117TH CONGRESS  
1st Session  

H. R.  

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

Mr. McHENRY introduced the following bill; which was referred to the Committee on __________________________

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”.
SEC. 2. TOKEN SAFE HARBOR.

(a) In General.—The Securities Act of 1933 (15 U.S.C. 77d) is amended by inserting after section 4A the following:

“SEC. 4B. TOKEN SAFE HARBOR.

“(a) In General.—Except as provided under subsection (d), this title does not apply to any offer, sale, or other transaction involving a token if the following conditions are satisfied by the initial development team of such token:

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

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

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

“(2) The token is offered and sold for the purpose of facilitating access to, participation on, or the development of the network.

“(3) The initial development team complies with—

“(A) the disclosure requirements under subsection (b);
“(B) the notice of reliance on the safe harbor filing requirements under subsection (c); and

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

“(b) DISCLOSURE REQUIREMENTS.—The initial development team shall disclose the following information on a freely accessible public website:

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

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

“(B) TRANSACTION HISTORY.—A narrative description of the steps necessary to independently access, search, and verify the transaction history of the network.

“(C) TOKEN ECONOMICS.—A narrative description of the purpose of the network, the protocol, and its operation, including—
“(i) information explaining the launch
and supply process, including the number
of tokens to be issued in an initial allocation, the total number of tokens to be cre-
ated, the release schedule for the tokens, and the total number of tokens out-
standing;

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

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

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

“(D) PLAN OF DEVELOPMENT.—The cur-
rent state and timeline for the development of the network to show how and when the initial
development team intends to achieve network maturity.
“(E) PRIOR TOKEN SALES.—For token sales completed prior to filing a notice of reliance under subsection (c), the date of sale, number of tokens sold, number of token purchasers, any limitations or restrictions on the transferability of tokens sold, price per token, and the type and amount of consideration received.

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

“(i) The names and relevant experience, qualifications, attributes, and skills of each person who is a member of the initial development team.

“(ii) The number of tokens or rights to tokens owned by each member of the initial development team and a description of any limitations or restrictions on the transferability of tokens held by such persons.

“(iii) If any member of the initial development team or related person has a right to obtain tokens in the future, in a manner that is distinct from how any third party could obtain tokens, the identity of
such person and a description of how such
tokens may be obtained.

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

“(H) RELATED PERSON TRANSACTIONS.—
A description of any material transaction, or
any proposed material transaction, in which the
initial development team is a participant and in
which one or more related persons participate
and had or will have a direct or indirect mate-
rial interest. The description shall identify the
nature of the transaction, the related persons,
the basis on which the persons are related per-
sons, and the approximate value of the amount
involved in the transaction.

“(I) WARNING TO TOKEN PURCHASERS.—
A statement that the purchase of tokens in-
volves a high degree of risk and the potential
loss of money.

“(2) SEMIANNUAL DISCLOSURES.—

“(A) IN GENERAL.—Every six months, an
updated plan of development described under
paragraph (1)(D).
“(B) TIMING OF DISCLOSURES.—Each disclosure required under subparagraph (A) shall be made—

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

“(ii) until the earlier of—

“(I) the safe harbor end date; or

“(II) the date on which the initial development team determines that network maturity has been reached.

“(3) POST-FILING TOKEN SALE DISCLOSURES.—For token sales completed after filing a notice of reliance under subsection (c), the date of sale, number of tokens sold, number of token purchasers, any limitations or restrictions on the transferability of tokens sold, price per token, and the type and amount of consideration received.

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

“(c) Notice of Reliance on Safe Harbor Fil-
ing Requirements.—

“(1) In general.—The initial development
team shall file with the Commission a notice of reli-
ance on the safe harbor provided under this section
prior to the date of the first token sold in reliance
on the safe harbor, except as expressly provided
under subsection (h) with respect to tokens sold be-
fore the date on which this section takes effect.

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

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

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

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

“(D) An email address at which the initial
development team can be contacted.
“(d) LIMITATION.—This section shall have no effect on the application of section 12(a)(2) or 17.

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

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

“(2) the date that is three years after the effective date of this section.

“(f) EXIT REPORT FILING REQUIREMENTS.—On or before the safe harbor end date, the initial development team shall file an exit report with the Commission containing the following:

“(1) DECENTRALIZED NETWORKS.—If the initial development team determines that network maturity has been reached for a decentralized network, a legal analysis that includes—

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

“(i) examples of material engagement on network development and governance
matters by parties unaffiliated with the initial development team; and

“(ii) explanations of quantitative measurements of decentralization;

“(B) an explanation of how the initial development team’s pre-network maturity activities are distinguishable from the team’s ongoing involvement with the network, including—

“(i) a discussion of the extent to which the initial development team’s continuing activities are more limited in nature and cannot reasonably be expected uniquely to drive an increase in the value of the tokens;

“(ii) a confirmation that the initial development team has no material information about the network that is not publicly available; and

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

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

“(A) a description of the holders’ use of tokens—

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

“(ii) for the participation in an application running on the network; or

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

“(B) an explanation of how the initial development team’s pre-network maturity marketing efforts and the team’s ongoing efforts will continue to be focused on the token’s consumptive use, and not on token price appreciation.

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

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

“(B) contact information for the initial development team that can be used by holders to
communicate with the initial development team; and

“(C) a statement acknowledging that the initial development team will register the tokens as a class of securities under section 12(g) of the Securities Exchange Act of 1934 within 120 days of the filing of the report under this subsection.

“(g) TRANSITION PERIOD FOR TRADING PLATFORMS.—No trading platform shall be subject to the requirements of section 6 of the Securities Exchange Act of 1934 due to activity related to the trading of tokens subject to a determination described under subsection (f)(3), if the trading platform prohibits such trading within six months of such determination.

“(h) TOKENS PREVIOUSLY SOLD.—If, before the date on which this section takes effect, an initial development team sold tokens (including such tokens sold pursuant to a valid exemption from registration or in violation of section 5 (as determined in a Commission order pursuant to section 8A that does not identify any other violations of the Federal securities laws)), the initial development team may make use of the safe harbor provided under this section, if the initial development team files the
notice of reliance described under subsection (c) as soon
as practicable.

“(i) Definition of Qualified Purchaser.—For
purposes of section 18(b)(3), a ‘qualified purchaser’ in-
cludes any person to whom tokens are offered or sold in
reliance on this section.

“(j) Disqualifications.—This section shall not
apply to tokens if the initial development team, or any in-
dividual member of the initial development team, would
be subject to disqualification under Rule 506(d) (17
C.F.R. 230.506(d)).

“(k) Definitions.—In this subsection:

“(1) Initial Development Team.—The term
‘initial development team’ means each person, group
of persons, or entity that provides the essential man-
gerual efforts for the development of a network
prior to reaching network maturity.

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

“(3) Network Maturity.—The term ‘network
maturity’ means the status of a decentralized or
functional network that is achieved when the network meets either of the following:

“(A) CONTROL.—The network is not economically or operationally controlled and is not reasonably likely to be economically or operationally controlled or unilaterally changed by any single person, entity, or group of persons or entities under common control. A network with 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—

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

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

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

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

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

(b) Amendments to the Securities Exchange Act of 1934.—

(1) Definition of Exchange.—Section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(1)) is amended by adding at the end the following: “The term ‘exchange’ does not include a person, organization, association, or group of persons to the extent such person, organization, association, or group of persons constitutes, maintains, or provides a marketplace or facilitates bringing together purchasers and sellers of tokens subject to a safe harbor under section 4B of the Securities Act of 1933, or otherwise performs with respect to such tokens the functions commonly performed by a stock exchange as that term is generally understood.”.

(2) Definition of Broker.—Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended by adding at the end the following:

“(G) Exception with respect to certain tokens.—The term ‘broker’ does not include a person to the extent the person engages in the business of effecting transactions in to-
okens subject to a safe harbor under section 4B of the Securities Act of 1933 for the account of others.”.

(3) Definition of dealer.—Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended by adding at the end the following:

“(D) Exception with respect to certain tokens.—The term ‘dealer’ does not include a person to the extent the person engages in the business of buying and selling tokens subject to a safe harbor under section 4B of the Securities Act of 1933 for such person’s own account through a broker or otherwise.”.


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

(B) by striking the period at the end and inserting “; or (vii) a person, organization, association, or group of persons with respect to activities specified in subparagraph (A) involving tokens subject to a safe harbor under section 4B of the Securities Act of 1933.”.

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

(B) by striking the period at the end and inserting “, or any person, organization, association, or group of persons who performs such functions solely with respect to tokens subject to a safe harbor under section 4B of the Securities Act of 1933.”.

(6) **Registration Exemption.**—Section 12(g)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(2)) is amended by adding at the end the following:

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

(c) **Amendment to the Investment Advisers Act of 1940.**—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by adding at the end the following: “The term ‘investment adviser’ does not include a person to the extent the person advises others with respect to, or issues or promulgates...
analyses or reports concerning, tokens subject to a safe harbor under section 4B of the Securities Act of 1933.”.

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

(e) EFFECTIVE DATE.—The provisions of law added by the amendments made by this Act shall take effect after the end of the 1-year period beginning on the date of enactment of this Act.