How Clarity Would Have Protected Americans from FTX

The losses at FTX were the result of straightforward fraud. This fraud was enabled by a defining regulatory gap: FTX's digital asset exchange was not registered with the CFTC, not subject to U.S. customer protection rules, and operated without any meaningful U.S. federal oversight. What makes the collapse especially striking is that FTX's own CFTC-and SEC-registered affiliates had no customer asset losses. The Senate Clarity Act closes the gaps that made the FTX fraud and resulting customer losses possible.

Had the Clarity Act applied to FTX, it would have prevented the fraud outright or detected it before it caused the harm it did. As table below makes plain, FTX would have been required to register as a digital commodity exchange, hold all customer digital assets with a qualified custodian subject to robust supervision and regulation, segregate customer and company assets, prohibit the misuse of customer funds, mitigate and disclose conflicts of interest with its affiliated trading desk, submit to ongoing CFTC examination, and more.

How Clarity Protects Americans from Fraud

FTX Failure	Clarity Act Requirement	Applicable Section	Specific Protection
Customer funds commingled with Alameda assets	Mandatory asset segregation; commingling prohibited	Sec. 20204 (Proposed CEA § 5i(f))	Customer assets must be treated as belonging to the customer at all times; Commingling of customer and company funds prohibited and customer property must be segregated.
No independent custody; FTX held all assets itself	Qualified Digital Asset Custodian (QDAC) requirement	Sec. 20204 (Proposed CEA § 5i(f)(2))	All customer digital assets must be held with a QDAC, subject to robust minimum statutory requirements, regulations, and supervision.
Customer funds used for Alameda trading, VC investments, real estate, and personal expenses	Misuse of customer property unlawful	Sec. 20204 (Proposed CEA § 5i(f)(6))	Explicitly unlawful for any exchange, custodian, or affiliate to dispose of or use customer assets as the exchange's own.
Alameda had backdoor exemption from FTX's own risk engine; preferential trading access	Affiliate trading restrictions; mandatory conflicts of interest (COI) rules	Sec. 20103(d); Sec. 20204	Exchanges and affiliates are prohibited from trading on their own platform to profit for their own account. All exchanges subject to mandatory COI framework, including those related to vertically integrated market structures.

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FTX Failure	**Clarity Act Requirement**	**Applicable Section**	**Specific Protection**
No regulatory examination	CFTC maintains ongoing examination authority over all registered intermediaries. DCEs required to maintain a complete audit trail for 5 years. Digital commodity brokers and dealers must also report daily trading records, counterparty records, and audit trail information to the CFTC.	Sec. 20204 (Proposed CEA § 5i(c)(8)(A)); Sec 20206 (Proposed CEA § 4u(h))	Registered digital commodity intermediaries are subject to CFTC books-and-records examination; CFTC can detect fund shortfalls or evidence of misappropriations of customer funds before collapse.
Customers had no way to verify whether FTX held their digital assets or funds	Exchanges must disclose relevant information about a digital commodity, including how to verify its transaction history, segregate customer assets, and hold them in a manner to minimize risk or loss.	Sec. 20204	Customers have access to information to verify digital asset transaction history and any material risk information. A digital commodity may not be listed unless required disclosures are available. CFTC supervision ensures exchanges remain in compliance with all customer property protections, including prohibitions on misuse of customer assets.
No U.S. regulatory oversight (e.g., FTX regulated in Bahamas only)	Mandatory CFTC registration for any DCE, digital commodity broker, or digital commodity dealer serving U.S. customers.	Sec. 20204 (Proposed CEA § 5i(a)(1)); Sec. 20206 (Proposed CEA § 4u(a)(1))	Any exchange offering digital commodity spot markets to U.S. customers must register with CFTC and comply with customer protection requirements—ensuring all Americans benefit from Clarity's framework.
Customers became unsecured creditors in bankruptcy	Establishes customer bankruptcy protections by extending existing insolvency protections for customer property to cover customers' digital assets.	Sec. 20204 (Proposed CEA § 5i(c)(5))	Customers of an exchange would have priority claim ahead of general creditors, helping ensure they receive faster and fuller recoveries.
Inadequate financial resources; $8B hole hidden from public	Exchanges must have adequate financial, operational, and managerial resources to comply with all of its responsibilities; Must hold - at a minimum - enough to cover operating costs for 1 year and to meet financial obligations to all customers. Digital assets issued by the exchange itself may not count towards minimum requirements.	Sec. 20204 (Proposed CEA § 5i(c)(11))	Customers are protected on the front end from an exchange being unable to satisfy customer obligations. Customers are also protected from a repeat situation where an exchange may artificially inflate its financial strength by issuing its own token, as FTX did through FTT issuance.