U.S. Chamber of Commerce

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August 8, 2022

U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Request for Comments, Department of the Treasury; Ensuring Responsible Development of Digital Assets (87 Fed. Reg. 40,881 – 40,883, July 8, 2022)

To Whom it May Concern:

The U.S. Chamber of Commerce (the Chamber) appreciates the opportunity to comment on the U.S. Treasury Department's request for comment on "Ensuring Responsible Development of Digital Assets" (the RFC). The RFC was issued in response to the March 9, 2022, Executive Order on "Ensuring Responsible Development of Digital Assets" (the Executive Order), which outlines numerous policy objectives, and tasks various offices in the executive branch and independent agencies with developing research and recommendations.

The Chamber generally supports the stated goals of the Executive Order. A year before the Executive Order was published, we publicly suggested, "A White House task force could help set the direction for reducing impediments to technological progress while ensuring that vital consumer and investor protections are not compromised. And it could collaborate with regulatory agencies and Congress and help coordinate national-level priorities designed to maintain the country's global innovation leadership."

Modernizing our public policy and regulation to recognizes the significant promise of digital assets is critical to the U.S. maintaining its position as a global innovation leader. Innovation is critical to driving long-term economic growth. This will only be possible if the U.S. can maintain technological leadership. The U.S. Chamber and the business community are hopeful the Executive Order will spur original research, grounded in data, that studies the potential of digital assets that are being developed by entrepreneurs in the private sector.

The Chamber released a report last year, "Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader,"[1] to provide a roadmap to U.S. policymakers. The report notes that the digitization of assets has

[1] Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader. (January 2021). U.S. Chamber of Commerce, Center for Capital Markets Competitiveness.

the potential to revolutionize how goods and services are offered and how value is transferred for generations to come. The report includes considerations for a digital assets framework with a particular focus on financial services regulatory regimes because of their significant impact on digital assets and related blockchain innovation. A competitive and workable regulatory framework for digital assets is critical to the ability of the U.S. to attract the capital to fund this growing industry and for the promise of the technology to be realized.

The U.S. Treasury Department has an important role in implementing the Executive Order and advancing public policy domestically and around the world that will position the U.S. as a competitive market for digital asset technologies. The U.S. cannot afford to fall behind. The Chamber is pleased to have the opportunity to provide input into the RFC.

(A) <u>Adoption to Date and Mass Adoption</u>

1. **What explains the level of current adoption of digital assets? Please identify key trends and reasons why digital assets have gained popularity and increased adoption in recent years.**

The digitization of assets has the potential to revolutionize how goods and services are offered and how value is transferred for generations to come. The ongoing and increasing adoption of digital assets is driven by the belief of the market that, in some, if not many, cases, they can be a more efficient means of interaction and transacting. Blockchain technology creates a decentralized ledger of transactions across a network that has consequences for numerous markets, especially financial services.

A new poll from the U.S. Chamber of Commerce finds that Americans are increasingly interested in using cryptocurrency. The polls finds that 16% of Americans are currently using cryptocurrency, and another 21% would like to use cryptocurrency. This marks more than one-third (37%) of the population expressing not just familiarity with cryptocurrency, but an interest in using it. This is consistent with a survey conducted by Pew Research Center finding that 16% of U.S. adults have personally invested in, traded, or otherwise used one or more cryptocurrencies.[2] This is up from just 1% when the research firm asked Americans in 2015. This is evidence that cryptocurrency is quickly moving beyond being considered a fledgling technology by Americans – it is on a trajectory to towards mass adoption by the public.

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[2] Perrin, A. (2021, November 11). 16% of Americans say they have ever invested in, traded or used cryptocurrency. Pew Research Center. Retrieved from https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/

With more consumers looking to use cryptocurrencies to purchase goods and services, particularly over the internet, and exchange value, leaders across industries are increasingly asking if now is the right time for their businesses to start accepting digital currencies. According to a Skynova survey, 37% of business owners said desire from consumers influenced their decision to start accepting cryptocurrencies.[3] Moreover, 44% said they've started to accept cryptocurrencies to reach younger generations and acquire new customers. Still, while cryptocurrencies are growing in popularity overall, some businesses' customer bases may not be ready to use them — or at least not right now. We believe an absence of regulatory clarity is a barrier to broader adoption of digital assets and blockchain technology, be it for payments or other purposes.

As it relates to stablecoins, the President's Working Group Report on Stablecoins ("the PWG Report) provides a helpful description about the market and trends for expanded adoption.[4] Stablecoins are not the only type of digital currency. They are, however, a useful indicator for understanding the market for digital assets given the function they serve and their correlation with the market for other cryptocurrencies and digital assets. The PWG Report notes that, at this time, stablecoins are predominantly used in the U.S. to facilitate trading, lending, and borrowing of digital assets. And the PWG Report finds that, the market capitalization of stablecoins issued by the largest stablecoin issuers exceeded $127 billion as of October 2021 – a nearly 500% increase over the preceding twelve months.[5] The PWG Report also discusses use cases beyond just being used as an intermediary to facilitate financial transactions. This recognition is especially notable, because it indicates the range of benefits that the technological innovation can help usher in.

The PWG Report notes, *"Beyond digital asset trading, several existing stablecoin issuers and entities with stablecoin projects under development have the stated ambition for the stablecoins they create to be used widely by retail users to pay for goods and services, by corporations in the context of supply chain payments, and in the context of international remittances."*[6] We agree this is a real, and promising, possibility. It is not a foregone conclusion, however, and will depend on the factors mentioned in the PWG Report such as whether stablecoins are a convenient means of payment, the competitiveness of transaction costs, and user confidence in the

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[3] Grabundzija, A. (2021, October 22). Report: Nearly a third of small businesses in the U.S. currently accept payments in crypto. Retrieved from https://cryptoslate.com/report-nearly-a-third-of-small-businesses-in-the-u-s-currently-accept-payments-in-crypto/

[4] U.S. Department of the Treasury. (2021, November). Report on Stablecoins. President's Working Group on Financial Markets (PWG), Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (OCC). Retrieved from https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf

[5] PWG Report – Page 7

[6] PWG Report – Page 7

stablecoin issuer and confidence about the stability in the price of the asset. Policymakers have an important role in addressing the factors that could be barriers for broader adoption.

2. Factors that would further facilitate mass adoption

The objective of "mass adoption" of digital assets could be significantly advanced by limiting regulatory ambiguity and promoting workable regulation that takes into account the blockchain technology that underpins digital assets. Companies that offer digital assets and that enable the market infrastructure need more certainty about what activity is compliant with the law, and what activity is not. Digital assets do not fit cleanly within the legacy financial regulatory structure, and specific regulatory requirements need to be modernized for the technological innovation that digital assets reflect. Consumers and businesses will be more confident about using digital assets if reasonable and workable regulations are in place that inform them of the terms of use and provide authority to regulators to reasonably enforce these terms in a manner that safeguards the digital assets marketplace while fostering technological innovation. We believe all stakeholders, including policymakers and market participants, should be properly educated about the benefits, and risks, of digital assets.

Consumer and investor education

As a first principle, we believe that consumers and investors are more inclined to engage in a market if they understand the products. They need to understand if the digital asset meets their specific needs, and they need to be able to weigh its potential benefits and risks. Informed decision-making by consumers and investors can be advanced through education by both the private sector and public sector. This is why we support businesses providing appropriate disclosures to the market.

Categorization of digital assets

Properly categorizing digital assets by their various use cases, features, and risks is a critical first step before policymakers should attempt to apply new regulatory standards. This asset class is new, evolving, and not monolithic: digital assets come in many forms. Establishment of a globally agreed upon lexicon would avoid confusion for the categorization or regulatory treatment of digital assets (i.e., security, commodity, currency, or property). Regulators and market participants should not find themselves in a position where it is difficult to discern which regulatory regime(s) certain digital assets are subject. These categories should create opportunities for digital assets to exist and operate within each – not all digital assets should be treated the identically.

We believe policymakers in the U.S. can be informed by developments in the European Union and international standard setting bodies in their efforts to establish a regulatory framework. U.S. regulations should be tailored for our market, but to the degree feasible our policymakers should strive to limit regulatory fragmentation and conflicts. The European Union's proposed regulatory framework, Markets in Crypto Assets (MiCA) is instructive for the categorization of digital assets. MiCA broadly applies to crypto-assets which it defines as "digital representations of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology." MiCA defines three subcategories of crypto-assets: 1) Asset-reference token – a stablecoin backed by a basket of currencies; 2) E-money token – a stablecoin pegged to the value of a fiat currency like the U.S. dollar; and 3) Utility token – a token intended to provide digital access to a good or serve that is only accepted by the issuer of that token. While we do not necessarily recommend these subcategories, the concept of a framework looking to laws that already exist and addressing residual gaps is important.

Defining "stablecoins" and regulatory standards

Recent market developments spurred an important dialogue regarding the categorization of stablecoins. The PWG Report defines stablecoins as "digital assets that are designed to maintain a stable value relative to a national currency or other reference assets."[7] A stablecoin pegged to the U.S. dollar, for example, means that the stablecoin is backed by U.S. dollars held in reserve or tied to an algorithm to track the value of the stablecoin to the U.S. dollar. Stablecoins can have different design features to maintain the stable value that they claim. Algorithmic stablecoins, for examples, are not necessarily collateralized and instead use algorithms and smart contracts to monitor supply and demand with reference to another cryptocurrency to keep the value stable. A fully reserved stablecoin is backed 1-1 by U.S. dollars and cash-like equivalents.

Stablecoins that meet certain standards, such as being fully reserved, should be recognized by policymakers as being more likely to maintain the stable value that they claim. We are encouraged by the discussion in the PWG Report that moves policymakers closer to ensuring that there are sound standards for payment stablecoin arrangements around issues such as governance, management of reserve assets, custody of reserve assets, settlement, redemption, and distribution. We believe it would be preferrable for Congress to enact legislation that provides for clear authorization and principled standards for the regulation of stablecoins that is

[7] PWG Report – Page 1

appropriately tailored for the risk of certain stablecoins rather than to subject stablecoins to a one-size-fits-all regulatory scheme.

It is important that market regulators be involved in the establishment and implementation of regulation applicable to stablecoin. Stablecoin arrangements have features that may cause them to be inappropriately labeled as a banking product, investment product, and/or commodities product. The importance of this collaboration is manifest in a recent joint report from the Committee on Payments and Market Infrastructures and the Board of International Organization of Securities Commissioners.[8]

Regulatory requirements should be applied to stablecoins based on the characteristics of the asset. Regulation should be effective and workable in light of the particular attributes of different types of stablecoins.[9] Appropriate regulatory authority may, in certain cases, already exist, including at the state level with well-established and tested state licensing and regulatory regimes for banks, trust companies, and money transmitters. Treasury should survey the market, categorize the different types of stablecoins, determine what regulatory tools should be applied, and work with Congress to bring stablecoins into the federally regulated financial system.

Digital Dollar / CBDC

Policymakers must also avoid taking actions that would have the public sector crowd out innovation. The U.S. has a strong history of the private sector leading in payments innovation that policymakers should be careful not to disrupt. It will be more difficult for innovators to attract capital and otherwise advance private-sector based solutions if there is a risk that they will have to directly compete with a payment technology issued by the Federal Reserve. The Federal Reserve is in a unique and potentially conflicted position as both a regulator of the private payments system, and potentially a direct competitor.

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[8] Committee on Payments and Market Infrastructures and Board of the International Organization of Securities Commissions. (2022, July). Application of the Principles for Financial Market Infrastructures to stablecoin arrangements. Bank for International Settlements. Retrieved from https://www.bis.org/cpmi/publ/d206.pdf

[9] A recent paper by the Coinbase Institute is intended to "explain[s] how different stablecoin arrangements operate, the current and potential uses of stablecoins, and how to consider regulatory approaches that balance their potential benefits against their risks." https://assets.ctfassets.net/c5bd0wqjc7v0/79db1PxjBTv1JbL574fFvA/61e9950c436df5556c878d94bfcee855/CBI-StablecoinWhitepaper-July2022.pdf

As we note in our letter to the Federal Reserve, the Chamber does not offer an opinion for whether the Federal Reserve should issue a U.S. CBDC. We have long respected and advocated to protect the independence of the Federal Reserve's role in implementing monetary policy. Central banks, including the Federal Reserve, should determine whether there is a specific market failure, a failure of public-private collaboration, or a shortcoming with other payments initiatives, including those led by the Federal Reserve, that a CBDC would address that cannot be addressed by, for example, a privately issued stablecoin that is backed 1-1 by U.S. dollars.[10] The Federal Reserve should clearly articulate the specific use cases for a Digital Dollar to facilitate a broader discussion about the objectives it seeks to achieve.

(B) Opportunities for Consumers, Investors, and Businesses

3. **What are the main opportunities for consumers, investors, and businesses from digital assets? For all opportunities described, please provide data and specific use cases to date (if any).**

There are many potential use cases for digital assets. Some of these cases are in effect today, while others have not been brought to market, or may not have yet even been contemplated. One use case for digital assets that has already shown significant process is cross-border payments.

Under current cross-border payment systems, several intermediaries are involved in facilitating, confirming, and processing the transaction and information about the parties. Most of these intermediaries charge fees that add to the cost of payment processing for cross-border transfers. Because cross-border payments must move through these intermediaries before settlement can be achieved, the time it takes to transfer money can be lengthy and uncertain, and participants must manage various time zones with associated restrictions on business hours, and additional fees. Generally, it takes at least some number of days.[11] The PWG Report similarly notes the potential for the use case.[12]

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[10] Hulse, B. (2022, May 20). Comments on Money and Payments: The U.S. Dollar in the Age of Digital Transformation. U.S. Chamber of Commerce. Retrieved from http://www.centerforcapitalmarkets.com/wp-content/uploads/2022/05/U.S.-ChambersComments_CBDC_FedReserve-Final.pdf?#

[11] See Chamber paper (pages 32 – 33) -- https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/01/CCMC_DigitalAssets2021_v3.pdf

[12] See PWG Report (page 9). "Stablecoins and other digital assets can be used to transfer large amounts of value across borders very quickly. A rapid increase in cross-border payments could amplify ML/TF risks due to the uneven implementation of global international AML/CFT standards developed by the FATF.38 While the United States regulates and enforces AML/CFT obligations for covered service providers, most countries have either not put these standards into their regulatory frameworks or are

However, as has been clearly identified by the G20 Cross Border Payments Roadmap, existing barriers to the speed, efficiency, transparency, and accessibility of cross-border payments are not exclusively – or even primarily – technological. A range of issues, including fragmented regulatory requirements, unharmonized messaging standards, and barriers to the cross-border flow of data would need to be resolved alongside the deployment of new technologies in order to deliver transformational improvement in the cost/speed of remittances and/or cross-border B2B flows.

Apart from cross-border payments, we believe that programable payments are of notable consideration. Programmability means the ability for users to build simple conditional obligations (colloquially, "smart contracts") into a payment. This could theoretically support a wide variety of use cases, including escrow services, automated insurance claims, and the provision of installment loans at the point of sale.

Finally, digital assets are particularly well positioned to support transformative innovation when adopted by traditional financial services players. As they are already trusted and regulated, digital assets represent an opportunity to combine these strengths with the benefits of digital assets. In this context, such assets can be digital representations of newly created assets (e.g., floating crypto-assets) or existing assets and currencies, with tokenized commercial bank deposits representing a particularly interesting new use case.

(C) General Risks in Digital Assets Financial Markets

4. Please identify and describe any risks arising from current market conditions in digital assets and any potential mitigating factors.

(D) Risks to Consumers, Investors, and Businesses

5. Please identify and describe potential risks to consumers, investors, and businesses that may arise through engagement with digital assets.

We are currently at an inflection point for whether the U.S. will be considered as a favorable destination for digital assets and, correspondingly, the underlying technological innovation. Other jurisdictions are moving quickly to update their

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failing to supervise them, leading to gaps in AML/CFT regulation and supervision for stablecoins and other digital assets."

respective regulatory frameworks. Policymakers in the U.S. should act strategically to ensure that we move quickly to implement a framework that promotes a competitive market environment for digital assets and fosters technological innovation. For example, the EU and the European Parliament recently reached a provisional agreement of the Markets in Crypto-assets (MiCA) Regulation with the objective of clearly defining the regulatory treatment of crypto-assets that are not covered by existing financial services legislation.

There is a general risk to U.S. businesses, consumers, and the competitiveness of our economy of not moving expeditiously to update our regulations to reflect the unique qualities of digital assets and provide them room to grow responsibility. Businesses are in search of legal and regulatory clarity and may choose to relocate, or invest, in jurisdictions that offer such legal certainty. And consumers need to know that reasonable regulatory protections are in place. Policymakers should, of course, be careful to not institute overly prescriptive or burdensome regulations, or regulations that do not account for the novel qualities of digital assets. We believe regulations can, and should, be modernized without duplicating or conflicting with existing regulations. Core regulatory objectives can be met even if particular regulatory requirements are revised or fashioned to account for the unique attributes of digital assets so that regulation is workable in the context of blockchain technology.

Regulatory fragmentation could become an increasingly more severe issue if the U.S. does not remain engaged in the quickly evolving policymaking. In particular, any regulatory proposal should be careful not to impact product design as innovators and suppliers need to provide a single product that can meet the demands of digital payments in multiple markets. Businesses design products for multiple markets and customers, and the ability for U.S. innovators to not only participate but to hold leading positions in the global marketplace is key to facilitating the cycle of private-sector R&D investments.

One particular issue that policymakers should focus on in this regard is the current lack of clear governance processes. Traditional finance has strong governance procedures in place for unwinding mistakes, assigning responsibility for losses (for example in the event of fraud), and managing disputes between parties. Unfortunately, the same is not always true for digital assets ecosystems, where the ‘rules of the road’ are often being determined along the way. As a result, ecosystem members often lack certainty about how issues - ranging in seriousness from a mis-directed transaction to a failed stablecoin - will impact them. We believe that the establishment of robust governance procedures and dispute practices for managing the consequences of user-error, fraud, and cyber-attacks will be essential to the broader adoption of digital assets. Moreover, while the details of these governance practices should be defined by private sector stakeholders at the level of a given digital asset ecosystem, the public sector can play a valuable role in providing clear regulatory frameworks that serve as a foundation for robust governance.

Establishment and adherence of global regulatory standards for digital assets may also prove helpful to avoid regulatory driven market fragmentation. Some countries have been actively calibrating their regulatory and supervisory oversight of digital assets to advance their own national interests, which may be at odds with those of the U.S. Therefore, the U.S. should consider global leadership in the regulation of digital assets as a key enabler of the overall competitiveness of American firms in this sector. As it relates to financial services regulation, cross-border coordination is important to addressing any perceived issues regarding financial stability or money laundering. This coordination on financial regulation can primarily occur through multilateral organizations, including those established by the G20.

SEC SAB No. 121

The Securities and Exchange Commission (SEC) Staff Accounting Bulletin No. 121 (SAB No. 121) is just one example of how a haphazard approach to policymaking can create significant regulatory uncertainty that could otherwise be avoided. On March 31, 2022, the SEC published a bulletin expressing the views of the staff regarding the accounting obligations to safeguard crypto-assets an entity holds for platform users.[13] SAB 121 adds interpretive guidance for entities to consider when they have obligations to safeguard crypto-assets held for their platform users. SAB 121 raises various substantive policy questions and it is unclear what process the SEC may pursue to address them.

SAB 121 is irregular for several reasons and is not the most efficient mechanism for implementing new accounting policy for crypto-assets. A more deliberative process would have been a rulemaking under the Administrative Procedure Act or standard setting by the Financial Accounting Standards Board (FASB) that would recognize and address the complex and technical questions arising from affected companies having to record a new asset and liability on their balance sheets at fair value.

SAB 121 would require companies to adjust their accounting so digital assets are treated as part of the balance sheet. This change is consequential for companies that provide custody services for digital assets and is uniquely problematic for banks given their regulatory capital requirements are linked to assets held on their balance sheet. Custody assets have not traditionally been treated as part of the balance sheet. Treating custody assets of part of the balance sheet would require banks to hold increased regulatory capital that does not correlate with real economic risk.

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[13] Staff Accounting Bulletin No. 121. U.S. Securities and Exchange Commission. (2022, April 11). Retrieved from https://www.sec.gov/oca/staff-accounting-bulletin-121

(E) Impact on the Most Vulnerable

6. **According to the FDIC's 2019 ''How America Banks'' survey, approximately 94.6 percent (124 million) of U.S. households had at least one bank or credit union account in 2019, while 5.4 percent (7.1 million) of households did not. And roughly 25 percent of U.S. households have a checking or savings account while also using alternative financial services. Can digital assets play a role in increasing these and other underserved Americans' access to safe, affordable, and reliable financial services, and if so, how?**

Financial inclusion is an important topic that merits continued study by the U.S. Treasury Department, financial regulators, and other policymakers. The Chamber launched an Equality of Opportunity Initiative in 2020 because we believe that all Americans should have the opportunity to earn their success, rise on their merit, and live their own American Dream. Access to the financial system – including payments services, credit products, and investment opportunities – is critical to providing underserved communities the means to be financially successful and to close the racial wealth gap.

If digital assets can be used to reach even a fraction of the Americans that do not currently have access to financial services, or have minimal access, then it is important for policymakers to pursue it and explore how to reduce regulatory barriers. Establishment of an account with a bank or credit union is important to the financial wellbeing of Americans, but there are many other financial products and services that are available to make payments, manage credit, and build wealth. Financial products that make use of distributed ledger technology aim to be more accessible and easier to use.

Another cornerstone of financial inclusion is consumer protection and trust. No technology, including digital assets and blockchain, can be a silver bullet for addressing financial exclusion in the U.S. or elsewhere. Digital assets providers, however, could bring more competition to the payments system and have attributes that may make it easier for all communities, especially underserved communities, to access financial services. Once trust and consumer protection are in place, digital assets innovations have the potential to support a much larger range of inclusionary use cases.

Sincerely,

William R Hulse

Bill Hulse
Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce