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(Original Signature of Member)

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”.

1 **SEC. 2. TOKEN SAFE HARBOR.**

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

5 **“SEC. 4B. TOKEN SAFE HARBOR.**

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

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

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

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

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

21 “(3) The initial development team complies
22 with—

23 “(A) the disclosure requirements under
24 subsection (b);

1 “(B) the notice of reliance on the safe har-
2 bor filing requirements under subsection (c);
3 and

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

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

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

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

18 “(B) TRANSACTION HISTORY.—A narrative
19 description of the steps necessary to independ-
20 ently access, search, and verify the transaction
21 history of the network.

22 “(C) TOKEN ECONOMICS.—A narrative de-
23 scription of the purpose of the network, the
24 protocol, and its operation, including—

1 “(i) information explaining the launch
2 and supply process, including the number
3 of tokens to be issued in an initial alloca-
4 tion, the total number of tokens to be cre-
5 ated, the release schedule for the tokens,
6 and the total number of tokens out-
7 standing;

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

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

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

20 “(D) PLAN OF DEVELOPMENT.—The cur-
21 rent state and timeline for the development of
22 the network to show how and when the initial
23 development team intends to achieve network
24 maturity.

1 “(E) PRIOR TOKEN SALES.—For token
2 sales completed prior to filing a notice of reli-
3 ance under subsection (c), the date of sale,
4 number of tokens sold, number of token pur-
5 chasers, any limitations or restrictions on the
6 transferability of tokens sold, price per token,
7 and the type and amount of consideration re-
8 ceived.

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

11 “(i) The names and relevant experi-
12 ence, qualifications, attributes, and skills
13 of each person who is a member of the ini-
14 tial development team.

15 “(ii) The number of tokens or rights
16 to tokens owned by each member of the
17 initial development team and a description
18 of any limitations or restrictions on the
19 transferability of tokens held by such per-
20 sons.

21 “(iii) If any member of the initial de-
22 velopment team or related person has a
23 right to obtain tokens in the future, in a
24 manner that is distinct from how any third
25 party could obtain tokens, the identity of

1 such person and a description of how such
2 tokens may be obtained.

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

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

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

21 “(2) SEMIANNUAL DISCLOSURES.—

22 “(A) IN GENERAL.—Every six months, an
23 updated plan of development described under
24 paragraph (1)(D).

1 “(B) TIMING OF DISCLOSURES.—Each dis-
2 closure required under subparagraph (A) shall
3 be made—

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

7 “(ii) until the earlier of—

8 “(I) the safe harbor end date; or

9 “(II) the date on which the ini-
10 tial development team determines that
11 network maturity has been reached.

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

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

1 the number of tokens sold, and the identity of the
2 seller.

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

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

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

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

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

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

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

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

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

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

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

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

14 “(1) DECENTRALIZED NETWORKS.—If the ini-
15 tial development team determines that network ma-
16 turity has been reached for a decentralized network,
17 a legal analysis that includes—

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

23 “(i) examples of material engagement
24 on network development and governance

1 matters by parties unaffiliated with the ini-
2 tial development team; and

3 “(ii) explanations of quantitative
4 measurements of decentralization;

5 “(B) an explanation of how the initial de-
6 velopment team’s pre-network maturity activi-
7 ties are distinguishable from the team’s ongoing
8 involvement with the network, including—

9 “(i) a discussion of the extent to
10 which the initial development team’s con-
11 tinuing activities are more limited in na-
12 ture and cannot reasonably be expected
13 uniquely to drive an increase in the value
14 of the tokens;

15 “(ii) a confirmation that the initial
16 development team has no material infor-
17 mation about the network that is not pub-
18 licly available; and

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

23 “(2) FUNCTIONAL NETWORKS.—If the initial
24 development team determines that network maturity

1 has been reached for a functional network, a legal
2 analysis that includes—

3 “(A) a description of the holders’ use of to-
4 kens—

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

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

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

11 “(B) an explanation of how the initial de-
12 velopment team’s pre-network maturity mar-
13 keting efforts and the team’s ongoing efforts
14 will continue to be focused on the token’s con-
15 sumptive use, and not on token price apprecia-
16 tion.

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

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

23 “(B) contact information for the initial de-
24 velopment team that can be used by holders to

1 communicate with the initial development team;
2 and

3 “(C) a statement acknowledging that the
4 initial development team will register the tokens
5 as a class of securities under section 12(g) of
6 the Securities Exchange Act of 1934 within 120
7 days of the filing of the report under this sub-
8 section.

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

16 “(h) TOKENS PREVIOUSLY SOLD.—If, before the
17 date on which this section takes effect, an initial develop-
18 ment team sold tokens (including such tokens sold pursu-
19 ant to a valid exemption from registration or in violation
20 of section 5 (as determined in a Commission order pursu-
21 ant to section 8A that does not identify any other viola-
22 tions of the Federal securities laws)), the initial develop-
23 ment team may make use of the safe harbor provided
24 under this section, if the initial development team files the

1 notice of reliance described under subsection (c) as soon
2 as practicable.

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

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

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

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

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

24 “(3) NETWORK MATURITY.—The term ‘network
25 maturity’ means the status of a decentralized or

1 functional network that is achieved when the net-
2 work meets either of the following:

3 “(A) CONTROL.—The network is not eco-
4 nomically or operationally controlled and is not
5 reasonably likely to be economically or oper-
6 ationally controlled or unilaterally changed by
7 any single person, entity, or group of persons or
8 entities under common control. A network with
9 respect to which the initial development team
10 owns more than 20 percent of tokens or owns
11 more than 20 percent of the means of deter-
12 mining network consensus does not meet the re-
13 quirements of this subparagraph.

14 “(B) FUNCTIONAL.—The network is func-
15 tional, as demonstrated by the use of the tokens
16 by token holders for the transmission and stor-
17 age of value on the network, the participation
18 in an application running on the network, or
19 otherwise in a manner consistent with the util-
20 ity of the network.

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

23 “(A) the initial development team;

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

1 “(C) immediate family members of the in-
2 dividuals described under subparagraph (A) or
3 (B).

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

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

9 “(A) has a transaction history that—

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

13 “(ii) has transactions confirmed
14 through an independently verifiable proc-
15 ess; and

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

19 “(B) is capable of being transferred be-
20 tween persons without an intermediary party;
21 and

22 “(C) does not represent a financial interest
23 in a centralized company, partnership, or fund,
24 including an ownership or debt interest, revenue

1 share, or entitlement to any interest or dividend
2 payment.”.

3 (b) AMENDMENTS TO THE SECURITIES EXCHANGE
4 ACT OF 1934.—

5 (1) DEFINITION OF EXCHANGE.—Section
6 3(a)(1) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78c(a)(1)) is amended by adding at the end
8 the following: “The term ‘exchange’ does not include
9 a person, organization, association, or group of per-
10 sons to the extent such person, organization, asso-
11 ciation, or group of persons constitutes, maintains,
12 or provides a marketplace or facilitates bringing to-
13 gether purchasers and sellers of tokens subject to a
14 safe harbor under section 4B of the Securities Act
15 of 1933, or otherwise performs with respect to such
16 tokens the functions commonly performed by a stock
17 exchange as that term is generally understood.”.

18 (2) DEFINITION OF BROKER.—Section 3(a)(4)
19 of the Securities Exchange Act of 1934 (15 U.S.C.
20 78c(a)(4)) is amended by adding at the end the fol-
21 lowing:

22 “(G) EXCEPTION WITH RESPECT TO CER-
23 TAIN TOKENS.—The term ‘broker’ does not in-
24 clude a person to the extent the person engages
25 in the business of effecting transactions in to-

1 kens subject to a safe harbor under section 4B
2 of the Securities Act of 1933 for the account of
3 others.”.

4 (3) DEFINITION OF DEALER.—Section 3(a)(5)
5 of the Securities Exchange Act of 1934 (15 U.S.C.
6 78c(a)(5)) is amended by adding at the end the fol-
7 lowing:

8 “(D) EXCEPTION WITH RESPECT TO CER-
9 TAIN TOKENS.—The term ‘dealer’ does not in-
10 clude a person to the extent the person engages
11 in the business of buying and selling tokens
12 subject to a safe harbor under section 4B of the
13 Securities Act of 1933 for such person’s own
14 account through a broker or otherwise.”.

15 (4) DEFINITION OF CLEARING AGENCY.—Sec-
16 tion 3(a)(23)(B) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78c(a)(23)(B)) is amended—

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

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

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

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

7 (B) by striking the period at the end and
8 inserting “, or any person, organization, asso-
9 ciation, or group of persons who performs such
10 functions solely with respect to tokens subject
11 to a safe harbor under section 4B of the Securi-
12 ties Act of 1933.”.

13 (6) REGISTRATION EXEMPTION.—Section
14 12(g)(2) of the Securities Exchange Act of 1934 (15
15 U.S.C. 78l(g)(2)) is amended by adding at the end
16 the following:

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

20 (c) AMENDMENT TO THE INVESTMENT ADVISERS
21 ACT OF 1940.—Section 202(a)(11) of the Investment Ad-
22 visers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended
23 by adding at the end the following: “The term ‘investment
24 adviser’ does not include a person to the extent the person
25 advises others with respect to, or issues or promulgates

1 analyses or reports concerning, tokens subject to a safe
2 harbor under section 4B of the Securities Act of 1933.”.

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

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