

DIGITAL ASSET MARKET STRUCTURE DISCUSSION DRAFT



May 8, 2025

Review of Title II - Offers and Sales of Digital Commodities

(review of Titles III to V to come in subsequent days)

I BACKGROUND

- The [Digital Asset Market Structure Discussion Draft](#) was published on May 5, 2025, by:
 - House Committee on Financial Services Chairman [French Hill \(AR-02\)](#)
 - House Committee on Agriculture Chairman [G.T. Thompson \(PA-15\)](#)
 - House Committee on Financial Services Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence Chair [Bryan Steil \(WI-01\)](#)
 - House Committee on Agriculture Subcommittee on Commodity Markets, Digital Assets Rural Development Chair [Dusty Johnson \(SD-AL\)](#)
- The draft is *a bill to establish a regulatory framework for the trading of digital assets in the United States*
- The draft bill is structured in five titles
- The draft follows, in some respects, the FIT21 bill released in 2024
- This deck provides the highlights of Title II of the draft, the summary of Title I can be found [here](#)
- Our summaries of Titles III to V will follow in subsequent days

TITLE II - OFFERS AND SALES OF DIGITAL COMMODITIES



Key Provisions Related to the Treatment of Digital Assets

- **Not Investment Contracts** - The proposed bill would amend sections 2(a) of the Securities Act of 1933 ('33 Act), 3(a)(10) of the Securities Exchange Act of 1934 ('34 Act), and 2(a)(36) of the Investment Company Act of 1940 by adding to the existing definitions of an “*investment contract*” the caveat that they do not include “*investment contract assets*.”
- **Investment Contract Assets** are defined as digital commodities that
 - (i) can be exclusively transferred peer-to-peer via a blockchain, and
 - (ii) are sold or transferred pursuant to an investment contract.
- This means a digital asset that is sold by means of an investment contract does not itself become an investment contract (and therefore a security) purely by means of being a part of the transaction (e.g., the oranges sold in *Howey* are not themselves securities).

**While this provision would only have a direct effect on the securities analysis of digital assets involved in transactions that occur after the effective date, several pending private rights of action and state regulatory enforcement actions that center on the understanding that these assets should be considered investment contracts may be influenced by this congressional carve-out.*

TITLE II - OFFERS AND SALES OF DIGITAL COMMODITIES

Exempted Issuer Transactions

A digital commodity issuer's sale of digital commodities in a capital raise is **exempt from securities registration** under Section 4(a) of the '33 Act by meeting the following requirements:

- The underlying blockchain is certified as a “*mature blockchain system*” under the new Section 43 of the '34 Act, or the issuer intends the blockchain to be certified as mature no later than the later of:
 - 4 years after the sale; or
 - 4 years after the effective date of the proposed bill.
- The aggregate amount of units of the digital commodity sold by the issuer in reliance on this exemption in the preceding 12 months does not exceed \$150 million.
- No purchaser of the sale owns more than 10% of the total outstanding units.
- The issuer is a U.S.-based company that does not meet certain express exclusions (e.g., if the issuer is an investment company, is issuing fractional interests in oil or gas rights, or is a disqualified person, etc.).
- Adequate disclosures are provided at the time of sale.

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Exempt Issuer Filing Requirements

A digital commodity issuer's offering or selling of a digital commodity pursuant to an exempt sale must file with the CFTC:

- (i) an offering statement, and
- (ii) any related documents, in the form and including the information prescribed by the CFTC.

The CFTC shall prescribe filing requirements, which will include:

- a description of the issuer and the operations of the issuer;
- Financial information related to the issuer;
- a description of the plan of distribution of any unit of digital commodities that are to be offered;
- the intended use of the offering proceeds;
- a description of the development plan for the blockchain system to become a “mature blockchain system”;
- source code of any blockchain system to which the digital commodity relates;
- a description of steps needed to verify transaction history;
- a description of the tokenomics, including the launch and supply process;
- a plan of development for the underlying blockchain; and
- disclosures that identify related and affiliated persons and identify risk factors.

TITLE II - OFFERS AND SALES OF DIGITAL COMMODITIES

Secondary Transactions

- Transactions made by persons *other than the issuer* will not be considered security transactions between the issuer and the purchaser if they meet the following requirements:
 - (1) the transaction does not give the purchaser any ownership interests or other similar interests in the revenues, profits, or assets of the original issuer;
 - (2) the transaction does not give the purchaser any rights or ownership of another business entity; and
 - (3) the transaction does not give the purchaser any ownership rights in any other assets acquired or to be acquired by any person or entity.

Requirements for offers and sales of digital commodities by related and affiliated persons

- Establishes requirements for project insiders to sell their digital commodities both before and after the maturity of the blockchain system and related digital commodity.
- Includes limitations on quarterly sales and pre- and post-sale disclosure obligations.
- The SEC is provided rulemaking authority related to the reporting obligations of issuers and insiders with respect to transactions involving digital commodities.

TITLE II - OFFERS AND SALES OF DIGITAL COMMODITIES

“Maturity” Standard for Blockchains

- **Certifying Blockchain Maturity** - Any issuer, related person, or affiliated person may certify to the SEC that a blockchain system is a “mature blockchain system,” demonstrating that the blockchain is not “*controlled by any person or group of persons under common control.*”
- Information that may be provided to demonstrate a *lack of control* includes:
 - A description of the operation of the blockchain system and functionality of the digital commodity
 - How the market value of the digital commodity is derived
 - Information demonstrating that the value mechanism has been substantially completed
 - Descriptions of the current roles of the digital commodity issuer, affiliated persons, and related persons that show a lack of ability to exercise unilateral authority or control
 - System governance that permits no person, or group of persons under common control, to exercise unilateral authority (directly or indirectly) to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system
 - No individual or group of individuals under common control own 20% or more of the total outstanding units of the digital commodity, or 20% or more of the voting power (where applicable)

TITLE II - OFFERS AND SALES OF DIGITAL COMMODITIES

“Maturity” Standard for Blockchains

Blockchain maturity is a *rebuttable presumption* - The SEC must notify the certifier within 60 days that (i) there is insufficient information to determine that the blockchain is mature, or (ii) the blockchain raises a novel or complex issue that requires additional time to review (up to 120 days).

- **Recertification** - A blockchain system for which the SEC has rebutted the certification must wait 90 days before attempting to recertify.
- **Appeal of Rebuttal** - If the SEC rebuts certification, the person making the certification may appeal the determination to the D.C. U.S. Court of Appeals no later than 60 days after receiving notice of the rebuttal.
- **Failure to Mature** - The SEC is to issue rules within 270 days related to the obligation of issuers, related persons, and intermediaries of a blockchain that fails to mature.

**PLEASE FEEL FREE TO REACH OUT WITH ANY
QUESTIONS, COMPLIMENTS, OR CONCERNS.**



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