

117TH CONGRESS
1ST SESSION

H. R. 5496

To amend the Securities Act of 1933 to provide a safe harbor for transactions in certain tokens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2021

Mr. MCHENRY (for himself, Mr. DAVIDSON, and Mr. BUDD) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Act of 1933 to provide a safe harbor for transactions in certain tokens, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clarity for Digital To-
5 kens Act of 2021”.

6 **SEC. 2. TOKEN SAFE HARBOR.**

7 (a) IN GENERAL.—The Securities Act of 1933 (15
8 U.S.C. 77d) is amended by inserting after section 4A the
9 following:

1 **“SEC. 4B. TOKEN SAFE HARBOR.**

2 “(a) IN GENERAL.—Except as provided under sub-
3 section (d), this title does not apply to any offer, sale, or
4 other transaction involving a token if the following condi-
5 tions are satisfied by the initial development team of such
6 token:

7 “(1) The initial development team intends for
8 the network on which the token functions to reach
9 network maturity not later than the later of—

10 “(A) the date that is three years after the
11 first sale of such token; or

12 “(B) the date that is three years after the
13 effective date of this section.

14 “(2) The token is offered and sold for the pur-
15 pose of facilitating access to, participation on, or the
16 development of the network.

17 “(3) The initial development team complies
18 with—

19 “(A) the disclosure requirements under
20 subsection (b);

21 “(B) the notice of reliance on the safe har-
22 bor filing requirements under subsection (c);
23 and

24 “(C) the exit report filing requirements
25 under subsection (f).

1 “(b) DISCLOSURE REQUIREMENTS.—The initial de-
2 velopment team shall disclose the following information on
3 a freely accessible public website:

4 “(1) INITIAL DISCLOSURES.—Prior to filing a
5 notice of reliance under subsection (c), and with
6 such information updated as soon as practicable
7 after any material change:

8 “(A) SOURCE CODE.—A text listing of
9 commands to be compiled or assembled into an
10 executable computer program used by network
11 participants to access the network, and confirm
12 transactions.

13 “(B) TRANSACTION HISTORY.—A narrative
14 description of the steps necessary to independ-
15 ently access, search, and verify the transaction
16 history of the network.

17 “(C) TOKEN ECONOMICS.—A narrative de-
18 scription of the purpose of the network, the
19 protocol, and its operation, including—

20 “(i) information explaining the launch
21 and supply process, including the number
22 of tokens to be issued in an initial alloca-
23 tion, the total number of tokens to be cre-
24 ated, the release schedule for the tokens,

1 and the total number of tokens out-
2 standing;

3 “(ii) information detailing any appli-
4 cable consensus mechanism or process for
5 validating transactions, method of gener-
6 ating or mining tokens, and any process
7 for burning or destroying tokens on the
8 network;

9 “(iii) an explanation of governance
10 mechanisms for implementing changes to
11 the network or protocol; and

12 “(iv) sufficient information for a third
13 party to create a tool for verifying the
14 transaction history of the token.

15 “(D) PLAN OF DEVELOPMENT.—The cur-
16 rent state and timeline for the development of
17 the network to show how and when the initial
18 development team intends to achieve network
19 maturity.

20 “(E) PRIOR TOKEN SALES.—For token
21 sales completed prior to filing a notice of reli-
22 ance under subsection (c), the date of sale,
23 number of tokens sold, number of token pur-
24 chasers, any limitations or restrictions on the
25 transferability of tokens sold, price per token,

1 and the type and amount of consideration re-
2 ceived.

3 “(F) INITIAL DEVELOPMENT TEAM AND
4 CERTAIN TOKEN HOLDERS.—

5 “(i) The names and relevant experi-
6 ence, qualifications, attributes, and skills
7 of each person who is a member of the ini-
8 tial development team.

9 “(ii) The number of tokens or rights
10 to tokens owned by each member of the
11 initial development team and a description
12 of any limitations or restrictions on the
13 transferability of tokens held by such per-
14 sons.

15 “(iii) If any member of the initial de-
16 velopment team or related person has a
17 right to obtain tokens in the future, in a
18 manner that is distinct from how any third
19 party could obtain tokens, the identity of
20 such person and a description of how such
21 tokens may be obtained.

22 “(G) TRADING PLATFORMS.—The name of
23 any secondary trading platforms on which the
24 token trades, to the extent known.

1 “(H) RELATED PERSON TRANSACTIONS.—

2 A description of any material transaction, or
3 any proposed material transaction, in which the
4 initial development team is a participant and in
5 which one or more related persons participate
6 and had or will have a direct or indirect mate-
7 rial interest. The description shall identify the
8 nature of the transaction, the related persons,
9 the basis on which the persons are related per-
10 sons, and the approximate value of the amount
11 involved in the transaction.

12 “(I) WARNING TO TOKEN PURCHASERS.—

13 A statement that the purchase of tokens in-
14 volves a high degree of risk and the potential
15 loss of money.

16 “(2) SEMIANNUAL DISCLOSURES.—

17 “(A) IN GENERAL.—Every six months, an
18 updated plan of development described under
19 paragraph (1)(D).

20 “(B) TIMING OF DISCLOSURES.—Each dis-
21 closure required under subparagraph (A) shall
22 be made—

23 “(i) within 30 calendar days after the
24 end of the applicable semiannual period;
25 and

1 “(ii) until the earlier of—

2 “(I) the safe harbor end date; or

3 “(II) the date on which the ini-
4 tial development team determines that
5 network maturity has been reached.

6 “(3) POST-FILING TOKEN SALE DISCLO-
7 SURES.—For token sales completed after filing a no-
8 tice of reliance under subsection (c), the date of sale,
9 number of tokens sold, number of token purchasers,
10 any limitations or restrictions on the transferability
11 of tokens sold, price per token, and the type and
12 amount of consideration received.

13 “(4) ONGOING DISCLOSURES WITH RESPECT TO
14 SALES OF TOKENS BY INITIAL DEVELOPMENT
15 TEAM.—Each time a member of the initial develop-
16 ment team sells at least five percent of the member’s
17 tokens that were disclosed pursuant to paragraph
18 (1)(F)(ii) over any period of time before the safe
19 harbor end date, a disclosure of the date of the sale,
20 the number of tokens sold, and the identity of the
21 seller.

22 “(c) NOTICE OF RELIANCE ON SAFE HARBOR FIL-
23 ING REQUIREMENTS.—

24 “(1) IN GENERAL.—The initial development
25 team shall file with the Commission a notice of reli-

1 ance on the safe harbor provided under this section
2 prior to the date of the first token sold in reliance
3 on the safe harbor, except as expressly provided
4 under subsection (h) with respect to tokens sold be-
5 fore the date on which this section takes effect.

6 “(2) CONTENTS.—The notice described under
7 paragraph (1) shall contain the following informa-
8 tion:

9 “(A) The name of each person on the ini-
10 tial development team.

11 “(B) An attestation by a person duly au-
12 thorized by the initial development team that
13 the initial development team have complied with
14 the requirements of this section.

15 “(C) The website where disclosure required
16 under subsection (b) may be accessed.

17 “(D) An email address at which the initial
18 development team can be contacted.

19 “(d) LIMITATION.—This section shall have no effect
20 on the application of section 12(a)(2) or 17.

21 “(e) DURATION OF EXEMPTION.—With respect to to-
22 kens, the relief provided by this section shall expire on
23 the later of—

24 “(1) the date that is three years after the date
25 of the first sale of the tokens; or

1 “(2) the date that is three years after the effec-
2 tive date of this section.

3 “(f) EXIT REPORT FILING REQUIREMENTS.—On or
4 before the safe harbor end date, the initial development
5 team shall file an exit report with the Commission con-
6 taining the following:

7 “(1) DECENTRALIZED NETWORKS.—If the ini-
8 tial development team determines that network ma-
9 turity has been reached for a decentralized network,
10 a legal analysis that includes—

11 “(A) a description of the extent to which
12 decentralization has been reached across a
13 number of dimensions, including voting power,
14 development efforts, and network participation
15 and, if applicable—

16 “(i) examples of material engagement
17 on network development and governance
18 matters by parties unaffiliated with the ini-
19 tial development team; and

20 “(ii) explanations of quantitative
21 measurements of decentralization; and

22 “(B) an explanation of how the initial de-
23 velopment team’s pre-network maturity activi-
24 ties are distinguishable from the team’s ongoing
25 involvement with the network, including—

1 “(i) a discussion of the extent to
2 which the initial development team’s con-
3 tinuing activities are more limited in na-
4 ture and cannot reasonably be expected
5 uniquely to drive an increase in the value
6 of the tokens;

7 “(ii) a confirmation that the initial
8 development team has no material infor-
9 mation about the network that is not pub-
10 licly available; and

11 “(iii) a description of the steps taken
12 to communicate to the network the nature
13 and scope of the initial development team’s
14 continuing activities.

15 “(2) FUNCTIONAL NETWORKS.—If the initial
16 development team determines that network maturity
17 has been reached for a functional network, a legal
18 analysis that includes—

19 “(A) a description of the holders’ use of to-
20 kens—

21 “(i) for the transmission and storage
22 of value on the network;

23 “(ii) for the participation in an appli-
24 cation running on the network; or

1 “(iii) otherwise in a manner consistent
2 with the utility of the network; and

3 “(B) an explanation of how the initial de-
4 velopment team’s pre-network maturity mar-
5 keting efforts and the team’s ongoing efforts
6 will continue to be focused on the token’s con-
7 sumptive use, and not on token price apprecia-
8 tion.

9 “(3) NO NETWORK MATURITY.—If the initial
10 development team determines that network maturity
11 has not been reached—

12 “(A) a description of the status of the
13 project network and the next steps the initial
14 development team intends to take;

15 “(B) contact information for the initial de-
16 velopment team that can be used by holders to
17 communicate with the initial development team;
18 and

19 “(C) a statement acknowledging that the
20 initial development team will register the tokens
21 as a class of securities under section 12(g) of
22 the Securities Exchange Act of 1934 within 120
23 days of the filing of the report under this sub-
24 section.

1 “(g) TRANSITION PERIOD FOR TRADING PLAT-
2 FORMS.—No trading platform shall be subject to the re-
3 quirements of section 6 of the Securities Exchange Act
4 of 1934 due to activity related to the trading of tokens
5 subject to a determination described under subsection
6 (f)(3), if the trading platform prohibits such trading with-
7 in six months of such determination.

8 “(h) TOKENS PREVIOUSLY SOLD.—If, before the
9 date on which this section takes effect, an initial develop-
10 ment team sold tokens (including such tokens sold pursu-
11 ant to a valid exemption from registration or in violation
12 of section 5 (as determined in a Commission order pursu-
13 ant to section 8A that does not identify any other viola-
14 tions of the Federal securities laws)), the initial develop-
15 ment team may make use of the safe harbor provided
16 under this section, if the initial development team files the
17 notice of reliance described under subsection (c) as soon
18 as practicable.

19 “(i) DEFINITION OF QUALIFIED PURCHASER.—For
20 purposes of section 18(b)(3), a ‘qualified purchaser’ in-
21 cludes any person to whom tokens are offered or sold in
22 reliance on this section.

23 “(j) DISQUALIFICATIONS.—This section shall not
24 apply to tokens if the initial development team, or any in-
25 dividual member of the initial development team, would

1 be subject to disqualification under Rule 506(d) (17
2 C.F.R. 230.506(d)).

3 “(k) DEFINITIONS.—In this subsection:

4 “(1) INITIAL DEVELOPMENT TEAM.—The term
5 ‘initial development team’ means each person, group
6 of persons, or entity that provides the essential man-
7 agerial efforts for the development of a network
8 prior to reaching network maturity.

9 “(2) NETWORK.—The term ‘network’ means a
10 system of devices connected to each other to create
11 and validate a ledger of transactions occurring with-
12 in the system, including a system of devices access-
13 ing and operating a protocol that utilizes an existing
14 network for transaction creation and validation.

15 “(3) NETWORK MATURITY.—The term ‘network
16 maturity’ means the status of a decentralized or
17 functional network that is achieved when the net-
18 work meets either of the following:

19 “(A) CONTROL.—The network is not eco-
20 nomically or operationally controlled and is not
21 reasonably likely to be economically or oper-
22 ationally controlled or unilaterally changed by
23 any single person, entity, or group of persons or
24 entities under common control. A network with
25 respect to which the initial development team

owns more than 20 percent of tokens or owns more than 20 percent of the means of determining network consensus does not meet the requirements of this subparagraph.

“(B) FUNCTIONAL.—The network is functional, as demonstrated by the use of the tokens by token holders for the transmission and storage of value on the network, the participation in an application running on the network, or otherwise in a manner consistent with the utility of the network.

“(4) RELATED PERSON.—The term ‘related person’ means—

“(A) the initial development team;

“(B) directors or advisors to the initial development team; and

“(C) immediate family members of the individuals described under subparagraph (A) or (B).

“(5) SAFE HARBOR END DATE.—The term ‘safe harbor end date’ means the date that is the end of the 3-year period described under subsection (e).

“(6) TOKEN.—The term ‘token’ means a digital representation of value or rights that—

“(A) has a transaction history that—

1 “(i) is recorded on a distributed ledger,
 2 er, blockchain, or other publicly accessible
 3 and auditable digital data structure;

4 “(ii) has transactions confirmed
 5 through an independently verifiable process;
 6 and

7 “(iii) cannot be easily modified, and
 8 where any modification is subject to the
 9 network consensus rules;

10 “(B) is capable of being transferred between
 11 persons without an intermediary party;
 12 and

13 “(C) does not represent a financial interest
 14 in a centralized company, partnership, or fund,
 15 including an ownership or debt interest, revenue
 16 share, or entitlement to any interest or dividend
 17 payment.”.

18 (b) AMENDMENTS TO THE SECURITIES EXCHANGE
 19 ACT OF 1934.—

20 (1) DEFINITION OF EXCHANGE.—Section
 21 3(a)(1) of the Securities Exchange Act of 1934 (15
 22 U.S.C. 78c(a)(1)) is amended by adding at the end
 23 the following: “The term ‘exchange’ does not include
 24 a person, organization, association, or group of persons
 25 to the extent such person, organization, asso-

1 ciation, or group of persons constitutes, maintains,
2 or provides a marketplace or facilitates bringing to-
3 gether purchasers and sellers of tokens subject to a
4 safe harbor under section 4B of the Securities Act
5 of 1933, or otherwise performs with respect to such
6 tokens the functions commonly performed by a stock
7 exchange as that term is generally understood.”.

8 (2) DEFINITION OF BROKER.—Section 3(a)(4)
9 of the Securities Exchange Act of 1934 (15 U.S.C.
10 78c(a)(4)) is amended by adding at the end the fol-
11 lowing:

12 “(G) EXCEPTION WITH RESPECT TO CER-
13 TAIN TOKENS.—The term ‘broker’ does not in-
14 clude a person to the extent the person engages
15 in the business of effecting transactions in to-
16 kens subject to a safe harbor under section 4B
17 of the Securities Act of 1933 for the account of
18 others.”.

19 (3) DEFINITION OF DEALER.—Section 3(a)(5)
20 of the Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)(5)) is amended by adding at the end the fol-
22 lowing:

23 “(D) EXCEPTION WITH RESPECT TO CER-
24 TAIN TOKENS.—The term ‘dealer’ does not in-
25 clude a person to the extent the person engages

1 in the business of buying and selling tokens
2 subject to a safe harbor under section 4B of the
3 Securities Act of 1933 for such person's own
4 account through a broker or otherwise.”.

5 (4) DEFINITION OF CLEARING AGENCY.—Sec-
6 tion 3(a)(23)(B) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78c(a)(23)(B)) is amended—

8 (A) by striking “, or (vi)” and inserting “;
9 (vi)”; and

10 (B) by striking the period at the end and
11 inserting “; or (vii) a person, organization, as-
12 sociation, or group of persons with respect to
13 activities specified in subparagraph (A) involv-
14 ing tokens subject to a safe harbor under sec-
15 tion 4B of the Securities Act of 1933.”.

16 (5) DEFINITION OF TRANSFER AGENT.—Sec-
17 tion 3(a)(25) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78c(a)(25)) is amended—

19 (A) by striking “or any registered clearing
20 agency” and inserting “, any registered clearing
21 agency”; and

22 (B) by striking the period at the end and
23 inserting “, or any person, organization, asso-
24 ciation, or group of persons who performs such
25 functions solely with respect to tokens subject

1 to a safe harbor under section 4B of the Securi-
2 ties Act of 1933.”.

3 (6) REGISTRATION EXEMPTION.—Section
4 12(g)(2) of the Securities Exchange Act of 1934 (15
5 U.S.C. 78l(g)(2)) is amended by adding at the end
6 the following:

7 “(I) any token offered and sold in reliance on
8 a safe harbor under section 4B of the Securities Act
9 of 1933.”.

10 (c) AMENDMENT TO THE INVESTMENT ADVISERS
11 ACT OF 1940.—Section 202(a)(11) of the Investment Ad-
12 visers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended
13 by adding at the end the following: “The term ‘investment
14 adviser’ does not include a person to the extent the person
15 advises others with respect to, or issues or promulgates
16 analyses or reports concerning, tokens subject to a safe
17 harbor under section 4B of the Securities Act of 1933.”.

18 (d) RULEMAKING.—Not later than the end of the 1-
19 year period beginning on the date of enactment of this
20 Act, the Securities and Exchange Commission shall issue
21 rules to carry out the amendments made by this Act.

22 (e) EFFECTIVE DATE.—The provisions of law added
23 by the amendments made by this Act shall take effect

1 after the end of the 1-year period beginning on the date
2 of enactment of this Act.

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