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Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
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Re: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets [Docket Number: FINCEN-2020-0020]

To Whom It May Concern:

The U.S. Chamber of Commerce's (the "Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to submit comments to the Financial Crimes Enforcement Network ("FinCEN") regarding requirements for certain transactions involving convertible virtual currency ("CVC") or digital assets.

Digital assets on a distributed ledger, such as blockchain, have the potential to promote the development of cutting-edge goods and services and to create innovative means of transferring value. Yet the swift ascent of this technology has often outpaced the capacity and willingness of regulators and other policy makers to ensure that regulatory regimes are adapted to foster innovation while protecting against the misconduct of bad actors—a challenging balance to strike.

To be fair, the pace of innovation, and in particular the development of blockchain applications incorporating digital assets, has presented legislators and regulators with a host of questions as they seek to ensure the fair, orderly, and robust operation of the nascent digital asset marketplace.

The Chamber is an avid supporter of FinCEN's efforts to enforce anti-money laundering ("AML") and to combat the financing of terrorism ("CFT") in the U.S.[1] Further, the Chamber shares FinCEN's mission "to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems."[2] Without question, stopping money laundering and combatting terrorist financing, along with deterring and rooting out other types of wrongdoing, should remain

[1] FinCEN Guidance, FIN-2019-G001, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf
[2] Mission of FinCEN, https://www.fincen.gov/mission-fincen

top priorities. We know our capital markets are healthier and our country is safer when we have the necessary tools to detect bad actors and hold them accountable for their misconduct.

While the Chamber supports the proposal's effort to "establish appropriate controls to protect United States national security from a variety of threats from foreign nations and foreign actors, including state-sponsored ransomware and cybersecurity attacks, sanctions evasion, and financing of global terrorism, among others," we are concerned by the 15 day comment period. In particular, a rushed rulemaking creates an undue potential of unintended long-term consequences that could hinder the future development of the digital assets ecosystem in the United States.[3]

We are grateful that FinCEN continues to track the evolution of digital assets and believe that it can address concerns through the rulemaking process, largely by following established regulatory best practices. As FinCEN surely appreciates, implementation of the proposed rule is both challenging and high-stakes. If done poorly, FinCEN could inadvertently negatively impact economic growth in the United States spurred by digital assets innovation and consequently incentivize companies to simply relocate outside the United States. To that end, we write to urge FinCEN to consider the following requests as it proceeds with the rulemaking:

- Allow a 60-day comment period;
- Avoid treating digital assets regulation less favorably than non-digital assets regulation;
- Consider the impact of the rule on U.S. innovation; and
- Partner with the private sector

Analysis

Allow a 60-day comment period

The proposed rule is complex and impacts the broader digital assets ecosystem—not just firms dealing with cryptocurrency. Simply, a 15-day comment period that includes Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day (plus two weekends) is not sufficient given the substance of the rule. The rationale for bypassing the Administrative Procedure Act ("APA") for this rulemaking is inconsistent with previous FinCEN rulemakings, and because such a rapidly-accelerated comment period materially impairs the public's ability to analyze and comment on the proposed rule, we respectfully request FinCEN reconsider a 60 day comment period.

FinCEN's proposal, officially published in the federal register on December 23, 2020, would require banks and money service businesses ("MSBs") to submit reports, keep records, and verify the identity of customers in relation to transactions involving CVC or digital assets

[3] "Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets," *Notice of Proposed Rulemaking*, Financial Crimes Enforcement Network of the U.S. Treasury Department, https://www.federalregister.gov/documents/2020/12/23/2020-28437/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets.

with legal tender status ("legal tender digital assets," or "LTDA") held in "unhosted" wallets or held in wallets hosted in a jurisdiction identified by FinCEN (collectively referred to as "otherwise covered wallets"). To effectuate these proposed requirements, FinCEN proposes to prescribe by regulation that CVC and LTDA are "monetary instruments" for purposes of the Bank Secrecy Act ("BSA").[4]

Pursuant to the proposed rule, banks and MSBs would have 15 days from the date on which a reportable transaction occurs to file a report with FinCEN. Further, the proposed rule would require banks and MSBs to keep records of a customer's CVC or LTDA transactions **and counterparties**, including verifying the identity of their customers, if a counterparty uses an unhosted or otherwise covered wallet and the transaction is greater than $3,000. This recordkeeping requirement would include the collection of: (1) the name and address of the financial institution's customer; (2) the type of CVC or LTDA used in the transaction; (3) the amount of CVC or LTDA in the transaction; (4) the time of the transaction; (5) the assessed value of the transaction, in U.S. dollars, based on the prevailing exchange rate at the time of the transaction; (6) any payment instructions received from the financial institution's customer; (7) the name and physical address of each counterparty to the transaction of the financial institution's customer; (8) other counterparty information the Secretary may prescribe as mandatory; (9) any other information that uniquely identifies the transaction, the accounts, and, to the extent reasonably available, the parties involved; and (10) any form relating to the transaction that is completed or signed by the financial institution's customer.[5]

Allowing the public and interested parties 60 days to understand the practical implications of the proposed rule in a thoughtful way in order to provide reasoned comments is in line with previous FinCEN approaches for similar rules.

Avoid treating digital assets regulation less favorably than non-digital assets regulation

Regulation should be technology-neutral and activity-based—recognizing that market participants using cutting-edge technology may have the technological capability to meet regulatory obligations in new and different ways, such as directly building compliance into a blockchain protocol or digital asset.

We are concerned with the new recordkeeping requirement proposed in the rule for CVC payments that includes a mandatory requirement that customer counterparties be identified by name and physical address for transactions above $3,000. This added layer of recordkeeping (i.e. identifying counterparty information) is not currently required of legacy payments. Creating a more onerous process for financial institutions using CVC payments could have a negative impact on the utilization of CVC transactions for all entities in the space.

Consider the impact of the rule on U.S. innovation

Digital asset innovation is a significant opportunity that should be encouraged. The stakes are high, and the test is to ensure that the U.S. remains at the forefront of global technological innovation. Vital U.S. economic interests are at risk if the U.S. does not maintain its lead.

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[4] Ibid.
[5] Ibid

According to a recent Fidelity survey, 27% of institutional investors in the U.S. hold crypto assets and 60% of investors across the U.S. and Europe "believe digital assets have a place in their investment portfolio."[6]

Some nations have responded by calibrating their regulatory and supervisory oversight of digital assets, including digital asset-driven innovation, to advance national interests that may be at odds with those of the United States.[7] Just last week, The People's Bank of China concluded its second digital-currency pilot program, moving closer to becoming the first major world economy to introduce such a system.[8] China's work on a digital currency with some form of legal tender status started in 2014, and they have been clear that the effort is intended to challenge the leadership of the U.S. Dollar.[9]

The U.S. faces the prospect of falling behind other nations when it comes to digital asset innovation, particularly with respect to digital currencies with legal tender status, and appropriate digital identity ecosystems to securely utilize these currencies. In addition, we risk ceding the development of innovation and potential economic growth to other countries. Vital U.S. interests are at risk if the U.S. does not lead, with adverse impacts on a range of economic sectors—from financial services to health care to manufacturing, to name just a few—that could be profound. Maintaining the leading role of the dollar in the international markets must be a priority. This requires ensuring that the regulatory environment, whether it be AML, KYC, CFT, or data privacy and security initiatives, does not overly burden technological innovation.

Partner with the private sector

Firms engaging in the digital asset space share FinCEN's commitment to detecting and preventing criminal activity and safeguarding our financial systems. The Chamber encourages FinCEN to build a partnership with the private sector that will promote the development of a thriving digital assets ecosystem in the United States while identifying ways to root out money laundering and combat the financing of terrorism.

Permitting innovators an opportunity to demonstrate a technology's merits while allowing regulators to learn more about how best to modernize a regulatory regime will be conducive to innovation and build trust. This combination should result in well-designed regulation that avoids discouraging innovation.

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[6] Olga Kharif, Fidelity Says a Third of Big Institutions Own Crypto Assets, Bloomberg.Com (June 9, 2020), https://www.bloomberg.com/news/articles/2020-06-09/fidelity-says-a-third-of-large-institutions-own-crypto-assets.

[7] https://www.weforum.org/press/2020/01/governing-the-coin-world-economic-forum-announces-global-consortium-for-digital-currency-governance/

[8] Jonathan Cheng, "China Envisions Its Digital-Currency Future, With Lotteries and a Year's Worth of Laundry," Wall Street Journal, December 27, 2020 (accessed 12/29/20), https://www.wsj.com/articles/china-envisions-its-digital-currency-future-with-lotteries-and-a-years-worth-of-laundry-11609066819?page=1

[9] Billy Bambrough, "China Eyes New Battlefield In Looming Showdown Over US Dollar Dominance," Forbes, September 22, 2020 (accessed 12/29/20), https://www.forbes.com/sites/billybambrough/2020/09/22/china-eyes-new-battlefield-in-looming-showdown-over-us-dollar-dominance/?sh=6f0f28bf245f

In closing, an accelerated comment period that runs through not one but two holiday weekends discourages and impedes vital public input. Indeed, while we have endeavored to unpack the proposed rule on a greatly accelerated basis, we have not had sufficient time to seek and obtain full input from our interested member companies to understand the rule's practical implications for them. As a result, we have ongoing concerns about the potential unintended consequences of the proposed rule should it be enacted.

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

Julie Stitzel