



CONGRESSMAN WILEY NICKEL
U.S. HOUSE OF REPRESENTATIVES
NORTH CAROLINA'S THIRTEENTH DISTRICT

May 15, 2024

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chair Gensler:

On May 8, 2024, the House of Representatives sent a clear message with a bipartisan vote on H.J.Res. 109, my resolution with Rep. Mike Flood to repeal Staff Accounting Bulletin No. 121 (SAB121) under the Congressional Review Act. In the wake of this vote, I reached out to your office requesting time to discuss my significant policy concerns with SAB 121 and the process that led to its release. I received no response from your office.

It's the mission of the Securities and Exchange Commission (SEC) to protect investors. However, SAB121 does just the opposite by preventing highly regulated American banks from placing digital assets in their custody at scale. Under SAB 121, banks must include their clients' custodied assets on their balance sheet, which is a stark contrast to traditional custody practices and GAAP principles. This results in a prohibitively expensive regulatory burden, making it virtually impossible for banks to offer these essential services. Regardless of your stance on digital assets, treating them differently leaves consumers to rely on riskier offshore custody solutions to safeguard their assets.

In January, the SEC approved spot bitcoin ETPs, a decision that was applauded by legislators on both sides of the aisle. This drastically increased retail investors' access to the digital asset class through a regulated financial product. Unfortunately, because of SAB 121, regulated American banks aren't serving as the custodians for these products as they would with a traditional ETP. Instead, one non-bank entity is the custodian for most of the Spot Bitcoin ETPs, potentially creating a concentration risk for our financial system.

Regardless of the underlying policy issues, the SEC's breach of the rulemaking process in issuing SAB 121 adds an additional layer of concern. Staff Accounting Bulletins are supposed to guide

understanding of existing policy. They're not meant to be used to make new policies, as SAB 121 does.

Unfortunately, the SEC's open hostility toward the digital assets industry isn't serving President Biden's best interests. The SEC is turning cryptocurrency regulation into a political football and forcing President Biden to choose sides on an issue that matters to many Americans.

The Senate will soon pass H.J. Res. 109 with bipartisan support. I'm hopeful that this bipartisan, bicameral resolution will send a message: it's time to adjust the SEC's misguided approach to digital assets.

I strongly encourage you to withdraw SAB121 to protect investors and the financial system, bolster American competitiveness, and respect Congress's role in the administrative rulemaking process. Acting now to withdraw SAB121, before it passes in the Senate, to allow for the custodial banking of digital assets would be a positive step toward a balanced regulatory approach to cryptocurrency. I welcome a meaningful discussion with you about your concerns.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Wiley Nickel". The signature is fluid and cursive, with a large loop at the end of the last name.

Wiley Nickel
Member of Congress