

The Honorable Patrick McHenry  
Chairman  
House Financial Services Committee  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
House Financial Services Committee  
2129 Rayburn House Office Building  
Washington, DC 20515

February 28, 2024

Dear Chair McHenry, Ranking Member Waters, and members of the Committee,

We the undersigned organizations and individuals write to you to express opposition to [HJ Resolution 109](#), a resolution that would rescind the Securities and Exchange Commission's Staff Accounting Bulletin 121 (SAB 121). Passing this resolution through Congress and rescinding the SEC's guidance on this matter would likely result in investors being exposed to more harm from the risks and questionable practices found throughout crypto markets, and could also harm investors by making it more difficult for the SEC to issue guidance on a wide range of accounting matters across other markets as well.

This guidance from the SEC is intended to give entities that provide custodial services for digital assets clear guidance regarding the accounting of these assets. This is necessary to ensure the safekeeping of these assets, given the unique legal, regulatory and market risks they pose. Many investors who suffered losses due to crypto platforms that failed during the crypto market crash of 2022-2023 suffered harm precisely because of the poor custody practices found throughout the industry itself. As such, issuing this guidance is appropriate and well within the scope of the SEC's remit, and such guidance complements but does not substitute the prudential regulation and oversight offered by banking regulators for those banking institutions that have custodial relationships with crypto firms.

There are good reasons why crypto assets should be recognized as liabilities on these entities' balance sheets. It is common knowledge that crypto assets, and the industry, have a unique and heightened risk profile – the crash of 2022 and 2023, with losses in the trillions due to poor industry practices, management, and outright fraud, is a strong example of such risk and resulting harm. In particular, many crypto firms are facing regulatory enforcement actions at the state and federal level or are engaged in litigation where key legal and technical questions about the industry are in dispute and have yet to be resolved - generating unique legal risks that make it difficult for firms to determine how they might be impacted by crypto firms' insolvency. These risks and questions are serious factors that heighten the risk profile for SEC registrants seeking to offer custody services, and the guidance's recommendations are a prudent response to them. Indeed, SAB 121 was issued seven months before the collapse of FTX.

It is also worth noting that some parties arguing for rescinding this guidance are likely not motivated by shaping the SEC's approach to providing accounting standard guidance writ large. Some proponents are simply looking for a way to profit from providing custodial services to the crypto industry - whether or not the risks present in crypto markets are adequately addressed. Others are simply seeking to add more fuel to the crypto industry's unrelenting campaign of criticism of the SEC for simply enforcing existing securities laws and standards and create another opportunity to shield the crypto industry from sound regulatory standards while blaming regulatory agencies for the industry's failures.

Most importantly, passage of this resolution could have significant negative impacts for investors and investor-owned companies in financial markets more broadly, even if they never touch crypto. The SEC, other affiliated bodies that determine accounting standards, and many regulated entities rely on staff accounting bulletins as a source of informal guidance. Bulletins are often issued (in a non-binding fashion) after the SEC receives queries from several regulated entities on similar accounting questions pertinent to particular scenarios. These bulletins provide clarity and consistency to those actors in a timely and responsive fashion.

Yet, if this resolution is passed, there's real legal uncertainty regarding how widely the CRA's prohibition on enacting substantially similar policy could apply to the SEC. It could be interpreted to apply to a wide range of accounting guidance the SEC and its affiliates provide across all its regulated markets and actors. Such an outcome would have a significant chilling effect on their ability to issue accounting standards guidance, which could in turn lead to major risks associated with accounting practices being unaddressed or otherwise flagged. The history of financial markets has hard lessons to share when it comes to poor accounting standards that hide misleading or fraudulent practices, which end up roiling financial markets - as those who remember Enron, WorldCom, and other major financial crises rooted in accounting practices mismanagement would no doubt agree.

This is an outcome that Members of Congress should strenuously avoid. We urge members of the Committee to oppose this resolution when it comes before them for mark-up in committee, and instead focus their efforts on supporting the SEC and other regulators who are seeking to hold the crypto industry accountable and provide investors with timely information to make sound investment decisions and safeguard their assets against exposure to the heightened and unique risk this industry poses to them.

Ultimately, the SEC has an obligation to provide regulatory guidance and oversight that not only protects individual investors or firms, but also provides safeguards that help ensure markets as a whole are fair, efficient and have a measure of stability. SAB 121 offers reasonable and prudent guidance with this obligation in mind.

Thank you,

*Organizations*

Americans for Financial Reform

Consumer Federation of America

Consumer Reports

Demand Progress

Institute for Agriculture and Trade Policy

New Jersey Citizen Action

Public Citizen

Texas Appleseed

20/20 Vision

U.S. PIRG

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