

## Key CRA Considerations: SEC Staff Accounting Bulletin 121 Regarding Holding Risky Crypto Assets

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On March 31, 2022, the SEC's Office of the Chief Accountant and Division of Corporation Finance published [Staff Accounting Bulletin \(SAB\) 121](#). SAB 121 provides that companies holding crypto assets for customers face unique risks and should therefore reflect those assets as liabilities on their balance sheets. This important guidance issued for the protection of investors and the markets is now the subject of a Congressional Review Act (CRA) resolution.

### SAB 121

SAB 121 details the unique risks and uncertainties involved when companies hold crypto assets for customers. These include the risk of significant losses arising from the technology underlying crypto-assets, the legal uncertainty surrounding how crypto-assets would be treated in an enforcement action or bankruptcy, and the significantly fewer regulatory requirements for holding crypto assets for customers. As a result, SAB 121 provides that a company responsible for holding crypto-assets for customers should present a liability on its balance sheet at fair value to reflect its obligation to safeguard the crypto-assets. It also provides that the notes to the financial statements should include clear disclosure of the nature and amount of crypto assets that an entity is responsible for holding for its platform users.


### Congressional Review Act

On February 1, 2024, a CRA resolution was [introduced](#) to overturn SAB 121. Agency action that is [overturned](#) pursuant to the CRA is immediately ineffective. Moreover, it may not be reissued in substantially the same form, and new agency action that is substantially the same may not be taken unless specifically authorized by a law enacted after the date of the CRA resolution. The CRA resolution to overturn SAB 121 is scheduled to be marked up in the House on [February 29<sup>th</sup>](#).

### Key Considerations

When thinking about the CRA, here are a few general and specific issues to consider.

First, generally, consideration should be given to the fact that accounting standards and bulletins are often highly technical and result from extensive deliberation and considered opinion of highly experienced experts. That doesn't mean they are always right, but is Congress the right forum for reviewing such accounting standards? Does it have the expertise? Will it be able to fully understand all the implications and ramifications of accounting standards, both immediately and downstream in terms of corporate impact? Does Congress want to set a precedent by nullifying



accounting requirements that are designed and intended to protect investors, customers, markets, and financial stability?

Second, specifically, proponents of SAB 121 argue it is an important measure that helps protect investors as well as the entire financial system from the potentially disastrous consequences of another crypto-market meltdown. For example, under the bulletin, banks would be among the entities anticipated to have capital to protect against the liabilities posed by crypto assets, thereby avoiding crashes, contagion, and bailouts.<sup>1</sup> More generally, accounting standards are critical to the proper operation of the U.S. capital markets. Those markets are the envy of the world because they are well-regulated, which is why so many people around the world have the trust and confidence to invest their money in those markets. History shows, including by the Enron scandal and many others, that weak accounting can lead to financial disaster.

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<sup>1</sup> Lee Reiners and Santiga Gazi, *Wanted: A Prudential Framework for Crypto Assets*, 76 Ark. L. Rev. 311, 336 (2023).


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