

September 27, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Re: Uniform Treatment of Custodial Assets Act (H.R. 5741)

Dear Chairman McHenry and Ranking Member Waters:

The American Bankers Association (ABA) welcomes and strongly supports H.R. 5741, the “Uniform Treatment of Custodial Assets Act” which was recently introduced by Reps. Mike Flood, French Hill, Ritchie Torres, and Wiley Nickel. The bill would prohibit the Securities and Exchange Commission and the federal banking agencies from requiring banks to include assets held in custody or safekeeping as a liability on the institution’s balance sheet.

In March 2022, the SEC released Staff Accounting Bulletin 121 (SAB 121) to address perceived risks to publicly-traded companies that safeguard crypto-assets for their customers. Under SAB 121, an entity responsible for safeguarding cryptocurrency assets for platform users must present a liability on its balance sheet at fair value to reflect that obligation, as well as a corresponding asset. SAB 121 is a departure from the banking industry’s historical practice of treating custody assets off-balance sheet, and this accounting treatment effectively precludes banks from offering digital asset custody at scale since placing the value of client assets on balance sheet will impact prudential requirements such as capital, liquidity, and other mandates.

Banks have long provided safe and well-regulated custody services to investors for securities and other assets. However, the implications of SAB 121 mean few banks are currently offering custody services for digital assets, leaving consumers with few options for a safe, well-regulated custody service for digital assets. Many have turned to non-bank market entrants that are not subject to prudential regulation and examination and are not subject to robust capital and liquidity requirements. As recent events have made clear, this unregulated activity can expose consumers and counterparties to significant harm.

We encourage you and your committee members to bring this bill up for prompt consideration and action. We would be pleased to meet with you and your staff to

discuss this legislation that would enhance the banking industry's ability to provide digital asset services in a safe and sound way.

Sincerely,



Cc: Members of the House Committee on Financial Services