity dealer does not authorize a person to engage in the aforementioned activities.

### **Sec. 106 – Administrative Requirements**

Section 106 expands the provisions in the Commodity Exchange Act regarding the improper use of nonpublic information by government employees to include the trading of digital commodities.

### **Sec. 107 – International Cooperation**

Section 107 requires the Commission to consult and cooperate with foreign regulatory authorities on the regulation of digital commodities.

### **Sec. 108 – Implementation**

Section 108 requires the CFTC to promulgate all rules required by the Act no later than 18 months after enactment of the Act, unless another timeframe is specified.

### **Sec. 109 – Effective Date**

Section 109 establishes the effective date of the Act at 18 months after the date of enactment or 120 days after publication of a required final rule.

### **Sec. 110 – Sense of Congress**

Section 110 articulates the sense of Congress that nothing in this Act or any amendment made by this Act should be interpreted to authorize any entity to regulate any commodity, other than a digital commodity on any spot market.

### **Sec. 201 – Commission Jurisdiction Over Digital Commodity Transactions**

Section 201 sets out the new authority of the CFTC over certain transactions in digital commodities. Specifically, the section provides the CFTC with exclusive regulatory jurisdiction over digital commodity cash or spot markets that occur on or with new

entities required to be registered with the CFTC: digital commodity exchanges, digital commodity dealers, and digital commodity brokers. This new authority complements the CFTC's existing anti-fraud and anti-manipulation authority over all cash or spot market commodity transactions, including cash or spot market transactions in digital commodities.

Lastly, this section provides the CFTC with authority over transactions with or involving a permitted payment stablecoin that occur on or with an entity registered with the CFTC. Section 201 prohibits the CFTC from regulating the operations of any permitted payment stablecoin issuer or any permitted payment stablecoin.

### **Sec. 202 – Requiring Futures Commission Merchants to use Qualified Digital Commodity Custodians**

Section 202 requires futures commission merchants to hold customers' digital assets in a qualified digital commodity custodian.

### **Sec. 203 – Trading Certification and Approval for Digital Commodities**

Section 203 establishes the process by which a registered entity may determine that a digital commodity is eligible to be traded on or through the registered entity. The process requires a registered entity to submit a certification to the CFTC that the digital commodity meets the requirements of the Commodity Exchange Act, including the listing requirements under section 204 of this Act. The CFTC then has up to 80 days to review the certification for its accuracy, completeness, and veracity.

Section 203 also provides that a digital commodity exchange, digital commodity broker, or digital commodity dealer applying for CFTC registration may seek prior approval to list or offer certain digital commodities when registered with the CFTC.

### **Sec. 204 – Registration of Digital Commodity Exchanges**

Section 204 provides for the registration and regulation of digital commodity exchanges. Registered digital commodity exchanges must comply with core principles that include listing standards, trade surveillance, financial resources, conflicts of interest, reporting, and system safeguards. Subject to the core principles, digital commodity exchanges are allowed to list only those digital commodities for which public disclosures regarding source code, transaction history, and digital asset economics are made.

Digital commodity exchanges are also subject to comprehensive requirements to segregate customer funds, provide risk-appropriate disclosures to retail customers, and designate a chief compliance officer. Digital commodity exchanges that accept customer funds are required to hold those funds in a qualified digital asset custodian.

No digital commodity exchange or affiliate of the exchange is permitted to act as a counterparty to any transaction on the exchange, except in limited circumstances. A digital commodity

exchange 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. A customer's access to the exchange is not permitted to be conditioned on the customer's election to participate in blockchain services.

### **Sec. 205 – Registration and Regulation of Digital Commodity Brokers and Dealers**

Section 205 creates a comprehensive federal regulatory framework under the Commodity Exchange Act for the registration, oversight, and supervision of digital commodity brokers and digital commodity dealers. It requires these firms to register with the CFTC, meet capital and risk management requirements, and comply with recordkeeping, reporting, business conduct, and customer protection standards. In addition, digital commodity brokers and digital commodity dealers are required to be members of a registered futures association and comply with any additional rules they may impose.

Customer funds held by a digital commodity broker or digital commodity dealer are subject to comprehensive segregation and commingling restrictions. Customer digital assets are also required to be held in a qualified digital asset custodian. A customer of a digital commodity broker or digital commodity dealer may elect, in writing, to participate in any blockchain services facilitated by the digital commodity broker or digital commodity broker, such as staking, subject to the requirements and limitations imposed by the CFTC. A digital commodity broker or digital commodity dealer may not condition a customer's access to their services on the customer's election to participate in blockchain services.

### **Sec. 206 – Registration of Associated Persons**

Section 206 requires associated persons of a digital commodity broker or a digital commodity dealer to register with the CFTC under this Act and makes it unlawful for a digital commodity broker or digital commodity dealer to permit a person to become or remain an associated person if the digital commodity broker or digital commodity dealer knew or should have known that the person was not registered with the CFTC or their registration was expired, suspended, or revoked.

### **Sec. 207 – Software Developer Protections**

Section 207 exempts certain software developer activities related to the operation and maintenance of blockchain networks from CFTC regulation, although not from the CFTC's anti-fraud or anti-manipulation enforcement authorities. Exempted activities include validating or providing incidental services, publishing and updating software, developing wallets for blockchain networks, providing user-interfaces for blockchain networks, and developing and publishing a blockchain system.

### **Sec. 208 – Portfolio Margining**

Section 208 extends application of the Securities Investor Protection Act to cleared swaps and digital commodities if those products are margined together with securities in a SEC regulated account.

### **Sec. 209 – Clarification on Customer Property**

Section 209 clarifies that property of the bankrupt estate of a commodity broker shall be considered customer property.

### **Sec. 210 – Resources for Implementation**

Section 210 authorizes the CFTC to charge and collect initial and annual fees from any entity registered with the CFTC as a digital commodity exchange, digital commodity broker, digital commodity dealer, or qualified digital asset custodian under the Act. It requires the CFTC to publish its fees, including an analysis of estimated costs to carry out the Act, annually in the Federal Register. Additionally, the CFTC is allowed expedited hiring authority to fill positions related to carrying out this Act.

### **Sec. 211 –Digital Commodity Retail Advocate**

Section 211 establishes an Office of the Digital Commodity Retail Advocate.

### **Sec. 212 – Report**

Section 212 requires the Commission to submit a report to Congress on the demographics of digital commodity intermediaries' customers.