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Via Electronic Submission

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Global Financial Innovation Network ("GFIN")

Re: Comments on the GFIN Consultation Document Dated August 2018

The Chamber of Digital Commerce (the "Chamber") welcomes the opportunity to submit these comments in response to the GFIN's Consultation Document dated August 2018 (the "Consultation Document"). The Chamber is the world's largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology, and we are supported by a diverse membership that represents the blockchain industry globally.

Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a pro-growth legal environment that fosters innovation, job creation, and investment. We represent the world's leading innovators, operators, and investors in the blockchain ecosystem, including leading edge start-ups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, and investment firms.¹ Consequently, the Chamber and its members have a significant interest in the Consultation Document.

Respectfully submitted,

Perianne Boring
Founder and President
Chamber of Digital Commerce

Responses to Questions

¹ A list of our membership is available online at <http://digitalchamber.org/membership.html>.

Question 1: Do you agree with the proposed Mission Statement for the GFIN?

We commend the GFIN for its efforts in supporting global regulatory and industry collaboration in new financial technologies (“FinTech”) and distributed ledger technologies (“DLT”). It is the Chamber’s view that the Mission Statement represents the goals set forth in the Consultation Document. In addition, the Chamber considers the engagement of regulators across jurisdictions to be a significant factor in the success of this initiative, and encourages the GFIN to include this factor more explicitly in its Mission Statement.

The Chamber supports: (i) the provision of an environment that encourages regulatory harmony and comity on a global scale; (ii) the promotion of consumer protection; and (iii) the facilitation of engagement among regulators and industry on prevailing issues and challenges in the FinTech and DLT space. These aspirations, highlighted by the GFIN as key themes, and set forth in the U.K. Financial Conduct Authority’s proposition document, support the idea of a “global sandbox.”

The Chamber notes that the Consultation Document emphasizes the establishment of a network of regulators as one of GFIN’s main aspirational functions and highlights that such network is an important aspect of any global sandbox. The Chamber agrees with this objective, and, consequently, encourages the GFIN to consider expressly referencing to the community of regulators and related organizations in its Mission Statement. Paragraph 15 of the Consultation Document states that the GFIN will seek to provide a more efficient way for innovative organizations to interact with regulators. The Chamber suggests that this wording, along with the notions of regulatory mutual recognition and the promotion of globally recognized regulatory standards, be built into the Mission Statement to highlight the importance of regulatory integration and better represent the three main functions of the GFIN (as set out in Question 2, below).

Question 2: Do you agree with the proposed functions of the GFIN?

The three main functions of the GFIN are summarized as: (i) the establishment of a network of regulators; (ii) collaboration on policy work and regulatory trials; and (iii) support in B2B and B2C cross-border trials.

The Chamber agrees with the first function as set forth in its entirety, and views this as a vital function of the initiative. It is crucial to establish such channels of communication to encourage collaboration and information-sharing between the regulators, supervisors, industry participants, and related organizations to communicate the views and interests of market participants globally (both established and new entrants).

We suggest that functions (ii) and (iii) be expanded to ensure that the cross-border “sandbox” function of the GFIN is not lost. The GFIN’s support of cross-border trials should enable participants to grow in an environment that facilitates the development of business on a global scale, allowing companies to better focus on developing their businesses and furthering innovation. Often the regulatory landscape in FinTech is complex, challenging, and often opaque when dealing with new and innovative products and services. The ability of industry to trial initiatives and discuss related regulatory matters with the regulators themselves is critical to ensure that laws and regulations that are currently an ill fit for FinTech advancements are identified and addressed in a collaborative nature.

In addition, the Chamber supports the functions in principle but only to the extent that both the network and the two forms of trials, while supporting consumer protection, do not

pose additional, duplicative, or overlapping burdens, costs, and/or potential regulatory conflicts to industry participants.

Question 3: What aspects/areas of regulation pose the biggest challenge when it comes to innovating?

The Chamber supports legal and regulatory clarity around DLT and related smart contract technologies. The development of complex FinTech-related regulation, however, has the potential to stifle innovation. Therefore, the Chamber encourages regulators to strike a balance between clarifying regulatory purview or enacting regulation to protect consumers with minimizing costly and redundant compliance obligations to ensure financial innovation is encouraged, not discouraged.

Defined contours are needed to combat regulatory overreach, which is a potential issue for DLT in many jurisdictions today. One way to ensure a measured and thoughtful regulatory approach is for lawmakers and regulators to be flexible and open to discussion with industry participants to ensure an adequate understanding of evolving technologies prior to imposing restrictions or implementing regulations. A significant impediment to the FinTech industry is the risk of burdensome regulations being imposed on the industry, particularly in its early stages, which may not accommodate future developments and may hamper the utilization and incorporation of DLT into the financial services landscape, as well as other industries.

In addition, onerous regulatory requirements and lack of cross-jurisdictional regulatory recognition present hurdles to industry growth, while DLT solutions develop and seek entry to the global marketplace. DLT seeks to create opportunities and efficiencies that transcend international borders. Jurisdictional ambiguity, conflict, and general lack of comity can stifle innovation and financial inclusion.

Further, current regulatory requirements may foreclose certain lines of DLT development. The right of access and the right to erasure under the new European General Data Protection Regulation (the “GDPR”), for example, may impact the deployment of permissionless DLT networks. Exceptions or changes may need to be made to existing legislation to allow market participants to use the technology. Alternatively, the appropriate regulators could issue guidance to advise the industry and market participants on how to reconcile any conflicts arising within the existing legislation. For example, the U.K.’s Information Commissioner’s Office has announced a project to create its own sandbox for companies to test innovative business ideas and draw upon its expertise and advice to mitigate risk and enhance data protection. Similarly, the GFIN may well be the ideal platform to help facilitate the implementation of such modifications and guidance.

In addition, the swathe of prescriptive (which often have extra-territorial impact) securities regulations (e.g., the Dodd-Frank Act in the United States and MiFID II/EMIR in the European Union) present challenges for DLT-based settlement and clearing platforms. These platforms may not fit neatly into existing securities and derivatives laws and regulations because the line between execution and clearing might become blurred on a blockchain platform, or the classification of a digital token in one jurisdiction (e.g., as a security) may not be consistent with the treatment in a different jurisdiction. Additionally, recordkeeping and reporting solutions that use DLT will need to comply with laws and rules intended for non-DLT infrastructure that may not account for these new methods of recordkeeping.

Further, we suggest that participating and non-participating jurisdictions’ regulatory regimes and enforcement risks be addressed, as well as the interoperability between the

two. With respect to companies and industry participants operating in GFIN jurisdictions, further consideration and clarity is needed to assess the risks of operating in or out of non-GFIN jurisdictions.

Going forward, results from GFIN sandbox trials may be used to evaluate whether there are circumstances where DLT-specific exemptions or exceptions from current regulation should be adopted. The benefits of DLT (e.g., an immutable record) may, in some cases, outweigh the need for a specific GDPR or Dodd-Frank reporting requirement. The Chamber anticipates that the GFIN presents a controlled environment where these ideas can be explored on a multi-jurisdictional basis.

Question 4: Do you see any reasons why this initiative may be counterproductive to the outcomes it is seeking to achieve?

The Chamber generally encourages regulators to adopt a “do no harm” approach to regulation. This will allow DLT to develop and companies to innovate within a principles-based, rather than a prescriptive, environment. Further, we support regulation by function rather than by technology. In other words, we advocate that the GFIN promote a regulatory culture that focuses on the activity (e.g., financial instrument trading) rather than form (e.g., hard/soft copy contract vs. digital ledger entry). The GFIN should take these principles into account on an ongoing basis when evaluating whether the function and Mission Statement of the GFIN are being met.

Furthermore, issues can arise when differing regulatory schemes conflict. By their very nature, DLT networks are transnational and can span multiple jurisdictions and involve participants and organizations from all over the world. While the GFIN initiative clearly aims to facilitate global interoperability, a conflicts resolution mechanism and globally-accepted baseline standards must also be established and encouraged to ensure that the aim of regulatory collaboration is fulfilled.

It is also crucial that the initiative does not seek to push the FinTech industry in a particular direction or inappropriately incentivize the development of a particular technology. The technology should be allowed to grow organically so that regulatory solutions emerge as the technological functionality develops and matures.

Question 5: Do you believe the issue of developing a best practice for regulators when assessing financial innovation should be a priority for the network? If not, what other priorities should the network first address?

As reflected in our comments to the Mission Statement, we believe that developing best practices for regulators is an important function not only for regulatory consistency, but also to provide guidance and standards to those regulators not participating in the GFIN.

These technologies are global in nature; thus prompting the need for regulatory interoperability across jurisdictions and across the global financial community. However, interoperability is often hindered by misalignment, duplication, and redundancy. The focus on regulatory best practices across jurisdictions should emphasize efficiency, affirmative support for innovation, and common approaches at a global level, including mutual recognition and acceptance of the various jurisdictional FinTech regulatory regimes, without duplicating existing requirements.

Broadly, the Chamber believes that the growth of DLT and FinTech has been, and may continue to be, impacted by divergent licensing requirements and restrictions across the

world. The industry requires a consistent regulatory approach in order for the technology to take hold and flourish and to encourage FinTech company activities around the world. Gaps in regulation or incompatible frameworks and standards across jurisdictions have the potential to inhibit the uptake of the technology and could deter DLT firms and market participants from adopting blockchain technology on a meaningful level. Moreover, any new or additional legislation should not be duplicative of existing regulatory frameworks.

Question 6: Do you agree with the approach to involve global standard setting bodies as part of the GFIN? How else would you like to see these organizations involved?

The Chamber supports the approach to involve global standard setting bodies (“GSSBs”) as part of the GFIN. The global reach of these technologies has already prompted a number of GSSBs to evaluate various use cases for innovation, potential benefits and risks of emerging technologies, and applicable regulatory regime responses. Additionally, we encourage global stakeholders to carefully consider the creation of industry standards, such as consistent definitions of key terms.

For example, in February 2017, the International Organization of Securities Commissions (“IOSCO”) published the Research Report on Financial Technologies (FinTech) (“IOSCO Report”) discussing blockchain technologies. The IOSCO Report addressed a variety of innovative business strategy technologies that are transforming the financial services industries. The IOSCO Report generally supports the use of stronger surveillance technology and cooperation among national level agencies. It also mentions the risk of regulatory arbitrage, noting that regulation at the national level can create challenges in terms of regulatory consistency and cross-border enforcement efforts with respect to global use of technologies.

Relatedly, the Organisation for Economic Co-operation and Development (“OECD”) has made efforts to promote sound regulatory policy and action on behalf of its member bodies. The OECD published (i) “Financial Markets, Insurance and Pensions: Digitalisation and Finance”; and (ii) “Financial Consumer Protection Approaches in the Digital Age,” in April 2018 and July 2018, respectively. In the former publication, the OECD explores the areas of innovation within the FinTech realm and potential risks, as well as the legislative and regulatory considerations that should be applied across varying jurisdictions. In the latter publication, the OECD stresses the importance of developing and fostering digital financial services to advance global welfare and financial inclusion. The OECD also expresses the need for global cohesion in effective policymaking and governance with respect to digital financial services. The organization has hosted two roundtable discussions, one in July 2018 and the other in September 2018, to help bring industry and regulators together to build a global policy environment for digital financial assets.

Global industry standard setters have also weighed in on the development FinTech and DLT. The Chamber’s Chief Policy Officer is co-chairing the DLT Terminology group, a subgroup within the American National Standards Institute (“ANSI”) accredited standards development organization X9, which is developing a continuous maintenance standard to define terms related to DLT and blockchain. Moreover, in 2016, the International Organization for Standardization (“ISO”) formed a Blockchain and DLT working group to create standards around areas such as personally identifiable information, security risks and vulnerabilities, security of digital asset custodians, and identity management, among others. ISO recently announced the establishment of a global committee, the FinTech Technical Advisory Group, to provide a forum for dialogue among financial institutions, their regulators, and supply chain and FinTech firms.

Involving GSSBs and others like them would allow the GFIN to benefit from these

previous analyses and coordination. GSSB participation would be beneficial to the GFIN in minimizing cross-border boundaries and challenges, while also providing a framework in which local jurisdictions can model their own regulatory regimes. GSSBs have already established lines of communication and rapport that the GFIN could leverage for its purposes and to its benefit.

Question 7: What kind of outcomes from the policy work and regulatory trials would your organization benefit from?

The Chamber supports outcomes that provide resources, guidance, regulatory contacts, and pathways to dialogue with multiple regulators for industry participants. Creating a single access point for industry participants to reach regulators supporting multiple jurisdictions would be beneficial, and would be particularly helpful in the context of supporting sandbox trials with cross-border implications.

The Chamber appreciates the GFIN's efforts to establish cohesive global regulatory policies and business standards concerning financial services innovations, and support for innovation growth. For example, innovative concepts such as digital identity technologies for the purpose of meeting know-your-customer ("KYC") and anti-money laundering ("AML") requirements have been challenged by existing frameworks and a lack of mutual regulatory recognition. In such instances, the Chamber supports the consideration of a KYC utility that can be used across jurisdictions to facilitate customer onboarding in a digital environment. In addition, more information regarding regulatory inconsistencies and redundancies and how industry participants can address such inconsistencies in the most cost effective manner would lower obstacles for new market entrants.

Question 8: Would the cross-border trials be of interest to your organization? If so, could you provide any potential example use cases?

As a trade association, our members may be interested in participating in cross-border trials. Examples of some of the areas in which our members innovate using DLT in financial services:

- A. Lending (e.g., P2P, secured blockchain lending);
- B. Global payment processing, remittance transfers, and B2B payment systems;
- C. Cross-border data reporting (e.g., EMIR and Dodd-Frank Act compliance);
- D. AML and KYC (particularly in the context of cross-border KYC and electronic KYC or "E-KYC" systems, which make the customer onboarding process more efficient and effective);
- E. Supply chain management;
- F. Trade finance;
- G. Gap analysis tools to compare and contrast regulatory regimes and licensing requirements;
- H. Cross-border data privacy/governance requirements and/or best practices (e.g., GDPR);
- I. Transaction settlement and clearing;
- J. Cross-border price transparency;
- K. Risk management; and
- L. Insurance uses.

Question 9: Do you agree with the approach to managing the application process for cross-border trials?

The Chamber agrees with the approach proposed by the GFIN but also welcomes the opportunity to assess other approaches suggested in response to this Consultation Document. The Chamber appreciates the simplicity of firms applying first to their domestic regulators, akin to how the European Union operates (e.g., the domestic competent authority polices compliance with the applicable regulation and escalates to European Securities and Markets Authority when necessary). The United States, however, has multiple regulators that may have jurisdiction over the activities contemplated by the GFIN and it is unclear whether and to what extent activities triggering those other agencies' oversight would be impacted by the GFIN.

Further, another option to consider is permitting firms to apply in the jurisdiction where the firm anticipates the majority of its user base will reside. For example, a French company that expects 80% of users to reside in Germany may wish to apply first to the BaFIN. Permitting firms to apply to the jurisdiction in which they intend to operate or maintain customers would help to promote the development of tailored innovation for jurisdictions with particular needs or interests. The Chamber also stresses the need for the GFIN, through its implementation of cross-border trials, to encourage non-GFIN regulators to join the GFIN in order to achieve sound and innovation-promoting FinTech and DLT regulation.

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