Issues List for House Market Structure Draft (5-13-25)

The Decentralization Research Center aggregated this list in collaboration with a community of aligned teams, developers, operators, and lawyers.

Items highlighted below reflect those we believe are of particularly high importance.

Issue No.	Section	Comment	Proposed Solution
		Title I - Section 101	
		Securities Act Definitions	
1.	***Paragraph (20) – "Affiliated Person"***	There should be different obligations for "Affiliated Persons" as compared to "Related Persons".	We believe there should be an "Affiliate" concept, which should be tailored but generally treated in line with Rule 144 concepts to ensure there are greater restrictions on the group control group with access to MNPI vs. passive large holders. This issue is also related to issues #4, 7, 22, 23, and 24, among others. We think that refinements to the defined terms for an issuer (adding group) and affiliated/control persons would be helpful to clarify the respective obligations.
2.	***Paragraph (25) – "Decentralized Governance System"***	We have talked to many organizations that agree, the bill's approach to control and decentralized governance will not work unless it takes into account that any decentralized governance system could be deemed to be a "person." This definition is broad/ambiguously defined such that even a routine system of meetings open to members of a token community could inadvertently be swept into this. People acting through decentralized gov systems cannot be equated with the system itself or it will lead to perverse outcomes. For instance, there have been court findings that a DAO (token-based governance) is either a general partnership or an unincorporated association. As a result, references to "persons" throughout the bill need to be scrutinized to determine whether they would preclude a project from having any decentralized governance. See our discussion regarding Section 202 below.	We think that there are a number of possible paths here. One solution is further defining a decentralized governance system safe harbor where governance decisions regarding the protocol do not implicate a business entity / will not be deemed to be a 'person' or general partnership for purposes of this provision. Another option to help this issue that has been proposed in RFIA was to: (1) Add a defined term "business entity" to distinguish between DAOs and companies: *"BUSINESS ENTITY.—The term 'business entity' means:* *"(A) a corporation, limited liability company, or other entity that is created by filing a document with the Secretary of State of a State (or a similar office) or Indian Tribe; or*

	Paragraph (25) – "Decentralized Governance System" (Continued)		*"(B) any comparable foreign entity that would be eligible for registration, or that is registered to do business, under the laws of a State or Indian Tribe.*" (2) Add the following carveout to the "Decentralized Governance System" definition: "*Persons acting through a decentralized governance system* ***(including any non-business entity that embodies such decentralized governance system)***..."
		In the interest of preventing gaming, further refinement is needed for "(B) RELATIONSHIP OF PERSONS TO DECENTRALIZED GOVERNANCE SYSTEMS" — the language regarding "decentralized governance system shall be treated as separate persons unless such persons are under common control" is ambiguous with respect to whether it captures concepts of collusion and cartel like behavior. In (B), and throughout the bill, common control is not defined; there should be a core definition proposed and modified to the specific context where required.	This definition could be fixed by adding language that picks up on what constitutes 'common control' in the context of governance. For purposes hereof, 'common control' refers to a relationship between two or more Persons, characterized by: (a) direct or indirect control, influence, or shared power over decisions impacting decentralized governance, established through external agreements or arrangements; or (b) mutual agreements or agreements to collude aimed at voting, acquiring, holding, disposing of Digital Commodities in concert. Participation in the system's consensus processes does not, on its own, constitute 'common control'. Nor would separate and independent actions taken in good faith by participants within the Decentralized Governance System imply 'common control'.

3.	***Paragraph (27) – Digital Asset Custodian***	There is ambiguity in the scope of this term - we are worried it could be construed in an overinclusive manner. The term should apply to a third party intermediary in the traditional sense and not software developers that develop technology with no ability to take 'control' of the assets in question. **Issue #1**: If we're going to define custody (even if indirectly), we should require control and try to be as certain/tight as possible in order to avoid unintended consequences. Theoretically, one could easily construe the intention of the bill to be that "holding, maintaining, or safeguarding" a digital asset is the equivalent of taking custody of another person's digital asset. The scope of this definition could also have implications under money transmission and money laundering rules and inadvertently make certain DeFi blockchain participants subject to those regimes. For instance, does a hardware self-custodial wallet maker "safeguard" user funds? Does a validator? Does a person have the ability to pause the functioning of a protocol? **Issue #2**: The term also refers to the potential inclusion of an entity that holds digital assets "for another person" and could benefit from a cleaner "Token Issuer Affiliate" concept in the bill as a carveout for DAOs and foundations that hold treasuries but are not third party custodians for a variety of customers (and a carve out for those entities would also clarify how they fare under the investment company analysis & the parallel custody discussion happening at the SEC). **Issue #3**: This definition needs to be harmonized with the definitions of "Digital Commodity Broker" and "Digital Commodity Dealer," (which should only pick up 3rd party intermediary service providers in the traditional sense) refer to the acceptance and control of customer assets.	Define custody with a relationship to control and then using a consistent definition throughout would lead to less risk of future misalignment. Clarify the meaning of the terms "holding, maintaining, or safeguarding" by adding they must implicate the ability to take 'control' over the asset. Clarify "for another person" means non-affiliated customers. Could include language "for compensation" or "for third-party customers".
4.	***Paragraph (28) – Digital Commodity Issuer***	There are many easy ways to circumvent this definition. Would suggest building in "Token Issuer Affiliate" concepts. These are commonly negotiated definitions in industry fundraising documents with definition sets designed to prevent gaming. Capturing "Token Issuer Affiliate" concepts would also help clarify what constitutes a primary vs. secondary transaction. For instance a token issuer could mint the token, sell a portion of supply to several affiliates for a nominal amount and bypass the regulations. At the same time, (A-B) failing to reference primary transactions makes it so anyone selling their investment contract could be construed as a primary issuer in (B) when an "Affiliated Person" definition would be more apt.	Consider reverting to a broader definition that is based off of the language included in FIT21, which had a path for a right sized definition. Incorporate "Token Issuer Affiliate" concepts and define them together with the issuer as an "Issuer Group".. We think that refinements to the defined terms for an issuer (adding group) and affiliated/control persons would be helpful to clarify the respective obligations.

5.	***Paragraph (30) – "End User Distribution"***	While we really appreciate the inclusion of this concept in the bill, it could benefit from some further refinement and build out of how the provision ties into the rest of the bill. **Issue #1**: It is unclear how this definition executes. If intended to fall under Sec. 202 in terms of treatment, the securities law protective carve outs in Sec. 202 (1) - (6) should be explicitly extended to these distributions (potentially subject to further SEC clarification). If the above change is not made, there may be benefit in excluding any type of end user distribution / air drop exclusion from integration with future exemptive offerings (under 4(a)(8) or (2)) and/or general solicitation taint on future private offerings (i.e. a compliant End User Distribution could enjoy a rebuttable presumption that a subsequent 506(b) sale isn't tainted by the airdrop, but this could be defeated if issuer clearly conditioned sale with the airdrop). **Issue #2**: It could also benefit from some further refinement such as the scope of its application and whether programmatic distributions are included as 'incentives'. **Issue #3:** (30)(A)(ii)(III) If the term "digital commodity" is used, there is a high risk of LSTs not being included due to the carve out for swaps and other derivatives.	We think that the bill could benefit from refining the types of transactions captured by End User Distributions & how they tie into the securities exemptions in the rest of the bill. The second prong may also benefit from the addition of language to limit gaming: ""(ii) is distributed according to predetermined rule sets designed to facilitate a distribution …" For better administration of the bill, we should move this exemption to Title II with the other exemptions. At minimum change the term "digital commodity" to "digital asset" in (30)(A)(ii)(III). Preferably, broaden further to "digital asset or other property relating to the blockchain system or use thereof or participation therein."
6.	***Paragraph (32) - "Permitted Payment Stablecoin"***	As drafted, the definition captures decentralized stablecoins. Our understanding is that STABLE and GENIUS will contain a carveout in line with the suggested change.	This definition should be deferential to the definition in stablecoin legislation.
7.	***Paragraph (33) – "Related Person"***	The definition should apply to an 'issuer group' concept to prevent gaming. It also should distinguish between 'consultants' in the general service provider category vs. those who are involved with bringing the digital assets to market.	As discussed above, we think that refinements to the defined terms for an issuer (adding group) and then refining this definition in line with affiliated/control person concepts would be helpful to clarify the respective obligations. This definition would also benefit from: • adding an "underwriter" concept to clause (A). • Clarifying the scope of consultants and advisors to limit the applicability to third party service providers and those that bring the token to market fall under this category - MMs, advisors, KOLs, and exchanges being comped in tokens to list.

Title I - Section 103			
Definitions under the Commodity Exchange Act			
8.	***Paragraph (55) – "Digital Commodity"***	A lot of organizations brought this point up as critical. We think additional fine tuning of this definition is necessary. **Issue #1**: We feel very strongly that this definition should in no way preclude value from accruing to the tokens. Network tokens are best analogized to 'network equity' or a stake in the network. The current definition fails to preempt claims that network tokens are deemed to be other types of securities, like transferable shares, profits interests, notes, etc. Within the current definition, the SEC could merely seek to categorize a digital asset as a "security" under one of the above theories to preclude them from being a "digital commodity," which would then prevent the asset from qualifying for any of the exemptions/exclusions from securities laws. This would be unacceptable and undermine the utility of the entire bill.	This can be resolved in the definition of "Digital Commodity" by precluding a digital asset from being deemed to be an investment contract, transferable share, profits interest, note, etc. merely because it may increase in value based on someone's ongoing efforts, or because it provides ownership interests in a network.
		Issue #2: The phrasing "the value of which is, or is reasonably expected to be, derived from the relationship of the commodity with the blockchain system to which the commodity relates" is overly ambiguous and gives rise to a number of issues on the scope. We agree with other commenters that the current language would have significant adverse consequences, including: 1. This definition would enable company-backed tokens to be offered and sold pursuant to the crowdfunding regime or other exemptions/exclusions in the bill, even though they have trust dependencies and risks that are nearly identical to securities. 2. The definition would also likely capture pure utility tokens and reward points, like gold in a video game or airline miles, as digital commodities, subjecting them to an onerous regulatory regime when they don't have any of the trust dependencies or risks of securities and are currently completely carved out of securities laws. 3. The definition might capture other digital assets that are commodities, such as tickets to sporting events.	We are aligned with the potential fixes other organizations have suggested to fine tune this definition. (1) Excluding tokens that are non-speculative would solve the arcade token problem. (2) Excluding tokens that derive substantial value from anything other than the programmatic functioning of blockchains would preclude company-backed tokens.

9.	***Paragraph (56) – "Digital Commodity Broker"***	**Issue #1:** We are incredibly grateful for the change in this definition from the previous draft as it was a gating issue for support. We think that additional fine tuning may help this definition. Consistent with the other comments, we think more granularity about what constitutes 'control' would be helpful in (A)(i)(II)(aa). **Issue #2**: We believe there should be more clarity in how this (and the custodian/ dealer provisions) apply to the DeFi carveouts. In (A)(i)(II)(bb), we think the language intentionally is directed at picking up "DeFi in name only" style DeFi but should more clearly articulate a standard whereby the platform is operating like an intermediary (the terms 'quality', 'routing', and the catch all 'any other attribute or fulfilment requirement' are overinclusive).	Recommend further refining the language to harmonize the bill on the custody/control points raised throughout this issue list and clarifying the intended scope. From an organizational standpoint, any language intended to implicate DeFi should be in the DeFi section so that there aren't regulatory pitfalls if the regulatory regime were weaponized in a future administration. We also believe that, with respect to DeFi, the line in the sand should be if there are proprietary or non-OSS/source available properties, those should be regulated more like an intermediary construct. Any catch- all would benefit from a materiality standard.
10.	***Paragraph (57) – "Digital Commodity Custodian"***	See above. What constitutes "custody" here is different than in the "digital commodity broker" and "digital commodity dealer" definitions.	Recommend further refining the language to harmonize the bill on the custody/control points raised throughout this issue list and clarifying the intended scope.
11.	***Paragraph (58) – "Digital Commodity Dealer"***	**Issue #1**: We are unclear on whether trading in your own account is intended to be included or whether DeFi systems are intended to be implicated. On the latter point, what is the reason for the exclusion in (B)(iii) relating to trades on a registered digital commodity exchange? Is the intention here to exclude dealers from having to register if they trade on a registered exchange, but not if they trade on a DEX? **Issue #2:** We believe the provision should implicate market makers but as drafted, we do not believe this is the case. We want to understand the intent behind including language related to (i) accepting and maintaining control of customer funds or (ii) exercising discretion over certain attributes of the order in (A)(i)(II). Considering a standard entity in crypto that would be considered a dealer, we are not sure they'd meet either of these requirements as drafted? This language seems to be copied from the broker definition but makes less sense in the concept of something like a crypto market maker, esp where certain deal structures would arguably fail to constitute the MM "controlling customer funds." There appears to be an attempt to distinguish the latter prong from the broker in that it uses "person" instead of "customer," but I'm not sure it's clear that a dealer exercises discretion over the person's transaction if they're just the counterparty to a sale?	Recommend further refining the language to harmonize the bill on the custody/control points raised throughout this issue list and clarifying the intended scope. However, we believe, at a minimum: ● The language should make clear that trading in your own account is out of scope given the regulatory requirements are only appropriate for intermediaries. ● If there is a dealer concept designed to police people who are trading at scale, this should be included separately. ● If there is an explicit intent to police DeFi, it should be clear the interaction in the DeFi provisions (and our comments re: (56) above apply).

12.	***Paragraph (61) – "Decentralized Finance Trading Protocol"***	Further refinement of the language is essential to ensuring the right scope. A proposed definition that received has widespread vetting is: The term "decentralized finance trading protocol" means any runtime software that: (A) is primarily designed to enable general-purpose, peer-to-peer, peer-to-system or system-to-system trading, borrowing, lending, or representation in tokenized form of, digital assets, in each case: (1) in accordance with rules, algorithms or protocols; and (2) in a manner not requiring reliance on any custodial intermediary; (B) is stored and executable on a read-unpermissioned, blockchain-based virtual machine environment governed by a peer-to-peer network of nodes running a single deterministic state transition byzantine-fault-tolerant consensus protocol; and (C) is not owned, controlled, permissioned, or arbitrarily modifiable by any single person or group of persons under 'common control' acting in concert with respect thereto. To the extent this definition remains, additional refinement is required to: ● Clarify the scope of 'self-direction' ● Clarify the scope of the language "…so that no other person is necessary to execute the financial transaction … during any part of the financial transaction" doesn't really work. There are several blockchain participants that are necessary in order for the transaction to execute, validators, block builders, relayers, node operators, etc. The bill seems to recognize this later by exempting certain activity in section 15H. ● Ensure there is an explicit tie in to 15H and that the in 15H carveouts are broad enough.	We recommend the definition that has more industry vetting (picking up the common control definition from above). If the existing definition stands, we should, at a minimum: ● Clarify that these types of infrastructure are not "persons" or strike that language altogether ● Refer to "intermediaries" or persons that take control ● Refer only to the point of execution of the transaction (rather than "any part" of the transaction) ● Exempt additional actions consistent with the carve outs in section 15H & harmonize the exemptions for certain activities in subsequent areas should also be the basis for carving out those actors as "persons" here, (or striking language altogether).

13.	***Paragraph (62) - "Decentralized Finance Messaging System"***	Further refinement of the language is essential to ensuring the right scope. **Issue #1**: We think that (B)(ii) contains problematic language that has a broad potential application. The inclusion of (B) Additional Requirements does not seem to practically consider certain functionality or practicality of some front ends (or DeFi transactions broadly) as it pertains to (ii). Especially as it relates to quality, timing, routing, or counterparty, there is not always a practical reason for an average user to have complete control over these. And in some instances e.g., counterparty, it does not make sense.This language might also implicate/affect Intents. Specifically, the language in (ii) regarding "discretion on the quantity, quality, timing, routing, counterparty, or any other attribute or fulfillment requirement of a transaction of the user." — this language could inappropriately impact systems with MEV, solvers, sequencers, intent aggregators, agents/bots, bridges, etc These issues in (ii) are amplified by the inclusion of undefined terms that could be read to prevent front ends from meeting the definition of a "decentralized finance messaging system." For example, depending on how "routing" is defined, it may capture (and exclude from this definition) a front end that allows the user to swap tokens on a DeFi protocol and displays only the best execution "route" for the user to complete the transaction without another routing choice. Also, it is unclear what words like "quality," "timing," and "counterparty" mean in this context, and how broadly "any other attribute or fulfillment requirement" can be read. **Issue #2**:We think that references to custody should be harmonized. Here, there are different framing/use of the term custody ("custody of assets of the user") as compared to other references in the broker, custodian and dealer definitions.	Replace (ii) with a provision regarding "control" so that DeFi messaging systems do not include a system that provides anyone other than the user with "control" over a transaction. There should be a way to note that, generally, automated actions taken as a part of the routing and execution through DeFi infrastructure do not negate a DFMS so long as such routing and execution is reasonable. Any catch-all re 'any other attribute' would benefit from a materiality standard. We also believe that this provision should be reframed and with respect to DeFi, the line in the sand should be if there are material proprietary or non-OSS/ source available properties in (ii), those should be regulated more like an intermediary construct. We also are not sure why the SEC would be implicated with respect to DeFi and wonder if this is more of an area for CFTC rulemaking/pilot programs with similar accommodations for progressive decentralization pre-maturity.
14.	***Sec. 105 - Rulemakings***	We think that the delegations to rulemaking should be more granular and designated throughout to prevent future potential weaponization and there should not be any carte blanche delegations.	This is a global comment that is echoed in specific contexts in this issue list. In this context, we think that the affiliate concepts should be more clearly defined in legislation. With respect to the implementation of the mature blockchain system criteria, the delegation should be clear that the principle is expressed at a high level rather than being intended as a verbatim purity test and while granting implementing agencies the authority to issue detailed guidance consistent with the principles and establish additional rules-based exemptions. This includes the use of safe harbors and other regulatory mechanisms designed to provide targeted and comprehensive relief as long as it is consistent with the overarching principles.

15.	***Sec. 105 - Protection of Self-Custody***	We strongly support the positions advanced by other organizations that are pushing to expand this protection, like Coin Center and DeFi Education Fund. Currently, the language can only stop a single regulator from outright prohibiting self-custody, not from impairing or burdening self-custody.	Potential improvements include: Implementing the KYC Act wholesale or the following alternative language: "(a) In General.—The head of a Federal agency may not prohibit, restrict, or otherwise impair the ability of a covered user to— (2) self-custody digital assets using a self-hosted wallet or other means to conduct transactions for any lawful purpose." Defining "hardware wallet" and "software wallet."
16.	***Sec. 106 - Notice Registration***	The information requirements for business seem tailored only to exchanges and not necessarily entities that would be brokers or dealers. For instance, many market makers will not have "customer order fulfilment rules" or a "listing process" to disclose. Some of the information requested of exchanges can be useful from brokers, although even there there is misalignment, but the issue is more glaring with respect to dealers.	Consider language either making clear certain information is, "if applicable," or tailor additional disclosures and remove unhelpful ones for brokers / dealers as a more robust fix.
Title II - Offers and Sales of Digital Commodities			
17.	***Sec. 201-Treatment of Investment Contract Assets***	The language in (36)(A) does not seem necessary given a "digital commodity" is a "digital asset", and therefore this is covered by the very nature of a digital commodity being a digital asset?	Suggest deleting (A).
18.	***Sec. 202 - Treatment of Secondaries (Lead In)***	We have concerns re the scope given the lead in exclusions in 202. Please see our concerns re: value accrual in Paragraph (55) – "Digital Commodity". Here the language "does not represent or give the purchaser an ownership interest or other interest in the revenues, profits, or assets of the issuer of such digital commodity or another business entity **or person**…" either bans projects with economic models and decentralized governance. Wherever decentralized governance exists, such governance could be deemed to be a person (many court cases allege that DAOs are general partnerships). As a result, any economic interest, those DAO tokens provide an ownership interest in **a person**.	For the first problem, see our suggestion above regarding the definition of "Digital Commodity." Further, consider eliminating references to "persons" to avoid the DAO problem.
19.	***202 - Treatment of Secondaries***	We think that the scope of this provision should be expanded to include End User Distributions.	This is a potential solution to the preemption question but we think that it is appropriate to include them if this provision stands as a blanket application to types of transactions.

20.	***201 - 203 - Scope of Exemptions Offered***	Sections 201 and 202 are a little inconsistent with Section 203. All three sections provide an exemption from securities laws, but only Section 203 requires (1) disclosures and (2) a project having intended to become mature or already being mature.	Consider extending the requirements of Section 203 to Sections 201 and 202 to make them parallel and consistent with one another. Disclosure obligations could sunset when an issuer is no longer engaged in managerial efforts (which is the mechanism that the "ancillary assets" approach) took.
21.	***Sec. 203 - Exempted Transactions (Crowdsale)***	The crowdfunding mechanism is essentially the legalization of ICOs and would be correctly pointed at by Democrats as a way for anyone to enrich themselves outside the bounds of securities laws. Allowing issuers to raise **$150M per year** all but eliminates the justification for the bill. Projects will be able to raise extreme amounts of capital at a time when their systems are still controlled and the risks are most similar to securities. Further, this entrenches centralization, by incentivizing the creation of monolithic and well capitalized companies that control their underlying networks. This approach creates several problems: 1. From a company perspective, any project worth less than $600M would be incentivized to never pursue decentralization, as they could sell the entire network without ever needing to do secondaries. Most projects never get close to a $600M valuation, so most projects have no incentive. 2. From a VC/entrepreneur perspective,there are ways to circumvent the lockups/exit restrictions. 3. From a broader industry/securities laws perspective, this approach would enable Apple to launch Apple Chain and raise $150M per year to fund it, while maintaining full control – effectively a securitization. That's a significant hole in current securities laws. The only guard against terrible outcomes from extending this to 'pre-maturity' currently is that they have to "intend to decentralize" to use the crowdfunding pathway and that they provide some disclosures. There isn't currently a forcing function to that "intention", as there currently are no consequences for failing to mature. There's reference to a rulemaking, but no information as to what the penalties might be. They certainly won't be sufficient to dissuade actors of pursuing this path. Even if there were consequences, such as "registering", projects could be abandoned after having raised $600M. (1) At a high level, it is unclear if this section refers to transactions related to blockchain systems both pre- and post-maturity. (2) It is also unclear whether it exempts offers or sales of a particular digital commodity by its own issuer or whether it could apply to an issuer unlinked to the digital commodity at issue. (3) The $150m sales allowance does not provide any incentive for people to decentralize. (4) Regarding the "Termination of Reporting Requirements" provision (p. 58), it is written so that termination can only occur once the token is listed by a registered Digital Commodity Exchange, rather than the information being publicly available through other means.	We believe that it is fraught to allow fundraising outside of SEC designed constructs pre-maturity. We also don't understand the post-maturity constraint provided the lockup concept remains intact. If kept in, consider significantly reducing the amount a project can raise pre-maturity as it aggregates with additional SEC exemptive relief. Consider permitting a much smaller amount ($25M in total amount raised?) of primary prior to maturity and then an additional amount per year post maturity. The goal here should not be to match what is covered by other Crowdfunding Regimes. Those regimes relate to securities, not assets that are supposed to not function like securities and not relate or depend upon large centralized institutions. Re termination of reporting requirements - Delete the requirement that the information be publicly available by a Digital Commodity Exchange or add additional options for where such info can be made available: "(5) TERMINATION OF REPORTING REQUIREMENTS.— (A) IN GENERAL.—The ongoing reporting requirements under paragraph (3) shall not apply to a digital commodity issuer 180 days after the end of the covered fiscal year, if the information with respect to the digital commodity and the blockchain system to which it relates described in subparagraphs (A) through (C) of paragraph (2) is made publicly available by a digital commodity exchange registered pursuant to 5i of the Commodity Exchange Act." Purchase caps make sense to ensure broad distribution, however, in addition to other solutions, consider a graduated ownership cap where smaller rounds may have a higher threshold (e.g. 20% in line with the later decentralized exemptions) to ensure we don't inadvertently herd people towards large rounds only. (D)(i) Consider limiting eligibility in line with Reg A such that public companies are not using this exception. This is another argument for ensuring eligibility by looking at "Token Affiliates".

22.	***Sec. 204(a) - Transfer Restrictions for Insiders***	We think that Section 204 could benefit from directional guidance on the affiliated person and related person concepts. In addition, we arent clear on the intent of the following provisions: ● Sec 42(b)(1)(A)(ii) - what does it mean to receive tokens? Could be held by issuer until unlocked or by custodian. Maybe flip to be released by the issuer? ● Sec 42(b)(1)(A)(iii) why is an exchange necessary, can you just use regulated actors and disclosure? Also, it is common to refrain from using exchanges and do OTC transactions as not to disrupt price. ○ Sec 42(b)(1)(A)(iv) there are possibilities of a scenario where tokens aren't on an exchange.	We think that this section is highly gameable and could first benefit from tighter definitions of the persons it covers to then distinguish obligations.
23.	***Sec. 204(b) - Lockups***	Sec 42(b)(1)(A)(iv)(I-II) There should be a carveout for smaller stakeholders like employees and service providers (non-underwriting function). The mechanics of this seems to punish smaller holders in general as larger ones can dump on smaller ones (ie. large vcs with 20% vs. small/angels), the lockup should account for rules for actual insiders with MNPI vs. large holders and the lockup should scale to size so that it serves its purpose in protecting the market from dumps. We also think that adding mechanics to sell OTC after 12 months where the purchaser restarts the clock on the lockup could reduce dumping pressure at unlock and have a healthy impact on the market.	After receiving further clarity, if helpful, we can prepare a rider with more suggestions. However, we think that these provisions are overly rigid, dont distinguish between types of insiders and relative size, and dont allow OTC private transactions that would prevent negative impact on the market. One commenter also referenced that the connector between (b)(1)(A) and (B) should be "or" not "and" (or just delete the word) but could be wrong - the goal is to preserve the ability to use the asst. This exists in (b)(2) as well.
24.	***204(b)(2) - Disclosure Sunset***	204(b)(2) The removal of all post-sale transaction based disclosures exposes investors to significant risks. Post-sale transaction disclosures for certain affiliates are common and provide good investor protection.	Disclosure should be required for so long as ongoing efforts are engaged in. This could be resolved with our proposed change to Section 202 as well. Alternatively, you could require these disclosures to be provided as part of the disclosure standards that the exchanges are required to comply with, but that hasn't been done. This could be resolved by adding that any affiliated person that holds over 5% of a blockchain system's tokens is required to file post-sale transaction reports.

25.	***Sec 42(c)(2-3) - Rulemaking***	These delegations require more specific rulemaking instructions. On (2), this wouldn't constrain regulations like in the UK on marketing and there is no direction to ensure they don't ban all marketing/public comments or make developers liable for comments that they cannot control. On (3), we think that the bill should get a head start on providing additional rules as they are important to 204(b) lockup concepts.	Additional detail on the delegation would be welcome here. On the second point, we will provide more granular ideas in Rider #1.
26.	***Sec 42 (d)(1) - Rulemaking***	Unclear what the goal of this section is. Is it intended to provide some kind of grandfathering relief? If so, we may have some additional suggestions to guide the delegation.	For discussion.
27.	***(b) - Rule of Construction***	This language almost seems too vague to be helpful or capable of being enforced/implemented. Also, restricted by who? Can you apply to market actors?	If the scope is regulators, this should tie into the keep your coins provisions. Beyond that, this should, and regulated market actors should, not impose restraints to self-custody by customers or unreasonable restrictions on self-custody/refrain from tying activities.... ie. custody requirements should apply only to registered/regulated actors.
28.	***205 - Certification of Mature Blockchain***	In Sec. 43(a) Certification is limited to “any digital commodity issuer, related person, or affiliated person” but should be open to “any person” and is repeated in (b) Deemed Mature. Some additional thoughts for more decentralized models: ● (a)(4)(A)(i) there are a number of situations where a decentralized play might not have a discrete issuer group/c-suite and it should not disadvantage the submission. One idea is to have a joint application from a number of organizations at the outset and/or in (a)(4)(B)(iii) Add that more organizations can add support.	We think that some refinement of this section would be helpful to even the playing field for decentralized models.

29.	***205 - Maturity Criteria Lead in***	(b)(1) and (2) — How can we make this delegation to rulemaking flexible and expansive? Also, this section lacks a tie-in to the fact that rules need to be consistent with the below principles as opposed to the limiter in (2) which could limit guidance/rules on how to implement the criteria. Reiterating the above points about 'common control' and the need to define.	We think this section and the mechanics of the bill should ensure that the delegations work to expand the relief and ensure flexibility of the regulatory regime rather than leave the rulemaking to be potentially weaponized or the use of the exemptions greatly constrained. We think this is incredibly important to Issues #31-37 below to ensure they are implemented in a manner that assuages the concerns raised in each issue. Add: rulemaking to be consistent with below principles and the Commission's role as a disclosure based regulator tasked with the implementation of the rules….
30.	***205 - Additional Criteria***	Additional criteria. Given that no additional requirements beyond those listed are permitted, we think a non-custodial requirement is important for a mature blockchain designation.	For Non-Custodial requirement, consider adding language like the following: "The source code of the blockchain network enables participants in the blockchain network to maintain total independent control of network tokens and other digital assets owned by them, with access and management governed solely by their private keys."
31.	***205 - (1) System Value***	(A) Market Value - It is unclear what "substantially derived from the programmatic functioning of the blockchain system" means.	Should there be more of an explicit tie in between (A) and (B).
32.	***205 - (2) Functional System***	(c)(2)(D) The inclusion of "sequencers" as user activities intended to be permissionless does not align with the architecture of many credibly decentralized layer 2s. Importantly, a single-sequencer architecture does not necessarily make a blockchain system non-functioning or centralized – under credibly decentralized systems, users can always avail themselves of the L1 to force the inclusion of the transaction on the L2. The proposed language would distort the development of L2 architecture – systems which have permissionless sequencing will fit the criteria, whereas decentralized single-sequencer systems (which allow users to bypass the sequencer) may not. Absent a clear user protection rationale, the language should not constrain innovation in this way.	(c)(2)(D) Remove the term "sequencer"

33.	***205 - (3) Open System***	(c)(3)(A) Open System - does this kill any project that uses Business License 2.0 (like Uniswap)? How much of the project would need to be open sourced? (c)(3)(B) The term "restricts" is overbroad in the context. Many blockchain systems empower one person (e.g. a validator) to "restrict" a user from engaging in activities (e.g. completing a transaction). Such a single validator would not be able to "prohibit" such user from completing the transaction – eventually, the transaction would land with a non-censoring validator, which would include the transaction. In addition, it's unclear why a "digital commodity issuer" and its affiliates and employees would be excluded from this language (i.e. could be subject to censorship in a mature system). (c)(3)(B) Open System - This criteria seems to restrict only the issuer, related person, or affiliated person from engaging in blockchain system activities while really no one should be restricted from the activities mentioned. It then conflicts with what the same group is allowed to do under (6)(A) Impartial System.	(c)(3)(B) Delete the term "restricts" and consider removing the reference to "digital commodity issuer." See comment to Issue #29.
34.	***205 - (4) Programmatic System***	Same issue flagged above in that humans are necessary for blockchain system operations and functions.	See comment to Issue #29.
35.	***205 - (5) System Governance***	Same issue flagged above re: need to define common control.	See comment to Issue #29.
36.	***205 - (6) Impartial System Criteria***	A version of this language is important to preserve. The carveout for Impartial System is potentially broad and could result in individuals with special permissions on the network with relatively minor justifications. For example, under 6(A) a person could have unique permissions to alter the functionality of a blockchain to address "regular maintenance" of a blockchain network. The criteria also need to interact with (d) Decentralized Governance System and the constraints in that provision. Other suggestions to improve the language are: 1 – Expanding the persons covered by these restrictions beyond just "digital commodity issuers", to any person who may hold some centralized permissions. A non-issuer should also be constrained by this language for any permissions or privileges it may hold. 2 – (A) Should be narrowed, by requiring the "rules-based process" under which it acts to be publicly available.	See comment to Issue #29. We also think that the language could benefit from refinement, including the following suggestions: In (A), make the following change: "according to a transparent rules-based process." (c)(6) Replacing the lead-in to 205(b)(6) with "No person or group of persons under common control…" In 205(b)(6)(A), make the following change: "according to a *transparent* rules-based process."

37.	***205(d) - Decentralized Governance***	This important concept should be included in the "Deemed Mature" framework, rather than as an instruction for rulemaking separate from that framework. The concept in this section is vital for any decentralization criteria, as it recognizes the reality that many blockchains operate through formalized governance structures (e.g. tokenholder votes). These governance structures may be viewed as legal persons (e.g. general partnerships) or may take on a legal form (e.g. a DUNA). Further, the governance structure may take actions through other persons (e.g. an agent, performing a function instructed by governance). A version of this is included in 205(c)(6), but the "Deemed Mature" framework should include a broader carveout on this point. Bona fide decentralized governance systems and their agents actually acting on their behalf do not pose the types of concentrated control risks the framework is aiming to target. Without clearly excluding these types of actors from the "Deemed Mature" framework, the framework risks having a glitch which excludes a large number of mature, credibly decentralized systems.	Incorporate exceptions for decentralized governance systems and persons acting on their behalf to the "Deemed Mature" framework.
38.	***205 - Control Person Definition & Rulemaking Delegation***	(e) This could lead to, among other things, reporting and trade requirements (including ownership %) for Foundations or core devs after Maturity. In (e), this is very broad & the below carveout is narrow, this may be leaving too large a gap for the SEC to fill.	(e) Language should be adjusted so there is more clarity with respect to the meaning of "asserts control" so persons acting on behalf of aren't implicated. (f) The delegation should be narrowed.
	Title III - Registration of Intermediaries at SEC		
39.	***Sec. 301 - Treatment of Digital Commodities (Scope)***	This exemption is likely unnecessary if the change to "Digital Commodity" definition regarding digital assets being investment contracts, transferable shares, profits interests, notes, etc. are made. Without that change, then the SEC could argue that a Digital Asset is a security, meaning it wouldn't qualify as a "Digital Commodity", which would mean it wouldn't qualify for Sections 201, 202 and 203. If the change is made, then 301 is unnecessary.	Consider deleting if changes to "Digital Commodity" definition are made.
40.	***Sec, 302(a) - Antifraud Authority***	Generally supportive of this. What is the intent of the references to 'judicial precedent' piece though?	Clarity needed to understand the intent.
41.	***Sec. 303 - Eligibility of ATS***	Why are ATS concepts implicated at all in the bill?	Clarity needed to understand the intent.

42.	***Sec. 309 - DeFi Exclusions***	There are inconsistent references throughout this section to digital assets and digital commodities. Presumably, this exception is to digital securities? Re 15H (2) - Computational work and the other activities listed happen outside of a "contract of sale of a digital asset" and this last clause is limiting in a way that seems unintentional. Sec 15H generally, we think this is a good list, but it may not be exhaustive, list all necessary functions, or include future actions, especially as DeFi markets, routing, execution, pooling, etc., evolve.	**Fix:** "(2) Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth, or providing other similar incidental services, with respect to a contract of sale of a digital asset." There should be some ability to update this section with additional activities (or that may be later in rulemaking?), possibly a solution is a delegation? Also, we can imagine that DeFi would be helped by clarity that the definitions of broker and dealer are not implicated by the DeFi definitions if the carveouts here are much broader… also, just because they are not subject to the act, it doesn't explicitly mean there won't be additional efforts to rulemake - this is an argument to do clear delegations with limits.
Title IV - Registration of Intermediaries at CFTC			
43.	***Sec. 403 - Trading Certifications***	Why are exchanges the only entities that can apply for listings? Why wouldn't you broaden the ability to apply (the Commission still acts as a check and balance on an approval)?	Market structure benefits from less concentration of power in specific market actors. Modify the eligible entity definition.

44.	***Sec. 404 - Registration of DCEs***	(c)(3)(A) "Listings Standards" - It is unclear what it means for a digital commodity to be "readily susceptible to manipulation." (c)(5)(C) Trading procedures - why are digital commodities exchanges self-policing? This feels like an area for an SRO. (c)(10) The antitrust provision should be more robust. Decentralized market structure is incredibly important to this space and monopolies are sources of systemic risk at the infra level on up. They should have transparent listing procedures and fee schedules, they should not be operating venture arms or packaging services - they should be constrained from operating major infra to limit concentration risk. (c)(11) Conflicts of interest - given that we know how conflicted exchanges are, why are we allowing digital commodities exchanges to be self-policing this? (13) disciplinary procedures - again, more of a topic for a SRO but these should be transparent and evenly applied (with an appeals process / a complaint process to a regulator if they are conflicted decisions) and delegations should be disclosed. (d)(3)(D) Assets removed from segregation. The intent and implementation of this provision is unclear and needs more gating. (d)(5)(B) Use of funds. Same comment as above. (d)(5)(C) Customer Choice. This provision should be strengthened/expanded to where it is required for a particular service to be performed. (k) Federal Preemption. Does this mean no more Bitlicense? Are we sure we have 1:1 coverage on the protections offered by state regimes?	Global comment - why do all of these provisions point to an ability to self-police? This is inconsistent with any other regulatory regime & there should be significantly more checks and balances on marketplace behavior by centralized, regulated actors. Market structure benefits from less concentration of power in specific market actors.
45.	***Sec. 406 - Registration of B/Ds***	Consider de minimis carveouts from registration regimes depending on scope. Intense registration requirements lead to heightened market concentration and limited customer choice.	Market structure benefits from less concentration of power in specific market actors. The refinement of these definitions such that they are not overinclusive as well as regulations that scale to size and risk are appropriate in this market.

46.	***Sec. 409 - DeFi Exclusion***	There are inconsistent references throughout this section to digital assets and digital commodities. Presumably, this exception is to digital commodities? (a)(1) the language "Compiling network transactions or relaying, searching, sequencing, validating, or acting in a similar capacity with respect to contract of sale of a digital asset" is good but we don't understand the "with respect to" language and it conflicts with the intermediary language in the decentralized finance definitions... need to fix that so that relayers, solvers, validators, intent aggregators, bridges, MEV, etc gets carved out and included as DeFi infrastructure.	Clarification needed.
47.	***Sec. 410 - Funding for Enforcement***	(g) Sunset provision on paying for the bill is unclear given the time required to do rulemaking.	Intent/implementation is unclear.
		Title V - Innovation	
48.	***Sec. 504 - DeFi Study***	(e)(1)(A) Need to replace with our definition of DeFi or, if not, strike this language or include language that makes it clear that validators, relayers, solvers, sequencers, etc are considered infra and not third party intermediaries for purposes of decentralized finance in this bill. They can be dealt with later but we don't want to inadvertently capture DeFi with this Bill when its intent is to punt it for further study. (e)(1)(B) This preserves SEC and CFTC regulatory authority ... effectively saying that (for now), regardless of decentralization, a developer could still be considered a regulated swap dealer or a security-based swap dealer during this period... is this necessary? Study of DeFi - Can this include any details on whether the industry will broadly be able to be involved in the study? We also worry about who is responsible for leading the study and other influences that try to impact its findings given the history of closed door committees.	Language could benefit from refinement.

MISC/ GLOBAL COMMENTS			
49.	***MISC***	The bill does not include previously proposed amendments regarding Commodity Pools and Commodity Pool Operators.	We agree with other commenters that these amendments are necessary.
50.	***MISC***	The bill should propose to amend the SEC's mission to include "fostering innovation."	We think that this element is important to their mission (as balanced by the other elements).
51.	***MISC***	Generally, the bill is not even in the application of state preemption principles. For instance, the bill appears to be missing state preemption and retroactive carveout of secondary transactions of digital commodities from state securities laws. This is an extremely important point.	Consider including an omnibus preemption provision in one place that explicitly and uniformly ties the individual sections in… Otherwise, confirm application/ scope.
52.	***MISC***	The bill does not include a voluntary registration regime for DeFi that would provide a basis for state preemption. This would leave DeFi significantly exposed to state bans, thereby significantly undercutting the potential value of the safe harbor at the federal level.	Consider inclusion.
53.	***MISC***	How does this bill get implemented and has there been a once over to ensure the effective timelines are possible given all the rulemaking contingencies? We want to avoid situations in which companies don't know how to comply. For instance, in 206 Effective 1 year out unless rulemaking is required in the bill - do we have a good indication of the timelines for this? It feels complicated to implement - might want a transition relief concept	Process questions - clarity here would be helpful.