



May 14, 2024

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

Re: Providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Securities and Exchange Commission relating to "Staff Accounting Bulletin No. 121" (H.J. Res. 109)

Dear Majority Leader Schumer and Minority Leader McConnell:

The American Bankers Association, Bank Policy Institute, Financial Services Forum, and Securities Industry and Financial Markets Association (Associations) write to express our support for H.J. Res. 109, the Congressional Review Act resolution of disapproval for the Securities and Exchange Commission's "Staff Accounting Bulletin 121." H.J. Res. 109 was introduced by Reps. Mike Flood (R-NE) and Wiley Nickel (D-NC) and passed the House of Representatives with a strong bipartisan vote on May 8, 2024. The Senate companion, S.J. Res. 59, was introduced by Sen. Cynthia Lummis (R-WY).

In March 2022, the Securities and Exchange Commission's (SEC) Office of the Chief Accountant released Staff Accounting Bulletin (SAB) 121, without consulting the prudential regulators or soliciting public comment, to address perceived risks to publicly traded companies that safeguard digital assets for their customers. Under SAB 121, an entity responsible for safeguarding digital assets for platform users must measure safeguarding assets and obligations on its balance sheet at the fair value of the related assets, which is a departure from accounting standards and the historical practice of treating custodial assets as off-balance sheet. As this effectively treats the custodied assets as those owned by a bank, SAB 121 effectively precludes banks from offering digital asset custody at scale since placing the value of client assets on their balance sheets will impact certain capital, liquidity, and other prudential requirements. Furthermore, SAB 121 undercuts the ability of banks to develop responsible use cases for distributed ledger technology (DLT) and encumbers regulated broker-dealers from custody services as a result of the net capital rule (Rule 15c3-1), which treats the on-balance sheet items as non-allowable assets.

On February 14, 2024, the Associations sent a joint letter to the SEC¹ noting that over the past two years SAB 121 has curbed the ability of our member banks to develop and bring to market at scale certain digital asset products and services. This includes spot bitcoin exchange traded

¹ <https://www.aba.com/advocacy/policy-analysis/joint-comments-to-sec-on-sab-121>

products (recently approved by the Commission for investors) and the use of DLT to record traditional financial assets (i.e. tokenization).

SAB 121 represents a significant departure from longstanding accounting treatment for custodial assets and threatens the industry's ability to provide its customers with safe and sound custody of digital assets. Other, non-bank digital asset platforms subject to SAB 121 are not required to meet the same capital, liquidity, or other prudential standards as banks and therefore do not face the economically prohibitive implications of SAB 121. Limiting banks' ability to offer these services leaves customers with few well-regulated, trusted options for safeguarding their digital asset portfolios and ultimately exposes them to increased risk.

The Associations respectfully request that Members of the Senate vote in favor of H.J. Res. 109.

Sincerely,

American Bankers Association
Bank Policy Institute
Financial Services Forum
Securities Industry and Financial Markets Association

cc: Members of the United States Senate