



July 30, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

Re: H.R.3684, Sec. _____. Enhancement of Information Reporting for Brokers and Digital Assets.

The Blockchain Association (the “Association”) is a not-for-profit organization dedicated to improving public policy in ways that will help public blockchain networks and their users develop and prosper in the United States. As the unified voice of the blockchain and cryptocurrency industry in the United States, the Association believes decentralized networks and other technological innovations are key to the future of the U.S. economy. We seek smart, simple, and supportive legislation to ensure that the United States continues to be a leader in this ecosystem.

As currently drafted, the recently announced Bipartisan Infrastructure Bill (the “Bill”) would jeopardize that future. The draft provision titled “Enhancement of Information Reporting for Brokers and Digital Assets” would likely lead to a host of unintended consequences, not only for the industry’s ability to operate in the United States but also for the privacy rights of all Americans. Given the highly compressed timeline on which the provision is being considered, the full extent of its implications is impossible to predict. What is certain, however, is that a provision written as broadly as this one will do little to advance its underlying goals while making great strides towards excluding the next major wave of technological innovation from the shores of the United States.

As presently drafted, the Bill would expand the definition of “broker” under section 6045(c)(1) of the Internal Revenue Code of 1986 to include “(D) any person who (for consideration) is responsible for and regularly provides any service effectuating transfers of digital assets.” Per section 6045(c)(1), these newly defined brokers would be obligated to “make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.”

The Association sees at least two serious problems with the proposed expanded definition of “broker.” As an initial matter, the drafted definition of “broker” is so imprecise that it is bound to spur mass confusion and a torrent of disputes about which entities must disclose what transactions. Given its broadest reading, the definition could capture almost any participant in

decentralized networks. For example, it could be interpreted to include a software developer whose sole participation in digital currency transactions is designing and selling software to third parties who may (or may not) go on to use it to engage in transactions with others.

Additionally, many of the potential “brokers” would be unable to satisfy their new legal obligations. For example, if engineers of cryptocurrency wallet software were “brokers,” they would have no means of reporting transactions that they “effectuated” because they play no role in those transactions beyond providing someone with the software necessary to effectuate them. In practice, then, the Bill’s provision on digital assets may lead to a *de facto* ban on many cryptocurrency-related activities in the United States as participants opt out of the market for fear of running afoul of these new obligations—which would frustrate rather than further the Bill’s revenue-raising efforts.

Cryptocurrency networks are open source and run on the internet; they are here to stay whether the United States participates in their development or not. They promise to advance many ideals the United States supports: openness, freedom of speech, transparency, and individual agency. They have the potential to make the open marketplace of ideas and enterprise an inherent feature of the internet. We urge Congress to explore that promise—and how to mitigate risks associated with it—through a deliberate and deliberative process. Passing legislation that may have the unintended consequence of effecting a *de facto* ban on many cryptocurrency activities in the United States would be a mistake. The Association implores Congress to reevaluate the language of this provision.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristin Smith".

Kristin Smith
Executive Director