

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.

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## 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

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## 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

1 owns more than 20 percent of tokens or owns  
2 more than 20 percent of the means of deter-  
3 mining network consensus does not meet the re-  
4 quirements of this subparagraph.

5 “(B) FUNCTIONAL.—The network is func-  
6 tional, as demonstrated by the use of the tokens  
7 by token holders for the transmission and stor-  
8 age of value on the network, the participation  
9 in an application running on the network, or  
10 otherwise in a manner consistent with the util-  
11 ity of the network.

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

14 “(A) the initial development team;

15 “(B) directors or advisors to the initial de-  
16 velopment team; and

17 “(C) immediate family members of the in-  
18 dividuals described under subparagraph (A) or  
19 (B).

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

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

25 “(A) has a transaction history that—

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

4 “(ii) has transactions confirmed  
5 through an independently verifiable proc-  
6 ess; 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 be-  
11 tween 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 per-  
25 sons 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.

○